active care group

USE OF FORCE ACT POLICY

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Policy Number	ACG/Hospital/01
Version Number	01
Purpose	This policy: • Sets out responsibilities in connection with the Mental Health Units (Use of Force) Act 2018 (also known as 'Seni's Law'). This includes responsibilities according to role, training, recording and information for people using the service. • Should be read alongside Mental Health Units (Use of Force) Act 2018, the Mental Health Act Code of Practice 2015 and policies that cover practices such as physical intervention and rapid tranquillisation.
Scope	• All colleagues working in hospitals in the Active Care Group (ACG) • Sites and services in England
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INTRODUCTION

1. Between 2000 and 2014, 46 mental health patients across the UK died following episodes of restraint.

2. In 2010, Olaseni (Seni) Lewis died after being restrained by 11 police officers in the Bethlem Hospital. The Act, sometimes referred to as 'Seni's law', was introduced via a Private Members Bill and was passed in November 2018.

3. The key provisions of the Mental Health Units (Use of Force) Act 2018 ('the Act') came in to force on 1 April 2022.

4. The Act aims for greater transparency and accountability around the use of restraint in mental health settings and introduces a number of requirements to support this, including publishing data on how and when physical force is used, and ensuring that any non-natural death in a mental health unit triggers an independent inquiry.

SCOPE

5. The Act imposes these requirements on 'mental health units', which for the purposes of ACG are services registered as independent hospitals (in England), registered to provide treatment to in-patients for mental disorder.

AIM

6. This policy sets out the key requirements of the Mental Health Use of Force Act 2018 and how these will be met across ACG, including:
    - reinforcing that the use of force is a last resort
    - identifying responsibilities of different staff members in relation to the Act
    - setting out data collection requirements
    - identifying training needs
    - how information will be provided to patients

DEFINITIONS

7. "Mental disorder" has the same meaning as in the Mental Health Act 1983, that is 'any disorder or disability of the mind'.

8. "Mental health unit" means–

    (a) a health service hospital, or part of a health service hospital, in England, the purpose of which is to provide treatment to in-patients for mental disorder, or

    (b) an independent hospital, or part of an independent hospital, in England–

        (i) the purpose of which is to provide treatment to in-patients for mental disorder, and

        (ii) where at least some of that treatment is provided, or is intended to be provided, for the purposes of the NHS.

9. "Patient" means a person who is in a mental health unit for the purpose of treatment for mental disorder or assessment.

10. "Use of force" means the use of physical, mechanical or chemical restraint on a patient, or the isolation of a patient (which includes seclusion and segregation).

11. "Negligible use of force" means force that involves 'light or gentle and proportionate pressure'. It must be the minimum necessary to carry out therapeutic or caring activities, form part of the patient's care plan, be used with valid consent. Use of force is never negligible if it involves rapid tranquillisation, mechanical restraint or verbal or physical resistance from the patient.

12. "Physical restraint" means the use of physical contact which is intended to prevent, restrict or subdue movement of any part of the patient's body.

13. "Mechanical restraint" means the use of a device which is intended to prevent, restrict or subdue movement of any part of the patient's body, and is for the primary purpose of behavioural control.

14. The Company prohibits the use of mechanical restraints in non-secure services. Where, by exception, a site is considering the use of mechanical restraint for an individual, an extraordinary mechanical restraint committee (to include Chief Medical Officer, Director of Quality, the Responsible Clinician for the individual and the Hospital Director/Registered Manager, or nominated deputies of any of the above) must consider the case. See policy on the use of physical interventions for further guidance.

15. "Chemical restraint" means the use of medication which is intended to prevent, restrict or subdue movement of any part of the patient's body. For clarity, rapid tranquillisation is considered chemical restraint and the policy on rapid tranquillisation should be referred to alongside this policy where RT is utilised.

16. "Isolation" means any seclusion or segregation that is imposed on a patient.

17. "Seclusion" is the supervised confinement and isolation of a patient, away from other patients, in an area from which the patient is prevented from leaving, where it is of immediate necessity for the purpose of the containment of severe behavioural disturbance which is likely to cause harm to others (MHA Code of Practice)

18. "Long term segregation" is a situation where, in order to reduce a sustained risk of harm posed by the patient to others, which is a constant feature of their presentation, a multi-disciplinary review and representative from the responsible commissioning authority determines that a patient should not be allowed to mix freely with other patients on the ward on a long-term basis (MHA Code of Practice).

MINIMISING THE USE OF FORCE

19. Active Care Group (ACG) is committed to delivering a high standard of person centred care at all times, and this includes managing behaviours that may place the patient or others at risk of harm.

20. ACG promotes Positive Behaviour Support (PBS) programmes in all inpatient services. BILD defines PBS as 'An understanding of the behaviour of an individual. It is based on an assessment of the social and physical environment in which the behaviour happens, includes the views of the individual and everyone involved and uses this understanding to develop support that improves the quality of life for the person and others who are involved with them.'

21. All staff who support people in inpatient settings will be trained to use prevention and de-escalation as first line strategies. This means developing an understanding of potential triggers for the individual (primary prevention), in order to avoid escalation in the first place, and understanding and utilising de-escalation techniques, where primary prevention has been ineffective.

22. The use of force will only ever be implemented where preventative and de-escalation strategies have been unsuccessful.

23. Where physical intervention is necessary, this will only ever be applied by staff trained to do so, using the approved technique for that service.

24. Post incident support to patients must be provided in accordance with the physical intervention policy and training. This must include debrief and physical health monitoring.

25. ACG is committed to ensuring:
    - we protect human rights and freedoms, including specifically reducing the disproportionate use of force and discrimination against people sharing protected characteristics under the Equality Act 2010
    - staff act within the law
    - force is only ever used as a last resort
    - only staff trained in approved techniques apply 'hands on' interventions
    - mechanical restraint is only ever used by exception and its use is approved by senior members of the Executive Committee, as referenced in this policy
    - all uses of chemical restraint are recognised as such and are appropriately recorded
    - all uses of physical interventions, seclusion or segregation are recognised as such and are appropriately recorded
    - that services that may use force as defined in this policy have sufficient governance arrangements in place to ensure the prompt review of any such practices as is required
    - the use of force is documented and reported on, as is required by the Use of Force Act
    - staff understand their responsibilities in relation to this policy
    - patients have access to information as require by the Act.

THE RESPONSIBLE PERSON

26. The Act requires the appointment of a 'responsible person', whose role it is to ensure that the organisation complies with the requirements of the Act.

27. This person must be a permanent member of staff within the organisation and must have the relevant skills and experience to undertake the responsibility of this role. They must have a relevant clinical background and experience of clinical care roles where the use of force is used, along with an understanding of the needs of the patient population being served

28. Within Active Care Group, this will be the Chief Medical Officer.

29. The responsible person may delegate some of their functions under the Act to other suitably qualified members of staff within the organisation, including a deputy responsible person. Within Active Care Group this will be the Director of Quality.

30. The responsible person may delegate their functions under the Act to more than one relevant person within the organisation- delegated functions will include the reporting of incidents and external reporting of data. The scheme of delegation appended to this policy should be referred to for detail of delegated responsibilities.

ROLES AND RESPONSIBILITIES

31. The responsible person (subject to the delegation of authority) has an overarching responsibility to:
    - publish a policy regarding the use of force
    - publish information for patients about their rights in relation to the use of force by staff who work in the hospital
    - ensure that staff receive appropriate training in the use of force, covering all areas as set out within the national guidance and later, in this policy.
    - ensure records are kept of any use of force on a patient by staff who work in that unit, which includes demographic data across the protected characteristics in the Equality Act 2010
    - attend appropriate training in the use of force to ensure they understand the strategies and techniques their staff are being trained in. It is important they are guided by the impact of trauma on their patients and the potentially re: traumatising impact of the use of force.

OPERATIONAL/MANAGING DIRECTORS

32. The Operational and Managing Directors have a responsibility to ensure that the services they oversee are compliant with all parts of this Act, specifically having oversight to ensure that:
    - staff across their services are trained as required by this policy
    - incidents of the use of force are appropriately recorded and reported
    - services are providing information to patients as required by the Act
    - the principles of staffing for safe and effective care are met, i.e. having the right number of staff with the right knowledge, skills and experience in the right place at the right time, and the impact this can have on reducing the use of force

HOSPITAL DIRECTORS/REGISTERED MANAGERS

33. Managers of services have responsibility for ensuring that:
    - staff, including agency staff, working in the hospital are trained as required by this policy
    - only appropriately trained staff are involved in incidents of physical intervention
    - any use of physical intervention, chemical or mechanical restraint is appropriately reporting on the incident reporting system
    - any such incidents of the use of force are investigated as required and that the incident cycle is closed, i.e. risk is reassessed, care plans are updated, lessons are learnt.
    - any lesson learning that extends beyond the individual is shared across the service and reported through divisional governance to ensure wider learning
    - patients are provided with information as required by the Act
    - any concerns regarding safe staffing are raised accordingly
    - the emotional impact the use of force has on staff is recognised, and that they are appropriately supported

ALL STAFF

34. All staff are responsible for ensuring that their training across all areas is up to date and that they act within the scope of their role, training and capabilities. Staff must always:
    - treat patients with dignity and respect at all times
    - only ever use force as a last resort, having exhausted other interventions
    - inform their line manager of any knowledge gaps or self-identified training needs
    - ensure incidents are reported using the incident management system
    - report concerns regarding unnecessary or excessive use of force

TRAINING

35. The responsible person must ensure staff are trained in the use of force.

36. All staff (including temporary, bank or agency staff) involved in using force on a patient or involved in the authorisation of the use of force must undertake training which is appropriate to the role they are undertaking, throughout all levels within the business.

37. Staff working in sites will undertake the training relevant to them, as identified by their line manager.

38. Executive board members (or equivalent) who authorise the use of force in their organisation will undertake appropriate training to ensure they are fully aware of the approaches and techniques (prevention or otherwise) their staff are being trained in. (They are not expected to complete the full training programme given to staff who are directly involved in patient care, but must receive training on the overarching principles of the use of force).

39. Staff training must include the following elements:
    - how to involve patients in the planning, development and delivery of care and treatment in the mental health unit,
    - showing respect for patients' past and present wishes and feelings,
    - showing respect for diversity generally,
    - avoiding unlawful discrimination, harassment and victimisation,
    - the use of techniques for avoiding or reducing the use of force,
    - the risks associated with the use of force,
    - the impact of trauma (whether historic or otherwise) on a patient's mental and physical health,
    - the impact of any use of force on a patient's mental and physical health,
    - the impact of any use of force on a patient's development,
    - how to ensure the safety of patients and the public, and
    - the principal legal or ethical issues associated with the use of force.

40. To ensure these principles are embedded into practice, these elements will be covered in existing training on approved physical intervention techniques (at the time of writing this policy, these are PRICE, MAYBO and PBM). Training will only be delivered by certified training providers, or staff certified by these providers as competence to do so.

41. To ensure staff have an awareness of the Use of Force Act itself, additional information will be provided to staff attending the training set out above.

42. Staff will receive training on appointment and subsequently through refresher training, as dictated by training cycles.

RECORDING REQUIREMENTS

43. The Act requires the responsible person to ensure the reporting of any non-negligible use of force.

44. Reportable incidences of the use of force must be recorded on the incident recording system and the service manager must ensure that staff have the training, knowledge and skills to do so correctly.

45. This data will be reported for external monitoring via the Mental Health Services Data Set (MHSDS).

46. Information recorded must include:
    - the reason for the use of force;
    - the place, date and duration of the use of force;
    - the type or types of force used on the patient;
    - whether the type or types of force used on the patient formed part of the patient's care plan;
    - name of the patient on whom force was used;
    - a description of how force was used;

- the patient's consistent identifier;
- the name and job title of any member of staff who used force on the patient;
- the reason any person who was not a member of staff in the mental health unit was involved in the use of force on the patient;
- the patient's mental disorder (if known);
- the relevant characteristics of the patient (if known);
- whether the patient has a learning disability or autistic spectrum disorders;
- a description of the outcome of the use of force;
- whether the patient died or suffered any serious injury as a result of the use of force;
- any efforts made to avoid the need to use force on the patient;
- whether a notification regarding the use of force was sent to the person or persons (if any) to be notified under the patient's care plan (subject to the patient's consent).

47. The 'relevant characteristics' of the patient referred to above are (as set out in the Equality Act 2010):
    - the patient's age
    - whether the patient has a disability, and if so, the nature of that disability;
    - the patient's status regarding marriage or civil partnership;
    - whether the patient is pregnant;
    - the patient's race;
    - the patient's religion or belief;
    - the patient's sex;
    - the patient's sexual orientation.

NEGLIGIBLE USE OF FORCE

48. The Act differentiates between the use of force, and 'negligible' use of force.

49. Only acts that amount to a use of force fall within the scope of the Act, guidance and this policy.

50. Negligible does not mean irrelevant to a person's experience of care or treatment. Whenever a member of staff makes a patient do something against their will, the use of force must always be recorded.

51. If a member of staffs' contact with a patient goes beyond the minimum necessary in order to carry out therapeutic or caring activities, then it is not a negligible use of force and must be recorded.

52. The Act defines negligible use of force as involving 'light or gentle and proportionate pressure'.

53. Negligible use of force, for the purpose of this policy, must also meet all of the following criteria. It must:

- be the minimum necessary to carry out therapeutic or caring activities
- form part of the patient's care plan
- used with valid consent given in connection with care and treatment as part of the delivery of care and treatment, as obtained from the patient

54. The use of force can never be considered negligible in any of the following circumstances:
    - any use of rapid tranquillisation
    - any form of mechanical restraint
    - where there is verbal or physical resistance from the patient
    - where the use of force involves the use of a wall, floor, (or other flat surface) and the use of force is disproportionate.
    - where a patient complains about the use of force either during or following the use of force.
    - someone else complains about the use of force. (This need not be a formal complaint and can include another patient telling a member of staff they are hurting a patient
    - where the use of force causes an injury to the patient or a member of staff, including scratches, marks to the skin and bruising
    - where the use of force involves more members of staff than is specified in the patient's care plan
    - if during or after the use of force, a patient is upset or distressed.

CONCERNS REGARDING THE USE OF FORCE

55. Where any member of staff observes or has concerns regarding the use of force they have a duty to report this accordingly.

56. ACG actively encourage the reporting of suspected wrongdoing as soon as possible, and staff can be assured that their concerns will be taken seriously and investigated as appropriate, and that their confidentiality will be respected wherever possible.

57. Staff should escalate any concerns to their line manager in the first instance. Where colleagues feel unable to do this or, it would be inappropriate to, or would prefer not to, they can raise their concerns through a number of alternative routes, including direct to the CEO at asksylvia@activecaregroup.co.uk, via the Freedom to Speak Up guardian Karen.langton@activecaregroup.co.uk or using Safecall, an independent whistleblowing service provider (0800 915 1571 or report online at www.safecall.co.uk/report).

58. Staff should refer to the Freedom to Speak Up policy for additional information.

59. Where a patient, family member or any other person raises a concern regarding the use of force, this must be reported on the incident management system and escalated accordingly for investigation/response. Such concerns should never be

dismissed or downplayed, and staff must recognise the impact and potential trauma of witnessing physical interventions on others.

CONSENT AND CAPACITY

60. Matters of consent arise in this policy specifically in relation to:
    - the sharing of information with those named for notification in a care plan following the use of force
    - when consenting to the use of negligible force.

61. Where the Act and this policy refers to the patient giving consent, this assumes the definition provided within the Code of Practice to the Mental Health Act:

    "Consent is the voluntary and continuing permission of a patient to be given a particular treatment, based on a sufficient knowledge of the purpose, nature, likely effects and risks of that treatment, including the likelihood of its success and any alternatives to it. Permission given under any unfair or undue pressure is not consent."

62. Where the patient's ability to give valid consent is called into question, this should be formally assessed under the Mental Capacity Act (those aged 16 and over) or using the Gillick principles to assessment competence (in those under 16).

ADDITIONAL CONSIDERATIONS FOR CHILDREN AND YOUNG PEOPLE

63. Additional considerations apply in the care and treatment of children and young people, and professionals working with this particularly vulnerable group of people must be familiar with the relevant legislation (e.g. The Children's Act).

64. The restraint or isolation of a child or young person may be particularly traumatic for both them and for other patient who witness such incidents.

65. Services providing care in a CAMHS setting must ensure the rights of the child are protected at all times, specifically in situations where they are separated or isolated from others within the unit. Suitable engagement, activities, education and support must be provided.

INFORMATION ABOUT THE USE OF FORCE

66. The responsible person is required to consult on, publish and keep under review information, for patients about the use of force.

67. This is to be provided to patients on admission (and to any existing inpatients at the time the Act is enacted).

68. This information should also be provided to families.

69. The information required is listed below:

- a statement that the use of force is only ever used proportionately and as a last resort and that it can never be used to cause pain, suffering, humiliation or as a punishment
- which staff may use force and in what circumstances, and what approaches and steps will be taken to avoid using it
- details of the types of force (techniques and approaches used) which staff may use with a distinction between children and young people, adults and older people and sex
- details of how stakeholders must be involved in care planning which sets out the preventative strategies to the use of force
- details of how stakeholders must be involved in post incident reviews following the use of force
- what action the organisation will take if the inappropriate or disproportionate use of force is identified
- the patient's rights in relation to the use of force
- the patient's legal rights to independent advocacy and how to access it, the role of the IMHA and IMCA
- the organisation's complaints procedure and the process for raising concerns about abuse and breaches of human rights, and the help available from independent advocates
- information on what will be recorded and reported on the use of force
- details on how the organisation will work to co-produce policies and information with their local patient populations
- a glossary of the terms used by staff and the organisation in relation to the use of force
- details on where the policy on the use of force can be found
- details of how often the information about use of force will be reviewed and by whom

70. This is a significant amount of information to provide and for patients to take on board and staff must be mindful that information about the use of force must be given in a way that is open and honest, but which also does not appear as a threat or to ensure compliance.

71. ACG have worked with service user representatives on how best this information can be made available, and patient feedback indicated that:
    - Patients should be given information about use of force in written form as a leaflet or ideally as a poster kept on the ward or in their rooms safely
    - Information on use of force should be given gently but proactively before a restraint is necessary (i.e. process should be explained beforehand)
    - Staff should explain to patients "I don't want to put you in a hold, but will keep you safe when you are in one"
    - Staff should reassure patients that they are safe when in holds and reassurance should be given
    - Staff need to be aware that there is an imbalance of power between staff and service users, this is particularly noticeable during use of force

- Staff should be aware that any use of force – hands on or off (restrictive practice) – can be distressing for some

72. Information leaflets and posters are available for sites and will reference this policy.

73. Service managers must implement a system locally to ensure that all patients are provided with this information and that there is documented evidence of this.

INVESTIGATION OF DEATH OR SERIOUS INJURY

74. When a patient dies or suffers a serious injury in a mental health unit, the responsible person for the mental health unit must have regard to any guidance relating to the investigation of deaths or serious injuries that is published by:
    - the Care Quality Commission (see Part 1 of the Health and Social Care Act 2008);
    - Monitor (see section 61 of the Health and Social Care Act 2012);
    - the National Health Service Commissioning Board (see section 1H of the National Health Service Act 2006);
    - the National Health Service Trust Development Authority (which is a Special Health Authority established under section 28 of the National Health Service Act 2006);
    - a person prescribed by regulations made by the Secretary of State

75. Internal ACG reporting and investigation processes should be followed in addition to the above.

POLICE ATTENDANCE ON SITE

76. Where police attend a mental health unit to assist staff, attending officers must wear and keep operational, a body camera if reasonably practicable.

77. All staff should be aware that police attendance on site will likely be alarming for staff and patients alike. The Protocol for Police and Mental Health staff in (rcem.ac.uk) provides clarity on the role of the police service in responding to incidents within mental health and learning disability settings.

IMPLEMENTATION

78. A Use of Force working group has been established to support the implementation of this Act and policy across relevant services.

79. Although staff will receive the necessary training as part of their physical intervention training on appointment and refresher, there is a need to ensure all staff are aware of requirements in the interim period.

80. This will be achieved by the provision of information to sites, which should be shared at local clinical governance and cascaded throughout the service via handovers and other routes as identified by the service manager.

81. Information will be provided to all current inpatients through the publishing of posters and the sharing of information leaflets to those in services as soon as is reasonably practicable after 31 March 2022.

82. A copy of this policy will be published on the company website and will be shared with advocacy providers.

83. The delegation of tasks is set out in the attached appendix.

MONITORING

84. This policy will be reviewed annually.

85. Data and activity on the use of force across services will be reviewed in the Reducing Restrictive Practice and Human Rights Committee.

EQUALITY IMPACT STATEMENT

86. This policy has been equality impact assessed and we believe that it is in line with the Equality Act 2010 as it is fair, it does not prioritise or disadvantage any employee or applicant and it helps to promote equality in our services.

Document Version History

Version	Description of revision (include reason for revision)	Date of Revision
1	New document	30/03/2022