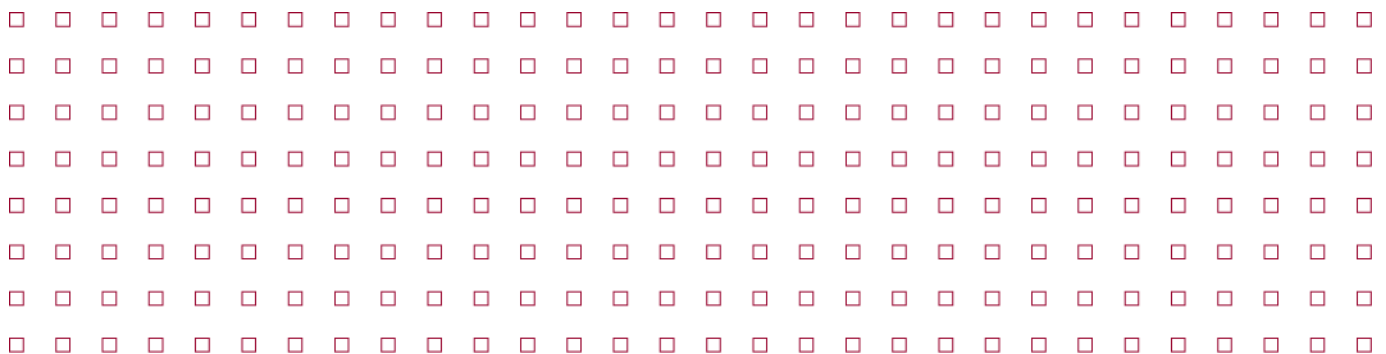




# The recall of conditionally discharged restricted patients

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## Introduction

1. The recall of a conditionally discharged patient is one of the most significant decisions taken at official level in Mental Health Casework Section (MHCS) on behalf of the Secretary of State as it deprives an individual of his or her liberty. While we issue Guidance Notes to Psychiatric Supervisors at the point of conditional discharge in every case, the statement below is a detailed explanation of our policy on recalls. This is the same statement of policy as used by officials in MHCS when determining whether to recall in a particular case. It is not, of course, possible to cover every eventuality but hopefully the guidance below will cover the major issues that regularly crop up in respect of conditionally discharged restricted patients. I should emphasize that this does not supersede or replace the Guidance Notes to Psychiatric Supervisors, but complements the guidance contained within that booklet.

## The legislation

2. Section 42(3) of the Mental Health Act 1983 provides that:

*The Secretary of State may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) above by warrant recall the patient to such hospital as may be specified in the warrant*

3. The legislation gives the Secretary of State a broad power of recall that applies to any conditionally discharged restricted patient. The parameters of how that power must be exercised have been set by case law. It follows that, while the power under the legislation is a broad one, any policy on its use formulated by Mental Health Casework Section and agreed by Ministers must be within the parameters established by case law.

## The case law

4. The key case law on the use of recall powers establishes that:
- In order for the Justice Secretary to recall there must be evidence of mental disorder of a nature or degree warranting detention (following *Winterwerp v Netherlands* (1979) as reflected in the Mental Health Act 1983).
  - In order to justify recall and before recalling the Justice Secretary must have up to date medical evidence showing that these legal criteria for detention are met (see *R(B) v MHRT* [2002] All ER (D) 304 (Jul)), **except in an emergency** (see *K v United Kingdom* (1998)). In an emergency such evidence **must be** obtained as soon as possible following recall.
  - There is no statutory requirement for the Justice Secretary to obtain the agreement of the hospital doctors to re-admit a recalled patient. The Justice Secretary is entitled to take a different view to that of the supervising psychiatrist, provided there are sufficient grounds/evidence to justify this and satisfy the Secretary of State that the criteria for detention under the Mental Health Act are met.
  - The Justice Secretary can recall a patient where the mental disorder at time of recall is different from that at time of discharge (see *R (AL) v SSHD* [2005] EWCA Civ 02).
  - There is no need for the patient's mental health to have necessarily deteriorated in order to justify recall. If a patient has a mental disorder and is presenting an elevated risk linked to that disorder that warrants detention in hospital then the patient can be recalled. In such a case the criteria for detention would be met because the disorder was of a nature (rather than degree) that warranted detention in hospital and this is necessary for the protection of other persons.
  - Similarly, where the primary concern relates to a deterioration (or potential deterioration) in a patient's mental state then this will be evidence that the disorder is of a degree that warrants detention in hospital.

## Mental Health Casework Section's policy on recalls

5. Mental Health Casework Section's policy is that patients will be recalled where it is necessary to protect the public from the actual or potential risk posed by that patient **and** that risk is linked to the patient's mental disorder. It is not possible to specify all the circumstances when recall will be appropriate but **public safety will always be the most important factor**.
- Decision on whether to recall largely turns on the degree of danger the patient might present. The gravity of any potential or actual risk will be relevant factors as will how imminent such a risk is. The more immediate the risk the more likely that recall will be indicated. Similarly, the more serious the risk or potential risk the more likely that recall is indicated.
  - Recall does not require any evidence of deterioration in the patient's mental state. However, except in an emergency, medical evidence is required that the patient is currently mentally disordered.
  - Recall will not be used to deal with anti-social or offending behaviour that is unconnected with the patient's mental disorder.
  - Recall decisions always give precedence to public safety considerations. This may mean that the Justice Secretary will decide to recall on public safety grounds even though the supervising psychiatrist may be of the view that recall would be counter-therapeutic for the patient.
  - Recall will be considered where it appears necessary for the protection of others from harm because of a combination of the patient's mental disorder and his behaviour. This includes potential behaviour where there is evidence that indicates the imminent likelihood of risk behaviours.
  - In an emergency the Justice Secretary will recall for assessment in the absence of any fresh evidence as regards mental disorder.
  - The fact that recall may not be supported by one or both the supervisors will be relevant in considering recall but not determinative. The Justice Secretary can and should recall, if his judgement is that recall is indicated on the evidence, even though the supervisors may not be recommending recall.
  - Where recall is supported by at least one supervisor, then the expectation is that the patient should be recalled unless there are compelling reasons not to recall.

## **Alcohol and substance misuse**

6. Substance (or alcohol) misuse cannot, of itself, lead to recall, even if it is in breach of the patient's conditions of discharge. Substance (and alcohol) misuse will lead to consideration of recall if there is evidence that these are risk behaviours and/or such misuse is known to have had a detrimental effect on the patient's mental state. It is not necessary to wait for the patient's mental state to deteriorate, if there is evidence of a pattern of behaviour likely to lead to such a deterioration. What constitutes such a pattern will, of course, depend upon the circumstances of the case.



## Defaulting on medication

7. Non-compliance with medication will lead to consideration of recall. Whether recall is indicated will, of course, turn on the circumstances of the particular case. Relevant factors will include:
  - whether there is a pattern of non-compliance with medication (and a history of such non-compliance)
  - is this a “one-off”?
  - whether there is also evidence of a general disengagement with supervision, or other relevant factors such as substance misuse
  - the inter-relationship between compliance with medication and relapse, including the likely rapidity of any deterioration in the patient’s mental state
  - crucially, the potential risk to others as a result of non-compliance.

## Informal admissions

8. Recall must be considered where there is any admission to psychiatric hospital. As with any consideration of recall, public safety is of paramount importance. In deciding whether recall is indicated where a patient has been informally admitted to hospital, relevant factors are:
  - the likely length of admission. If an admission of more than a few weeks is likely then recall is indicated, unless there are compelling reasons against recall.
  - any evidence of increased risk to others will lead to recall.
  - regardless of the fact that the patient is in hospital voluntarily, would the supervising psychiatrist seek to detain the patient if he wished, or attempted to leave?
9. In answering these questions we are guided by the information provided by, and discussions with the supervisors and our knowledge of the background, history and risk factors in the case. For example, has the patient a pattern of rapid deterioration or previous non-compliance?
10. Where a decision is taken not to recall but to allow the informal admission to continue then the case must be reviewed regularly. A weekly up-date will normally be appropriate, but a longer period may be indicated depending upon the circumstances of the case.

## **Informal admissions and risk of self-harm/suicide**

11. Where a patient has been informally admitted because of risk of self-harm/suicide and there is no evidence of risk to others, it may not be appropriate to recall. Again, it is not possible to cover the differing circumstances of cases but the following principles should be applied in considering the case.
12. If the medical evidence is that the patient does not meet the criteria for compulsory detention under the Mental Health Act, then recall will not normally be indicated, regardless of the likely length of admission
13. If the medical evidence is that the patient, while in hospital voluntarily, does meet the criteria for compulsory detention under the Mental Health Act, then recall may be indicated if the likely length of admission is more than about a month.

## **Admission under Section 2 or Section 3 of the Mental Health Act 1983**

14. If a Restricted patient requires compulsory detention in hospital under the Mental Health Act then recall will almost invariably be appropriate.
15. The only circumstances where recall may not be indicated would be where discharge was imminent (within days rather than weeks), or where the admission is solely due to self-harm/suicide issues and the admission is likely to last less than about a month.

## **Conditionally discharged patients and periods of imprisonment**

16. Where a conditionally discharged patient is sentenced to a period of imprisonment, consideration must be given to recalling that patient when the custodial part of his or her sentence expires.
17. Where the patient has been transferred to hospital while serving the sentence of imprisonment, then he or she must be recalled upon the expiration of the Section 49 restrictions.
18. If in any particular case, a supervising psychiatrist has an issue that is either causing them concern or they are unsure about I would urge them to contact the Casework Manager responsible for the case. We are always happy to discuss cases with the doctors responsible for the patient. Such contact can only help to develop and maintain effective working relationships between the Ministry of Justice and patient's care teams.