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Safety and Security Directions – response to consultation

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Document Purpose	For Information
Gateway Reference	16188
Title	Consultation on safety and security directions
Author	Mental Health and Disabilities Division, DH
Publication Date	24 Jun 2011
Target Audience	Those with an interest in high secure psychiatric services
Circulation List	
Description	Response to consultation on new safety and security directions and guidance for the high secure hospitals
Cross Ref	Safety and Security Directions - High Secure Psychiatric Services - Proposals for consultation
Superseded Docs	N/A
Action Required	N/A
Timing	**N/A**
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First published 2011
Published to DH website, in electronic PDF format only.
http://www.dh.gov.uk/publications

Safety and Security Directions – response to consultation

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Background

1. We consulted on new directions to govern security in the high secure hospitals. The proposed new Safety and Security directions and associated guidance governing security arrangements at the three high secure hospitals in England were developed as a result of a comprehensive review of the existing arrangements which involved significant stakeholder involvement. The proposals were issued for consultation on 10 August 2009 and consultation closed on 2 November 2009. During this period a workshop was held focussing on the issue of 'night time' confinement. The high secure hospitals also held meetings to allow patients to engage in the consultation.

2. We asked questions in the consultation. The first three questions focused on important equality issues. The fourth asked respondents to consider the individual directions and associated guidance. The fifth was concerned with the balance between direction and guidance and the sixth asked for views on the financial impact of the proposals. See appendix 1 for a complete list of consultation questions.

3. This paper provides an analysis of the consultation responses received including a summary of issues raised at the confinement workshop and indicates areas of support and concern. It also includes details of changes made in response to the consultation.

Details of respondents

Number of respondents: 22

Organisational type of respondents

Carers	Patient individual	Patient group	Hospital collective	Hospital individual	SHAs	Charity	Professional organisation	Other
1	4	2	4	4	2	2	1	2

Question 1

We have completed an Equality Impact screen, and have assessed the amendments as having little effect on matters of equality and human rights.

a. Do you think any of the Directions or the associated guidance will have a significant ***negative*** *impact in relation to:*

- *disability?*
- *ethnicity?*
- *gender?*
- *sexual orientation?*
- *age?*

- *religion or belief?*
- *human rights?*

If so, which directions and/or associated guidance might have an effect and what effect might they have?

There were 9 (41%) responses to this question with all agreeing that the proposals would not have a significant negative impact in the areas of ethnicity, gender, sexual orientation, and age. One respondent felt that there could be a negative impact on disability. One raised an issue about religion or belief which it was felt was appropriately dealt with in the Clinical security framework. There were three comments identifying potential negative impact on human rights issues; one relating to smoking, one regarding mail, telephone and internet access and one raising concerns about 13 of the Directions including most of those relating to searching, patients' mail and property. This respondent indicated a need for sensitive management 'to ensure that people are treated with the dignity and respect which is absolute'

b. Do you think any of the directions or the associated guidance will have a significant ***positive*** *impact on equality by reducing inequalities that already exist and help to meet our duty to:*

- *promote equality of opportunity?*
- *eliminate discrimination?*
- *eliminate harassment?*
- *promote good community relations?*
- *promote positive attitudes towards disabled people?*
- *encourage the participation of disabled people?*
- *consider more favourable treatment of disabled people?*
- *promote and protect human rights?*

If so, which Directions and/or associated guidance might have an effect and what effect might they have?

There were 9 (41%) responses to this question with 7 (32%) giving responses to all elements. The general view was that the proposals would not have a significant positive impact on equality issues. One respondent felt that the proposals regarding confinement at night would have a positive impact on equality of opportunity, elimination of harassment, promotion of human rights and promotion of good community relations. The potential positive impact on community relations was also mentioned by two other respondents.

Question 2

Paragraphs 4 and 5 of the guidance remind Trusts of their responsibility to consider equality issues when implementing the Directions and considering the guidance. Do you think this is sufficient or should we include additional guidance? If so, what guidance should we be giving?

There were 9 (41%) responses to this question. Five respondents felt that reminding Trusts of their responsibility was sufficient, two answered 'no' but did not identify areas for change. One

respondent thought that the relationship between security and therapy should be mentioned here. However, it is felt that this issue is appropriately covered within the Clinical Security Framework. The need to include the consideration of human rights issues when implementing the directions was also raised and the guidance has been amended to reflect this.

Question 3

Do you think any of the individual directions or associated guidance would be improved by including direct reference to or advice on equality issues? If you do, which directions would benefit and what should we be including?

There were 8 (36%) responses to this question. Five respondents felt there was no need for direct reference to equality issues, two answered 'yes' but did not specify any directions or guidance. One respondent thought that there should be a requirement within direction 45 for all staff to receive equality and diversity training. Having considered this, it was felt that this requirement was covered elsewhere and was outside the remit of these directions.

Question 4

This question asks you to focus on the content of the individual directions and the associated guidance.

Do you have any comments on any specific directions or the associated guidance? Please indicate clearly to which direction or paragraph of guidance your comments apply.

Direction 2 - Interpretation

There were two comments (9% of respondents) about this proposed direction. One thought the Medical Director should be defined as 'the senior doctor employed in the Hospital and a nominated deputy'. This issue was given careful consideration during the drafting of the proposals and it is considered that the wording reflects the appropriate arrangements.

Direction 3 - Promotion of Safety and Security

There were three comments (14% of respondents) about this proposed direction. These included two in general support and one felt that there should be a requirement for the communication with the SHA to be in writing. This has been clarified by including this requirement in the associated guidance.

Direction 4 – Duty to Co-operate

There were five comments (23% of respondents) about this proposed Direction. These included three in general support, one concerned that this could result in adoption of the most restrictive practices and one requesting consideration of Equality and Human rights issues. The latter was felt to be adequately covered by paragraphs 4 and 5 of the Guidance.

Direction 5 - Requirement for conducting a rub-down search of a patient

There were 9 comments (41% of respondents) about this proposed direction. These included two in general support and some suggesting changes which were not supported e.g. one questioned the need for searching to take place following a visit and another who felt that there was no need to specify that searching must be gender specific. One raised an issue which it was felt could adequately be covered by local operational arrangements. There were two requests for improved guidance. We have included a minor clarification in guidance regarding searching without consent.

Direction 6 - Searches of patients that involve the removal of clothing other than an outer layer

There were 7 comments (32% of respondents) about this proposed direction. These included three in general support and one raising an issue which it was felt could adequately be covered by local operational arrangements. Changes have been made in response to a request to use the term 'outer clothing' in preference to 'an outer layer' and for this to be defined. There was also a request for these searches to be permitted in areas other than the patient's ward. After careful consideration we have added 'admission facilities' to the locations where these searches may take place. We have also included a minor clarification in guidance regarding searching without consent.

Direction 7 - Searches of patients, rooms and lockers

There were 6 comments (27% of respondents) about this proposed direction. These included three in general support and one related to a recording issue which is covered in direction 19. A change has been made in response to a request to clarify the search requirements for visitors authorised to hold keys. We have also included clarification in guidance regarding the search requirements associated with visits.

Direction 8 - Searches when a patients moves around in the secure area

There were 7 comments (32% of respondents) about this proposed direction. These included three in general support and one related to a recording issue which is covered in direction 19. There was one request to limit searching in some situations, one objection to searching associated with visits and one to all searching. The only change made is to replace 'a patients moves' with 'patients move' in the direction title.

Direction 9 - Searches of ward areas and other areas

There were four comments (18% of respondents) about this proposed direction. These included three in general support and one opposed to these searches.

Direction 10 - Security of tools, equipment and materials

There were four comments (18% of respondents) about this proposed direction. These included three in general support and one suggesting that checks should only take place twice a week.

Direction 11 - Searches of members of staff

There were five comments (23% of respondents) about this proposed direction. These included two in general support and one questioning a point of grammar.

Direction 12 - Arrangements in respect of visitors and visiting children to a high secure hospital

There were 10 comments (45% of respondents) about this proposed direction. These included four in general support. There were two objections regarding exemptions from search, one about the removal of the exemption for Tribunal members and the other about the continuing inclusion of an exemption for members of the Royal Family. We have had further discussion with Tribunal members about the removal of exemption and have decided that the exemption should remain, but Tribunal members will be invited to participate in search on a voluntary basis in the interests of their own safety and the safety and security of the high secure hospitals. We have amended the guidance in response to a request that the Director of Security should be informed if a visitor is given approval to bring in food. We felt that an amendment to the Clinical Security framework was the best way to respond to a request for guidance on booking visits in advance. There were also three comments relating to smoking but it is considered that no change is required.

Direction 13 - Searches of visitors and inspection of possessions

There were 7 comments (32% of respondents) about this proposed direction. These included three in general support and one in opposition. With regards to 'same sex' searching requirements, it was suggested that 'sex' should be replaced by 'gender'.

Direction 14 - Supply of food by staff to patients

There were five comments (23% of respondents) about this proposed direction. These included three in general support. There was one request to make the Director of Security the authorizing officer and one request to allow the therapy staff to be authorized to bring in food. We have included clarification of the reasons for these restrictions within the guidance.

Direction 15 - Checks of vehicles

There were four comments (18% of respondents) about this proposed direction. These included three in general support and one in opposition.

Direction 16 - Contractors' vehicles in the secure areas

There were four comments (18% of respondents) about this proposed direction: all in general support.

Direction 17 - Testing for illicit substances

There were four comments (18% of respondents) about this proposed direction: all in general support.

Direction 18 - Control of prescribed drugs

There were five comments (23% of respondents) about this proposed direction. These included four in general support and one suggestion that 'consideration needs to be taken into account with regards to Directions issued by the Security Management Services'.

Direction 19 - Written records of certain searches and tests

There were five comments (23% of respondents) about this proposed Direction. These included four in general support and one requesting that records should include the reason for searches. We felt that an amendment to the Clinical Security framework was the best way to respond to this request.

Direction 20 - Security information

There were 4 comments (18% of respondents) about this proposed direction all in general support. One included a request for clarification of whether 'security files' were 'medical records'.

Direction 21 - Patients' possessions

There were 7 comments (32% of respondents) about this proposed Direction. These included one in general support and three comments / objections to the restrictions on access to technology. We have, in response to a request, included in the guidance clarification of the type of staff that can authorise exchange of recorded material. We have also clarified the Trusts' right to refuse access to stored items where access is considered to be a risk to security.

Direction 22 - Items delivered or brought to hospital premises for patients

There were four comments (18% of respondents) about this proposed direction. These included one in general support and a request to move the reference to 18R recordings in the guidance into the directions. This was considered during the drafting and it was felt that it should remain in the guidance. We have included clarification in the guidance that this direction covers patients' property arriving at the hospital on admission or following leave of absence.

Direction 23 - Patients' access to computer equipment

There were 7 comments (32% of respondents) about this proposed direction. This direction and the associated guidance deal with complex issues and as a result some of the comments are extremely detailed.

In summary, there was general support for allowing limited access to the internet but some concern that the proposals were unnecessarily restrictive. The responses included requests to relax the restriction on the ownership of games machines and the supervision of their use. The restrictions on access to recordable media and some of the required control mechanisms were also questioned. The technical specification for equipment was also felt to be unnecessarily prescriptive. One respondent stated that '*The approach outlined is fundamentally unsustainable. Article 10, the Right to Free Expression, supports the "right and freedom to hold opinions and to receive and impart information and ideas". As the internet becomes the predominant mode of publishing, our patients rights to hold, receive and impart information and ideas are contravened.'* Having taken expert advice, we are satisfied the majority of our proposals are appropriate, however we have made minor changes relating to the equipment specification and introduced related safeguards.

Direction 24 - Location of patients' shops

There were four comments (18% of respondents) about this proposed direction: all in general support.

Direction 25 - Role of patients in managing or working in patients' shops

There were four comments (18% of respondents) about this proposed direction. These included three in general support and one suggestion that this direction should be amalgamated with direction 39 - Specified employment opportunities. The directions have been amalgamated in the final version.

Direction 26 - Patients' incoming post

There were four comments (18% of respondents) about this proposed direction: all in general support. There were two comments which raised issues about the scope of this provision one suggesting extending the authority to inspect to a range of correspondents including staff to patient and one arguing for the exclusion of correspondence with the hospital complaints department.

Direction 27 - Internal post
There were five comments (23% of respondents) about this proposed direction. These include three in general support. Two related to the coverage of this direction, one requesting extension to other communication including mail from staff to patients and the other wanted to exclude mail to a hospitals complaints department.

Direction 28 - Patients' outgoing post

There were four comments (18% of respondents) about this proposed direction: all in general support.

Direction 29 - Incoming post addressed to members of staff

There were four comments (18% of respondents) about this proposed direction all in general support.

Direction 30 - Mobile phones

There were five comments (23% of respondents) about this proposed direction. These include three in general support. One request was for 'on call' mobiles to be allowed and one supported the removal of restrictions on mobiles.

Direction 31 - Patients' outgoing telephone calls

There were 7 comments (32% of respondents) about this proposed direction. These included three in general support. There was one submission in support of the proposals to allow contact with the Samaritans and three in opposition to this. We have considered the issue of contact with the Samaritans again and have concluded that it is appropriate to allow Trusts to determine whether patients should be allowed this access. One response included a request for a relaxation of the time restrictions on telephone use, but it is considered that these restrictions should remain.

Direction 32 - Patients' incoming telephone calls

There were five comments (23% of respondents) about this proposed direction. These include two in general support. There was one comment in support of the limited proposals to allow incoming calls and one request for all incoming calls to be allowed.

Direction 33 - Risk assessments

There were 9 comments (41% of respondents) about this proposed direction. These included four in general support. There was one request for formal definitions of High Risk and one suggesting changes to the arrangements for reviewing risk management plans and the recording of decisions. There were two comments which appeared to arise out of misunderstandings. One was an objection to the involvement of security staff in the risk assessment process and it is thought that the respondent was not aware that the security staff concerned are clinicians. The other suggested that the proposals represented a significant change. A request 'to see the directive insisting that carers' opinions should be taken into

account to as part of the risk assessment' will be addressed by inclusion of a reference to carers views within the Clinical Security Framework.

Direction 34. – Monitoring telephone calls

There were 6 comments (23% of respondents) about this proposed direction. These include three in general support and one in opposition to monitoring. A comment about the need to record the reasons for retaining recorded telephone calls has been addressed by including a recording requirement in the Guidance.

Direction 35 - Security at night

As anticipated, this direction which deals with night-time confinement of patients received the most comment both in terms of number of responses (12 (55% of respondents)) and the range of views. A workshop to consider the implications of the proposals on confinement at night also formed part of the consultation. (See Appendix 1 for a full report) A composite summary of the issues raised at the workshop and in written responses to the consultation is included here.

Views on this issue varied widely ranging from suggestions that all patients should be confined in their rooms at night to total opposition to confinement for any patients.

Broadly there were three elements to the proposals: a requirement to consider confinement for 'high risk' patients, a requirement to confine DSPD patients and a provision that would allow the confinement of other patients where doing so would not be detrimental to their wellbeing. The first two elements form the basis of the existing provision.

There was a lot of support for the continuing requirement to consider the confinement of 'high risk' patients and the requirement to confine DSPD patients although the latter was accompanied by a considerable amount of concern about equality issues (see below). The new proposals relating to the confinement of other patients met with mixed views with some support for the principle but no support for the provision as drafted in the consultation paper.

Alternatives proposed
As mentioned above the proposed alternatives ranged from confining all patients to not confining any. In between there were suggestions that no change should be made to the current arrangements.

Ethical considerations
Concern was expressed that the wider introduction of night-time confinement for patients may undermine the principle of patients receiving care and treatment in conditions that are 'least restrictive' and shift the dynamics towards prison and prisoner and away from hospital and patient. A counter-view was that locking patients in their bedrooms at night is not a significant

increase in restriction as patients are already confined in a high secure hospital, and many will already choose to lock their bedrooms at night.

One view expressed was that confinement might have a negative impact on patient improvement, by undermining the freedom to choose which can be an important part of recovery.

There was strong support for decisions about confinement to be taken only on an individual patient basis. Those who supported confinement of groups of patients generally did so only if decisions included consideration of individual patient issues. Discussions also considered the relationship between central policy and managerial and clinical decision-making.

Security and safety considerations
The proposed extension of night-time confinement was considered by some to improve patient safety as it would reduce opportunities for bullying or because it would provide greater safety for other patients. Others felt that it would reduce opportunities for concerted action and indiscipline at night.

Some felt that that the proposals would result in an increase in self harm. There were also concerns that risks could be increased by changes in the patient mix on wards, that there was a potential for staff to become complacent and that any resulting staff reductions could result in instability, which could compromise security.

Clinical considerations
Respondents felt that night-time confinement may be in conflict with the Code of Practice guidance and that the relationship between night-time confinement and seclusion needed to be better understood and more clearly stated. A better understanding of terms such as ‘risk’ and ‘clinical benefit’ was also felt to be needed.

There were concerns that enabling staff to make decisions about confinement may put too much pressure on staff, and that confinement would change the nature of the relationship between staff and patient. There was also a concern that an increased use of confinement may interfere with transfer pathways to medium security.

It was thought that there might be benefit in night-time confinement if this freed up resources, including staff expertise, in order to enable better access to therapy during the day.

Practical considerations
It was felt that, if patients were to be confined, the environment in which they are confined was important and there was support for proposals about the need for integral sanitation and staff call systems. The length of time patients were confined was also considered important and should not start too early.

There was strong support for the need to include individual assessment of risk and regular reviews of decisions regarding confinement.

Financial considerations

There was little, if any, agreement on the potential for savings arising from the proposals. The savings and/ or costs would depend on the numbers of patients involved and any requirements for capital development to meet the environmental requirements. There was, however, a widely- held view that night-time confinement could help hospitals better target resources towards the improved availability of therapy during the day. It was felt that in the current financial climate, hard decisions had to be made about resources and that night-time confinement might be a better option to deliver savings, rather than cutting other areas of care.

There were, however, some concerns both at the workshop and in the consultation responses that cost savings may be being over-estimated once requirements for minimum staff numbers are factored in, and that the numbers suitable for confinement may not be that high.

It was also felt that there would be costs incurred in service redesign to deliver confinement and that there may be legal challenge.

Equality impact considerations

Equality impact issues arose in particular in relation to clinical diagnoses where it was felt that singling out patients in dangerous and severe personality disorder services may be inequitable. The proposed directions were also felt to have some impact on human rights issues in relation to deprivation of liberty. It was felt that the right to private life could be affected if telephone access was further reduced as a result of confinement. Access to integral sanitation was felt to be an important consideration in ensuring patients were treated in a non-degrading manner. It was considered that where equality and human rights issues arose, many could be mitigated against.

Outcome

The new directions address many of the issues raised in consultation. The new directions are permissive and enable Trusts to confine patients at night, in accordance with guidance issued by the Secretary of State which sets out the necessary safeguards which should be in place. To address equality concerns, the directions no longer single out patients in DSPD facilities as a group requiring night-time confinement, though such patients will still be able to be confined at night if the Trust determines, subject to safeguards. The directions and guidance set out clearly the safeguards to be put in place where patients are confined at night, including that patients should not be confined where there is a serious risk of suicide or self-harm, and that patients must have access to integrated sanitation and a staff on-call system, or must be on continuous observation.

Direction 36 - Grounds Access Committee

There were five comments (23% of respondents) about this proposed direction. These included four in general support and one expressing concern about the way the hospitals are currently interpreting one of the direction requirements.

Direction 37 - Functions of the Grounds Access Committee

There were six comments (27% of respondents) about this proposed direction. These included four in general support. There were two concerns expressed: one related to details in the application process and the other was a repeat of the issues raised above regarding the way the hospitals are interpreting one of the direction requirements.

Direction 38 - Grounds Access

There were four comments (18% of respondents) about this proposed direction: all in general support.

Direction 39 - Specified employment opportunities

There were 6 comments (27% of respondents) about this proposed direction. These included four in general support. The contents of this proposed direction have been amalgamated with Direction 25 on the role of patients in managing or working in patients' shops.

Direction 40 - Review of decision of the Grounds Access Committee

There were 6 comments (27% of respondents) about this proposed direction. These included four in general support. One comment related to the concern over detail in the application process related to Direction 37 and the other related to clinical teams using the provisions within this direction. The new direction supports the involvement of clinicians in the operation of Grounds Access Committees.

Direction 41 - Leave of absence

There were 6 comments (27% of respondents) about this proposed direction. These include four in general support. There was another objection to the involvement of security staff this time in the approval of the risk management plans; the security staff who would be involved would be clinicians so this involvements is throught to be appropriate.

Direction 42 - Escorting patients

There were four comments (18% of respondents) about this proposed direction: all in general support.

Direction 43 - Security of keys and locks

There were four comments (18% of respondents) about this proposed direction: all in general support.

Direction 44 - Security Audits

There were four comments (18% of respondents) about this proposed direction. These included three in general support of the proposals and one who felt audits should not be undertaken.

Direction 45 - Provision of training

There were 6 comments (27% of respondents) about this proposed direction. These include four in general support. One respondent suggested that training in Mental Health Awareness should be included. An amendment has been made to the Guidance to reflect a request to clarify the role of the Security Management service in providing advice.

General guidance on policies (Guidance paragraphs 7 – 11)

There were no significant comments on these proposals

A Protocol for the Identification and Management of "High Risk" Patients in High Security Hospitals and locking patients in their rooms at night (Annex A to the Guidance)

There were 7 comments (32% of respondents) about the protocol. These included one in general support. Most of the comments relate to the issues discussed above under direction 35 Security at night and are covered there.

The remaining questions relate to the new directions and guidance documents more generally.

Question 5.

Some of the material in earlier versions of the guidance is now in the directions, and some of the material formerly in the directions has been moved to guidance. Have we got this right?

There were 3 comments (14% of respondents) about this question. Two of these agreed with the distribution of material between direction and guidance and one requested that these should be collated.

Question 6

We do not believe that there will be a financial impact or other costs associated with the implementation of these amended directions and guidance. Do you agree? If not, which directions do you think will have a financial impact and why?

There were 3 comments (14% of respondents) about this Question. One suggested training costs could increase. The other two related to costs associated with the proposals on patients' access to computer equipment. One of these included a request for a lead time for this Direction to allow time to develop compliant arrangements.

Conclusion

Responses to the consultation broadly supported the proposed changes to directions. A number of useful amendments were suggested which have been incorporated in the new directions.

The new directions and guidance will be issued in 2011. Arrangements will be put in place to ensure that they are kept under review so that they remain up-to-date.

Appendix 1

Report of Confinement workshop
9th October 2009, Birmingham

Attendance
There were attendees from a range of organisations, including clinical and managerial staff from the three high secure hospitals, patient advocates, a carer, and representatives from the three Strategic Health Authorities which performance manage the high secure hospitals. The national High Secure Commissioning Team, and the Care Quality Commission were also represented.

Format of the day
The day started with an overview of the history of the practice of night-time confinement and how policy and legislation had changed over the last twenty years. The legislative proposals and accompanying draft guidance were then introduced and explained.

Workshop participants were asked in mixed groups to consider the risks and benefits of the proposed directions and guidance in terms of their ethical, clinical, financial, practical and other implications.

In different groups, they were asked to consider the equality impact issues of the directions in terms of their impact on human rights and different areas of equality: age, gender, disability, sexual orientation, age, religion or belief, and socio-economic groups.

Feedback from all the groups was shared in plenary, and a note of discussions was taken.

Outcomes
Risks and benefits
Whilst the groups were asked to consider risks and benefits in terms of ethical, clinical, financial, practical and other implications, the discussions were not confined to these areas and considerable areas of overlap were identified.

The key issues raised in discussion were:
- The need for greater clarity in directions, guidance, and decision-making tree
- The need for better understanding of terms such as risk and clinical benefit
- Clarity around distinction between confinement and seclusion
- Concern around uniformity of approach across system
- Defining the relationship between central policy and managerial and clinical decision-making
- The need to define any financial benefit – there was a feeling that there would be some but that the benefit needs careful analysis as it will not be clear-cut
- There may be benefit in night-time confinement if this freed up resources, including staff expertise, to enable better access to therapy during the day
- Concern around messages that confinement might send in terms of whether patients are perceived as prisoners
- The impact on individual patients and staff will differ
- Night-time confinement would have an impact on staffing levels and staff rotas
- Patient safety may be improved by night-time confinement, though there was a possible risk of staff complacency
- The risk of self-harm needed to considered in any policy

Equality impact issues
Equality impact issues arose in particular in relation to clinical diagnoses where it was felt that singling out patients in dangerous and severe personality disorder services may be inequitable.

The proposed directions were also felt to have some impact on human rights issues in relation to deprivation of liberty. It was felt that the right to private life could be affected if telephone access was further reduced as a result of confinement. Access to integral sanitation was felt to be an important consideration in ensuring patients were treated in a non-degrading manner.

It was considered that where equality and human issues arose, many could be mitigated against.

Annex 2: Consultation respondents

Responses were received from individuals and organisations. Individuals have not been named but the following organisations responded:

Ashworth Hospital, Mersey Care NHS Trust
Broadmoor Hospital, West London Mental Health Trust
Rampton Hospital, Nottinghamshire Healthcare NHS Trust
British Medical Association
Counter Fraud and Security Management Service
DEFRA
First Tier Tribunal – Mental Health
NHS London
NHS North West
Rethink
The Howard League