

<p>Reference Number: UHB 410</p> <p>Version Number: 3</p>	<p>Date of Next Review: 27/01/2029</p> <p>Previous Trust/LHB Reference Number: UHB 410</p>
<p>Hospital Managers' Scheme of Delegation Procedure Mental Health Act, 1983</p>	
<p>Introduction and Aim</p> <p>This document supports the Hospital Managers' Scheme of Delegation, Mental Health Act, 1983 (MHA).</p> <p>To ensure individuals are aware of their delegated functions under the MHA.</p> <p>To provide clear directions and guidance to staff in relation to the arrangements for authorising people to exercise delegated functions on behalf of the Hospital Managers.</p> <p>To ensure that statutory requirements under the MHA 1983 are met.</p>	
<p>Objectives</p> <p>The principal objectives of this procedure are to inform the organisation of the arrangements for authorising people to exercise delegated functions as set out in the scheme of delegation. Unless the MHA or regulations say otherwise, organisations may delegate their functions under the MHA to any one and in any way their constitutions allow or in the case of the Health Board, in line with NHS legislation.</p> <p>This procedure describes the following with regard to the Hospital Managers' Scheme of Delegation:</p> <ul style="list-style-type: none"> • The purpose of a Scheme of Delegation • Who is authorised to exercise delegated functions on behalf of the Hospital Managers • Responsibilities and requirements of individuals in relation to the delegated duties of Hospital Managers 	
<p>Scope</p> <p>This procedure is applicable to all people authorised to exercise delegated functions to be carried out day to day required by the MHA, 1983 on behalf of Cardiff and Vale University Health Board within all mental health inpatient settings, community settings and general hospital settings where patients are detained under the MHA.</p>	
<p>Equality and Health Impact Assessment</p>	<p>There is potential for both positive and negative impact. The procedure is aimed at improving services and meeting diverse needs. Mitigation actions are already in place to offset any potential negative outcome, e.g. through the monitoring of the procedure. There is nothing, at this time, to stop the procedure from being implemented.</p>

Documents to read alongside this Procedure	<ul style="list-style-type: none"> • The Mental Health Act 1983 (as amended by the Mental Health Act 2007) • Mental Health (hospital, guardianship, community treatment and consent to treatment)(Wales) regulations 2008 • The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007) • The respective Codes of Practice of the above Acts of Parliament • The Human Rights Act 1998 (and the European Convention on Human Rights) • Domestic Violence, Crime and Victims Act, 2004 <p>All Cardiff and Vale procedures on the Mental Health Act 1983 as appropriate including:</p> <p>Hospital Managers' Scheme of Delegation Section 5(4) Nurses' Holding Power Procedure Section 5(2) Doctors' Holding Power Procedure Community Treatment Order Procedure</p>
Approved by	Mental Health Legislation Committee

Accountable Executive or Clinical Board Director	<i>Chief Operating Officer</i>
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<p><u>Disclaimer</u></p> <p>If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the Governance Directorate.</p>	

Summary of reviews/amendments			
Version Number	Date of Review Approved	Date Published	Summary of Amendments
1	26/06/2018	02/07/2018	<i>New document</i>
2	24/02/2022	24/02/2022	<i>Removal of glossary of terms.</i> <i>Updated sections for clarity.</i> <i>Removal of any qualified nurse able to accept nearest relative discharge request</i>

3	27/01/2026	19/03/2026	<p><i>Change Mental Health and Capacity Legislation Committee to Mental Health Legislation Committee throughout.</i></p> <p><i>Updated sections throughout for clarity.</i></p>
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1. INTRODUCTION

Associate Hospital Managers as appointed by the Health Board have the authority to detain patients under the MHA. The Health Board is defined as the 'hospital managers' for the purposes of the MHA.

Hospital Managers have a range of responsibilities, including:

- Ensuring that patient's care and treatment complies with the MHA,
- Authority to detain patients admitted under the MHA, and
- Power to discharge certain patients (sec 23 of the MHA) - which can only be exercised by three or more members of a committee formed for that purpose.

There are many other responsibilities and duties which are carried out on the health boards behalf by 'authorised officers' (staff) of our hospitals. These include receipt, scrutiny and amendment of detention papers, ensuring patients' rights are made known to them, referral for and arranging Mental Health Review Tribunals (MHRT), ensuring compliance with renewal/extension. This is not an exhaustive list as there are many other duties. These roles and responsibilities will be given in more detail below and in the scheme of delegation at **Appendix A**.

It is the hospital managers who have the authority to detain patients under the MHA and have equivalent responsibilities towards patient's subject to Community Treatment Orders (CTO), where the patient was detained at the "responsible hospital" immediately before becoming subject to the CTO, even if those patients are not being treated at one of their hospitals. The procedure provides assurance that the health board as a detaining authority has formally delegated specific statutory duties and powers to specific individuals (or groups of individuals).

The health board's Mental Health Legislation Committee is responsible for providing assurance to the health board hospital managers that those functions of the MHA, which they have delegated to officers, are being carried out correctly; and that the wider operation of the MHA in relation to the health board's area is operating properly.

2. PROCEDURE STATEMENT

The health board is responsible for ensuring that the MHA is used lawfully and fairly, in accordance with the principles of the MHA's Code of Practice for Wales 2016, including ensuring all paperwork is scrutinised for validity, that detained patients are informed of their rights, and that patients are referred to the MHRT for Wales within the timeframes set out in the MHA. They also have various powers to discharge patients from detention, transfer detained patients to other hospitals in accordance with regulations, as well as withholding a patient's outgoing correspondence where the law permits.

People making decisions under the MHA must recognise and respect the diverse needs, values and circumstances of each patient, including their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, or belief, sex and sexual orientation and culture, or any combination of these. There must

be no unlawful discrimination, and reasonable adjustments must be made. Individuals' protected characteristics should be taken into account and good practice followed in all aspects of care and treatment planning and implementation.

3. SCOPE

The health board has in place appropriate governance arrangements to monitor and review the exercise of functions under the MHA on its behalf. The Mental Health Legislation Committee is specifically for this purpose.

The scheme of delegation covers mental health patients across community, outpatient and inpatient settings. Hospital managers must ensure that those acting on their behalf are competent to do so and receive suitable training to ensure they exercise their functions appropriately to ensure the functions are carried out on a day-to-day basis.

4. THE STATUTORY FUNCTIONS OF HOSPITAL MANAGERS

The statutory functions of the hospital managers are as follows:

4.1. Receipt, Scrutiny and Recording of Documentation

Hospital managers should formally delegate their duties to receive and scrutinise admission documents to a limited number of officers, who may include clinical staff on wards. Someone with the authority to receive admission documents should be available whenever patients may be admitted to the hospital. A manager of appropriate seniority should take overall responsibility on behalf of the hospital managers for the proper receipt and scrutiny of documents. (Code of Practice for Wales, 35.8).

It is necessary that all detention papers undergo both administrative and medical scrutiny to ensure that they are technically correct and that the clinical reasons given are sufficient for detaining the patient under the MHA. The MHA administrator will carry out the administrative scrutiny and a consultant who is not involved with the patient concerned will carry out the medical scrutiny in accordance with local practice.

The Mental Health Act Department provides the Mental Health Legislation Committee with details of fundamentally defective admission documents and of any subsequent action on a quarterly basis.

Authority for receiving papers authorising a patients' detention can only be undertaken by:

- The Mental Health Act Department
- Shift Coordinator
- Night Site Manager

All the above staff should receive training in the receipt and scrutiny of admission documentation.

Section 15 of the MHA describes the types of errors that may be rectified on the statutory documents. The person who signed the document in question must complete the rectification and that must take place within 14 days of the date of the Form HO14 (record

of receipt of admission). Further guidance on the subject of rectification may be found in Part II of the MHA.

If admission documents reveal a defect which fundamentally invalidates the application and which cannot, therefore, be rectified under section 15, the patient can no longer be detained on the basis of the application. Authority for detention can only be obtained through a new application. The hospital managers should use their power under section 23 to discharge the patient. The patient should be informed both verbally and in writing.

Responsibility for coordinating this at Cardiff and Vale UHB rests with the Mental Health Act Department

4.2. Report on hospital in-patient (section 5, MHA)

Hospital managers should monitor the use of section 5 including:

- How quickly patients are assessed for detention and discharged from the holding power
- The attendance times of doctors and ACs following the use of section 5(4)
- The proportion of cases in which applications for detention are, in fact, made following use of section 5

Hospital managers should ensure suitably qualified, experienced and competent nurses are available where there is a possibility of section 5(4) being invoked.

The role of monitoring is provided by the Mental Health Legislation Committee who will be informed via the Mental Health Act Department

4.3. Emergency admission (section 4, MHA)

Hospital managers should monitor the use of section 4 and ensure that second doctors are available to visit a patient within a reasonable time after being requested. This will also be monitored by Healthcare Inspectorate Wales (HIW).

The role of monitoring is provided by the Mental Health Legislation Committee who will be informed via the Mental Health Act Department

4.4. Allocation of a Responsible Clinician

Every patient must have an allocated Responsible Clinician (RC). (Code of Practice for Wales, Chapter 36) The RC is the Approved Clinician (AC) who will have overall responsibility for the patient's care and treatment. The patient should be informed of the identity of the RC and of any change. Chapter 36 of the Code of Practice for Wales outlines the functions of RC's and AC's and steps to be followed to ensure that:

- The patient's RC is the available AC with the most appropriate expertise to meet the patient's main assessment and treatment needs,
- A patient's RC can be easily determined,
- Cover arrangements are in place when the RC is not available,
- There is a system for keeping the appropriateness of the RC under review.

The allocation of the RC is delegated to the clinical team and the Clinical Director. A list of ACs in Wales and those employed by the health board is held by Betsi Cadwaladr University Health Board.

4.5. *Transfer between hospitals (section 19, MHA)*

Section 19 of the MHA allows hospital managers to authorise the transfer of most detained patients from one hospital to another. Decisions on transfers may be delegated to a person who could but need not be the patient's RC, i.e. nurse in charge, shift coordinator or night site manager. For restricted patients, the consent of the Secretary of State for Justice is also required.

The Mental Health Act Department, Shift Coordinator or Night Site Manager will perform this role on behalf of the hospital managers.

4.6. *Transfers into/from guardianship (section 7, MHA)*

Section 19 allows hospital managers to authorise the transfer of most detained patients into guardianship with the agreement of the relevant local authority. This procedure avoids the need to discharge the patient from detention and making a separate guardianship application. There should be good reasons for any transfer into guardianship, and the needs and interest of the patient must be central to decision making.

The Mental Health Act Department, Shift Coordinator or Night Site Manager will perform this role on behalf of the hospital managers.

4.7. *Transfer and assignment of responsibility for CTO patients (section 19A, MHA)*

The managers of a hospital to which a CTO patient has been recalled may authorise the patient's transfer to another hospital during the 72-hour maximum period of recall. With the agreement of the hospital to which the patient is being transferred, the hospital managers may also reassign responsibility for CTO patients so that a different hospital will become the patient's responsible hospital.

The Mental Health Act Department, Shift Coordinator or Night Site Manager will perform this role on behalf of the hospital managers.

4.8. *Removal and return of patients (section 86)*

Part 6 of the MHA enables the transfer between the United Kingdom jurisdictions, Channel Islands or Isle of Man of detained patients (otherwise than under s.35, s.36 or s.38), patients subject to guardianship or to compulsion in the community where the patient concerned needs to remain subject to detention, guardianship or the equivalent CTO on arrival in Wales.

Following approval by Welsh Ministers this role is performed on behalf of the hospital managers by the Mental Health Act Department.

4.9. Responsibilities under Community Treatment Order

There is a duty on the hospital managers to take steps to ensure patients understand what a CTO means for them and their rights to apply for discharge. A copy of this information must also be provided to the nearest relative, where practicable, if the patient does not object. (Code of Practice for Wales, Chapter 4)

The RC, Care Coordinator or qualified nurses will perform this role on behalf of the hospital managers.

4.10. Recall to hospital for CTO patients (section 17E)

Following recall, the hospital managers are responsible for ensuring no patient is detained for longer than 72 hours unless the CTO is revoked. The relevant statutory form (CP6) must be completed on the patient's arrival at hospital. Arrangements should be put in place to ensure the patient's length of stay following the time of detention after recall, as recorded on the form, is carefully monitored.

The completion of Form CP6 will be undertaken by Mental Health Act Department, Shift Coordinator or Night site Manager on behalf of the hospital managers.

4.11. Duty to provide information to patients

Section 132 and 132A of the MHA require hospital managers to take such steps as are practicable to ensure that patients who are detained in hospital under the MHA, or who are subject to a (CTO), understand important information about how the MHA applies to them. This must be done as soon as practicable after the start of the patient's detention or the CTO. (Code of Practice for Wales, Chapter 4)

Information should be given to the patient both verbally and in writing, in accessible formats, appropriate to the patient's needs, e.g. Braille, Moon, easy read and in a language the patient understands. It would not be sufficient to repeat what is already written on an information leaflet as a way of providing information verbally.

Patients should be given all relevant information, which includes how to make a complaint, how to access advocacy services, legal advice and the role of the Inspectorates.

Those with responsibility for the care and treatment of patients should be aware of the most effective way to communicate with each individual and their family, carers and relevant others. Everything possible should be done to overcome barriers to effective communication.

Under section 133 of the MHA, the hospital managers must inform the nearest relative (as defined in section 26 of the 1983 Act) when a patient is released from detention, including a patient who is to be discharged from hospital under CTO. It need not be provided, if either the patient or nearest relative have requested that this information should not be given.

The role for ensuring that the patient and nearest relative are informed in line with the above requirements rests with the Mental Health Act Department or suitably experienced nursing staff.

4.12. Correspondence of patients

Section 134(1)(a) of the MHA allows hospital managers to withhold outgoing post from detained patient if the person it is addressed to has requested in writing that they do so and the procedure to be followed in the event of the hospital managers receiving a written request for outgoing mail to be withheld.

Responsibility for this rests with the Nurse in Charge, Shift Coordinator or Night Site Manager.

4.13. Information about Independent Mental Health Advocates

Section 130D places a duty on hospital managers (and in certain cases RCs) to provide qualifying patients with information that advocacy services are available and how to obtain that help.

This role will be provided on behalf of the hospital managers by ward nursing staff, community staff or the Mental Health Act Department in accordance with (Code of Practice for Wales 37.15)

4.14. Duty to refer cases to the Mental Health Review Tribunal for Wales (section 68, MHA)

Hospital managers must refer a patient's case to the MHRT for Wales in the circumstances set out in section 68 of the MHA below:

- Who has not exercised their right to apply (or been referred by Welsh Ministers or the hospital managers as set out in section 68),
- Who has been transferred from guardianship under regulations under section 19 and has not applied for a tribunal,
- Who has not had an application made on his behalf by the nearest relative or by virtue of a referral by Welsh Ministers,
- If the authority for detention is renewed and the patient has not had a MHRT for more than three years, or a patient under 18 years of age, for one year; or
- On the revocation of a Community Treatment Order (CTO)

The responsibility for ensuring that systems are in place to make a reference to the MHRT for Wales within the timescales will be performed by the Mental Health Act Department on behalf of the hospital managers.

4.15. Referrals to the Mental Health Review Tribunal for Wales by Welsh Ministers

Hospital managers should consider asking Welsh Ministers to exercise their power of referral for a patient (whose rights under Article 5(4) may be at risk of being violated) to have their case considered by the MHRT for Wales (Chapter 37.40 of the Code of Practice for Wales refers).

The hospital managers should normally seek such a reference in any cases where:

- A patient's detention under section 29 has been extended under section 29 of the MHA pending the outcome of an application to the county court for the displacement of their nearest relative
- The patient lacks the capacity to request a reference
- The patient's case has never been considered by the MHRT for Wales, or a significant period has passed since it was last considered

The Mental Health Act Department will perform this duty on behalf of the hospital managers.

4.16. *Renewal/Extension of authority to detain (section 20/20A, MHA)*

The hospital managers should consider a report made under section 20(3) or section 20A (4) before the current period of detention or community treatment expires. If an RC does not hold a review before the period of detention or CTO expires, this should be considered a very serious matter to be urgently reviewed. The hospital managers should have processes in place to ensure that this does not happen.

The RC has responsibility for completing the report to renew a patient's detention or extend the CTO. The Mental Health Act Department receives the report on behalf of the hospital managers and arranges a hearing for the hospital managers to sit and consider the renewal of detention or extension of CTO.

4.17. *Report barring discharge by nearest relative (section 25, MHA)*

The nearest relative may order the discharge of a patient detained under section 2, section 3, or CTO by giving 72 hours' notice to the hospital managers in writing. The person receiving the notice must note the time and date received.

The receiving of this notification of intent to discharge the patient is delegated to the Mental Health Act Department or Shift Coordinators.

The RC may within the 72-hour period furnish Form NR1 barring the discharge by the nearest relative.

The duty of informing the nearest relative in writing of the decision on behalf of the hospital managers is delegated to the Mental Health Act Department.

4.18. *Duties in respect of victims*

The Domestic Violence, Crime & Victims Act 2004 (DVCVA) 2004 places a number of duties on hospital managers in relation to certain patients who have committed sexual or violent crimes together with guidance on the exercise of these.

The duties include the following information is communicated to victims:

- When authority to detain a patient expires

- When the patient is discharged, including allowing the victim to make representations about discharge conditions and whether a CTO is to be made
- What conditions of discharge relate to the victim, and when these cease
- The victim's entitlement to make representations on the need for a CTO and allowing representation concerning the conditions attached to the CTO
- Any conditions on the CTO relating to the victim or their family, and any variation of the conditions
- When the CTO ceases

RC will perform this role on behalf of the hospital managers.

4.19. Discharge from MHA detention and CTO (section 23, MHA)

Hospital managers have the power to discharge certain patients from detention (section 23 of the MHA) which can only be exercised by three or more members of a panel formed for that purpose. Although the function is delegated to a panel of three or more lay members, the Health Board remains responsible for this statutory function. A panel of three or more members drawn from the Hospital Managers Power of Discharge Sub-Committee (a Sub-Committee of the Mental Health Legislation Committee) hear individual cases where patients or their nearest relative have applied for discharge. The panels also sit on renewal and extension hearings; these are collectively known as hospital managers reviews.

Section 23 of the MHA (the power to discharge certain patients from detention) is delegated to three or more members of the Hospital Managers Power of Discharge Sub-Committee and the RC.

4.20. Consent to Treatment

The hospital managers should ensure that robust procedures are in place to notify the ACs in charge of the patient's treatment, of the expiry of the three-month rule, which is set for Part 4 certificates for inpatients and the one-month rule for Part 4A certificates for CTO patients. Hospital managers should check that action has been taken.

This is delegated to the Mental Health Act Department on behalf of the hospital managers.

The same reminder system should ensure that patients are asked whether they consent to continued medication.

Responsibility for this task is delegated to qualified nursing staff and community staff.

If the patient is unwilling to consent or incapable of doing so, the AC in charge of the patient's treatment must ask Healthcare Inspectorate Wales to arrange for a second opinion appointed doctor (SOAD) to visit the patient and review the proposed treatment.

When a second opinion is required, the hospital managers should ensure that the patient, statutory consultees (one of which is neither a doctor nor a nurse), and any other relevant

people, are available to consult with the SOAD, and that the statutory documents are in order and readily available for inspection.

Responsibility for this is delegated to the RC and Mental Health Act Department in conjunction with qualified nursing staff and community staff.

4.21. Emergency Treatment

The hospital managers should monitor the giving of 'urgent treatment' under section 62 and 64 of the MHA. They should ensure that a form is provided for completion by the RC or the AC in charge of the patient's treatment. It must record details of:

- the proposed treatment
- why it is immediately necessary to give the treatment
- The length of time for which the treatment was or will be given.

The use of section 62 and 64 will be monitored by the Mental Health Act Department on behalf of the hospital managers.

4.22. Hospital accommodation for children

Section 131A of the MHA puts a duty on hospital managers to ensure any children receiving in-patient care for mental disorder in their hospitals are accommodated in an environment which is suitable for their age and in line with their needs. This duty will apply to children admitted informally to hospitals, as well as those detained under the MHA.

The admission of children and young people onto psychiatric wards is monitored by the child and adolescent mental health services on behalf of the hospital managers.

5. TRAINING

The health board will provide ongoing training for staff that have a delegated duty under the scheme of delegation. Details of training courses available can be found on the [Mental Health Act SharePoint page](#).

6. IMPLEMENTATION

This document will be widely disseminated to staff in Cardiff and Vale University Health Board. It will be published on the [Mental Health Act SharePoint page](#) and referred to during training relevant to the MHA.

7. RESPONSIBILITIES

7.1. Chief Executive

The Chief Executive Officer has overarching responsibility for ensuring that Cardiff and Vale University Health Board is compliant with the law in relation to the Mental Health Act.

7.2. Chief Operating Officer

The Chief Operating Officer is the Executive Lead for Mental Health. They have overarching responsibility for ensuring compliance with the contents of this procedure.

7.3 Designated Individuals

The procedure states which individuals are responsible for certain sections of the Mental Health Act under the Scheme of Delegation at Appendix A.

8. REVIEW

This Procedure will be reviewed every 3 years or following any changes in legislation to the Mental Health Act 1983.

9. REFERENCES

All staff will work within the Mental Health Act 1983 and in accordance with the Code of Practice for Wales 2007, Mental Capacity Act 2005, and Human Rights Act 1998.

Mental Health Act 1983 - www.legislation.gov.uk/ukpga/1983/20/contents

Mental Capacity Act 2005 - www.legislation.gov.uk/ukpga/2005/9/schedule/7

Mental Health Review Tribunal for Wales - www.justice.gov.uk/tribunals/mental-health

Human Rights Act 1998 - www.legislation.gov.uk/ukpga/1998/42/contents

APPENDIX A: Hospital Managers' Scheme of Delegation

The arrangements for authorising decisions should be set out in a scheme of delegation approved by the resolution of the body itself. (Code of Practice for Wales, chapter 37.8)

Page	Legislative Reference	Function	Delegated to
6	Section 15	Receipt, scrutiny and recording of documentation	MHA Department, Shift Coordinator, Night Site Manager
7	Section 5	Report on hospital in-patient	MHA Department, Shift Coordinator, Night Site Manager
7	Section 4	Emergency admission (Monitoring)	MHA Department, Shift Coordinator, Night Site Manager
7	Code of Practice for Wales - Chapter 36	Allocation of Responsible Clinician	Clinical Director, Integrated Team Manager
8	Section 19	Transfer between hospitals	MHA Department, Shift Coordinator, Night Site Manager, Responsible Clinician
8	Section 7	Transfers into/from guardianship	MHA Department, Shift Coordinator, Night Site Manager
8	Section 19A	Transfer and assignment of responsibility for CTO patients	MHA Department, Shift Coordinator, Night Site Manager, Responsible Clinician
8	Section 86	Removal and return of patients	MHA Department
9	Section 17E	Recall of CTO patient to hospital	Responsible Clinician, MHA Department, Shift Coordinator, Night Site Manager
9	132, 132A and 133	Duty to provide Information to patients	MHA Department, Ward Manager, Shift Coordinator, Night Site Manager, Community Staff, Responsible Clinician
9	Section 134(1)	Correspondence of patients	MHA Department
9	Section 130D	Independent Mental Health Act Advocates – duty to provide information	MHA Department, ward staff, community staff,
10	Section 68	Referral to MHRT for Wales	MHA Department

Page	Legislative Reference	Function	Delegated to
10	Section 67	Referrals by Welsh Ministers to MHRT	MHA Department
10	Section 20 and 20A	Renewal of authority to detain	MHA Department
11	Section 25	Report barring discharge by nearest relative	MHA Department, Ward Manager, Responsible Clinician
11	Domestic Violence, Crime & Victims Act 2004	Victims Right to be informed of discharge and conditions attached to that discharge	Responsible Clinician
11	Section 23	Discharge from MHA detention or CTO	Responsible Clinician Hospital Managers - who have the power to discharge certain patients from detention which can only be exercised by three or more members of a committee formed for that purpose. The UHB Board remains responsible for this statutory function.
11	Part IV and Part IVA Section 58 – Section 63	Consent to Treatment	MHA Department, Nursing Staff, Community Staff, Approved Clinicians and Responsible Clinician
12	Section 62	Emergency Treatment (Monitoring)	MHA Department, Responsible Clinician
12	Section 131A	Hospital accommodation for children and young people (Monitoring)	MHA Department, CAMHS