



Patients who are **Absent Without Leave (MHA)**

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.

WMP has a well-established role in locating patients whose location is not known or acting in an emergency to mitigate threats to life involving missing or absent without leave patients. However, a number of other agencies and organisations also owe a duty of care to patients who are missing or AWOL. As such it will be often be the case that they have the lead in such matters and will continue to owe a duty of care when safeguarding patients.

WMP Actions on being notified of AWOL –

- Officers will be deployed *immediately* if there is an **urgent threat to life** in respect of anyone, regardless of whether or not the patient's location is has been established.
- A missing person investigation can commence for someone whose location is not known, but WMP will request the reporting organisation will support their officers by undertaking enquiries which they are better placed to complete.
- The Code of Practice MHA (para 28.14) states that where reports relate to a patient whose location is already known, the police should be asked to return patients "where necessary" – this should relate to situations of urgency and / or serious risk. The fact that it has not been possible to identify responsibility within the relevant healthcare organisation in order to give effect to this provision is not sufficient justification to request police support and transport.

The inquest after the death of Sasha Forster (2019) saw criticism of an NHS trust which could not provide staff to undertake the return of a patient who was known to be highly distressed by any involvement of police officers in their care – a Preventing Future Deaths report was issued.

WMP may support the return of AWOL patients in non-urgent circumstances where the risk of a Breach of the Peace is evident.

- **Para 28.17 Codes of Practice MHA** – reports that detained patients are AWOL should include the time scales which will apply to re-detention under the MHA. This is especially necessary where less-common provisions of the Act apply (eg, s4, s5, or s7 MHA.)
- **Section 17 MHA leave / Community Treatment Order (CTO) recalls** – WMP has no power to return s17 leave or CTO patients unless their leave has been revoked or they have been recalled from their CTO, *in writing*. These are comparatively rare events for officers and if a police presence is required during service of revocation or recall notices because a Breach of the Peace is anticipated, this should be specified. As failure to return from leave or a recalled CTO renders the patient AWOL, health services should seek assistance to "return an AWOL patient".

BREACH OF THE PEACE

A breach of the peace occurs where "*Harm is done or likely to be done to a person or, in their presence, to their property; or puts that person in fear of such harm being done through an assault, affray, a riot, unlawful assembly or other disturbance.*"

Any request for police intervention should make express reference to the threat and risk assessment generated by information supplied to WMP in 999 calls, or any other communications.

West Midlands has a well-established, but limited, role to play in the response to patients who go missing or are 'Absent Without Leave' (AWOL) under the Mental Health Act 1983. It is important to distinguish between someone who is AWOL and someone who is missing (as defined by the Force policy). Not all AWOL patients are 'missing' and the duty of care owed when patients are AWOL will usually sit with hospitals or mental health trusts. Upon receipt of a contact, the following questions will be essentially to identifying the appropriate police response –

- **Is there an urgent threat to life emergency?** – the police have a duty to protect life and where the location of an AWOL patient is known, the need to act swiftly may justify police attending on their own to making use of their powers. Where such urgency does not exist, other agencies or a slower multi-agency response should be relied upon rather than WMP
- **Is the patient's location known** – if not, the force missing policy must be followed, regardless of questions arising about the person's MHA or AWOL status.

If the patient's location is already known, then additional questions will be necessary:
- **What is the patient's legal status?** – they may be a voluntary patient or detained under one of the many 'sections' of the MHA which allow for compulsory treatment. Most usually reports will relate to a s2 or s3 patient, but they could relate to a number of other provisions – ask for precise clarification in order to establish what the requirement is for WMP to attend / support.

FOUR OPTIONS

- **Threat to life emergency** = deploy officers in accordance with normal deployment principles as such a situation is potentially life-changing or life-threatening.
- **Location not known** = refer to WMP missing person policy.
- **Location known, voluntary patient, no emergency** = Police officers would have no legal powers to respond and act and will also not be best placed to assess safety or wellbeing of patients. << [See the Offer on welfare checks.](#)
- **Location known, detained MHA patient, no emergency** = Paragraph 28.14 of the Code of Practice MHA stipulates it is for hospitals to arrange return of their patient. Police support can be provided, where justified (see below).

POLICE SUPPORT

Where healthcare staff seek police support in their attendance to return an AWOL patient, this can be offered where a patient is likely to be 'violent or dangerous' in order that officers can prevent a breach of the peace. Agreeing to joint attendance against this threshold is perfectly permissible and often necessary to prevent serious risks to healthcare staff.

West Midlands Police will not agree to meet another police force 'half way' if they have decided to return an AWOL patient to expedite their return.

WMP officers will be deployed to incidents of missing or AWOL patients in some circumstances –

- **Urgent threat to life** – where an AWOL patient is at immediate risk of serious harm, an emergency response will be justified and officers have powers by which to mitigate the risk.
- **Missing persons** – where a patient’s location is not known and they are reported missing, force policy will apply, regardless of their AWOL status or specific MHA considerations.
- **Paragraph 28.14 Code of Practice MHA** – where the location of an AWOL patient is already known, it is the hospital’s responsibility to return the patient. Police may support healthcare staff where the patient is ‘violent or dangerous’ and a Breach of the Peace may be anticipated.

AWOL / SECTION 17 LEAVE / COMMUNITY TREATMENT ORDERS

The definition of AWOL status is that a patient has been detained in hospital and has a) absconded without permission; b) had authorised (s17 MHA) leave ‘revoked’; c) been ‘recalled from a Community Treatment Order; or d) failed to return from authorised (s17) leave. **In each situation: the patient is AWOL.** Should there be any confusion arising from the way in which these matters are reported or during discussion with MH professionals, the *key question* to be considered is –

“Is this patient AWOL under the MHA now?”

- **If not** – the only legal power available under the MHA will be s136 MHA, where officers have encountered the patient outside a domestic dwelling. Otherwise, there is no legal power to act.
- **If they are AWOL now** – one further question is required: “When does the s18 MHA authority expire?” If a patient is AWOL, there *may* be a limited timescale for continued / further detention and detail should be sought from the reporting professionals – they have an obligation to specify this timeframe to you. (*Para 28.17 of the MHA CoP*).

AWOL POWERS

- **Section 18 MHA** – officers can re-detain an AWOL patient under s18, however there is no power of entry available, unless s17(1)(e) of PACE applies to protect life or limb.
- **Section 135(2) MHA** – where PACE does not apply, a warrant must be secured under s135(2) MHA to gain entry to the premises. Police can apply for this warrant, if necessary, but in the first instance it should be done by the staff from the patient’s hospital.

ABSCONDING FROM MHA

AWOL status does not apply to anyone who *absconds* from s135 or s136 MHA or *absconds* after being ‘sectioned’ but before they arrive at hospital – such patients may be re-detained under s138 MHA and taken (back) to the Place of Safety or hospital as long as they are re-detained within relevant timescales – see the next page, for detail of timescales which apply.

[See WMP ‘Offer’ on Conveyance regarding return to hospital once an AWOL patient is re-detained.](#)

Where WMP officers have re-detained an AWOL patient, their legal duty is to return that patient to the hospital from which they are missing, or to which they have been recalled. << [See the Offer on Conveyance](#) regarding the four 'NEVER EVENTS' which should be applied to consideration of the journey to return the patient to hospital.

It is the legal responsibility of the detaining hospital to arrange for the return of their patient and where the distance involved would take WMP officers outside the force area, this would be another justification for refusing the request. Inquiries and inquests have examined critical incidents involving mental health patients being moved long distances in police vehicles and the Code of Practice MHA states conveyance by police vehicle should be *exceptional* and only where justified by risk. Even where a patient is 'violent or dangerous', long journeys will require clinical supervision and may be better managed by specialist clinical transport which can be arranged by the hospital.

If it will take time for a hospital to make the necessary arrangements to return their patient, consideration needs to be given to that person's immediate care. Nothing prevents a local NHS trust being asked to accommodate the AWOL patient in a Place of Safety until arrangements are complete. Whilst they are not obliged to assist, nothing prevents them from doing so if their facility is not in use and this should be attempted wherever possible.

If it is **unavoidable**, nothing prevents an AWOL patient redetained by the police under s18 or s135(2) MHA from being temporarily held at a police station. The law prohibiting the use of police stations as a Place of Safety apply only to those detained under s135(1) or s136 MHA and whilst it is preferable to avoid police stations, it is not prohibited if there are no other practical options.

- ❖ **Where a patient from the West Midlands is re-detained elsewhere, no obligation is created for WMP to be involved – the patient's return is a matter for the hospital and the other force.**
- ❖ **West Midlands Police will not agree to meet another police force 'half way' if they have decided to return an AWOL patient by police vehicle in order to expedite the patient's return.**

TIMESCALES – REDETENTION OF AWOL / ABSCONDED PATIENTS

AWOL or absconded – *an AMHP, a constable or anyone authorised by the hospital may act.*

- **s2** – up until 28 days after their original admission to hospital
- **s3** – up to six months after the date on which they become AWOL
- **s4** – up to 72hrs after their original admission to hospital
- **s5(2)** – up to 72hrs after their original detention under 5(2).
- **s5(4)** – up to 6hrs after their original detention under 5(4).
- **s7** – up to six months after the date on which they become AWOL
- **s17A** – up to six months after the date on which they were recalled.
- **s37** – up to six months after the date on which they become AWOL
- **s37/41** – any time after they become AWOL.

Unusual Circumstances – *only the police may redetain*

- **s35, 36 and 38** patients may all be retaken in to custody under powers specific to those sections (see s35(10), s36(9), s38(7) MHA) at any time after they abscond: BUT! –

NB: all s35, 36 or 38 patients must then be taken to **back to court**, not to hospital!

