Using the Mental Health Act Code of Practice

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What is the Code of Practice?

- The Code of Practice is a document that tells people HOW to interpret the Mental Health Act.
- It is classed as "statutory guidance" for certain roles. This mean the following people must follow the Code when they are undertaking duties under the Act
  - registered medical practitioners (doctors),
  - approved clinicians,
  - managers and staff of providers and
  - approved mental health professionals (AMHPs)

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Advocacy and the Code of Practice

- As an advocate you should be familiar with the Code and follow it.
- It is worth buying a hard copy and taking it with you wherever you go.
- When decisions are being made you can check they are in line with the Code
- If decisions are made and you are worried they go against the Code, you can use it to ask questions, raise concerns and make challenges

Departing from the Code of Practice

- It is not okay to make decisions that are not in line with the Code of Practice. You should know that the Code tells us that:

  Departures from the Code could give rise to legal challenge. So reasons for any departure should be recorded clearly. Courts will scrutinise such reasons to ensure that there is sufficiently convincing justification in the circumstances

- It is legitimate for an advocate to remind decision makers of this and request any departures are formally recorded.

“Must” or “Should”

The Code describes legislative functions and duties and provides guidance. Whilst the whole of the Code should be followed, please note that where ‘must’ is used, it reflects legal obligations in legislation (including other legislation such as the Human Rights Act 1998) or case law, and must be followed.

Where the Code uses the term ‘should’ then departures should be documented and recorded; paragraphs II to VI explains the status of this guidance. Where the Code gives guidance using the terms ‘may’, ‘can’ or ‘could’ then the guidance in the Code is to be followed wherever possible.

Figure iii: Terminology

Terminology	How it is to be understood	Exceptions
Must	Reflects legal obligations which it is essential to follow	No exceptions
Should	For those to whom this is statutory guidance see paragraphs II – V For those to whom it is not statutory guidance VI – VII	See paragraphs II – VII. Any exceptions should be documented and recorded including the reason for this. Patients, their families and carers, regulators, commissioners and other professionals may ask to see this
May/could/can	Reflects guidance to be followed wherever possible	Good practice but exceptions permissible

Practice Example – using the Code

During the Covid Pandemic, a hospital refused to allow the IMHA service onto the ward to meet with patients. The advocate wrote to the hospital explaining the Code of Practice says that IMHAs can access people in hospital. The advocate explained that any departure from the Code must be recorded and clear reasons given. The advocate further explained that bans on visitors should be proportionate and under review and blanket bans could be unlawful.

The advocate used the following information from the Code of Practice:

> *6.27 Clinicians, hospital managers (and local authorities for guardianship patients) should ensure that IMHAs are able to:*
>
> - *access wards and units on which patients are resident*
> - *meet with the patients they are helping in private, unless the patient objects or it is otherwise inappropriate (for example where the risk is too great – see paragraphs 11.11 – 11.14), and*
> - *attend meetings between patients and the professionals involved in their care and treatment when asked to do so by patients.*

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Practice Example – using the Code

An advocacy service was concerned about the quality of information being given to people about their rights. The practice at the hospital was to give a leaflet which explained about rights as soon as a person was admitted. The problem was that the quality of printing was incredibly poor meaning it was difficult to read. The advocate was also concerned that a number of people staying on the ward had dementia which meant written information was not accessible.

The advocate used the following information from the Code of Practice to request that information was provided in accessible formats, at a time that meant the person was able to understand it:

> *4.10 Information must be given to the patient both orally and in writing, including in accessible formats as appropriate (eg Braille, Moon, easy read) and in a language the patient understands. These are not alternatives. Those providing information to patients should ensure that all relevant information is communicated in a way that the patient understands.*

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Practice Example – using the Code

An advocate was supporting a lady who was very unhappy with the medication she was being forced to take. As she wasn't fully aware of what medication she was taking and for what purpose, the advocates suggested that they request a copy of the records which captured what medication was being used, any use of PRN and the dosage. When the advocate requested this, they were told the hospital couldn't share this information due to GDPR and patient confidentiality.

The advocate wrote an email and used the following information from the Code to formally request access:

> *6.30 Where the patient consents, IMHAs have a right to see any clinical or other records relating to the patient's detention or treatment in any hospital, or relating to any after-care services provided to the patient. An IMHA has a similar right to see any records relating to the patient held by a local authority*

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In Summary

The Code of Practice is an important piece of guidance which informs how people are treated under the Mental Health Act

As an advocate you MUST be familiar with its contents

You can use the Code of Practice when promoting a person's rights.

You can also use it when checking decisions are in line with statutory guidance

Use it every week!

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USE IT!!!!

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF