



Escalation Strategy for 'No Beds'

Strategic Intention:

- Ensure the safety, the dignity and the rights of the public are placed at forefront of all WMP decisions on policing and mental health.
- Ensure collaborative partnerships operate effectively.
- Ensure deployments to support MHA Assessments are timely, proportionate, necessary and lawful.
- Ensure WMP fulfils its responsibilities under the Mental Health Act 1983 and its Code of Practice.
- Ensure WMP is not operating beyond its legal authority.
- Ensure WMP officers are not operating beyond professional competence.

There are considerable pressures on mental health services and difficulties exist nationally in ensuring the timely admission to hospital under the Mental Health Act of patients who require it. Whilst WMP can provide support in some circumstances, there are legal and operational limits on the extent to which police officers and WMP can engage in these matters in a lawful way. In recent years, inquests and other inquiries which have considered the issues of access to inpatient mental health services have made it clear: the police have an important, but limited role to play in admissions processes under the Mental Health Act.

The following points should be borne in mind, when undertaking Mental Health Act assessments or seeking to identify hospitals to which applications can be made –

- **WMP has a right to expect assessment and admissions processes to be conducted lawfully.**
- All public authorities have a duty to act in a way that is compatible with the ECHR – section 6 HRA provides it is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- The MHA relies upon s12 doctors ensure timely identification of hospitals to which AMHPs can make applications under the Act where the grounds in s13 are satisfied.
- Whether someone has been arrested for an offence and taken to custody, or detained in a Place of Safety under s135 or s136 MHA: there is a (maximum) **24hr time limit** to resolve detention, including any admission to hospital. This can be extended to 36hrs where a superintendent authorises extension under PACE or a Doctor authorises extension under s135/136.
- Where authority to detain in custody or in a Place of Safety is due to expire, officers will follow a national escalation process, to protect the rights of the public and to protect themselves.
- West Midlands Police reserves the right to consider any and all actions where officers are forced to make decisions regarding the well-being of a person after other agencies failing to fulfil their duties and obligations in accordance with the MHA.
- Whilst there may be limited scope to consider common law or other powers if PACE or MHA authorities to detain someone have expired, this will be *exceptional* and cannot be relied upon.
- WMP cannot agree in policy to detain patients outside the scope of domestic law, pending MHA assessment or MHA admission.
- **Any direction to the contrary by a senior officer is not lawful and outside the scope of Police Regulations (*lawful orders*).** Officers at every rank are obliged to ensure they act *lawfully*.

An application to a 's140 hospital' OR a Place of Safety which ensures a lawful solution to keep people safe where they are identified as being at risk, is preferable to an unlawful solution which leaves responsibility for MHA admissions problems with the frontline police officers. **This is especially true where the incident engages patient rights under Articles 2, 3 or 5 of the ECHR and s6 of the Human Rights Act 1998.**

A person becomes “sectioned” under the Mental Health Act at the point where an Approved Mental Health Professional (AMHP) makes a *written* application to a *specific, identified* hospital, supported by the appropriate medical recommendations from one or two doctors. Unless a completed application is made, the person either remains at liberty; OR their detention continues to be governed by the legal framework which existed before.

This will usually be –

- PACE, if the person was under arrest in custody for an alleged offence; OR
- Section 135 / 136 if the person was being held at a Place of Safety.

Where a person was assessed in the community and whilst at liberty, the police may intervene under s135 or s136 where the relevant criteria are satisfied and remove that person to a Place of Safety pending identification of a bed. << [See Offers on MHA Assessments \(inc 135\) or on Section 136 MHA.](#)

It is vital that West Midlands Police officers have a legal basis for any ongoing restraint or detention of a vulnerable person, pending any application under the Mental Health Act being made.

LEGAL NOTES

The following legal considerations are relevant to Mental Health Act admissions –

- **Section 13 MHA** – where MHA assessments have occurred, AMHPs have a legal *duty* to make MHA applications when the grounds are satisfied. This section does not make specific reference to “beds”, but focusses upon whether the patient satisfies the criteria for the particular section of the Act (ie, s2 or s3 MHA); whether the AMHP has spoken, where possible, to the patient’s ‘Nearest Relative’; and whether they believe it is necessary for them to make the application.

Section 13 then states, “**they shall make the application**”.

- **Section 140 MHA** – The Act imposes a legal duty upon CCGs to ensure hospitals are specified to the AMHP service which can receive patients “in circumstances of special urgency”. **NB:** this duty is for CCGs, not for MH trusts; and it does not apply to beds commissioned by NHS England ie, specialist CAMHS beds (for children or ‘secure’ beds in medium or high secure hospitals).

However, for all patients requiring admission, the following two provisions still apply:

- **Section 6 Human Rights Act 1998** – it is unlawful for any public authority to act in a way which is incompatible with someone’s fundamental human rights, this includes CCGs, MH trusts and NHS England. Failure to admit someone to hospital when required, could trigger ECHR considerations around Articles 2 and 3; and
- **Article 5 ECHR** – detention of a vulnerable person outside the limits of domestic law is an Article 5 violation. This remains true whether the patient requires a CCG commissioned bed or an NHSE commissioned bed.

POLICE CUSTODY

There is no authority in PACE to detain someone for the purposes of a MHA assessment *or* for the purpose of finding a hospital which is willing to receive an application. A custody officer may reach evidential decisions under s34(2), s37(2) or s37(7) PACE prior to AMHPs being told which hospital will receive a patient.

- The law requires the release of suspects where PACE detention is no longer justified to secure and preserve evidence or obtain evidence by questioning.
- If pre-release assessment indicates someone's acute mental health problems present an obvious risk to themselves or others, detention may be *considered* under s136 MHA, where the grounds are met.

There will normally be no authority to continue to hold the person in police custody under s136 – because police stations can only be used as a Place of Safety for adults and even then, in *exceptional circumstances* which will normally not be met. << [See the Offer on s136 and Places of Safety](#).

PLACES OF SAFETY

Once removed to a Place of Safety, there is normally a 24hrs 'specified period' to arrange assessment and / or care arrangements – this can be extended to 36hrs in some circumstances. There is no legal authority to hold the person further, unless an MHA application is completed. Officers should begin to escalate anticipated difficulties to response or FSU managers at least 12hrs in advance of detention expiring. << [See the Offer on s136 and Places of Safety](#).

SECTION 139 MHA

Should officers find themselves compelled in to legally ambiguous circumstances which are, in effect, forced upon them by outside agencies' (see legal notes, above), section 139 states –

“No person shall be liable ... 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, unless the act was done in bad faith or without reasonable care.”

This is not a legal power – but it could act as a defence to things done for which there is no obvious power, if all options available to the officers were unsafe or unlawful and which might place someone at serious risk. To rely upon this, WMP would need to be able to demonstrate due diligence in considering *all other approaches*, having escalated for resolution in the proper way.

Nothing prevents AMHPs making applications to 's140 hospitals' or to a hospital which contains a Place of Safety and nothing prevents the police from requesting consideration of this. WMP may experience resistance to these ideas, but they are based on legal advice to the College of Policing / NPCC; upon findings of failings from UK coroners courts concerning failures to comply with these statutory responsibilities which in some cases can amount to legal neglect; and / or to examples of such things happening in reality, as the *least worst option* available. Such things have occurred within the WMP area, *in extremis*.

Escalation of operational problems arising from difficulties accessing MH beds should ideally occur before a situation becomes (potentially) unlawful. Early escalation is **strongly recommended** to prevent such a situation. However, history shows that police officers may find themselves in a position where all options available to them are, at best, legally ambiguous or at worst, expressly unlawful arising from situations where mental health services accept they have a duty under s13 to make an application for admission, but feel unable to do so or are declining to do so.

NPCC Escalation Policy advises that the FIM or Duty Supt handling the escalation should discuss the position with a senior manager from the NHS, highlight the legal issues (see above) and seek a time estimate for resolution. In the absence of appropriate and timely progress, WMP should indicate they will reserve their rights to consider all options to bring the situation to a safe and *lawful* conclusion.

TACTICAL OPTIONS

To be considered in this order, as part of considerations under the NDM –

- **Request an application be made to a “s140 hospital” or to a Place of Safety hospital** – see the legal notes (above). Nothing in law prevents an AMHP making a legal application under s2, s3 or s4 of the Act to a s140 hospital or to a hospital in which a Place of Safety is situated and asking the MH trust to accept the patient in that facility until such time as a bed is available. The patient can then be legally transferred (s19 MHA) to the hospital with the bed, once found. Examples exist of this approach, within the WMP area and elsewhere.
- **Withdraw police officers** – where WMP have no lawful way to contribute further and the legal duty owed is by the NHS / LA, inquests have concluded responsibility for inaction rests with the AMHP and / or NHS for any failure to discharge their responsibilities. MH services often take decisions on a case by case basis to leave patients in the community pending compulsory admission and nothing prevents discussion of this approach with MH services who have a responsibility to ensure care for patients where applications are not (yet) made.
- **Maintain immediate safety** – if it is felt unconscionable to withdraw because of *immediate* concerns for safety, consider the least restrictive action necessary, continue to escalate for resolution and bear in mind s139 MHA (see above). Common law allows force to be used to prevent someone suffering an *imminent* risk of serious harm, albeit the extent of this scope is limited and would not allow for prolonged detention as statute law should be followed instead.
- **Legal Advice / Media Release** – forces have considered or started legal action; others have released outline details to the media. Both approaches can be said to ‘work’ in the sense of speeding up identification of a bed – history suggests this can have an impact, however counter-intuitive it feels but it is far from ideal and risks compromising critical partnerships.
- **Multi-agency review** – these events have become so frequent that it sometimes forgotten to seek review that fact such situations are potentially unlawful and officers are often drawn in against their will. They could be considered a Serious Untoward Incident, for NHS purposes.

