Department of Health

A Department of Health Response to the Consultation

Guidance on provisions to deal with nuisance or disturbance behaviour on NHS premises in England

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Department of Health Response to the Consultation

Guidance on provisions to deal with nuisance or disturbance behaviour on NHS premises in England

Prepared by NHS Security Management Service

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1. Introduction

NHS staff and patients deserve to work and receive treatment in an environment which is safe and free from nuisance or disturbance behaviour. Such behaviour disrupts NHS services and diverts the attention of NHS staff from providing the highest standard of care to their patients.

The majority of people who attend NHS hospitals act in a respectful and courteous manner, but a minority create a nuisance or disturbance to NHS staff, which can sometimes lead to serious criminal offences such as assault. NHS staff that experience nuisance or disturbance behaviour can fear for their own safety at work and such behaviour can result in low staff morale and greater absenteeism.

The measures created in the Criminal Justice and Immigration Act 2008 seek to empower NHS staff to deal with this behaviour before it escalates to more serious incidents. The offence of causing a nuisance or disturbance on NHS premises and the power to remove a person reasonably suspected of committing this offence will enable NHS staff to take action as incidents occur.

Draft guidance in respect of this new legislation was consulted on during the spring and summer of 2009. The results of this consultation are provided in this response and the amended guidance produced in Annex A. Thanks are passed to all those who took the time to respond to this consultation exercise and their constructive comments were valuable in preparing the guidance.

2. Background

The Respect Campaign

Tackling low-level nuisance or disturbance behaviour sat within the wider context of the Government's Respect campaign, which was led by the Home Office from 2004-2008. The campaign adopted an early intervention approach to dealing with anti-social behaviour, advocating this as a way of preventing such behaviour from escalating to more serious offences such as assault.

Information and statistics collected on violent incidents against NHS staff[1] indicated that the problem of nuisance and disturbance behaviour existed in the NHS. However, there was a lack of information on the nature and scale of the problem, including which parts of the NHS were most affected and who were the main perpetrators, for example patients or non-patients. The Department of Health took steps to address these concerns and propose solutions specific to the problem in the NHS.

The 2006 Department of Health consultation

In 2006 the Department of Health published the consultation paper 'Tackling nuisance and disturbance behaviour on NHS healthcare premises'[2]. The consultation sought clarity on the problem of nuisance and disturbance behaviour in the NHS and specifically, comments on proposals to tackle this type of behaviour. The public were asked whether creating a criminal offence of causing a nuisance or disturbance on NHS premises with a power for certain NHS staff members to remove a person suspected of committing this offence, was both necessary and appropriate to solve this problem.

Respondents to the consultation indicated nuisance and disturbance behaviour from non-patients and/or visitors to NHS hospitals was a particular problem. Of the 150 respondents to the consultation in 2006, 78% supported the move to create a criminal offence and power to remove these people from the premises.

The Department of Health has since taken the information from the consultation and developed provisions to deal with nuisance and disturbance behaviour in the NHS.

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[1] This information is collected annually from NHS organisations in England by the NHS Business Services Authority, Counter Fraud and Security Management Service
[2] Details of the consultation are available here: http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_4138711

3. The Criminal Justice and Immigration Act 2008

The Criminal Justice and Immigration Act 2008[3] creates provisions intended to deal with nuisance or disturbance behaviour on NHS premises.

Section 119 of the Act contains the offence of causing a nuisance or disturbance on NHS premises. A person may commit an offence if, without reasonable excuse, they cause a nuisance or disturbance to an NHS staff member on NHS premises, refuse to leave the premises without reasonable excuse and are not on the premises to seek medical advice, treatment or care. The offence applies to NHS hospital premises only and patients cannot commit the offence.

Section 120 of the Act provides authorised NHS staff with a power to remove a person reasonably suspected of having committed the offence in section 119. A person cannot be removed if removal will endanger their physical or mental health.

Section 121 of the Act permits the appropriate national authority (the Secretary of State) to publish guidance about the power to remove in section 120.

[3] A copy of the Act is available here: http://www.opsi.gov.uk/acts/acts2008/ukpga_20080004_en_1

4. Overview of Consultation

Criteria for consultation

This consultation followed the ‘Government Code of Practice’, in particular we aimed to:

- formally consult at a stage where there was scope to influence the policy outcome;
- consult for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- be clear bout the consultations process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- ensure the consultation exercise was designed to be accessible to, and clearly targeted at, those people it is intended to reach;
- keep the burden of consultation to a minimum to ensure consultations are effective and to obtain consultees’ ‘buy-in’ to the process;
- analyse responses carefully and give clear feedback to participants following the consultation;
- ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

The full text of the code of practice is on the Better Regulation website at:
http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html

Consultation process

The consultation ran for a period of 12 weeks from 12 May 2009 to 4 August 2009. Stakeholders were asked to read the draft guidance and answer the consultation questions, but also comment more widely on the content, structure, style and layout of the document. Their input has helped shape the guidance and ensures it is both relevant and appropriate to the needs of NHS bodies wishing to use the power of removal.

Stakeholders commenting on the content of the Impact Assessment and/or Equality Impact Assessment (available on the main consultation page), were asked do so as part of the answer to question 15.

Overview of the consultation responses

A total of 45 responses to the consultation were received from a wide range of stakeholders.

Question 1: Does the guidance adequately describe nuisance or disturbance behaviour?

Yes: 91%
No: 9%

Of the 39 respondents who commented on this aspect of the consultation, 91% felt that the guidance adequately defined nuisance or disturbance behaviour.

A number of respondents however suggested clarifications, a wider range of examples, definitions of the terms ‘nuisance and ‘behaviour’ and other enhancements to the section, which have been incorporated into the final guidance.

Question 2: Does the guidance adequately describe reasonable excuse for causing a nuisance or disturbance?

Yes: 86%
No: 11%
Not sure: 3%

Of the 35 respondents who commented on this aspect of the consultation, 86% felt that the guidance adequately defined reasonable excuse for causing a nuisance or disturbance.

In light of suggestions made the guidance was strengthened, enhanced and clarified to provide a greater number of mental health presentations. The DH publication ‘Valuing People Now’ has also been added as valuable reference in this area.

Question 3: Does the guidance adequately explain what constitutes a refusal to leave and a reasonable excuse for refusing to leave the premises?

Yes: 86%

No: 9%

Not sure: 6%

Of the 35 respondents who commented on this aspect of the consultation, 86% were happy with the explanation of what constitutes a ‘refusal to leave’ and ‘reasonable excuse for refusing to leave’ the premises.

In response to those who provided feedback the guidance has been clarified with regard to the situation of carers, suggestions for publicity of the guidance and the situation for people with mental health conditions.

Question 4: Does the guidance adequately describe when a person is on the premises to seek medical advice, treatment or care?

Yes: 68%
No: 26%
Not sure: 6%

Of the 35 respondents who commented on this aspect of the guidance, 68% thought the document was adequate, whereas 26% did not, and 6% were unsure.

The suggested improvements around mental health patients have been incorporated. Several respondents suggested the incorporation of a flow chart which has now been included.

Question 5: *Are the recommended steps in section 3.1 of the guidance useful in terms of assessing whether a person should be removed from the premises?*

Of the 35 respondents who commented on this aspect of the guidance, 77% thought it adequately described what steps to take in order to assess whether a person should be removed from the premises, and gave positive feedback. For example:

> *The scenarios are particularly useful and could be adapted for training purposes.*

On the other hand, 14% did not feel this aspect of the guidance was adequate, and 9% were unsure.

In response to suggestions around terminology, terms around mental health conditions have been amended. The scenarios provided have also been amended to better clarify and improve guidance.

Question 6: Does the guidance adequately explain what considerations should be made when attempting to safely remove a person from NHS premises?

Yes: 72%
No: 14%

Not sure: 14%

Of the 35 respondents who commented on this aspect of the consultation, 72% deemed the guidance to be adequate. Comments included:

> *[It is] good that it is linked into verbal de-escalating techniques, CRT and risk assessing whether it is safe to attempt to remove the patient.*

Four respondents commented on the difficulty in determining use of ‘reasonable force’. One respondent, for example, noted:

> *The fact there is no legal definition of what is considered reasonable force could leave the authorised officers exposed to the possibility of allegations of assault being made against the said officers, almost as retaliation.*

The training package for authorised officer and other staff who will be enforcing this legislation will contain elements on the use of force as a last resort, and surrounding legal aspects.

Question 7: Overall, does the guidance make it clear what constitutes an offence and who cannot be removed?

Yes: 77%
No: 11%
Not sure: 11

Of the 35 respondents who commented on this aspect of the consultation, 77% deemed the guidance to be adequate. For example:

> *The document provides a good teaching aid for the legislation.*

Conversely, 11% did not feel this aspect of the guidance was adequate, and 11% were unsure. Two respondents felt that homeless persons pose a particular challenge in terms of the guidance. For example:

> *They constitute a problem group and would feature prominently if this is used. Often [homeless persons] frequent the hospitals begging and for shelter.*

It was suggested that the guidance should stress that effective links with local authority housing departments and social services are essential, all of which has been incorporated into the final version.

Question 8: Does the guidance clearly explain the distinction between 'authorised officers' and 'appropriate NHS staff'?

Yes: 83%
No: 9%
Not sure: 9%

Of the 35 respondents who commented on this aspect of the consultation, 83% felt that the guidance clearly explained the distinction between 'authorised officers' and 'appropriate NHS staff'.

Those that answered 'no' or 'not sure' to this question, raised a number of concerns mainly around training requirements. This and issues around training will be taken into account in the training elements for authorised officers.

Question 9: Is the guidance useful, in terms of describing which staff members might be appointed as 'authorised officers' and 'appropriate NHS staff'?

Yes: 65%
No: 16%
Not sure: 19%

Of the 37 respondents who commented on this aspect of the guidance, 57% found it useful in terms of describing which staff members might be appointed as 'authorised officers' and 'appropriate NHS staff'. Conversely, 16% did not find it useful, and 19% were unsure.

In response to the feedback, changes were made to the NHS grades, the kind of job roles thought to be appropriate for an authorised officer as well as clarifying the training section of the consultation draft.

Question 10: Do you think the recommended training requirements are sufficient?

Yes: 47%
No: 29%
Not sure: 24%

Of the 34 respondents who commented on this aspect of the guidance, only 47% felt that the recommended training requirements were sufficient. A further 29% believed the recommendations to be insufficient, and 24% were 'not sure'.
The issues raised have been forwarded to the NHS SMS for incorporation in the design of the training modules.

Question 11: Do you have any additional suggestions about how trusts might raise public awareness of the offence and power of removal?

A number of suggestions made by respondents on how to raise public awareness have been forwarded to the NHS SMS for consideration in the communications being developed to assist NHS trusts. This legislation and its use will be communicated through toolkits, media campaigns and articles.

Question 12: Does the guidance adequately explain the statutory requirements on record keeping, for each of those responsible (NHS body; authorised officer; Local Security Management Specialist)?

Yes: 48%
No: 52%

Of the 42 respondents who commented on this aspect of the consultation, only 48% felt that the guidance was helpful in explaining best practice on record keeping. The remaining 52% did not find the guidance helpful.

Many of the suggestions made by respondents to improve this section would be managed and fall under the direction of local trust polices. A number of the suggestions relate to training requirements around record keeping. These will be considered by the NHS SMS when constructing the training modules.

Question 13: Overall, do you think the guidance is useful?

Yes: 71%
No: 11%
Not sure: 17%

Overall, 71% of respondents found the guidance to be useful. For example:

> *The guidance is useful and clear.*
>
> *It is a useful tool in protecting NHS staff from abuse so that the highest standards of clinical care can be given to patients.*
>
> *Yes, the guidance is useful but it is essential that it is backed up with training.*

5. Conclusion

The stakeholders responding to the consultation were largely positive and welcomed the guidance. A small minority commented around key concepts such as ‘nuisance’ and ‘disturbance’ and ‘reasonable force’ and safeguards to protect people with mental health conditions and learning disabilities. Training requirements and the absence of a nationally agreed standard with regard to physical intervention were also fed back. The final guidance along with the development of communications assistance and training from NHS SMS has taken the above concerns into account.

6. List of Respondents

5 Boroughs Partnership NHS Trust
Addenbrookes Hospital
Airedale NHS Trust
Association of Professional Ambulance Personnel
Barking and Dagenham NHS
Barnet Enfield and Haringey Mental Health Trust
Birmingham and Solihull PCT
Cheshire and Wirral Partnership NHS Foundation Trust
County Durham and Darlington NHS Foundation Trust
Cumbria Partnerships NHS Foundation Trust
Cwaudit Services Warwickshire PCT
Dudley Group of Hospitals Foundation Trust
East Midlands Ambulance Service NHS Trust
East Midlands Ambulance Service Trust
East Sussex Hospitals NHS Trust
Greater Manchester Police Authority
Halton and St Helens PCT
Leeds Partnerships NHS Foundation Trust
Loughborough University
Metropolitan Police
Milton Keynes Hospital NHS Foundation Trust
National Association for Healthcare Security
NHS City and Hackney PCT
Oxford Radcliffe Hospitals NHS Trust
Peterborough & Stamford Hospitals NHS Foundation Trust
Rethink
Royal College of Nursing
Royal College of Physicians
Royal College of Psychiatrists
Royal Liverpool and Broadgreen University Hospitals NHS Trust
St George's Healthcare NHS Trust
The British Psychological Society
The Royal Marsden NHS Foundation Trust
Unison
University Hospital Coventry and Warwickshire NHS Trust
Warrington PCT
West Midlands Ambulance Service NHS Trust
Worcestershire Mental Health Partnership NHS Trust