

CHAPTER 1

Statement of guiding principles

- 1.1 This chapter provides a set of guiding principles which should be considered when making decisions about a course of action under the Act.

Guiding principles

Purpose principle

- 1.2 Decisions under the Act must be taken with a view to minimising the undesirable effects of mental disorder, by maximising the safety and wellbeing (mental and physical) of patients, promoting their recovery and protecting other people from harm.

Least restriction principle

- 1.3 People taking action without a patient's consent must attempt to keep to a minimum the restrictions they impose on the patient's liberty, having regard to the purpose for which the restrictions are imposed.

Respect principle

- 1.4 People taking decisions under the Act must recognise and respect the diverse needs, values and circumstances of each patient, including their race, religion, culture, gender, age, sexual orientation and any disability. They must consider the patient's views, wishes and feelings (whether expressed at the time or in advance), so far as they are reasonably ascertainable, and follow those wishes wherever practicable and consistent with the purpose of the decision. There must be no unlawful discrimination.

Participation principle

- 1.5 Patients must be given the opportunity to be involved, as far as is practicable in the circumstances, in planning,

developing and reviewing their own treatment and care to help ensure that it is delivered in a way that is as appropriate and effective for them as possible. The involvement of carers, family members and other people who have an interest in the patient's welfare should be encouraged (unless there are particular reasons to the contrary) and their views taken seriously.

Effectiveness, efficiency and equity principle

- 1.6 People taking decisions under the Act must seek to use the resources available to them and to patients in the most effective, efficient and equitable way, to meet the needs of patients and achieve the purpose for which the decision was taken.

Using the principles

- 1.7 All decisions must, of course, be lawful and informed by good professional practice. Lawfulness necessarily includes compliance with the Human Rights Act 1998.
- 1.8 The principles inform decisions, they do not determine them. Although all the principles must inform every decision made under the Act, the weight given to each principle in reaching a particular decision will depend on the context.
- 1.9 That is not to say that in making a decision any of the principles should be disregarded. It is rather that the principles as a whole need to be balanced in different ways according to the particular circumstances of each individual decision.

Related material

- Human Rights Act 1998

This material does not form part of the Code. It is provided for assistance only.

CHAPTER 2 Information for patients, nearest relatives and others

- 2.1 This chapter gives guidance on the information that must be given to patients and their nearest relatives. It also gives guidance on communication with patients and others generally.

Communication with patients

- 2.2 Effective communication is essential in ensuring appropriate care and respect for patients' rights. It is important that the language used is clear and unambiguous and that people giving information check that the information that has been communicated has been understood.
- 2.3 Everything possible should be done to overcome barriers to effective communication, which may be caused by any of a number of reasons – for example, if the patient's first language is not 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. A patient's cultural background may also be very different from that of the person speaking to them.
- 2.4 Those with responsibility for the care of patients need to identify how communication difficulties affect each patient individually, 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 (eg in sign language or Makaton) available as required.
- 2.5 Where an interpreter is needed, every effort should be made to identify who is appropriate to the patient, given

the patient's gender, religion, language, dialect, cultural background and age. 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.

- 2.6 Independent advocates¹ engaged by patients can be invaluable in helping patients to understand the questions and information being presented to them and in helping them to communicate their views to staff. (See **chapter 20**.)
- 2.7 Wherever possible, patients should be engaged in the process of reaching decisions which affect their care and treatment under the Act. Consultation with patients involves assisting them in understanding the issue, their role and the roles of others who are involved in taking the decision. 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.

Information for detained patients and patients on supervised community treatment

- 2.8 The Act requires hospital managers to take steps to ensure that patients who are detained in hospital under the Act, or who are on supervised community treatment (SCT), 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 SCT. This information must also be given to SCT patients who are recalled to hospital.
- 2.9 Information must be given to the patient both orally and in writing. These are not alternatives. Those providing information to patients should ensure that all relevant information is conveyed in a way that the patient understands.

- 2.10 It would not be sufficient to repeat what is already written on an information leaflet as a way of providing information orally.

Information about detention and SCT

- 2.11 Patients must be informed:
- of the provisions of the Act under which they are detained or on SCT, and the effect of those provisions;
 - of 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); and
 - for SCT patients, of the effect of the community treatment order, including the conditions which they are required to keep to and the circumstances in which their responsible clinician may recall them to hospital.
- 2.12 As part of this, they should be told:
- the reasons for their detention or SCT;
 - the maximum length of the current period of detention or SCT;
 - that their detention or SCT 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 SCT ends; and
 - that their detention or SCT will not automatically be renewed or extended when the current period of detention or SCT ends.
- 2.13 Patients should also be told the essential legal and factual grounds for their detention or SCT. For the patient to be able to effectively challenge the grounds for their detention or SCT, should they wish, they should be given the full facts rather than simply the broad reasons. This should be done promptly and clearly.

- 2.14 In addition, a copy of the detention or SCT documentation should be made available to the patient, 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.
- 2.15 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. This also applies where a detained patient becomes an SCT patient, where an SCT patient's community treatment order is revoked, or where a conditionally discharged patient is recalled to hospital.

Information about consent to treatment

- 2.16 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 second opinion appointed doctors (SOADs) and the circumstances in which they may be involved; and
 - (where relevant) the rules on electro-convulsive therapy (ECT).

Information about seeking a review of detention or SCT

- 2.17 Patients must be informed:
- 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 SCT extended;
 - (for NHS patients in independent hospitals) of the power of the relevant NHS body to discharge them;
 - 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.
- 2.18 Hospital managers should ensure that patients are offered assistance to request a hospital managers' hearing or make an application to the Tribunal. They should also be told:
- how to contact a suitably qualified legal representative (and should be given assistance to do so if required);
 - 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.
- 2.19 It is particularly important that patients on SCT who may not have daily contact with people who could help them make an application to the Tribunal are informed and supported in this process.
- 2.20 SCT patients whose community treatment orders are revoked, and conditionally discharged patients recalled to hospital, should be told that their cases will be referred automatically to the Tribunal.

Information about the Commission

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

- 2.22 Patients may also make a complaint to the Commission, and they should 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.

Information about withholding of correspondence

- 2.23 Detained patients must be told that post sent by them may be withheld if the person to whom it is addressed asks the hospital managers to do so. Patients in high security psychiatric hospitals must be told about the other circumstances in which their correspondence may be withheld, the procedures that will be followed and their right to ask the Commission to review the decisions taken.

Keeping patients informed of their rights

- 2.24 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 convey 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.
- 2.25 A fresh explanation of the patient's 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;
 - 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 **chapters 23 and 24**);

- 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 SCT is being considered; or
 - a decision is taken to renew their detention or to extend their SCT.
- 2.26 When a patient is discharged from detention or SCT, or the authority for their detention or SCT expires, this fact should be made clear to them. The patient should also be given an explanation of what happens next, including any section 117 after-care or other services which are to be provided.

Information for nearest relatives

- 2.27 The Act also requires hospital managers to take such steps as are practicable to give the patient's 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.
- 2.28 When a patient detained under the Act or on SCT is given information, they should be told that the written information will also be supplied to their nearest relative, so that they have a chance to object.
- 2.29 The nearest relative should also be told of the patient's discharge from detention or SCT (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 SCT. If practicable, the information should be given at least seven days in advance of the discharge.

- 2.30 In addition, regulations require nearest relatives to be informed of various other events, including the renewal of a patient's detention, extension of SCT and transfer from one hospital to another.
- 2.31 These duties to inform nearest relatives are not absolute. In almost all cases, information is not to be shared if the patient objects.
- 2.32 In addition, there will occasionally 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 the European Convention on Human Rights. The risk of this is greatest where the nearest relative is someone whom the patient would not have chosen themselves.
- 2.33 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.

Communication with other people nominated by the patient

- 2.34 Patients may want to nominate one or more people who they would wish to be involved in, or notified of, decisions related to their care and treatment.

- 2.35 Patients may nominate an independent mental health advocate, another independent advocate or a legal professional. But they may also nominate a relative, friend or other informal supporter.
- 2.36 The involvement of such friends, relatives or other supporters can have significant benefits for the care and treatment of the patient. It can provide reassurance to the patient, who may feel distrustful of professionals who are able to impose compulsory measures on them, or are relatively unfamiliar and unknown to the patient. People who know the patient well can provide knowledge of the patient and perspectives that come from long-standing and intimate involvement with the patient prior to (and during) their involvement with mental health services. They can provide practical assistance in helping the patient to convey information and views and may have knowledge of advance decisions or statements made by the patient (see **chapter 17**).
- 2.37 Professionals should normally agree to a patient's request to involve relatives, friends or other informal supporters. 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 to the decision in question that would not be in the patient's best interests;
 - the involvement of the person is contrary to the best interests of the patient; or
 - that person has requested that they should not be involved.

- 2.38 Professionals should also take steps to find out whether patients who lack capacity to take particular decisions for themselves have an attorney or deputy with authority to take the decision on their behalf. Where there is such a person, they act as the agent of the patient, and should be informed in the same way as the patient themselves about matters within the scope of their authority.

Involvement of carers

- 2.39 Carers frequently play a vital role in helping to look after relatives and friends who have mental disorders. It is important to identify all individuals who provide regular and substantial care for patients, to ensure that health and social services assess those carers' needs and, where relevant, provide services to meet them.
- 2.40 Unless there are reasons to the contrary, patients should be encouraged to agree to their carers being involved in decisions under the Act and to them being kept informed. If patients lack capacity to consent to this, it may be appropriate to involve and inform carers if it is in the patient's best interests – although that decision must always be made in the light of the specific circumstances of the case.
- 2.41 In order to ensure that carers can, where appropriate, participate fully in decision-making, it is important that they have access to:
- practical and emotional help and support to help them to participate; and
 - timely access to comprehensive, up-to-date and accurate information.
- 2.42 Even if carers cannot be given detailed information about the patient's case, where appropriate they should be offered general information which may help them understand the nature of mental disorder, the way it is treated, and the operation of the Act.

Information for patients' children

- 2.43 In considering the kind and amount of information which children and young people (especially young carers) should receive about a parent's condition or treatment, the people giving the information will need to balance the interests of the child or young person against the patient's right to privacy and their wishes and feelings. Any such information should be appropriate to the age and understanding of the child or young person.

Hospital managers' information policy

- 2.44 The formal duty to ensure that detained and SCT patients and their nearest relatives have been informed about their legal situation and rights falls to the hospital managers. In practice, it would usually be more appropriate for professionals working with the patient to provide them with the information. In order to fulfil their statutory duties hospital managers should have policies in place to ensure that:
- the correct information is given to patients and their nearest relatives;
 - information is given in accordance with the requirements of the legislation, at a suitable time and in an accessible format, where appropriate with the aid of assistive technologies and interpretative and advocacy services;
 - people who give the information have received sufficient training and guidance;
 - a record is kept of the information given, including how, when, where and by whom it was given, and an assessment made of how well the information was understood by the recipient; and
 - a regular check is made that information has been properly given to each patient and understood by them.

Information for informal hospital in-patients

- 2.45 Although the Act does not impose any duties to give information to informal patients, these patients should be made aware of their legal position and rights. 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 freedom of movement, which could result in an unlawful deprivation of their liberty.

Information for those subject to guardianship

- 2.46 Responsible local social service authorities (LSSAs) are required to take steps to ensure that guardianship patients understand their rights to apply to the Tribunal and the rights of their nearest relatives. The same information must also normally be given to nearest relatives. More generally, LSSAs (and private guardians) should do what they can to ensure that patients understand why they have been made subject to guardianship and what it means for them.