Surrey and Borders Partnership
NHS Foundation Trust

16 July 2019

Private and Confidential

Mr David Reid, HM Assistant Coroner for Central Hampshire

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Dear Mr Reid

Re: Regulation 28 Report to Prevent Future Deaths (2)
Surrey and Borders Partnership NHS Foundation Trust Response

I am writing to respond to your Regulation 28 Report to Prevent Future Deaths (2), hereafter referred to as 'PFD', issued on the 23 May 2019 following the inquest touching upon the death of Sasha Forster. I would like to thank you for investigating this matter so thoroughly and for bringing the matters of concern you have to our attention.

This letter has been signed by me, the Chief Executive of Surrey and Borders Partnership NHS Foundation Trust (SABP), on behalf of the organisations listed below, the actions outlined in this letter have been agreed by:

- Executive Director of Quality and Nursing on behalf of the Chief Executive, Hampshire and Isle of Wight Clinical Commissioning Group Partnership
- Joint Accountable Officer, NHS Guildford and Waverley Clinical Commissioning Group, NHS North West Surrey Clinical Commissioning Group and NHS Surrey Downs Clinical Commissioning Group
- Chief Executive, Frimley Health NHS Foundation Trust
- Chief Executive, Royal Surrey County Hospital NHS Foundation Trust
- Chief Executive, Ashford and St. Peter's Hospitals NHS Foundation Trust
- Chief Executive, Epsom and St. Helier University Hospitals NHS Trust
- Chief Executive, Surrey and Sussex Healthcare NHS Trust
- Chief Constable, Surrey Police
- Chief Constable, Hampshire Constabulary

The PFD outlined that evidence was received at the inquest that the hospitals and police forces who had regular dealings with Sasha were not always aware of their powers and responsibilities in relation to sections 17 and 18 of the Mental Health Act, or did not have sufficient care planning in place to assist staff in taking appropriate actions when Sasha's section 17 leave had been revoked.

The PFD stated that clarification was required as to the actions that would be taken to achieve the goals set out in a letter dated 22 May 2019 from the Deputy Chief Executive of Surrey and Borders Partnership NHS Foundation Trust (SABP). This letter committed to the development of joint working protocols across the system for the management of complex absent without leave (AWOL) cases (cases where section 17 has been revoked and a person is AWOL).

To respond to the PFD, a meeting was held on the 01 July 2019 between a number of the key stakeholders named in the PFD. Below is a summary of the discussions and actions that were agreed moving forwards. A further meeting will be held to discuss and evidence dissemination of learning and training.

Section 17 & Section 18 Mental Health Act 1983 (MHA)

Section 17 leave provides authority for a person detained under the MHA to leave the hospital, this may be to facilitate treatment at a different hospital, or it may form a part of their recovery. It can be escorted, where they are accompanied by hospital staff, or unescorted, where the person is allowed to leave the hospital without a member of hospital staff.

Where a person is on section 17 leave, and it comes to the attention of the responsible clinician that it is necessary to revoke the person's leave in the interests of the patient's health or safety or for the protection of others, they may by notice in writing given to the patient, or to the person for the time being in charge of the patient, revoke their section 17 leave and recall the person to the hospital.[1]

The Mental Health Act Code of Practice states that

> *Hospitals should always know the address of patients who are on leave of absence and of anyone with responsibility for them whilst on leave … The reasons for recall should be fully explained to the patient and a record of the explanation included in the patient's notes*.[2]

In an emergency where a person's condition has rapidly deteriorated it is recommended that the written notice is given in conjunction with returning the person to the ward. This can be facilitated by those responsible for returning the person to hospital.[3]

If a person's section 17 leave is revoked and they do not return to hospital they become AWOL.[4] This gives powers to any of the persons listed in section 18(1) to take the person

[1] Mental Health Act 1983, section 17(4)
[2] Mental Health Act Code of Practice, para 27.33 – 34.
[3] Jones, R. (2018) *Mental Health Act Manual*. 21 Edn, p.138
[4] Mental Health Act 1983, s18(1)(b)

into custody and return them to hospital.

The Mental Health Act Reference Guide states at paragraph 25.23 that the following people can exercise this power:

> *any staff of the [mental health] hospital*
>
> *any approved mental health professional (AMHP) acting on behalf of a local authority, or an approved social worker in Northern Ireland*
>
> *any police officer (or other constable), or*
>
> *any person authorised in writing by the managers of the hospital in which the person is liable to be detained or of another hospital where the patient is required to reside as a condition of leave, which includes someone authorised in writing on behalf the managers by someone authorised by the managers to do so.*

Therefore with written authority from SABP managers, or someone authorised to provide this on their behalf, any person can take an AWOL person into custody and return them to hospital. The written authority can be faxed or scanned, the original is not required.[5]

The authority to take a person into custody and use reasonable force to return the person to hospital comes from section 137 of the Mental Health Act, this section does not give the power to use force to enter premises to remove a person; in these circumstances section 135 should be used.

The only exception to this is outlined in section 17(1)(d) of the Police and Criminal Evidence Act (PACE) (1984) which states that:

> *Subject to the following provisions of this section, and without prejudice to any other enactment, a constable may enter and search any premises for the purpose […] of recapturing any person whatever who is unlawfully at large and whom he is pursuing…*

It was considered by Lord Lowry[6] that if a person who was lawfully detained went absent without leave they were, by virtue of section 18(1), unlawfully at large for the purpose of section 17(1)(d) of PACE. The pursuit, however short in time or distance, is considered to have to be almost contemporaneous with the entry into the premises.[7]

Proposed recommendations

The recommendations below have been agreed following the meeting between the key stakeholders on the 01 July 2019. They have been shared with and agreed by those who were unable to attend.

[5] Mental Health Act Code of Practice, para 28.6
[6] *D'Souza v Director of Public Prosecutions* [1992] 4 All E.R. 545
[7] Jones, R. (2018) *Mental Health Act Manual*. 21 Edn, p.597

Systemwide

Long term

There is a long term goal to create a platform that will allow NHS organisations to have read only access to key information pulled from a service user's internal record keeping platforms. Graphnet is currently being explored to provide an integrated care record across Surrey. This will potentially be able to show that a person is currently detained in hospital allowing other organisations to see their legal status, as well as associated risks. Were a system such as this in place in early 2017 this would have allowed staff at the acute hospitals to view Sasha's legal status and contemporaneous care plans; this would have assisted their decision making and meant that the system would have had read only access to the notes from her interactions with other services.

Short term

In the short term the focus will be on care planning. It was clear in the evidence of Professor Shaw (the expert instructed by the coroner) that Sasha's community care plan was an excellent tool, providing a scenario based care plan that was easy for staff to navigate and implement. However, it was noted that this plan was not updated when Sasha moved into inpatient services.

Where a person, who is a frequent user of services, moves from the community to inpatient setting any care plan will be promptly reviewed, the revised plan will include signposting to the appropriate legal frameworks that can be used in different scenarios if they abscond. This will be facilitated through the Surrey High Intensity Partnership Programme and High Intensity User Groups and will be made accessible to the emergency services, emergency departments and other organisations as appropriate.

If the person is frequently admitted to inpatient services for short periods their care plan should account for this and include guidance and a plan for when they are an inpatient.

The mental health training provided to emergency services, emergency department, police and SABP staff will be reviewed to include an overview of section 17 and 18 of the MHA. This should be proportionate to the frequency that each organisation is expected to come across these cases and this will be determined by each organisation.

Surrey & Borders Partnership Foundation NHS Trust

Before section 17 leave is agreed there should be careful care planning, this is to include consideration of the risk of the person becoming AWOL and discussion with the person who uses our services, the person's family, and those who provide the person with care and / or support.

If a person is on section 17 leave, known to be high risk, and presents with risky behaviors, early consideration should be given to contacting the Responsible Clinician (RC), or on call psychiatrist, to discuss revoking the person's leave.

If the decision is made to revoke the person's leave this should be documented in the person's notes before the SABP section 18 form or any other paperwork is completed (this means it will be visible to others accessing the record on SystmOne). It is preferable for this to be documented by the clinician who makes the decision to revoke the leave.

If a person is deemed to be AWOL and they are at their home address, or their location is known, early consideration should be given to the practicalities of attending their address to bring them back to the ward, this should be escalated to ward management early if there are factors that are likely to complicate this.

If the person is known to frequent emergency departments, frequently call the emergency services, or frequent another place where professionals are present, early consideration should be given to providing those services with written authority to take the person into custody and return them to the ward (they should be supported by SABP, the Police, and ambulance services (NHS or private / secure), in doing this as appropriate).

A template letter has been developed for the revocation of section 17 leave and included in the Trust's Section 17 leave policy as an appendix. A template letter, or email, for the provision of written authority to take a person into custody and return them to the ward will be included in the AWOL policy as an appendix, this policy will be updated with the learning from this PFD and presented to the SABP Policy Assurance Group by the end of September 2019. These templates will be available for SABP ward staff to complete, expediting the process of revoking leave, or providing written authority for a person to be taken into custody, and improving compliance with the Mental Health Act.

Police

Where a person who is suffering from a mental health condition and is under inpatient services comes to the attention of the Police, communication between Officers and the ward staff should be commenced as early as possible in the contact to confirm their legal status.

Where return to the ward is considered appropriate the Police should inform the ward that this is being arranged and discuss the plan with the ward before the person's care is passed on to another person or service. If the person is known to be at risk of absconding it may be appropriate for the hospital to revoke their section 17 leave and provide those who are conveying them to hospital (if they are not the Police) with authority to do this under section 18(1).

If a person is a frequent user of blue light services and known to mental health services their response plan should include signposting to the powers associated with being an inpatient. This will assist staff who are unfamiliar with the Mental Health Act in knowing that they should contact the ward to discuss the person's current care plan (if there are concerns about their presentation).

Acute Hospitals

Where a person who is suffering from a mental health condition and is under inpatient services attends the Emergency Department (ED), communication between the hospital staff

and the staff at the detaining hospital should be commenced as early as possible in the contact to confirm their legal status.

If a person is a frequent attender to the ED and known to mental health inpatient services, a multiagency care plan should be devised and this should include signposting to the powers associated with being an inpatient. This will assist staff who are unfamiliar with the Mental Health Act in knowing that they should contact the ward to discuss the person's current care plan (if there are concerns about their presentation).

Summary

The meeting held on the 01 July 2019 has led to a greater understanding across key stakeholder's senior leadership teams of the powers that are available to them when a person detained under the MHA presents to their staff and is AWOL. A further meeting will take place in three months, this will focus on what has been achieved so far and identify any further actions or training needs that are required. A shared protocol is also in the process of being drafted and it is anticipated this will be finalised at this meeting.

We hope the above reassures you that a large amount of work has taken place following the receipt of your report and that all the named organisations are committed to continuing the system learning, ensuring improved awareness of section 17 and 18, more robust interagency working, and enhanced care planning for service users with complex needs who are frequent users of blue light services.

Yours sincerely,

Fiona Edwards
Chief Executive