

## Children and young people and the Mental Health Act 1983: information for social workers

### **1 Introduction**

This document provides information for social workers working with children and young people who are detained under the Mental Health Act 1983 in order to help them continue to safeguard and promote the child's welfare.

Children and young people's mental health services in Camden are delivered by universal and specialist health services including CAMHS. Most treatments and interventions are community-based but for some children and young people, treatment may need to be provided in a hospital setting, either voluntarily or under the Mental Health Act 1983.

Details of CAMHS in Camden "Open-minded" can be found at:

<https://tavistockandportman.nhs.uk/care-and-treatment/our-clinical-services/camden-camhs-open-minded/>

### **2 Mental Health Act principles**

Under the Mental Health Act guidance, the basic principles for the care and treatment of children and young people are:

- Decisions on care and treatment must be in the child's best interest
- Everyone involved in delivering services has a duty to safeguard the child.
- The child's wishes and feelings should be taken into account.
- Children should be provided with clear, age appropriate information on their care and condition.
- Care and treatment should involve the least restrictive and least stigmatising option and should take into account the child's ongoing development.
- Where the child must be detained, placements should be as close to home as possible.
- Children who are detained should have the same access to education provision as their peers.
- Children's dignity, privacy and confidentiality should be respected.

A key principle of the Act is that **the least restrictive treatment option should be used and where safe and practicable, patients should not be detained.**

### **3 Detention and assessment in an emergency**

- Section 135 of the Act allows the police and an AMHP to obtain a warrant to enter any premises to locate a person who is believed to be suffering from a mental illness or disorder and remove them to a place of safety for assessment. It is often used to return a patient who has absconded from hospital.
- Section 136 of the Act allows the police to remove any person found in a public place who appears to be suffering from a mental illness or disorder and is in need of care and control to a place of safety for assessment. in order to ensure the safety of the person or others.
- A place of safety for children and young people should be a suitable health setting where appropriate services including CAMHS is available.

### **4 Admission and treatment**

- Children and young people should only be admitted and treated in hospital if that is the only place where they will receive the treatment they need; otherwise they should be treated in the community.
- They can be admitted and treated informally (on a voluntary basis) or detained under section 2 or section 3 of the Mental Health Act if they are considered a risk to themselves or others. There is no minimum age for admission but informal admission should be pursued first.
- Under section 2, children and young people can be detained for assessment (and follow up treatment) for up to 28 days.
- Under section 3, children and young people can be detained for assessment and treatment for up to 6 months where being detained in hospital is the only option for ensuring treatment.
- Children and young people may also be subject to a community treatment order (CTO) under the Act where they are required to attend treatment in the community, normally following discharge from hospital. Children, young people and parents and those with parental responsibility cannot consent or refuse treatment under a CTO but will be consulted on the treatment programme.

## 5 Consent

- When a child or young person is being admitted, mental health professionals will need to establish the “nearest relative” that they will consult with over decisions about admission and treatment. This will be a parent or guardian who has parental responsibility.
  - Where both parents hold parental responsibility, they must both be involved in decision-making.
  - Special guardians may exercise their parental responsibility to the exclusion of parents.
  - Where the child is accommodated under section 20, parents must be involved in decision making.
  - Where a child is subject to a care order, the local authority will be the nearest relative and CSFH may make decisions on behalf of the child but should consult with parents as appropriate.
- Children and young people may consent to their formal or informal admission and treatment as long as they have capacity to do so, although parents should be kept informed of decisions.
- - Children aged under 16 must be Gillick competent;
  - Young people aged 16/17 must have capacity under the Mental Capacity Act.

For further details on their ability to give consent, please see the *Capacity and Consent* policy available at: [Capacity and Consent](#)

- Consent should be sought for each element of treatment and no “blanket” consent should be used.
- Where young people aged 16/17 do not have capacity to make the decision the mental health professionals will decide on the best actions to take although parents or those with parental responsibility should be consulted about whether this decision is in the young person’s best interest.
- If children under 16 are not competent to make the decision parents or those with parental responsibility may make the decision if it comes under the scope of parental responsibility.
- In any event, children and young people may be detained under the Mental Health Act where they meet the criteria and no consent to admission is forthcoming.

- It is possible that formal admission and treatment may amount to a deprivation of the child's liberty; in these cases social workers should refer to the *Deprivation of Liberty* policy for details of what action to take to authorise any placement.

[Deprivation of Liberty Resource Guide](#)

## 6 Children and young people's rights

Children detained under the Mental Health Act should:

- have an Independent Mental Health Advocate to help them exercise their rights;
- be placed on a ward that is suitable for their age;
- receive age-appropriate treatment from staff with specialist skills and knowledge;
- have access to education as far as their mental state enables them to take part.

Children and young people who have been detained or on a Community Treatment Order may also apply to the Mental Health Tribunal to have their case reviewed. Further information is available at:

<https://www.nhs.uk/using-the-nhs/nhs-services/mental-health-services/children-and-young-peoples-mental-health-services-cypmhs/>

## 7 Local authority duties

- Local authorities are responsible for providing a suitable education for children and young people who are detained and social workers should try to ensure that the child's education is not disrupted. Camden Learning can provide information about what provision will be made available in hospitals; for CLA, the Virtual School should also be consulted.
- Local authority duties to looked after children continue where a child or young person who is on a care order is admitted to hospital and should use the statutory CLA review mechanism to have oversight of their treatment.
- For CLA accommodated under section 20, if they are detained under section 2 for assessment (up to 28 days) their status as a looked after child should be reviewed at the next statutory review; if they are detained under section 3 for treatment up to 6 months their LAC status will end (but they will remain a child in need).
- Children and young people are entitled to have visitors whilst detained by hospitals; visits should be in the child's best interests and ensure their safety and their views on visits should be sought. Hospitals have a duty to safeguard children in their care and should have a safeguarding policy that social workers may wish to check.