



Policing and Mental Health

August 2015

Mental Health Act Admissions from Police Custody

The most common query received at the College in 2015 relates to mental health patients who are to be 'sectioned' from police custody and where there is difficulty achieving the admission within timescales prescribed by PACE. A [recent example from Plymouth](#), highlighted by ACC NETHERTON from Devon and Cornwall Police, shows it is evident that some custody sergeants and duty officers misunderstand the legal situation which applies after a Mental Health Act assessment in police custody –

- A person becomes 'sectioned' at the point where an Approved Mental Health Professional (AMHP) makes an application for their admission to hospital.
- At that point, *and not before*, the person is 'liable to be detained' under the Mental Health Act and in legal custody by virtue of s137 MHA.
- Where an AMHP informs the custody sergeant after an assessment that a person in custody "needs to be sectioned under section 2", an application is *not yet* complete.
- The AMHP needs to confirm from the DR involved in the assessment to which hospital they should make that application and then complete the written document.
- If no bed is readily available in a hospital and the AMHP delays making an application, s137 is of no application and the person remains in police detention.
- Until such time as an application is made, PACE continues to govern that person's detention in custody and all the reviews, upper time limits and [s34 \(2\) PACE](#) apply.

Bridging Mental Health Act Admissions from Police Custody

Where a person is in police detention, the law makes it clear that in the absence of a completed application from an AMHP there would be no MHA grounds for continuing detention. The AMHP should not be in a position where there is no bed available and it may be argued that the AMHP's duty under [s13 MHA](#) and the NHS's broader duty under [s140 MHA](#) are being breached where this situation occurs.

College advice is: ongoing detention without an application under the MHA would potentially amount to a violation of Article 5 of the European Convention and, in some circumstances, Article 3. However, where faced with a situation where a vulnerable (or potentially dangerous) individual could be released, the following factors would be worth bearing in mind –

- The Mental Capacity Act 2005 will usually be of no application to these situations.
- Officers may seek to rely upon their Common Law authority to prevent a risk of significant harm, under the *Doctrine of Necessity*.
- [Section 139](#) of the Mental Health Act states, "No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules made under this Act, unless the act was done in bad faith or without reasonable care.

Section 139 (continued)

Sections 139 MHA ensures that no criminal or civil proceedings may be brought against a person pursuing an objective under the MHA unless they were first authorised by the DPP or High Court, respectively.

During [an IPCC investigation](#) into these exact circumstances, officers were found to have acted *unlawfully* but *none* were subject to any disciplinary action, formal or informal, because the situation was totally beyond their control and they had escalated the problem to senior officers and many representations had been made to the NHS.

Duty Inspectors / Superintendents / ACCs should note that section 139 has not been tested in courts in these circumstances; in any event, it would *always* be necessary to demonstrate efforts to escalate problems of this kind to senior NHS managers early on.

Criminal Justice and Courts Act 2015

Following the 'mid-Staffs' care scandal new offences have been introduced in the CJA regarding wilful neglect of patients. They are of potential relevance to police forces where an individual professional's standard of care or a care provider's duty of care have led to ill-treatment or wilful neglect –

- [Section 20](#) – it is a criminal offence for a 'care worker' to ill-treat or wilfully neglect someone to whom they are providing care.
- The offence also includes the care supervisors or directors of the professionals who are providing care and may be committed by employees in connection with physical or mental health or adult social care.
- [Section 21](#) – a corporate version of the individual ill-treatment or corporate offence applies to almost all care-settings, but exclusions should be noted ahead of any investigation.
- The offence has three elements that must each be satisfied –
 - 1) a care worker who works for the provider ill-treating or neglecting a person;
 - 2) the organisation of the care provider's activities amounts to a breach of a relevant duty of care; AND
 - 3) that the ill-treatment or neglect would not have occurred or would have been less likely in the absence of a breach of that duty of care.

Death whilst subject to DoLS

The College has received several queries relating to sudden deaths whilst a person is subject to a Deprivation of Liberty Safeguards order under the Mental Capacity Act 2005.

DoLS orders trigger a requirement for care providers to inform the Coroner of any death, whether thought to occur from natural causes or otherwise, and it is then regarded like a death in police, prison or psychiatric detention. Local authorities as well as mental health and social care providers have varying policies about whether to call the police to such deaths even where they are to have occurred because of natural causes.

This whole area of law is under review by the [Law Commission](#) and it may be that the whole MCA is replaced in due course. Meanwhile, it may be that forces wish to ensure clarity with local Coroners and their Local Authorities and other care providers to ensure lawful and proportionate responses.

In particular, the Chief Coroner has issued [guidance on DoLS](#).

RCPsych Standards on s136 MHA

The Royal College of Psychiatry chairs a multi-agency group on the [standards and use of section 136 of the Mental Health Act](#). This document was published in 2011 since which time many developments have occurred – the Crisis Care Concordat; the emergence of street triage initiatives; increased focus on reducing the use of police custody, etc..

The 2011 edition is now being formally revised to take account of this progress and the College of Policing is representing the police service in this. One it is possible to do so, a copy of the revised guidance will be circulated for opinions which is estimated to be during autumn 2015 with a view to the publication of a newly agreed set of national operating standards on s136.



College of
Policing

Further Information

The National Mental Health Coordinator at the College of Policing is –

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