

Livewell Southwest

**Mental Health Act 1983 – Section 132, 132A,
133 and 134 – Hospital Managers
Information Policy**

Version No 1.7
Review: July 2019

Notice to staff using a paper copy of this guidance

The policies and procedures page of Livewell Southwest Intranet holds the most recent version of this document and staff must ensure that they are using the most recent guidance.

Author: Deputy Mental Health Act Manager

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Reader Information

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Author contact details	By post: Local Care Centre Mount Gould Hospital, 200 Mount Gould Road, Plymouth, Devon. PL4 7PY. Tel: 0845 155 8085, Fax: 01752 272522 (LCC Reception).

Document review history

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Mental Health Act 1983 - Section 132, 132A, 133 and 134 - Hospital Managers Information Policy.

1 Introduction

- 1.1 Any course of action taken under the Mental Health Act 1983 (as amended 2007) must be done with consideration to the Guiding Principles. Section 118 of the Act states, "The Code of Practice (the Code) shall include a statement of principles which will inform decisions under the Act."

The Guiding Principles are:

- Least restrictive option and maximising independence
 - Empowerment and involvement
 - Respect and dignity
 - Purpose and effectiveness
 - Efficiency and equity
- 1.2 This policy is reflective of the guidance contained in Chapter 4 of The Code of Practice Mental Health Act 1983, (2015) and contained within Chapter 9 and 26 of the Reference Guide, (2015).
- 1.3 Effective communication is essential in ensuring appropriate care and respect for patient's rights. It is important that the language used is clear and unambiguous and that people giving information, check that the information which has been communicated is understood.
- 1.4 Everything possible should be done to overcome barriers to effective communication, which may be caused by any number of reasons. For example, the patient's first language may not be English. Patients may have difficulty in understanding technical terms and jargon or in maintaining attention for extended periods. They may have a hearing or visual impairment or have difficulty in reading or writing, or have a learning disability. A patient's cultural background may also be very different from that of the person speaking to them. Children and young people will need to have information explained in a way they can understand and in a format that is appropriate to their age.
- 1.5 Those with responsibility for the care of patients need to identify how communication difficulties affect each patient so that they can assess the needs of each patient and address them in the most appropriate way. Hospitals and other organisations should make people with specialist expertise (e.g. in sign language or Makaton) available as required. Often carers and advocates can help with or advise on best ways of communicating with a patient. Carer's centres and similar services can advise carers on their rights and can also answer general questions on the Mental Health Act, The Code, procedures and other issues. An electronic version of resources is held on the MHA Office intranet site. Additional resources can be accessed via the Mental Health Act Office.

- 1.6 Where an interpreter is needed, every effort should be made to identify an interpreter who is appropriate to the patient, given the patient's sex, religion or belief, dialect, cultural background and age. Interpreters need to be skilled and experienced in medical or health-related interpreting. Using the patients' relative and friends as intermediaries' or interpreters is not good practice, and should only exceptionally be used, including when the patient is a child or a young person. Interpreters (both professional and non-professional) must respect the confidentiality of any personal information they learn about the patient through their involvement.
- 1.7 Independent mental health advocates (IMHAs) engaged by patients can be valuable in helping patients to understand the questions and information being presented to them and in helping patients to communicate their views to staff. (See chapter 6 of the Code).
- 1.8 Wherever possible, patients should be engaged in the processes of reaching decisions which affect their care and treatment under the Act. Consultation with patients involves, helping them to understand the information relevant to decisions, their own role and the roles of others who are involved in taking decisions. Ideally decisions should be agreed with the patient. Where a decision is made that is contrary to the patient's wishes, that decision and the authority for it should be explained to the patient using a form of communication that the patient understands. Carers and advocates should be involved where the patient wishes or if the patient lacks capacity to understand.

2 Purpose

- 2.1 The purpose of this policy is to ensure the duties of Livewell Southwest under Section 132, 132A, 133 and 134 of the Mental Health Act, are carried out effectively.
- 2.2 The policy will identify the information which must be given to the patient and their nearest relative, what steps need to be taken to achieve understanding, and to define the process of auditing compliance to this duty.

3 Duties

- 3.1 The Hospital Managers of Livewell Southwest have delegated their responsibilities contained within this policy to staff of the organisation who have been trained to undertake these functions. These will normally be qualified nursing staff, qualified community staff, the Mental Health Act Manager and the Deputy Mental Health Act Manager, but not exclusively.
- 3.2 As soon as reasonably practicable (generally within the first 24 hours) the admitting nurse, following admission to hospital, or by the care co-ordinator if the patient is to be discharged onto a Community Treatment Order, must attempt to inform the patient of their rights and the information required under S132/132A. All attempts must be documented in the patient's notes and the appropriate assessment on SystemOne (S1) completed. Alternatively a S132/132A Rights form can be completed. (Appendix A)

- 3.3 Those with responsibility for patient care should ensure that patients are reminded from time to time of their rights and the effects of the Act. It may be necessary to give the same information on a number of different occasions or in different formats and to check regularly that the patient has fully understood it. Information given to a patient who is unwell may need to be repeated when their condition has improved. It is helpful to ensure that patients are aware that an IMHA can help them to understand the information.
- 3.4 A fresh explanation of the patients' rights should be considered in particular where:
- The patient is considering applying to the Tribunal, or when the patient becomes eligible again to apply to the Tribunal;
 - The patient requests the Hospital Managers to consider discharging them, or such a request is refused;
 - The rules in the Act about their treatment change (for example, because three months have passed since they were first given medication, or because they have regained capacity to consent to treatment see the Code Chapter 23, 24 and 25);
 - Any significant change in their treatment is being considered;
 - There is to be a Care Programme Approach Review (or its equivalent);
 - Renewal of their detention or extension of their Community Treatment Order (CTO) is being considered; or
 - A decision is taken to renew their detention or to extend their CTO.
 - A decision is taken to recall a community patient or revoke a CTO, or
 - A decision is taken to recall a conditionally discharged patient to hospital.
- 3.5 It is the responsibility of the care co-ordinator or community clinician, to ensure that patients on S17 leave or S17A (CTO) are informed of their rights whilst they are subject to the provisions of the Act, and are living in the community.

4 Definitions

- 4.1 "Hospital Managers" means the Chair and the Non-Executive Directors of The Board.
- 4.2 "Associate Mental Health Act Managers" mean suitably experienced lay people appointed to assist the Hospital Managers with their duties to discharge a detained patient.
- 4.3 Section 132/132A places a duty on the Hospital Managers (The Board) to ensure those that are subject to the provisions the Act, are aware of the reasons for them being subject to the provision of the Act, what this means, what rights they have including their rights of appeal, consent to treatment provisions and information regarding the Care Quality Commission and how to make a complaint.

It further places a duty to inform patients of the nearest relative's right to order

their discharge (Section 23), and the responsible clinician's ability to barr this discharge, but only on the grounds of dangerousness (Section 25). A list of all information to be provided is contained within Chapter 5 of this policy.

- 4.4 Section 133 places a duty on the Hospital Managers to inform the patients' nearest relative of the patient's discharge if the patient does not object to them being informed and if it is practicable to do so, giving 7 days' notice.
- 4.5 Section 134 enables the Hospital Managers to withhold a patients outgoing mail, if the addressee has requested the Hospital Managers do so.
- 4.6 "Nearest Relative" is a matter of fact in law and identified through a hierarchical list contained within Section 26 of the Act. The nearest relative is the person who is informed or consulted with about the patient becoming subject to the provisions of the Act. The nearest relative has certain rights under the Act, which includes the right to order the discharge of the patient and to object to some provisions under the Act.
- 4.7 "Mental Health Tribunal" is an independent body that those subject to the Act can apply to for discharge. The Tribunal's powers range from discharge to making unenforceable recommendations regarding the patients' future care and treatment.
- 4.8 "Information Leaflets" are leaflets produced by the Department of Health which provide information on the different provisions of the Act, and the rights of the patient subject to that provision. The Care Quality Commission also provide leaflets for both detained and Community Treatment Order patients, and Electro Convulsive Therapy (ECT).
- 4.9 "Section 132/132A Form" is the Organisations internally produced form used to record the details of the information giving process for patients subject to detention. It acts as a record of the time and date, and if there were any issues identified that need to be addressed. This form must be completed for all attempts to give the information, even if the attempt is unsuccessful. (Appendix A). This form is available on SystmOne as an Assessment and should be used wherever possible.
- 4.10 The Code of Practice (The Code) is produced by the Department of Health as required by Section 118 of the Act. The Code provides guidance to registered medical practitioners ("doctors"), approved clinicians, managers and staff of hospitals, and approved mental health professionals on how they should proceed when undertaking duties under the Act. This policy reflects the guidance in the Code of Practice published in April 2015.
 - 4.10.1 It also gives guidance to doctors and other professionals about certain aspects of medical treatment for mental disorder more generally.
 - 4.10.2 While the Act does not impose a legal duty to comply with the Code, the people listed above to whom the Code is addressed must have regard to the Code.

The reasons for any departure should be recorded. Departures from the Code could give rise to legal challenge, and a court, in reviewing any departure from the Code, will scrutinise the reasons for the departure to ensure that there is sufficiently convincing justification in the circumstances.

- 4.11 “Local Authority” (LA) is the local social services authority (or council) responsible for social services in a particular area of the country.
- 4.12 “Community Treatment Order” (CTO) relates to a person who has been discharged from hospital under Section 17A of the Mental Health Act 1983. The patient remains liable to be recalled to hospital for medical treatment.
- 4.13 “Care Quality Commission” (CQC) is an independent body responsible for monitoring the operation of the Mental Health Act. The CQC is also the body that acts as the health and social care regulator.
- 4.14 “The Act” Unless otherwise stated, the Mental Health Act 1983 (as amended by the Mental Health Act 2007).

5 Information to be given to the Patient

- 5.1 The Act requires Hospital Managers to take steps to ensure that patients who are detained in hospital under the Act, or who are subject to a community treatment order, understand important information about how the Act applies to them. This must be done as soon as practicable after the start of the patient’s detention or the CTO. This information must be given to patients subject to a CTO (‘community patients’) who are recalled to hospital at the time they are being recalled.
- 5.2 Information must be given to the patient both orally and in writing, including in accessible formats as appropriate (e.g. Braille, Moon, easy read) and in a language the patient understands. These are not alternatives. Those providing information to patients should ensure that all relevant information is communicated in a way that the patient understands.
- 5.3 It would not be sufficient to repeat what is already written on an information leaflet as a way of providing information orally.
- 5.4 Patients should be given all relevant information, including details of the complaints procedure, advocacy, legal advice, safeguarding and the role of the Care Quality Commission (CQC). This information should be readily available to them throughout their detention or the period of the CTO.
- 5.5 It is a requirement that all persons providing S132 and S132A information are familiar with the Code of Practice Chapter 4.
- 5.6 The patient will be given the information, both orally and in writing, following:
- admission under section,
 - a change in legal status,
 - renewal of detention or CTO,

- admission to a different ward or unit,
- when a patient's level of understanding improves,
- or when a patient is transferred in from another hospital.

This list is not exhaustive.

- 5.7 When a patient demonstrates that they are unhappy with their care or treatment, or to remaining on the ward/unit or remaining on a CTO, it is good practice to repeat the Section 132/132A rights. This provides a good opportunity to remind the individual of their rights of appeal. The provision of Section 132/132A information should not be viewed as a one of requirement.
- 5.8 The information must be conveyed in a way that the patient understands. If there is a need for interpreters/signers, the patient's relatives and friends should only **exceptionally be used** as intermediaries' or interpreters. Interpreters (both professional and non-professional) must respect the confidentiality of any personal information they learn about the patient through their involvement. Access to interpreters should be in line with Livewell Southwest's Interpretation and Translation policy.
- 5.9 The following information in Para 5.5.1 must be given (or attempted) by the person fulfilling the hospital manager's duty to all detained and CTO patients as soon as they become subject to the provisions of the relevant section. All subsequent attempts must be recorded on the S132/132A Assessment on SystmOne or on a S132/132A Rights Form. The MHA Office must be made aware of all attempts whether successful or not.

5.9.1 Information about detention and CTOs

Patients must be informed:

- of the provisions of the Act under which they are detained or subject to a CTO, and the effect of those provisions;
- the rights (if any) of their nearest relative to discharge them (and what can happen if their responsible clinician does not agree with that decision);
- for community patients, of the effect of the CTO, including the conditions which they are required to keep and the circumstances in which their responsible clinician may recall them to hospital, and
- that help is available to them from an IMHA, and how to obtain that help.

As part of this, they should be told:

- the reasons for their detention or CTO;
- the maximum length of the current period of detention or CTO;
- that their detention or CTO may be ended at any time if it is no longer required or the criteria for it are no longer met;
- that they will not automatically be discharged when the current period of detention or CTO ends;
- that their detention or CTO will not automatically be renewed or extended

- when the current period of detention or CTO ends;
 - the reasons for being recalled; and
 - for patients subject to a CTO, the reasons for the revocation of a CTO.
- 5.9.2 Patients should also be told the essential legal and factual grounds for their detention or CTO. For the patient to be able to adequately and effectively challenge the grounds for their detention or their CTO, should they wish, they should be given the full facts rather than simply the broad reasons. This should be done promptly and clearly. They should be told they may seek legal advice, and assisted to do so if required.
- 5.9.3 In addition, a copy of the detention or CTO documentation should be made available to the patient as soon as practicable and as a priority, unless the Hospital Managers are of the opinion (based on the advice of the authors of the documents) that the information disclosed would adversely affect the health or wellbeing of the patient or others. It may be necessary to remove any personal information about third parties.
- 5.9.4 Where the section of the Act under which the patient is being detained changes, they must be provided with the above information to reflect the new situation. The same applies where a detained patient becomes subject to a CTO.

The Code of Practice Chapter 14 now includes specific information regarding the assessment of persons who are deaf or have dementia. The information contained in Para. 14.115- 125 may also be useful to consider when communicating someone's Section 132/132A rights.

5.9.5 **Information about recall to hospital whilst on CTO**

Where a patient is to be recalled to hospital, the responsible clinician should give (or arrange for the patient to be given) oral reasons for the decision before the recall. The patient may nominate another person who they wish to be notified of the decision. Para. 27.33 – 27.34 of the Code of Practice states, "The responsible clinician must arrange for a notice in writing revoking the leave to be served on the patient or on the person who is for the time being in charge of the patient. (This is the CTO3 Form). Hospitals should always know the address of patients who are on leave of absence and of anyone with responsibility for them whilst on leave. The reasons for recall should be fully explained to the patient and a record of the explanation included in the patient's notes."

- 5.9.6 Where a conditionally discharged patient is to be recalled to hospital, a brief verbal explanation of the Secretary of State's reasons for recall must be provided to the patient at the time of recall unless there are exceptional reasons why this is not possible, e.g. the patient is violent or too distressed. The Secretary of State's warrant will detail the reasons. The patient should also receive a full explanation of the reasons for his or her recall within 72 hours after admission, and both written and oral explanations should be provided by the responsible clinician. A copy of the written explanation needs to be saved to SystmOne and the MHA Manager/Deputy informed this has happened. Further information is available at Para. 29.52 – 29.62 of the Code.

5.9.7 A patient whose CTO is revoked, and conditionally discharged patients recalled to hospital, will be told that their cases will be referred automatically to the Tribunal. One of the MHA team will write to the patient and where appropriate the nearest relative when a referral has been made.

5.9.8 The responsible clinician or the AMHP must give the patient (or arrange for the patient to be given) oral reasons for revoking the CTO, before it is revoked. Written reasons for the revocation should also be given to the patient and (where appropriate) their nearest relative. The responsible clinician will write to the patient and inform them of the reasons for the revocation. A copy of the written letter to the patient must be saved to S1 and the MHA Manager/deputy informed when this has happened.

5.9.9 **Information about consent to treatment**

Patients must be told what the Act says about treatment for their mental disorder. In particular they must be told:

- the circumstances (if any) in which they can be treated without their consent – and the circumstances in which they have the right to refuse treatment;
- the role of the second opinion appointed doctors (SOADs) and the circumstances in which they may be involved; and
- (where relevant) the rules on electro-convulsive therapy (ECT) and medication administered as part of ECT (see Para. 25.19 – 25.25 of the Code).

5.10. **Information about seeking a review of detention or CTO**

Patients must be informed of their rights to be considered for discharge, particularly:

- of the right of the responsible clinician and the Hospital Managers to discharge them (and, for restricted patients, that this is subject to the agreement of the Secretary of State for Justice);
- of their right to ask the Hospital Managers to discharge them;
- that the Hospital Managers must consider discharging them when their detention is renewed or their CTO extended;
- of their rights to apply to the Tribunal;
-
- of the rights (if any) of their nearest relative to apply to the Tribunal on their behalf;
- about the role of the Tribunal; and
- how to apply to the Tribunal.

5.10.1 The person providing the information should ensure that patients are offered assistance to request a Hospital Managers hearing or make an application to the Tribunal, and that the application is transmitted to the Tribunal without delay. They should also be told:

- how to contact a suitably qualified legal representative (and should be given assistance to do so if required) a list of suitable solicitors is available on each ward/unit and on the intranet;
- that free legal aid may be available; and
- how to contact any other organisation which may be able to help them make an application to the Tribunal.

5.10.2 Information about the Care Quality Commission (CQC)

Patients must be informed about the role of the CQC and of their right to meet visitors appointed by the CQC in private. Patients should be told when the CQC is to visit their hospital and be reminded of the CQC's role.

Patients may make a complaint to the CQC and they must be informed of the process for this. Support should be made available to patients to do this, if required. Patients should also be given information about the hospital's own complaints system and how to use it.

5.10.3 How to make a Complaint

In addition to the information that is required by the Code of Practice, patients should also be informed about how to make a complaint to the Organisation. Contact details are as follows:

Customer Services
Local Care Centre
200 Mount Gould Road
Mount Gould
Plymouth

Telephone 01752 435201

e-mail: customerservicespch@nhs.net

If a patient wishes to make a complaint, staff must assist them to do so.

5.10.4 Access to Health Records

In addition to the information that is required by the Code of Practice, the Organisation's policy is to also ensure the patient is informed about how to access their health records.

The patient must be informed they may request a copy of their health records, upon payment of a nominal sum, or may request to access their health records. Any request to access health records must be dealt with in line with the Organisation's policy.

If a patient wishes to access their health records either formally or informally, please contact the Corporate Records Team for further information.

5.10.5 Information Leaflets

Information leaflets regarding different sections of the Act are available to assist the patient in understanding the meaning of being detained. Information leaflets will be available on the ward/unit or via the Intranet. If a leaflet is required which is not on the ward, contact the Mental Health Act Office who may be able to obtain it. Some resources are available in different formats, i.e. large print.

Information leaflets are provided English and Welsh, and are also available in the following languages:

- Albanian
- Arabic
- Bengali
- Farsi
- French
- Gujurati
- Hebrew
- Hindi
- Italian
- Korean
- Lithuanian
- Mandarin
- Pashto
- Polish
- Portuguese
- Punjabi
- Russian
- Somali
- Spanish
- Swahili
- Sylheti
- Tamil
- Turkish
- Urdu
- Vietnamese

These leaflets can be accessed via the MHA Office Intranet page or Web page.

If the patient requires the information in another language, the ward/team must use an appropriate translator to convey the information. The MHA Office will obtain the leaflet in the chosen language if able to do so and not already available.

To fulfil the legal obligation to give the information both orally and in writing, it would not be considered sufficient just to repeat what is already written on the leaflet. In addition to the patient information leaflets there is also a Livewell South West leaflet explaining the purpose of the Hospital Managers and the patient's right to apply for a hospital manager's hearing. (Available on the intranet)

5.10.6 Recording

All attempts at informing the patient of the information must be recorded on the S132/132A Rights Assessment on SystmOne or via the Section 132/132A Form (Appendix A). This includes detailing on the form which leaflets are given to the patient. It is important that all leaflets are given and discussed. All attempts to provide the patient with the necessary information must be recorded either via SystmOne or on the S132/132A Rights form. The MHA Office must be notified of all attempts and be sent the original of any forms completed.

5.10.7 If the attempt is unsuccessful, the timescale for re-attempting to give the information to the patient must be stated on the assessment/form, and written in the ward/community team communication diary. The MHA Office will continually audit the compliance with this duty, and will remind staff of the duties delegated to them by the Hospital Managers.

5.10.8 A record of the interaction with the patient must be recorded in the patients'

clinical record in accordance with Organisational policy. It is essential to record the details of the discussion, what information was given both orally and in writing, any difficulties encountered and (if appropriate) a timescale for the process to be reattempted. Completion of the assessment/form is not sufficient to show evidence of complying with this requirement.

5.10.9 Coming off detention or CTO

When a detained patient or a community patient is discharged, or the authority for their detention or the CTO expires, this fact should be made clear to them. The patient should be given an explanation of what happens next, including any Section 117 after-care or other services which are to be provided. This explanation must be recorded on SystemOne.

6 Access to Independent Mental Health Advocates (IMHAs)

- 6.1 Certain people have a duty to take whatever steps are practicable to ensure that patients understand that help is available to them from IMHA services and how they can obtain that help, as set out in the following table. This must include giving the relevant information both orally and in writing.
- 6.2 If a patient lacks capacity to decide whether or not to obtain help from an IMHA, the hospital manager should ask an IMHA to attend the patient so that the IMHA can explain what they can offer to the patient directly. This responsibility has been delegated to the nurse who provides the Section 132/132A information. Even if it is believed the patient may not want to meet with the advocate a referral should be made. The advocate may reach a decision that if the patient lacks capacity and it is in the patient's best interest not to be contacted by the advocacy service and will record their reasons for doing so.
- 6.3 The information should be given both orally and in writing.

Type of Patient	Steps to be taken by	As soon as practicable after
Detained Patients	the managers of the hospital in which the patient is liable to be detained	the patient becomes liable to be detained
Guardianship patients	the responsible local authority	the patient becomes subject to guardianship
Community patients (Subject to CTOs)	the managers of the responsible hospital	the patient becomes a community patient
Conditionally discharged patient's	the patient's responsible clinician	the patient is conditionally discharged
Informal patients	the doctor or approved clinician who first discusses with the patient the possibility of them being given the Section 57 or 58A treatment in question	the discussion (or during it)

7 Information for Nearest Relative

- 7.1 The Act requires Hospital Managers take such steps as are practicable to give the patients nearest relative a copy of any information given to the patient in writing, unless the patient requests otherwise. The information should be given to the nearest relative when the information is given to the patient, or within a reasonable time afterwards
- 7.2 When a patient detained under the Act or subject to a CTO is given information, they should be told that the written information will also be supplied to their nearest relative, so that they can discuss their views about sharing this information and following this discussion, raise any concerns or object to the sharing of some or all of this information. There should be discussion with the patient at the earliest possible time as to what information they are happy to share and what they would like to be kept private. If the patient objects to the nearest relative receiving the information, this must be indicated in the appropriate box on the Section 132/132A assessment/form.
- 7.3 The MHA Office will contact the ward to clarify the patients' wishes if it is not indicated on the form. If unable to ascertain patients' wishes, taking into consideration information contained on the MHA Assessment form, the MHA Office will send the information to the nearest relative.
- 7.4 These duties to inform the nearest relative are not absolute. In almost all cases, information is not to be shared if the patient objects.
- 7.5 In addition, occasionally there will be cases where these duties do not apply because disclosing information about the patient to the nearest relative cannot be considered practicable, on the grounds that it would have a detrimental impact on the patient that is disproportionate to any advantage to be gained from informing the nearest relative.

This would therefore be a breach of the patient's right to privacy under Article 8 of the European Convention on Human Rights (ECHR). The risk of this is greatest where the nearest relative is someone whom the patient would not have chosen themselves. Before disclosing information to nearest relatives without a patient's consent, the person concerned must consider whether the disclosure would be likely to:

- put the patient at risk of physical harm or financial or other exploitation,
- cause the patient emotional distress or lead to a deterioration in their mental health, or,
- have any other detrimental effect on their health or wellbeing and, if so, whether the advantages to the patient and the public interest of the disclosure outweigh the disadvantages to the patient, in the light of all the circumstances of the case.

8 Section 133 – Duty of Hospital Managers to inform Nearest Relative of Discharge

- 8.1 The nearest relative must be told of the patient's discharge from detention or CTO (where practicable), unless either the patient or the nearest relative has requested that information about discharge should not be given. This includes discharge from detention onto a CTO. If practicable, the information should be given at least seven days in advance of the discharge.
- 8.2 In circumstances where discharge from detention can be assured seven days in advance the above action will be taken. However, the Organisation accepts that often this is not feasible due to the patient being discharged immediately from section when the criteria for detention are no longer met.
- 8.3 In addition, regulations require nearest relatives to be informed of various other events, including the renewal of a patient's detention, extension of a CTO and transfer from one hospital to another.

9 Communication with other people nominated by the patient

- 9.1 Although this policy is specifically related to the sections of the Mental Health Act regarding the provision of information to detained patients and their nearest relative, the Code of Practice (2015) Chapter 4.37 - 4.47 makes it very clear that patients may also want information to be provided to one or more persons who are not nearest relatives. The Code of Practice (2015) Para 4.40 states, "Professionals should normally agree to a patient's request to involve carers, relatives, friends or other informal supporters or advocates. They should tell the patient whenever such a request will not be, or has not been, granted. Where a patient's request is refused, it is good practice to record this in the patient's notes, giving reasons for the refusal. It may not always be appropriate to involve another person as requested by the patient, for example where:
 - contacting and involving the person would result in a delay in making the decision in question that would not be in the patient's interests,
 - the involvement of the person is contrary to the interests of the patient, or,
 - that person has requested that they should not be involved."
- 9.2 Although the Mental Health Act Code of Practice (2015) is statutory guidance for professionals on how to carry out their functions under the Mental Health Act, Para. 4.49 -4.51 states, "Although the Act does not impose any duties to give information to informal patients, these patients should have their legal position and rights explained to them. Informal patients should be provided with relevant information (e.g. about how to make a complaint and consent requirements for treatment). Informal patients must be allowed to leave if they wish, unless they are to be detained under the Act. Both the patient and, where appropriate, their carer and advocate should be made aware of this right with information being provided in a format and language the patient understands. Local policies and arrangements about movement around the hospital and its grounds must be clearly explained to the patients concerned. Failure to do so could lead to a patient mistakenly believing that they are not allowed to leave hospital, which could result in an unlawful deprivation of their liberty and a breach of their human rights."

10 The Mental Capacity Act

- 10.1 Chapter 13.11 of the Mental Health Act Code of Practice (2015) states, “The MCA should be central to the approach professionals take to patients who lack capacity in all health and care settings (including psychiatric and general hospitals). The starting point should always be that the MCA should be applied wherever possible to individuals who lack capacity and are detained under the Act. The Principle that a “person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success” is of particular importance when providing detained patients who lack capacity with Section 132/132A information in particular to assist them in exercising their rights.
- 10.2 The MCA places a strong emphasis on the need to support individuals to make their own decisions. Information should be explained in a manner best suited to the individual to aid the individual’s understanding. All individuals should be encouraged to participate in decision making and professionals should carefully consider the individual’s wishes at all times.
- 10.3 Chapter 13 of the Code of Practice provides further guidance on the Mental Capacity Act and the Principles that apply to people who lack capacity.

11 Section 134 – Withholding Patients Correspondence

- 11.1 Detained patients must be told that their letters for posting may be withheld if the person to whom it is addressed asks the Hospital Managers to do so.
- 11.2 Post sent **to** a patient detained in a local hospital may not be inspected, opened or withheld under any circumstances. Specific provisions in relation to this are made for high security hospitals only. However, if either a detained or informal patient is sent articles of potential danger, such as weapons, explosives or matches, through the mail, Section 3(1) of the Criminal Law Act 1967 and the common law provide authority for hospital staff to take reasonable measures to prevent the patient receiving or keeping the article in his/her possession.
- 11.3 The post of a detained patient may only be withheld if the person to whom it is addressed has requested this in writing to the Hospital Managers or the approved clinician in charge of the patient’s treatment. Further guidance can be found in the Reference Guide (2015) at Para 5.7.
- 11.4 The written request should be passed to the Mental Health Act Manager / Deputy Mental Health Act Manager who will be appointed by the Hospital Managers to exercise their function under this section.
- 11.5 The managers, or those authorised on their behalf, may open and inspect any letter or other postal packet in order to determine whether it is one which may, in principle, be withheld, and if so whether it, or anything contained in it, should be withheld. The discussion will take place between the Manager/deputy MHA managers and the ward manager. An incident form will be completed should

this occur.

- 11.6 Where a postal packet, or a letter contained within it, is withheld, this will be recorded in the patients' clinical record, and centrally in the MHA Office, by the Mental Health Act Manager / Deputy Mental Health Act Manager on behalf of the Hospital Managers. It may be appropriate that an item from a packet can be withheld and the rest of the packet forwarded to the addressee.
- 11.7 The Mental Health Act Manager / Deputy Mental Health Act Manager will ensure that a register is kept for the purpose of recording any withheld items found in post that has been opened
- 11.8 There is no appeals procedure for the patient against their mail being withheld under Section 134(1)(a) as it is done at the request of the addressee. The Mental Health Act Manager / Deputy Mental Health Act Manager will inform the patient in writing that the mail to that particular person is being withheld on the recipient's request.

12 Children and Young People

- 12.1 All staff providing children and young people with information about their rights in accordance with Section 132 of the Act must have sufficient knowledge and experience to be able to provide information to children and young people and determine whether the information has been understood. Written information must always be made available. Such information should be age appropriate and include an explanation about when they have the right to see an independent mental health advocate (IMHA) under the Act and an explanation of how one can be made available.
- 12.2 IMHAs have an important role in ensuring that children and young people understand, and are able to exercise, their rights under the Act, such as applying to a Tribunal (See Code of Practice Para. 19.107), and to the Hospital Managers for discharge from detention (See chapter 38 for further guidance). It is therefore essential that the IMHAs working in CAMHS (or providing assistance to under 18s who are admitted to adult psychiatric wards – see Code Para.19.94 below) have experience of working with children and young people and an understanding of children's services and relevant law and policy, as well as an in-depth knowledge of the Act.

13 Monitoring Compliance and Effectiveness

- 13.1 The Mental Health Act Office will be responsible for reviewing the compliance with the delegated duty of Hospital Managers to inform patients and their nearest relative of their rights under the Act.
- 13.2 On each attempt, whether successful or not, the S132/132A assessment/form must be completed by the professional undertaking the attempt. If a paper form is used this must be forwarded to the MHA Office. The clinician is also required to document in the clinical record the information given to the patient, any difficulties encountered and if the process is to be re-attempted, the timescales

within which this must occur.

13.3 On receipt of the original section papers the MHA Office will check if a patient has been informed of their rights. If the S132/S132A assessment/form has not been received, or the attempt was unsuccessful, the appropriate clinical team will be informed and requested to undertake this duty. The MHA Office will continue to monitor compliance with this policy. An incident form will be completed by the MHA Manager/Deputy if there is a need to remind a care co-ordinator or named nurse more than twice that the Section 132/132A rights need to be provided.

13.4 **Section 133**

The MHA Office will, on receipt of the completed S132/132A form, check if information is to be sent to the Nearest Relative. If this is not indicated on the form the MHA Office will contact the appropriate ward/community team, and request the patient is asked if they wish for information to be sent.

If the patient is incapable of answering, or refuses to answer, the MHA Office will send the necessary information to the Nearest Relative, if identified on statutory paperwork. The exception to this will be if the responsible clinician advises the MHA Office that informing the nearest relative of the patient's detention would be detrimental to the patients' health and wellbeing. The reasons for this must be recorded in the patients' notes by the advising clinician.

13.5 **Section 134**

The Hospital Managers will monitor incidences of mail being withheld under Section 134(1)(a) via the Mental Health Act Governance Group.

13.6 **Reporting**

The MHA Office will report to the Mental Health Act Governance Group any areas of concern regarding the fulfilment of these duties.

14 Training

14.1 The training regarding the giving of information to patients and the processes to be followed is provided in the MHA Training held within the organisation and also directly to the qualified ward staff as part of the Receiving and Scrutinising Section Paper training. The training will be updated as necessary to incorporate any future amendments to the legislation or policy.

All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.

The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.

The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.

Signed: Director of Professional Practice, Safety & Quality

Date: 13th July 2016

MHA Section 132 / 132A – Patients’ Rights Form

Name:	Responsible Clinician:
In accordance with the Mental Health Act 1983 Section 132/ 132A, the above person admitted under Section _____ / subject to Community Treatment Order has been given information and understands the following:-	
a)	Details relating to the section / CTO / CTO Recall / CTO Revocation* and the legal consequences of the detention / CTO. *delete as applicable
b)	Reason for their Detention / Use of CTO / CTO Recall / CTO Revocation* in accordance with the Human Rights Act (1998), article 5(2). *delete as applicable
c)	Consent to treatment (Not applicable for patients admitted under S 5(4), 5(2) or 4)
d)	The right to appeal to or have an interview with the Hospital Managers. (Not applicable for patients admitted under S 5(4), 5(2) or 4)
e)	The right to appeal to the Mental Health Tribunal and the right to free legal representation. (Not applicable for patients admitted under S 5(4), 5(2) or 4)
f)	To be involved with the treatment plan.
g)	The rights of the Nearest Relative (including the right of the patient to apply to court to appoint / displace Nearest Relative)
h)	The role of the Care Quality Commission (including how to make a complaint).
i)	How to make a complaint.
j)	The right of access to health records, with regard to the Data Protection Act 1998.
k)	The right to have an Independent Mental Health Advocate (IMHA). If the patient lacks capacity a referral to the IMHA service must be made by the ward.
l)	A copy of the Mental Health Act Code of Practice is available on the ward and can be viewed on request.
m)	Outgoing post may be withheld if a written request is received from the intended recipient by the Hospital Managers under Section 134.

The following Information Leaflets have been given to the patient (please tick):

Section _____ Information Leaflet	Information for Detained / CTO patients about the CQC	Please specify any additional leaflets given
Your Right to Complain to the CQC	Advocacy SEAP Leaflet	
Your Nearest Relative under the MHA 1983		

Please indicate below if there were any difficulties/delays in giving the necessary information to the patient, e.g. delay due to medication/language problem/etc.

If unsuccessful date to be reattempted: _____

Does the patient want the same information to be sent to their Nearest Relative? Yes No

Signature: _____ Date: _____

Print Name: _____ Designation: _____

Please return to the Mental Health Act Office, immediately.
Details of all the information given to the patient should be recorded in the clinical record.