

STANDARD OPERATING PROCEDURE PATIENT CORRESPONDENCE

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VALIDITY – All local SOPS should be accessed via the Trust intranet

CHANGE RECORD

Version	Date	Change details
1.0	26.04.2023	New SOP. Approved at Mental Health Legislation Steering Group (17 May 2023).

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1. INTRODUCTION

1.1. Managing Patients' Mail / Correspondence and Least Restrictive Practice

The British postal system and the laws governing post entitle patients to send and receive postal packets, Part IV section 84 Postal Services Act 2000 states that "A person commits an offence if, without reasonable excuse, he intentionally delays or opens a postal packet in the course of its transmission by post".

The Malicious Communications Act 1988 makes provision for the prosecution of persons who send or deliver letters or other articles with the intent to cause distress or anxiety.

Article 8: of The European Convention on Human Rights - The Right to Respect for Private and Family Life stipulates that:

- "everyone has the right to respect for their private and family life, their home and their correspondence"and to send and receive mail, including in electronic formats, without restriction;
- that "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

1.2. Risks Associated with Patients' Mail / Correspondence

The patient's right to post and receive mail can provide patients with a mechanism through which they might seek to breach an inpatient unit's safety restrictions around contraband. Breaches might result directly and/or indirectly in any or a combination of the following possibilities:

- The unauthorised passage of goods/contraband i.e. money, drugs, alcohol, phones and/or weapons into the service.
- Adverse effects upon the patient culture with impact upon existing and established peer networks. The consequence of such changes may give rise to deteriorations in mental health or result in a heightened risk of harm to the recipient/staff and/or others.

1.3. Blanket Restrictions

Blanket restrictions should be avoided unless they can be justified as necessary and proportionate responses to risks identified for particular individuals. The impact of a blanket restriction on each patient should be considered and documented in the patient's records (Mental Health Act Code of Practice 2015, 8.5).

Blanket restrictions include restrictions concerning:

- access to the outside world,
- access to the internet,
- access to (or banning) mobile phones and chargers,
- incoming or outgoing mail,
- visiting hours,
- access to money or the ability to make personal purchases,
- or taking part in preferred activities.

Such practices have no basis in national guidance or best practice; they promote neither independence nor recovery and may breach a patient's human rights (Mental Health Act Code of Practice 2015, 8.7).

1.4. Withholding Patients' Correspondence [section 134]

Section 134 allows hospital managers to withhold **outgoing** post from **detained** patients if the person to whom it is addressed has made a written request to the hospital managers, the approved clinician with overall responsibility for the patient's case or the Secretary of State that post from the patient in question should be withheld. The fact that post has been withheld must be recorded in the patient record, and the patient must be informed within 7 days in accordance with the

regulations and the Mental Health Act Code of Practice 2015, 4.27. **Except in high-security psychiatric hospitals, post should not be opened or inspected unless section 134 applies** (Mental Health Act Code of Practice 2015, 37.37).

In respect of unrestricted part 3 patients there may be a family member, friend and carer who is a victim or for other reasons does not wish to maintain contact or visit, despite a part 3 patient's wish for them to do so. The rights of the individual victim should be protected and maintained in this and, if appropriate, this should be explained to the patient (Mental Health Act Code of Practice 2015, 40.23).

Detained patients' post may be withheld from them or from the postal operator (as the case may be) only in the circumstances described in the table below, subject to the restrictions set out in 1.5 below. For these purposes, detained patients include patients detained under any provision of the Act, except patients on community treatment orders (CTOs) who have been recalled to hospital (MHA Reference Guide 5.2).

Conditions in which correspondence may be withheld

Patient detained in:	Outgoing post may be withheld if:	Incoming post may be withheld if:
All hospitals	The addressee has requested that post from the patient should be withheld	May not be withheld
High security psychiatric hospitals only	It is likely to cause: <ul style="list-style-type: none"> distress to the addressee or to any other person (not being on the staff of the hospital), or danger to any person 	It is necessary to withhold it: <ul style="list-style-type: none"> in the interests of the safety of the patient, or for the protection of other persons.

The Act refers to post as 'postal packets' which has the same meaning as in the Postal Services Act 2011, i.e. a letter, parcel, packet or other article transmissible by post. The power to withhold a postal packet also applies to anything contained in it (MHA Reference Guide 5.3).

A request from someone for post addressed to them to be withheld must be made in writing to:

- the hospital managers, or
 - the approved clinician with overall responsibility for the patient's case.
- (MHA Reference Guide 5.4).

The managers may open and inspect any **[outgoing]** letter or other postal packet for dispatch in order to determine whether it is one which may, in principle, be withheld (**because the person to whom it is addressed has made a written request to the hospital managers for it to be withheld**), and if so whether it, or anything contained in it, should in fact be withheld (MHA Reference Guide 5.5).

In hospitals **other than** high security psychiatric hospitals it will not usually be necessary to open **outgoing** post for these purposes, but merely to check whether it is addressed to someone who has asked for it to be withheld. However it would be permissible for such mail to be opened if staff had a reasonable suspicion that a postal packet contained letters which the patient wanted the addressee to forward to people who had requested that mail be withheld (Jones, MHA Manual 25th edition page 639).

Incoming correspondence should not be opened or inspected at all for these purposes, as there is no power in the Act for the managers to withhold it from patients (MHA Reference Guide 5.6).

There is no authority for the hospital managers to censor correspondence, i.e. to strike out certain passages in a letter.

1.5. Correspondence not to be Withheld [Section 134(3) and (3A) and Regulation 31]

Under no circumstances may the managers withhold post to or from:

- any Government Minister, any of the Welsh or Scottish Ministers, or the Counsel General to the Welsh Assembly Government
- a Member of either House of Parliament or a member of the National Assembly for Wales or the Scottish Parliament or the Northern Ireland Assembly
- any judge or officer of the Court of Protection, any Court of Protection Visitor, or any person asked by that Court for a report under section 49 of the Mental Capacity Act 2005 concerning the patient
- the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman)
- the Scottish Public Services Ombudsman
- the Public Services Ombudsman for Wales
- the Health Service Commissioner for England (the Parliamentary and Health Service Ombudsman)
- a member (other than an advisory member) of the Commission for Local Administration in England (the Local Government Ombudsman)
- the Care Quality Commission (CQC)
- the First-tier Tribunal or the Mental Health Review Tribunal for Wales
- the NHS Commissioning Board, a clinical commissioning group (CCG), local health board, special health authority or local authority
- a Community Health Council (in Wales)
- a provider of probation services
- a provider of a patient advocacy and liaison service for the assistance of patients at the hospital in which the patient is detained and their families and carers, which is provided by an NHS trust, an NHS foundation trust, a CCG or the NHS Commissioning Board
- a provider of independent mental health advocacy services under the Act (see chapter 4), or independent complaints advocacy services under the NHS Act 2006, the Local Government and Public Involvement in Health Act 2007/37 or the NHS (Wales) Act 2006, or independent mental capacity advocacy under the Mental Capacity Act 2005 for the patient
- the managers of the hospital in which the patient is detained
- the patient's legal adviser (if legally qualified and instructed by the patient to act on their behalf), or
- the European Commission of Human Rights or the European Court of Human Rights. (MHA Reference Guide 5.7).

The Secretary of State for Health has the power to make regulations adding other independent advocacy services to the list above (MHA Reference Guide 5.8).

1.6. Deviations from the MHA Code of Practice

If either a detained or an informal patient is sent articles of potential danger, such as weapons, explosives or matches, through the mail, s3(1) of the Criminal Law Act 1967 and the common law provide authority for hospital staff to take reasonable measures to prevent the patient from receiving or keeping the article in his/her possession (Jones, MHA Manual 25th edition page 637).

Common law - there may be circumstances where it could be deemed appropriate and legal to withhold or interrupt the passage of mail sent into or out of a hospital. One such example would be where allowing passage of a letter or parcel might be a criminal offence or make the admission of such an offence likely (Practical and legal aspects of withholding patient's mail, Published online by Cambridge University Press: 02 January 2018).

Although there is no power to withhold the incoming mail of a patient who is detained in a hospital which is not a high security hospital, para 1.135 of the MHAC's *Thirteenth Biennial Report* states:

“Some **medium secure hospital** policies stipulate that, whilst it is unlawful to withhold incoming mail from a patient, or to open mail addressed to a patient **without that patient's permission**, if a staff member has concerns about the possible contents of a particular package or letter, it is acceptable for the patient to be advised that he or she may only open it in a controlled environment (i.e. the nurses' office) in the presence of staff. Once open, the contents may be treated like any other item of patient property and confiscated if necessary. The MHAC accepts the need for such arrangements as a last resort, but they should be carefully monitored and reviewed to ensure that they are and continue to be a justified interference with the patient's rights to privacy, and must never (be) used as a blanket measure irrespective of individual risk assessment”.

(Jones, MHA Manual 25th edition page 639).

2. SCOPE

This SOP applies to all clinical staff in inpatient mental health and learning disability services where there is an identified need to consider the withholding of patient correspondence.

With regards to any withholding of mail to be considered which is outside the scope of this SOP guidance should be sought from the Mental Health Legislation Team / Legal Department. If urgent and in relation to potential crime then the police should be contacted immediately.

3. PROCEDURE STATEMENT

The purpose of this SOP is to promote a safe and therapeutic environment for patients, staff and the public by ensuring all clinical staff working within inpatient mental health and learning disability services are aware of:

- their roles and responsibilities in relation to the management of the correspondence of patients.
- their powers in relation to managing patient correspondence where there are concerns about risk of harm.

The SOP aims to ensure that all initiatives, actions, interventions relating to the correspondence of patients detained in hospital under the Act are responsibly developed in accordance with the relevant statute law and best practice.

It seeks to ensure that the management of the correspondence of patients is compliant with the Mental Health Act 1983, its guiding principles and its corresponding Code of Practice 2015.

The process of monitoring incoming and outgoing mail, **where there is an individual identified need**, aims to reduce the likelihood of contraband entering the service. It will also seek to prevent mail leaving the service that might, in causing: harm, alarm or distress to others constitute a criminal offence (see MHA sec 134).

Any decision taken to deviate from the directions contained within this document must be explicitly stated along with an underpinning rationale and a datix submitted.

4. DUTIES AND RESPONSIBILITIES

Chief Executive

The Chief Executive has overall responsibility to ensure that policies and processes are in place for the care and treatment of the patients subject to this SOP.

Executive Director of Nursing, Allied Health and Social Care Professionals The executive director of nursing/Caldicott Guardian as lead director has responsibility to ensure that this SOP is understood and adhered to by all mental health and learning disability inpatient staff and that all the processes are in place to ensure the SOP is fully implemented.

Medical Director

The medical director is responsible for ensuring that this SOP is understood and carried out by medical staff involved in the implementation of this SOP.

Clinical Director

Has responsibility for ensuring that all mental health and learning disability inpatient staff within the Trust are familiar with the requirements of the SOP and are able to implement them.

General Managers and Clinical Leads

Have responsibility for ensuring that all mental health and learning disability inpatient staff within their division are familiar with the requirements of the SOP and are able to implement them.

Modern Matrons

The modern matrons have the responsibility to ensure that all nursing staff working within inpatient mental health and learning disability areas comply with the SOP and ensure it is implemented effectively and safely. The Matron will be responsible for ensuring that information is made available to patients and visitors regarding this SOP and should routinely be included in ward patient information.

Responsible Clinician/Approved Clinician

Has specific responsibilities for leading and supporting the multi-disciplinary team (MDT) in decision making for both formal and informal patients within the scope of this SOP.

Charge Nurses/Registered clinical staff/other clinical staff

- Must be aware of and comply with their responsibilities to implement the SOP.
- Must complete the personal and environmental search training, refreshed in line with DMI training.
- Must ensure each patient has **a property search on admission due** to high levels of patient safety incidents occurring within inpatient units involving restricted items. This search will also constitute the patient possession list on admission of items retained by the Trust during admission.

5. PROCEDURES

5.1. Incoming Mail

A record will be made in the unit's incoming mail logbook of all patient post and each patient will be asked to sign to say they have received it.

5.2. Individual Assessment

Regulation and monitoring of mail will be dependent upon the outcome of continuous collaborative risk assessments occurring as required (not routinely) and throughout the duration of the patient journey if deemed necessary. In doing so this procedure will uphold the principles of least restrictive practice as embodied within the Code of Practice (2015). In addition, consideration will also be given to a patients' capacity to deal with the contents of their mail – where capacity is doubted, an assessment must be performed and, if capacity is found to be absent, a best interests meeting must be arranged to consider procedures involving the individual's mail.

The assessment of the postal packet will balance the multidisciplinary team's knowledge of the patient with any risk factors that might be associated with incoming mail i.e. where mail has previously been used as a vehicle for contraband.

The following procedure balances the recognition of a person's postal rights against the possible use of those rights to breach the security of the organisation or to cause alarm, harm and/or distress to others. **The requirement for restrictions pertaining to the regulation of mail in any of our inpatient services will be considered on an individual basis.**

5.3. Alternative Arrangements

The Trust accepts that there may be times when alternative arrangements need to be agreed in response to intelligence regarding an inpatient receiving a dangerous item through the post.

Whilst it is unlawful to with-hold incoming mail from a patient, or to open mail addressed to a patient, it would be acceptable to do this with the capable patient's permission if the concerns were so serious as to warrant this. This would require the patient's signature to state they agree to the restriction, with a clear statement about what the patient is agreeing to. It should include a date and time and should be uploaded to the patient electronic record.

If it is believed or reasonably suspected that an item of mail contains items or materials that might increase risk to patients, staff or others, it is acceptable for the patient to be advised that he or she may only open it in a controlled environment (i.e. the nurses' office) in the presence of staff. If this is accepted by the patient, once open, the contents may be treated like any other item of patient property and confiscated if necessary.

The incident will be logged through the Datix system to report on the variance to the management of incoming patient mail, and the reason that this decision was taken (i.e. the nature of the concern).

Where a multidisciplinary and/or collaborative risk assessment has concluded there is a possibility that postal packets might contain contraband that could be harmful to the patient or others, an individualised risk management care plan will detail the rationale as to why in the interests of safety that the patients mail should be opened in the presence of the nurse in charge of the ward or their nominated deputy.

The need for such arrangements will be a last resort. They must be carefully monitored and frequently reviewed to ensure that they are and continue to be a justified interference with the patient's rights to privacy and must never be used as a blanket measure irrespective of individual risk assessment.

Staff must be clear that the process will only relate to the items of mail which are suspected to contain items or materials that might increase risk to patients, staff or others. All other mail items in that delivery will be opened by the patient as per their normal approach.

If staff are concerned that a patient may have ordered contraband to the unit this should be raised with the MDT for discussion around how this might be managed. Solutions could include asking the patient to open the package in front of staff however it would depend on the patient's overall presentation and risk which would determine the best course of action. If the patient declined to

open the mail in front of staff and the risk was deemed high then an immediate professional meeting should be held to determine how the specific patient's mail should be managed safely. This should include attendance by Safeguarding, Mental Health Legislation and IMHA wherever possible.

5.3.1. Capacity

For patients who lack capacity to consent to these arrangements staff should complete a formal capacity assessment and the patient's multidisciplinary team must at the earliest opportunity convene a best interest meeting. The meeting will be used to balance the likelihood of a breach of security occurring against the requirement for the introduction / maintenance of any controls to minimise any probable risk of harm to either: patient, peers and/or staff.

5.3.2. Nonconsenting patients

Where there is a reasonable belief that the package may contain dangerous items and the patient is not willing to cooperate or consent to their mail being opened or to open it in a controlled environment in front of staff, the mail item will be retained by staff pending a wider discussion with the Clinical Team at the earliest opportunity. The MDT should consider other alternatives, for example restricting/supervising use of internet in order to prevent the patient ordering contraband items. Appropriate next steps will be determined based on the assessment of risk, both for the item and the patient. This decision will be reported through the Datix system to ensure that a clear rationale is stated for this extra-ordinary intervention.

There will be recognition of the need for increased vigilance for any behavioural and or attitudinal changes that might require a nursing intervention over the following hours. The patient as described will be asked to sign for their postal packet/s in an environment that respects their rights to privacy, dignity and respect.

Staff must make efforts to engage the patient in a collaborative endeavour to reduce the risks associated with the import of contraband into the service. **Patients are to be made aware that where mail is used in the commissioning of a criminal offence the police will be notified and the possibility of prosecution will be supported by the Hospital Managers**

5.4. General Incoming Correspondence – No Risk

A patient whose mail risk assessment indicates no requirement for monitoring may request that a member of staff supports them in the opening of their mail. This can be especially important when postal packets might contain information/news that could cause alarm or distress for the recipient. Where the recipient might require help in reading his mail or in some instances where the patient expresses a feeling of vulnerability to his fellow patients and may have been placed under duress to have goods sent into the service on behalf of others.

5.5. Recording

In any instance that mail is found to have been or is suspected of being the vehicle through which contraband items were enabled to enter the service then a "datix" must be completed. The use of datix will inform any future revision of this SOP.

Contraband items, as well as those defined by the Trust Search Policy, may include the following:

- Personal information about other patients that may increase their vulnerability i.e. offence details from newspapers, malignant misinformation and or instructions and/or inducements to cause harm to others
- Personal information about unit staff.

5.6. Outgoing Mail – Section 134 MHA

Section 134 of the Mental Health Act 1983 allows hospital managers to withhold outgoing postal packets from detained patients when a written request has been made for it to be withheld. A postal packet includes a letter, postcard, printed packet, parcel or telegram.

The intended recipient must make their request to either:

- The Hospital Managers.
- The Responsible Clinician (RC) with overall responsibility for the patient's case.
- The Secretary of State.

The fact that post has been withheld must be recorded in writing by an officer authorised by the hospital managers, and the patient must be informed of that action in accordance with the regulations.

5.6.1. Correspondence Where the Powers of 134 do not Apply

The powers of Section 134 do not apply to correspondence sent by detained patients to the following persons:-

Any government minister or MP

Court of Protection

Health Service Commissioner

Mental Health Review Tribunal

Health Authority

The Care Quality Commission (CQC)

Hospital Managers

The patients' legal adviser

The European Commission of Human Rights

5.7. Restrictions to Informal Patients' Correspondence

Both formal and informal patients come within the scope of this SOP; restrictions on any patients' correspondence should only be considered where there are reasonable grounds to believe that the patient has been sent / has ordered dangerous items that may cause harm to self or others.

If an informal patient is not cooperating with the proposed arrangements an MDT meeting should be held to determine the level of risk the patient may pose to themselves and others. Options considered for informal patients may include the discharge of the individual if deemed appropriate.

6. REFERENCES

The Malicious Communications Act 1988

Postal Services Act 2000

European Convention on Human Rights

Mental Health Act Code of Practice 2015

MHA Reference Guide

Jones, MHA Manual 25th edition

Criminal Law Act 1967

Appendix A: Equality Impact Assessment

For strategies, policies, procedures, processes, guidelines, protocols, tenders, services

1. Document or Process or Service Name: **Patient Correspondence SOP**
2. EIA Reviewer (name, job title, base and contact details): **Michelle Nolan, Mental Health Act Clinical Manager**
3. Is it a Policy, Strategy, Procedure, Process, Tender, Service or Other? **SOP**

Main Aims of the Document, Process or Service
Please indicate in the table that follows whether the document or process has the potential to impact adversely, intentionally or unwittingly on the equality target groups contained in the pro forma

Equality Target Group	Is the document or process likely to have a potential or actual differential impact with regards to the equality target groups listed?	How have you arrived at the equality impact score?
1. Age 2. Disability 3. Sex 4. Marriage/Civil Partnership 5. Pregnancy/Maternity 6. Race 7. Religion/Belief 8. Sexual Orientation 9. Gender re-assignment	Equality Impact Score Low = Little or No evidence or concern (Green) Medium = some evidence or concern (Amber) High = significant evidence or concern (Red)	a) who have you consulted with b) what have they said c) what information or data have you used d) where are the gaps in your analysis e) how will your document/process or service promote equality and diversity good practice

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
Age	Including specific ages and age groups: Older people Young people Children Early years	Low	This SOP is consistent in its approach regardless of age.
Disability	Where the impairment has a substantial and long term adverse effect on the ability of the person to carry out their day to day activities: Sensory Physical Learning Mental health (including cancer, HIV, multiple sclerosis)	Low	This SOP is consistent in its approach regardless of disability. For patients who have a communication need or have English as their second language consideration must be given to providing information in an accessible format.
Sex	Men/Male Women/Female	Low	This SOP is consistent in its approach regardless of sex.
Marriage/Civil Partnership		Low	This SOP is consistent in its approach regardless of marital status.
Pregnancy/Maternity		Low	This SOP is consistent in its approach regardless of maternal status.
Race	Colour Nationality Ethnic/national origins	Low	This SOP is consistent in its approach regardless of race. It is acknowledged however that for any patient whose first language is not English, as information needs to be provided and understood, staff will follow the Trust interpretation procedure.

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
Religion or Belief	All religions Including lack of religion or belief and where belief includes any religious or philosophical belief	Low	This SOP is consistent in its approach regardless of religion or belief.
Sexual Orientation	Lesbian Gay men Bisexual	Low	This SOP is consistent in its approach regardless of sexual orientation.
Gender Reassignment	Where people are proposing to undergo, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attribute of sex	Low	This SOP is consistent in its approach regardless of the gender the individual wishes to be identified as. We recognise the gender that people choose to live in hence why the terms gender identity and gender expression ensure we are covering the full spectrum of LGBT+ and not excluding trans, gender fluid or asexual people.

Summary

Please describe the main points/actions arising from your assessment that supports your decision.	
The SOP is specifically aimed at the protection of all inpatients, inpatient staff and general public with regards to patient's correspondence. Significant attention has been paid to ensure that no groups are discriminated against either directly or indirectly.	
EIA Reviewer: Michelle Nolan	
Date completed: 26.04.23	Signature: M. Nolan