SOUTH WALES POLICE

TOOLKIT FOR THE MANAGEMENT OF DETAINEES WHERE THEIR MENTAL HEALTH IS A CONCERN

STANDARD OPERATING PROCEDURES

FOR FURTHER DETAILS PLEASE REFER TO APP, MENTAL HEALTH IN CUSTODY

Mental Health in Custody S.O.P.

Wherever possible, people who appear to police custody officers to be mentally unwell should have their treatment needs considered at the earliest possible opportunity, by the liaison and diversion service (see below) where there is one, or, other professionals providing healthcare in police custody. Vulnerable people may be at greatest risk of self-harm while in custody. Prompt access to specialist treatment may prevent significant deterioration in their condition.

1.Liaison and Diversion

All Custody facilities should have some form of Liaison and Diversion (L&D) coverage. In SWP custody suites we provide Criminal Justice Liaison Nurses during normal office hours, these contractors are NHS employees who work within the custody suites. Outside these times refer to the crisis team.

The criminal justice liaison nurses aim to identify, assess and refer individuals of all ages who have mental health problems, learning disabilities and other needs, when they come into contact with the youth and adult justice systems and help support the most appropriate criminal justice system outcome.

L&D is not itself a treatment service, but it is an identification, assessment and referral service. It uses assessments to make appropriate referrals for treatment and support and ensures youth and adult justice practitioners are notified of specific health requirements and vulnerabilities of an individual which can be taken into account when decisions about charging and sentencing are made.

The service will aim to identify these individuals as early as possible after they come into contact with the police and criminal justice system. It links up to other parts of the justice process, such as prison and probation.

2.Appropriate Adults for those with mental health issues

PACE Code of Practice C requires an appropriate adult to be available for a person who appears to be mentally disordered or mentally vulnerable. This can be a relative, guardian or other person responsible for their care or custody, someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police or, failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

Although an appropriate adult should be available, they have no role in the doctor's assessment or AMHP's interview of the patient and their presence is not required for these to be undertaken.

The appropriate adult is a safeguard not a right, therefore, where it is identified that an appropriate adult is required, one must be provided, regardless of the views of the detainee. This may result in a negotiation between all involved as to how the interview could progress where a detainee does not wish for the appropriate adult to be present to ensure the needs of the investigation are met.

3.Using S136 in Custody

One consequence of the changes that the Policing and Crime Act 2017 made to Section 136 Mental Health Act 1983 is that this arrest power can now be used in a custody suite as it is not a dwelling, thus providing officers with a legal framework within which to act, and reduce our need to rely on a common law duty of care.

If a person is arrested for a criminal offence but following arrival in the custody suite, mental illness is identified and a mental health act assessment is required, consideration should be given as to where this is to take place.

There are two basic options -

When there are no grounds to hold the person under PACE (i.e. the investigation is complete or no further evidence can immediately be obtained) the individual should be released from custody.

However, due to the identification of a mental health care need i.e. the requirement for an assessment, it would be contrary to our duty of care as police officers to release them when there is a potential risk to themselves or others, and therefore they should be arrested under S136 MHA and removed to a health based place of safety.

The criteria for S136 MHA has been met for the person to be removed to a place of safety when:

i) The person appears to the officer to be suffering from mental disorder

ii) They are in immediate need of mental health care, and

iii) It is in their own interests and for the protection of others

The arrest should be recorded on the NICHE custody record via the Further Arrest – S136 drop down.

Where there are still grounds to detain the person under PACE, the criminal investigation and the mental health care can be progressed simultaneously. The local AMHP service to where the custody suite is located should be contacted so that a mental health team can be assembled and attend custody. It is the role of the AMHP to arrange and coordinate the assessment.

There should be a locally agreed policy in place which should set out the time within which the appropriate health and social care professionals will attend the police station to assess the person. The Royal College of Psychiatry advice under S136 MHA, but equally applicable here, that the AMHP and doctor(s) approved under S12(2) MHA,

should attend custody within 3 hours in all cases where there are not good clinical grounds to delay assessment.

Repeated excessive delays in AMHP or doctors attending custody, should be escalated to the local BCU MH Team or force advisor so that solutions can be found. (Details below)

The time that the request is made should be captured on the NICHE custody record using the detention log entry CL1033, this should be added by the HCP or CMHT Nurse after their initial assessment.

When the AMHP and s12 approved doctors have arrived at the suite and go into an assessment with the detainee, the CL1041 entry must be completed on the NICHE detention log by custody staff.

Once the assessment is completed, the result must be recorded on the CL1042 entry on the NICHE detention log by custody staff.

If, after the assessment has been arranged the PACE clock is stopped before the arrival of the mental health team, then the person should be released from custody, detained under S136 and taken to a health based place of safety, with the AMHP being notified of the change of location.

The officer considering the use of S136 MHA power of arrest, must, if practicable, consult with a mental health professional prior to the detention. It should be noted that not all Liaison and Diversion staff will be one of the specified professions with whom an officer must consult.

4.Using Custody as a Place of Safety

If the person has been detained under S136 MHA then they will need to be removed from custody unless in the very limited circumstances it is necessary for the person to remain. The Mental Health Act 1983 (Places of Safety) Regulations 2017 specify the conditions which must be satisfied before a police station can be used as a place of safety and the safeguards that need to be applied in such cases.

When an Inspector is asked to give consideration for authorisation to use custody as a place of safety, the decision process must be entered on the NICHE occurrence and the detention log once a custody record has been opened using the relevant CL990 NICHE detention log entry.

5.Legalities of keeping someone detained following assessment and awaiting a bed

If the doctors reach the opinion that the patient needs to be admitted to hospital, it is their responsibility to take the necessary steps to secure a suitable hospital bed. Once

this has been identified it is the responsibility of the AMHP under Section 13 Mental Health Act to make the application for admission to hospital. In some cases, it could be agreed between the local authority and the relevant NHS bodies that the AMHP will liaise with the local bed management and take the necessary steps to identify a suitable hospital bed, and then complete the application.

It is a reality that there are regular delays experienced by Mental Health Professionals in finding a suitable bed once an AMHP and two S12 doctors have decided that someone needs to be detained under the Mental Health Act (normally under Section 2 or 3). This can raise some difficult issues for Custody staff, who understandably become concerned as to the powers that can be relied upon to keep the person 'detained' until the transfer is organised.

Under PACE unless the Custody Officer has reasonable grounds for believing that person's detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, the person arrested shall be released under investigation either with or without conditions.

However, if the person has been assessed under the Mental Health Act in custody and recommendations have been made for an inpatient admission, then there could be a potential risk to themselves or others releasing them from custody when a mental health bed has not been found. The patient would therefore need to be arrested under S136 MHA and removed to a health based place of safety.

The HBPOS can provide the immediate need of mental health care, and is a more conducive environment for the patient. Remember, at this point, the person is a more a patient than a prisoner.

There will be occasions when a Custody Officer still has reasonable grounds for believing that a person's detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning, after they have been seen by an AMHP and two S12 doctors who complete recommendations in order to detain in hospital under S2 or S3 MHA or agree to take the person into hospital as a voluntary patient.

The investigation and charge can still continue. Effectively the detainee is now a person liable to be detained as a patient under the MHA or for whom voluntary arrangements have been made who also happens to be being dealt with in police custody. The process of bail before charge or bail/remand in custody after charge may continue as with a person who is not mentally ill.

The difference is that normal safeguards such as an appropriate adult will be present, and if bailed the person would be bailed to the hospital as a detained patient with the hospital required to facilitate the patient's appearance at court or return to the police station. Similarly following charge and sending to court in custody, the court would be told through the CPS case file that arrangements have been made for the accused to be a patient at the nominated hospital.

Negotiation between the approved mental health professional, the custody officer and the investigating officer should take place before and after the assessment to agree these arrangements

6.Following Assessment & Identification of HBPOS Bed

Once an application has been completed, the patient should be transported to hospital as soon as possible, if they are not already in the hospital. However, patients should not be moved until it is known that the hospital is willing to accept them.

Custody Officers should refer to transportation section, re suitable transportation arrangements.

If the individual is to be transferred out of police custody (at a police station) to an alternate place of safety, they should, as a minimum be accompanied by a:

i) person escort record (PER) form

ii) detainee medical assessment form/detainee medication form (provided by MITIE staff for provision to NHS staff on transfer)

The patient is now detained under Mental Health Act and in the legal custody of the AMHP under S137 MHA. The police have a duty of care under Common Law to release people into a safe environment so will therefore keep the person in custody until transportation arrives. Any delay should be challenged and contemporaneous notes made on the custody record.

7.Onwards transportation to Health Based Place of Safety (HBPoS)

The Sergeant will arrange transport and transfer of the patient detained to the designated place of safety along with the AMHP who will undertake a joint risk assessment of the most appropriate mode of transport.

The NHS Ambulance Service Protocol requires ambulance services across the country to transport all Mental Health Act section 136 detainees unless the individual is so violent that it is unsafe to do so. Where this is the case, the ambulance should accompany the police vehicle with a member of ambulance staff travelling in the police vehicle.

8.The FME sees the detainee and decides they are unfit to be interviewed

Where the offence is serious this can present investigators with an extremely challenging situation. Where sufficient evidence can be found to charge without interview then this should take place and the guidance followed. (There is not a requirement that someone is deemed fit to charge).

Where an interview is required the options are to release on bail until the person is in a fit condition to be interviewed or in extreme cases to consider over ruling the FME's

advice and going ahead with interview. Such a decision should be taken following consultation with the CPS and/or the Superintendent covering PACE responsibilities for the custody suite concerned. The risks of this are that evidence obtained in such a way might be later excluded;

conversely the risks of releasing without charge through insufficient evidence because an interview cannot take place are that the person may commit a further serious offence. Where for example the offence alleged is one of serious harm (e.g. rape, attempted murder etc) the decision maker may feel that the risks of release without first attempting interview with a view to charge are too great to ignore.

Occasionally the person may be assessed and an AMHP decides to detain under Section 2 or 3 Mental Health Act and that person is also deemed to be unfit to interview. In these circumstances the options are as already outlined above – to bail to the hospital as a patient to be returned when fit to interview or consider interview in any case or charge without interview.

The key message is that the investigative process and a mental health Section are not alternative options but may run in parallel.

9.How Custody Officers/Staff should escalate Cases

If Custody Officers/Staff experience a poor or unsatisfactory service from our partners in health, whether it be AMHP, A&E, FME, MH Trust or other service, the first port of call would be to contact the custody bronze inspector for consideration of instigating the escalation process.

Escalation to Bronze:

In the event of an issue arising the Custody Sergeant must appraise the on call Bronze supervisor who is then able to proceed with arbitration with the Local Health Board. The Bronze officer is authorised to escalate high level decisions that pertain to situations such as non-acceptance of patients, no Psychiatric bed availability, concerns with PACE timing and other high-level risk related scenarios.

A custody case requiring escalation must be raised with the Health Board Silver command which is composed of members of the Clinical Board, Directorate Teams, and Senior Nurses on call for senior advice and escalation. The on-call system operates out of hours and advice is available by contacting each respective Health boards switchboard service to request Silver on call for Mental Health.

Ordinarily it is the responsibility of the local Mental Health trust to arrange admission for a secure bed. There is currently a national wide shortage of secure Mental Health beds, however, any issues must be escalated to a Silver Health Representative at the earliest in line with PACE.

Please note that the shift coordinators do not hold the rank or decision protocols of a Silver Health Representative.

The escalation protocol becomes relevant at the point where either -

A MHA assessment has occurred in police custody in respect of someone who is under arrest for an alleged offence or a non-MHA related reason; OR

the time limit is soon to be reached in respect of someone detained in custody OR in a health-based Place of Safety under ss135/6 of the MHA.

Further extensions may only be agreed within the 24-hour period by the approved practitioner responsible for examination of the person detained under s136 and believed to be necessary. Where the person is detained at the police station, and the assessment would be carried out or completed at the station, the registered medical practitioner may give an authorisation to 36 hours only if an officer of the rank of Superintendent or above approves it.

10.Points of contact:

[redacted]

Relevant Crisis Team contact details for respective BCU:

[redacted]

CAMH Service:

[redacted]

Outside working hours, including weekends and Bank Holidays, the receiving staff will contact the CAMHS First-On-Call. The rota for CAMHS On-Call is maintained at the Switchboard, University Hospital of Wales [redacted]

Learning Disability Services In an emergency the on-call Learning Disability psychiatrist can be contacted via Princess of Wales Hospital switchboard on [redacted]

NB: Please note that Mental Health and General Health enquiries can be discussed with the NHS 111 Press 2 service. This service will now direct Mental Health queries by telephone transfer or offer specific Crisis Team contacts within the most appropriate Health Board area.

Criminal Justice Liaison Teams:

[redacted]

Please note these services operate Monday – Friday office-based hours.

Appendix 1: NPCC National escalation protocol

NATIONAL ESCALATION PROTOCOL

This escalation protocol becomes relevant at the point where, either -

- a MHA assessment has occurred in police custody in respect of someone who is under arrest for an alleged offence or a non-MHA related reason; OR
- the time limit is soon to be reached in respect of someone detained in custody OR in a health-based Place of Safety under ss135/6 of the MHA.

As soon as it seems likely to the custody sergeant (or to detaining officers in a PoS) that time will expire, undertake the following actions –

- inform the duty inspector and the AMHP who coordinated the MHA assessment.
- ask that the DR who led the assessment be informed and to identify a **single-point of contact** pending the resolution of the patient's admission process.
- state for the record, "We are approaching the point where it will become unlawful to continue to hold this person under *[PACE / MHA, as appropriate]* unless there is a duly completed application for this person's admission to hospital under the MHA. By the admission of the AMHP leading the assessment, the grounds for making such an application were reached at *[time of MHA conclusion being notified to officers]*. Upon reaching this time limit, the police service will face very real legal difficulties in continuing to detain this person and to do so would amount to a human rights violation. We have been placed in an invidious position for reasons beyond our control. I want to draw your attention to ss13 and 140 MHA as well as articles 3, 5 and 8 of the ECHR. We ask that you escalate the non-availability of a bed to the Chief Executive or on-call Director of both the provider Trust and *[the CCG or NHS England, as*

appropriate to the kind of bed being sought]. We urge the swiftest resolution to this situation to protect the unambiguous legal rights of the detained person, which seem threatened."

- *For those under arrest in custody* – Request that the provider MH trust arrange **24/7 nursing support** in police custody until such time as the person is admitted.

  Document any response to this.

- *For those detained in a PoS that is not normally staffed other than by the police* – **request nursing support** in the PoS until such time as the person is admitted or released.

  Document any response to this.

- If there is no resolution within 2hrs of this, escalate to the duty Superintendent for the policing area.

- Superintendent to seek a phone conversation with the Chief Executive or on-call Director. In addition to the above, state for the record –

- "We are now considering legal advice about the position the police *[will be / are]* in, given that the police's authority to detain someone has legal limits unless and until an MHA application is made. There should be provision in all areas to ensure patients can be swiftly admitted to hospital where necessary. This situation amounts to a human rights violation that you are obliged to prevent or end, quite possibly on more than one basis. We reserve the right, on advice, to consider legal action to defend the rights of the person detained and the liabilities of the officers and the police force who are now in an invidious position for reasons entirely beyond their control."

- If nursing support has not yet been secured, as above, **request it again** and document any response.

- Ask for confirmation that ALL of the following have been considered and tried or rejected as not possible;

  - Out of areas beds.
  - Private sector provision.
  - Admission to a different kind of unit to the one required, with necessary supports to << This may not be ideal, but it would at least be lawful. It could include a temporary offer of police support, if thought likely to bring forward the admission of the patient.

- Consideration of whether a PoS facility could be used as a temporary 'bed' for admission under s2 or s3, etc.. Again, could include an offer of police support.

- If no resolution within 2hrs, or ASAP if the detention has already become unlawful, **escalate to duty NPCC / Gold commander** for the force.
- Consider legal advice from your force solicitor: consider the potential that Article 3, 5 and 8 are being breached (particular circumstances will determine which, if any are relevant - Art 5 will always be relevant if someone is detained without obvious authority in domestic law.)
- Consider a proactive media approach to highlight the problem publicly, but anonymously, in order to motivate compliance by NHS partners with the law. This could include a force press release or senior officer / official account 'tweet', as per ACC (now DCC) Netherton (Devon and Cornwall) in 2014.
- Decide following advice whether the force will seek a Judicial Review of the LA / MH trust / NHS England inability to end this **human rights violation**.

Post-incident –

- Consider self-referral to the IPCC.
- Consider asking the MH Trust to record the matter as a SUI for review.
- Consider a request for review to the Care Quality Commission.
- Consider a vulnerable adult safeguarding referral.

History shows that professionally conducted escalation of the legal and risk issues by the police service, along one or more of the above lines, may bring quicker resolution than would otherwise be seen, ending an unlawful detention. By not escalating to senior NHS managers, it renders the force and its officers potentially liable for breaching s6(1) HRA and complicit in the overall issues.

Finally, consider the relevance of s139 MHA: are you doing an act in pursuance of an objective under the MHA? If the AMHP had finalised an application the person would have remained detained and safe: is continuing to ensure this safety more likely to be defendable than releasing a person known to be a risk to themselves or others? If you fear you'd be defending the un-defendable in the Coroner's Court, consider the potential for this provision to protect you in the Civil Court for keeping people safe.

Notes –

- **Section 13** – obligation on AMHPs to make MHA applications when grounds are met.
- It is the *Doctor's* responsibility, not the AMHPs, to identify the bed for the MHA application.
- **Section 140** – obligation on CCGs to identify hospitals for the purposes of urgent admissions.
- **Once an MHA application is made to an identified hospital for the patient's admission, the person is in legal custody pending conveyance there.**
- Protracted detention in police custody, even if lawful under timescales in domestic law, can still amount to **inhumane and degrading treatment** – *MS v UK* (2012).
- Financial considerations can never amount to a defence of violating the ECHR – *Dankevich v Ukraine* (2005)

Appendix 2: useful contacts

1. **Adult Mental Health – Cwm Taf (working hours):**

[redacted]

2. **Adult Mental Health - SNPT:**

[redacted]

3. **Adult Mental Health – Cardiff & Vale:**

[redacted]

4. **CAMHS:**

[redacted]

Outside working hours, including weekends and Bank Holidays, the receiving staff will contact the CAMHS First-On-Call. The rota for CAMHS On-Call is maintained at the Switchboard, University Hospital of Wales [redacted]

Learning Disability Services In an emergency the on-call Learning Disability psychiatrist can be contacted via Princess of Wales Hospital switchboard on [redacted]

NB: Please note that Mental Health and General Health enquiries can be discussed with the NHS 111 Press 2 service. This service will now direct Mental Health queries by telephone transfer or offer specific Crisis Team contacts within the designated Health Board area.