



Ministry of JUSTICE

National Offender
Management Service

National Offender Management Service
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ADDRESSEE

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Dear Colleague

CHANGING DISCHARGE CONDITIONS - RESIDENCE

Section 42(2) of the Mental Health Act 1983 (as amended) provides that:

'At any time while a restriction order is in force in respect of a patient, the Secretary of State, may if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions.'

Mental Health Casework Section (MHCS) discharges this power on behalf of the Secretary of State.

Section 73 of the Act gives a power of discharge to the First-Tier (Mental Health) Tribunal, when certain criteria for lawful detention set out in that section are not satisfied. Again, the Tribunal may discharge a patient absolutely or subject to conditions.

Section 73(4)(b) states that 'the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the Tribunal or at any subsequent time by the Secretary of State'

Section 73(5) states that 'The Secretary of State may from time to time vary any condition imposed (whether by the Tribunal or by him) under subsection (4) above.'

MHCS exercises this power under delegated authority from the Secretary of State and will, on occasion, vary conditions either by either adding a new condition, or amending or deleting an existing one. Any such changes will be based on a risk assessment and be subject to a reasonableness and proportionality test.

Changes of Address

MHCS has reviewed its procedures in respect of residence conditions. This has been prompted by a particular case where it was discovered that the Ministry of Justice (MoJ) had not closely managed a conditionally

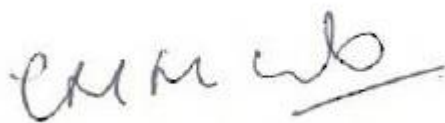
discharged patient's movements as it should have done. In particular, the MoJ in this instance had overlooked the need to acknowledge and register a change of address.

In response, it has been decided that from 4 January 2016 :

- All discharged patients will have a condition giving an actual address at which they will reside and Responsible Clinicians (or Care Teams) will not have the discretion to move patients without notifying MHCS beforehand (at least 14 days prior to the date of the intended move – but see below).
- If there is no address quoted in a condition set by the Tribunal on discharge, the Secretary of State will automatically add one at the point where the officials check the Tribunal decision.
- All existing conditions will be re-examined on receipt of Conditionally Discharged patient reports and, should they not contain the address where the patient resides or include a reference to allowing the patient to be moved at the discretion of the RC/Team alone, consideration will be given to amending that condition in accordance with the above.
- All discharges agreed by the Secretary of State will also accord with this policy and be subject to review.

The Secretary of State does not want to create unnecessary work for Responsible Clinicians and Care Teams and is acutely aware of the difficulties many Restricted Patients present. However, our overriding concern is to ensure public protection and the safe supervision of Restricted patients in the community at all times. Whilst planning a move of accommodation, RCs and Teams are asked to be aware of the 14-day period of notice which should be given to the MHCS but also encouraged to inform officials at the earliest possible opportunity to allow them to raise any concerns the Secretary of State may have and discuss them with the Team.

Yours sincerely

A handwritten signature in black ink, appearing to read 'CHARNETT', with a horizontal line underneath the name.

COLIN HARNETT
Head of Mental Health Casework Section