NURSES HOLDING POWER
SECTION 5(4) MENTAL HEALTH ACT 1983
NOVEMBER 2015

This policy supersedes all previous policies for Nurses’ Holding Power Section 5(4) MHA 1983.
<table>
<thead>
<tr>
<th>Policy title</th>
<th>Nurses’ Holding Power Section 5(4) Mental Health Act 1983</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy reference</td>
<td>MHA01</td>
</tr>
<tr>
<td>Policy category</td>
<td>MHA</td>
</tr>
<tr>
<td>Relevant to</td>
<td>All nursing staff working on Trust inpatient wards and their managers.</td>
</tr>
<tr>
<td>Date published</td>
<td>November 2015</td>
</tr>
<tr>
<td>Implementation date</td>
<td>November 2015</td>
</tr>
<tr>
<td>Date last reviewed</td>
<td>October 2015</td>
</tr>
<tr>
<td>Next review date</td>
<td>November 2017</td>
</tr>
<tr>
<td>Policy lead</td>
<td>Dominique Merlande, Mental Health Law Manager</td>
</tr>
<tr>
<td>Contact details</td>
<td><a href="mailto:Dominique.merlande@candi.nhs.uk">Dominique.merlande@candi.nhs.uk</a> 020 3317 7141</td>
</tr>
<tr>
<td>Accountable director</td>
<td>Claire Johnston, Director of Nursing and People</td>
</tr>
<tr>
<td>Approved by (Group)</td>
<td>Mental Health Law Committee</td>
</tr>
<tr>
<td>Approved by (Committee)</td>
<td>Quality Committee 17 November 2015</td>
</tr>
<tr>
<td>Document history</td>
<td><img src="#" alt="Table showing document history" /></td>
</tr>
<tr>
<td>Consultation</td>
<td>Margaret Adedeje, Matron (Acute), Peter Cartlidge, Associate Divisional Director (SAMH), Aisling Clifford, Associate Divisional Director (Acute), Rachel Cockerton, Practice Development Nurse, Ian Griffiths, Divisional Clinical Lead (Acute), Stanley Riseborough, Deputy Director of Nursing and People, Dr. Suzanne Joels, Divisional Clinical Lead (SAMH), Claire Johnston, Director or Nursing and People, Karen Jones, Service manager (Acute), Ann Jumawan, Matron (Acute), Kerry O’Brien, Matron (Acute), Sophie Philippou, Practice Development Nurse</td>
</tr>
</tbody>
</table>

**DO NOT AMEND THIS DOCUMENT**
Further copies of this document can be found on the Foundation Trust intranet.
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Appendix 1: Equality Impact Assessment Tool
1. Trust values
Camden and Islington NHS Foundation Trust developed its set of six values with more than 500 service users and members of staff.

Our values are important to us. They are our promise to patients as well as to each other that we will behave in a certain way, no matter what our job title is or how under pressure we feel.

Our commitment to our values makes us who we are. It gives our service users confidence that they will be treated in the most compassionate way possible as they go through their journey to recovery. It also gives us pride in the knowledge we are providing the best care.

Our values show that we are welcoming, respectful and kind. Professional in our approach. Positive in our outlook. Working as a team, we are your partner in care and improvement.

These values are part of a wider campaign, Changing Lives which is helping to drive up the standards of care across the Trust.

In simple terms our values assure our service users that:

- They will receive a warm welcome throughout the journey to recovery;
- They, their dignity and their privacy will always be respected;
- Their care will be founded on compassion and kindness;
- They will receive high quality, safe care from a highly trained team of professionals;
- We work together as a team to ensure they feel involved and offer solutions and choices – 'no decision about you, without you';
- We are positive so they can feel hopeful and begin their journey of recovery knowing we will do our very best.

<table>
<thead>
<tr>
<th>Trust value</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>They will receive a warm welcome throughout the journey to recovery</td>
<td>Yes</td>
</tr>
<tr>
<td>They, their dignity and their privacy will always be respected;</td>
<td>Yes</td>
</tr>
<tr>
<td>Their care will be founded on compassion and kindness;</td>
<td>Yes</td>
</tr>
<tr>
<td>They will receive high quality, safe care from a highly trained team of</td>
<td>Yes</td>
</tr>
<tr>
<td>professionals</td>
<td></td>
</tr>
<tr>
<td>We work together as a team to ensure they feel involved and offer solutions</td>
<td>Yes</td>
</tr>
<tr>
<td>and choices – 'no decision about you, without you'</td>
<td></td>
</tr>
<tr>
<td>We are positive so they can feel hopeful and begin their journey of</td>
<td>Yes</td>
</tr>
<tr>
<td>recovery knowing we will do our very best.</td>
<td></td>
</tr>
</tbody>
</table>

2. Policy and governance
A policy is an organisational statement of rules and standards which govern performance and actions required to be followed by those in employment by the Trust. A policy provides a framework for the Trust to work within and should specify actions which are required. A policy may include detailed procedures which supply standardised methods of performing clinical or non-clinical tasks by providing a series of actions to be conducted in a certain order to achieve a safe and effective outcome in a consistent method by all concerned.

Policies should take account of existing good quality evidence. The Whittington Health Library provides a library service to the Foundation Trust and can assist with literature
searches and finding evidence to inform policy and practice. For more information please contact:

Richard Peacock
Librarian
Whitlington Health Library
020 7288 3607
richardpeacock@nhs.net

Good governance lies at the heart of all successful organisations. Good governance helps protect the Trust, its staff and service users from poor decisions and exposure to risks. All Trust policies must be compliant with the relevant statutory legislation, e.g.: the Mental Health Act 1983 (which was amended in 2007) and national expectations, e.g.: the NHS Litigation Authority Risk Management Standards 2012-13.

A policy which has not been scrutinised and approved by the appropriate Trust committee but is being used by staff could lead to poor practice being delivered which could potentially harm service users and have consequences for staff. It is therefore essential that in either developing or revising a policy, managers ensure that the proper governance procedures have been followed. By following the correct governance procedures, we all help to reduce risk and assure safe and effective care is delivered to service users.

3. Policy statement
This policy sets out the standards and procedures for all nurses employed by, or on behalf of, Camden and Islington NHS Foundation Trust who exercise holding powers under Section 5(4) of the Mental Health Act 1983.

This policy has been revised following the introduction of the Mental Health Act 2007. This policy also reflects the requirements of the new Code of Practice to the Mental Health Act (Department of Health, 2015).

4. Executive summary
The Nurses’ Holding Power under Section 5(4) of the Mental Health Act 1983 is used as an emergency measure. It is used by the nurse at their professional discretion and allows them to lawfully prevent an informal inpatient, who is receiving treatment or assessment for a mental disorder, from leaving hospital. This includes the hospital building and its grounds.

A first level nurse may exercise this power in the rare event of a doctor not being readily available to exercise the Doctor’s Holding Power under Section 5(2).

5. Duties and responsibilities
The Chief Executive has ultimate responsibility for ensuring that mechanisms are in place for the overall implementation, monitoring and revision of policy.

The Director of Nursing and People is the executive director responsible for this policy, but will delegate authority for the operational implementation and ongoing management of the policy to the Mental Health Law Manager.

The Mental Health Law Manager is responsible for reviewing this policy every two years.
The Associate Director, Governance and Quality Assurance, via the Clinical and Corporate Policy Manager, is responsible for ensuring:

- Dissemination and implementation of the policy
- Identification of any resource implications to enable compliance
- Training and monitoring systems are in place
- Regular review of the policy takes place.

Associate Divisional Directors are responsible for implementation of the policy within their own spheres of management and must ensure that:

- All new and existing staff have access to and are informed of the policy
- Ensure that local written procedures support and comply with the policy
- Ensure the policy is reviewed regularly
- Staff training needs are identified and met to enable implementation of the policy.

Each registered healthcare professional is accountable for his/her own practice and will be aware of their legal and professional responsibilities relating to their competence and work with the Code of Practice of their professional body.

All Trust staff are responsible for ensuring that they:

- Are familiar with the content of the relevant policy and follow its requirements
- Work within, and do not exceed, their own sphere of competence.

6. Definitions

“Approved Clinician” or “AC” is a professional (registered medical practitioner, chartered psychologist, social worker, mental health/learning disability nurse or registered occupational therapist) who has undertaken specific training, meets specific competencies and has been approved by the strategic health authority to provide certificates to authorise treatment under Part 4 of the Mental Health Act 1983 (amongst other powers and duties).

“Nominated Deputy” is the doctor or Approved Clinician nominated by the doctor or AC in charge of the patient’s treatment to act for them and exercise the holding power under Section 5(2) of the Mental Health Act 1983 in their absence.

“Nurse of the Prescribed Class” is a nurse registered in either sub-part 1 or 2 of the register maintained under Article 5 of the Nursing and Midwifery Order 2001, i.e. a mental health or learning disability nurse.

“Responsible Clinician” or “RC” is the Approved Clinician with overall responsibility for the patient’s care.

7. Taking the decision to exercise the S5 (4) power

7.1 A Nurse of the Prescribed Class may take the decision to exercise the Nurse’s Holding Power under Section 5(4) of the Mental Health Act 1983 when:

- A patient who is receiving treatment for mental disorder as an informal patient in a hospital (including a patient who is subject to a Deprivation of Liberty authorization under the Mental Capacity Act 2005) appears to be suffering
from mental disorder to such a degree that it is necessary for their health or safety or for the protection of others for them to be immediately restrained from leaving hospital; and

- It is not practicable to secure the immediate attendance of a doctor or Approved Clinician for the purpose of furnishing a report under Section 5(2).

7.2 As the decision maker, the nurse of the prescribed class must consider less restrictive options than detention before utilising holding powers in accordance with the least restriction principle contained in the Code of Practice (2015) to the Mental Health Act.

7.3 Exercising the holding power is the personal decision of the nurse who cannot be instructed to exercise it by anyone else.

8. **Once the decision has been made to exercise the S5 (4) power**

8.1 The patient must be informed by the nurse that they are being held under Section 5(4) of the Mental Health Act 1983 and must been explained their rights under the Mental Health Act, in line with the Trust policy on S132 Patients Rights.

8.2 If it should become necessary, the patient can be physically prevented from leaving the hospital.

8.3 Statutory Form H2 (Appendix 2) must be completed immediately and, as the completion of this form indicates the time from which the Holding Power commences, any delay needs to be avoided.

8.4 The relevant leaflet, Section 5(4), regarding patients’ rights must be given. The nurse must use this opportunity to explain to the patient the reasons for this action in an effort to maintain trust between patient and nurse. The needs of the patient with regards to language or learning difficulties must carefully be considered.

8.5 **Prescribed medication cannot be administered under the Mental Health Act 1983** as Section 5(4) does not confer the power to compulsorily treat. However treatment can be administered with the patient’s consent or, if they lack capacity to consent, under the Mental Capacity Act 2005. If the patient refuses medication and has capacity to make that decision, treatment cannot be administered (please refer to trust policy on Consent to Examination and Care). If the patient lacks the capacity to consent to treatment, treatment can be given under the provisions of the Mental Capacity Act 2005. The Trust Mental Capacity Act policy must be followed; the capacity test and best interest assessment must be clearly recorded on the Trust EPR.

8.6 Continuous efforts should be made to contact the RC or nominated deputy, responsible for undertaking an assessment of the person detained under Section 5(4). This should be dealt with as an urgent matter. The Nurses Holding Power terminates within six hours of inception or immediately on the arrival of the doctor/AC to make an assessment.

8.7 If, for whatever reasons, the RC or nominated deputy has not arrived **within four hours**, the Duty Consultant must be contacted by the nurse coordinating the shift.
8.8 Nursing records must contain an account of events leading up to the power being used and subsequent action taken. A clear record should be made of:

a. name of doctor;
b. time contacted;
c. subsequent arrival (or lack of).

8.9 In the event of the nurse of the prescribed class leaving the ward or going off duty in the six-hour period, a clear record should be made by them of the circumstances which warranted the use of Section 5(4) and handed over to the nurse in charge of the shift before departure.

8.10 In the unlikely event of the six hour period elapsing without the arrival of a doctor, the Section lapses, and a patient, if still wishing to leave, should be supervised leaving the premises by a nurse in charge or nominated nurse.

NB: Common Law protects members of staff in a crisis when acting in good faith consistent with their training and experience, and so are able to detain any patient in order to prevent serious self-harm or injury to others.

8.11 The Form H2 should be delivered to the Mental Health Act Officer or Duty Nurse as soon as possible. The nurse should also inform the Mental Health Act Officer as soon as the power has lapsed. An entry should also be made in the Trust’s EPR.

9. Training

9.1 Training on section 5(4) is included in the basic induction of nursing staff.

9.2 Specialist training on section 5(4) is available to all staff from the Learning and Development Department.

9.3 Local Mental Health Act Officers provide local training sessions on request covering Section 5(4) requirements under the Mental Health Act.

9.4 Training on Section 5(4) is delivered by the Mental Health Law Hub. For further details of mental health law training, refer to the mental health law training brochure.

9.5 For training requirements please refer to the Trust’s Mandatory Training Policy and Learning and Development Guide.

9.6 For further details of available training, contact the Learning and Development Department.

10. Dissemination and implementation arrangements

10.1 The Associate Director, Governance and Quality Assurance, via the Clinical and Corporate Policy Manager, will disseminate the policy to ensure implementation commences.
10.2 For clarification or support in the implementation of the policy, contact Dominique Merlande, Mental Health Law Manager.

11. Monitoring and audit arrangements

11.1 The following aspects of this policy will be monitored:
   - Section 5(4) lapsing (and reasons).
11.2 The Mental Health Law Manager will be responsible for the monitoring.
11.3 The results will be reported to the Mental Health Law Monitoring Group, which reports to the Mental Health Law Committee.

<table>
<thead>
<tr>
<th>Elements to be monitored</th>
<th>Lead</th>
<th>How Trust will monitor compliance</th>
<th>Frequency</th>
<th>Reporting</th>
<th>Acting on recommendations and Lead(s)</th>
<th>Change in practice and lessons to be shared</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 5(4)s lapsing</td>
<td>Mental Health Law Manager</td>
<td>Datix Incident reports</td>
<td>As and when</td>
<td>MHL Monitoring Group</td>
<td>MHL Committee</td>
<td>Required actions will be identified and completed in a specified timeframe</td>
</tr>
</tbody>
</table>

12. Review of the policy

12.1 The review date will be two years from the date of ratification. If the review date is earlier or later than two years, a justification for this will be provided.
13. References

- Mental Health Act 1983
- Code of Practice to the Mental Health Act 1983
- Mental Capacity Act 2005

14. Associated documents

- Trust’s Mandatory Training Policy
- Trust’s Learning and Development Guide
- Trust’s Section 132 Patients’ Rights policy
- Trust’s Consent to Examination and Care policy
### Equality Impact Assessment Tool

<table>
<thead>
<tr>
<th></th>
<th>Yes/No</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does the policy/guidance affect one group less or more favourably than another on the basis of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Ethnic origins (including gypsies and travellers)</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Nationality</td>
<td>No</td>
<td>The policy provides for information to be given in other languages where necessary.</td>
</tr>
<tr>
<td>Gender</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Culture</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Religion or belief</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Sexual orientation including lesbian, gay and bisexual people</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Disability - learning disabilities, physical disability, sensory impairment and mental health problems</td>
<td>No</td>
<td>The policy provides for alternative media to be used for patients with learning difficulties.</td>
</tr>
<tr>
<td>2. Is there any evidence that some groups are affected differently?</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>3. If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>4. Is the impact of the policy/guidance likely to be negative?</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>5. If so can the impact be avoided?</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>6. What alternatives are there to achieving the policy/guidance without the impact?</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>7. Can we reduce the impact by taking different action?</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>
FORM H2
Section 5(4) – Record of Hospital In-patient

This form is accessible from the Intranet
Please search for Section 5(4) or Nurses Holding Power