

Trust Board Meeting: Wednesday 14 January 2015

TB2015.14

Title	Review of the Trust's Obligations under the Mental Health Act
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Status	For information
History	Previously reported to: <ul style="list-style-type: none"> • Trust Management Executive, 27 November 2014. • Quality Committee, 10 December 2014.

Board Lead(s)	Paul Brennan, Director of Clinical Services			
Key purpose	Strategy	Assurance	Policy	Performance

Executive Summary

1. Oxford University Hospitals NHS Trust (OUH) is registered with the Care Quality Commission (CQC) as a provider of *Assessment or medical treatment for persons detained under the Mental Health Act 1983*.
2. Between January 2013 - December 2013, there were four recorded incidents of detention under the Mental Health Act (MHA) at OUH sites. Between January 2014 and July 2014, there were a further ten detentions.
3. The Trust's Psychological Medicine Department (PMD) has been reviewing MHA governance to ensure lawful compliance with the MHA Code of Practice for patients detained in the Trust's hospitals.
4. The PMD has identified two areas for action relating to the provision of safeguards for detained patients, which have been addressed in order to lawfully detain patients.
 - Provision of safeguards for detained patients: Manager's Hearings (is this Manager's or Managers'?) .
 - Provision of safeguards for detained patients: Out-of-hours Responsible Clinician (RC) status.
5. Both issues are addressed in the paper.

6. **Recommendation**

The Trust Board is asked to:

- Review the paper and note that the provision of safeguards for detained patients are currently compliant in order to lawfully detain patients within the Trust.

Review of Trust's obligations under the Mental Health Act

1. Background

- 1.1. The Trust is registered with the Care Quality Commission (CQC) as a provider of Assessment or medical treatment for persons detained under the Mental Health Act 1983.
- 1.2. Between January 2013 - December 2013, there were four recorded incidents of detention under the Mental Health Act (MHA) at Trust sites. Between January 2014 and July 2014, there were a further ten detentions.
- 1.3. The Trust's Psychological Medicine Department, with advice from Oxford Health NHS Foundation Trust, has been reviewing MHA governance to ensure lawful compliance with the MHA Code of Practice for patients detained in the Trust's hospitals.
- 1.4. Key aspects to MHA governance are:
 - Provision of safeguards for detained patients, especially around appeals processes;
 - Establishing administrative and clinical protocols;
 - Monitoring and reporting at directorate and divisional level to the Trust Board.

2. MHA Compliance

- 2.1. The PMD originally identified two areas relating to the provision of safeguards for detained patients, which needed to be addressed in order to lawfully detain patients.
- 2.2. These were:

Identified issue	Action taken
Manager's Hearings	
<p>A person who has been detained in hospital can be discharged in one of three ways:</p> <ol style="list-style-type: none"> 1. by the Responsible Clinician, 2. by the nearest relative, and 3. by the managers of the responsible hospital. <p>Managers are defined in the case of an NHS trust as <i>"the chairman of the trust and such directors... [who] are not also employees of the trust."</i></p> <p>The role was previously provided by Oxford Health NHS Foundation Trust (OHFT). However, further consideration of the guidance identified that this arrangement could no longer continue as OUH is not a foundation trust.</p>	<p>To address this potential future gap in compliance, three Non-Executive Directors have agreed to undertake this role.</p> <p>Training has been provided to support them in discharging these responsibilities.</p>

Identified issue	Action taken
Out-of-hours Responsible Clinician status	
<p>The Responsible Clinician (RC) must be identified for the care of any patient detained under the Mental Health Act. This role must be maintained on a 24 hour basis.</p> <p>There are three potential scenarios where this might apply which are summarised as follows:</p> <p>Scenario 1: A patient already detained to a mental health trust under the Mental Health Act requires transfer to OUH.</p> <p>Scenario 2: An OUH inpatient requires detention under the Mental Health Act.</p> <p>Scenario 3: An OUH inpatient detained under the MHA requires transfer to mental health trust bed.</p> <p>A more detailed description of each scenario is contained in Appendix 1.</p>	<p>The RC role will remain with the Mental Health Trust though could be transferred to the OUH but only with the agreement of the OUH Psychological Medicine Service (PMS).</p> <p>The RC role will rest with the OUH PMS which has implemented an on call rota to provide 24/7 cover.</p> <p>The RC role will transfer to the receiving Mental Health Trust.</p>

3. Recommendation

3.1. The Trust Board is asked to:

- Review the paper and note that the provision of safeguards for detained patients are currently compliant in order to lawfully detain patients within the Trust.

Paul Brennan, Director of Clinical Services

January 2015

Appendix 1

Scenario 1: A patient already detained to a mental health trust under the MHA requires transfer to OUH

- The patient will be transferred to OUH under section 17 MHA. This permits the patient to leave the psychiatric hospital, while the mental health trust remains the detaining authority. Responsible Clinician (RC) status remains with the mental health trust consultant psychiatrist.
- A policy for the planning of such transfers and subsequent risk management in OUH is under development. It will be imperative for the OUH psychological medicine service to liaise with the referring psychiatrist.
- There are two options for the legal detention whilst the patient is in OUH:
 1. The referring RC may delegate day-to-day clinical management to the psychological medicine service, whilst RC status and MHA responsibilities remain with the mental health trust.
 2. RC status may be formally transferred to one of the OUH psychological medicine consultants, so that OUH becomes the detaining authority (under section 19 MHA). The patient's detention to the mental health trust would be discharged.
- The choice between these options will depend on the patient's clinical needs and how long they are likely to stay in OUH. Both options require the agreement of the OUH psychological medicine consultant and the mental health trust consultant psychiatrist.

Scenario 2: An OUH inpatient requires detention under the MHA

- The patient requires inpatient treatment for a medical disorder which may be comorbid with or directly consequential to the index mental disorder.
- Patients may be detained in OUH through one of the following:
 1. The patient was admitted to OUH informally but it was subsequently decided by the OUH psychological medicine service (or the out-of-hours through the OH-led duty service) that s/he requires assessment/treatment under the MHA.
 2. The patient is admitted to OUH from the community under the MHA. They will have been assessed by a GP or community mental health team as requiring inpatient medical treatment under the MHA.
 3. The patient was transferred from a psychiatric ward (section 19 MHA; see above).
- An OUH psychological medicine consultant will assume RC status for the detained patient and will act as joint clinician for the care with the relevant OUH physician or surgeon.
- This arrangement will continue until both consultants deem the patient safe for discharge or the psychiatrist deems the patient safe to continue to receive inpatient care on an informal basis (ie not under the MHA).

Scenario 3: An OUH inpatient detained under the MHA requires transfer to mental health trust bed.

- If the patient has been deemed medically fit for discharge from OUH and still requires inpatient psychiatric treatment the psychological medicine consultant will refer them to their local mental health trust.
- Once a bed has been identified, the patient will be transferred. All MHA duties will be transferred under section 19 MHA, to the receiving mental health trust.
- If a patient requires inpatient psychiatric treatment (or any intervention delivered outside OUH), there is no foreseeable circumstance whereby OUH will remain the detaining authority regarding the MHA. Transfer to a psychiatric ward for a patient detained under the MHA would only take place once the patient is medically-fit to leave OUH; transfer of MHA duties would be part of the transfer process.