

# Annex A

*Draft guidance on provisions to deal with nuisance or disturbance behaviour on NHS premises in England*

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# 1. Introduction

NHS staff and patients deserve to work and receive treatment in an environment which is safe and free from nuisance or disturbance behaviour. Such behaviour disrupts NHS services and diverts the attention of NHS staff from providing the highest standard of care to their patients.

Sections 119-120 of the Criminal Justice and Immigration Act 2008, referred to in this guidance as **the Act**, contain provisions for NHS staff to deal with nuisance or disturbance behaviour. Section 119 creates a criminal offence of causing a nuisance or disturbance on NHS premises, and Section 120 provides a power for police constables or NHS staff to remove a person suspected of committing this offence.

## 1.1 Purpose of this guidance

This guidance provides NHS bodies and authorised officers with a framework to support them in their use the power of removal in Section 120 of the Act.

The guidance applies to England only. It is addressed to English NHS bodies and authorised officers in English NHS bodies. These terms are defined in Sections 119 and 120. References in this guidance to NHS bodies, NHS premises, NHS staff members and authorised officers should be read as references to English NHS bodies, English NHS staff members and authorised officers in relation to English NHS premises.

Section 121(1) of the Act states that the appropriate national authority (for England this is the Secretary of State for Health) may publish guidance to NHS bodies and authorised officers about the power of removal in Section 120. NHS bodies and authorised officers must have regard to this guidance when exercising the power.

Specifically, this document provides guidance to NHS bodies and authorised officers on:

- a) the authorisation of authorised officers by NHS bodies,
- b) the authorisation of appropriate NHS staff by authorised officers to remove persons under Section 120,

- c) training requirements for authorised officers and NHS staff authorised under Section 120,
- d) matters that may be relevant of consideration by authorised officers for assessing whether an offence is being or has been committed under Section 119,
- e) matters to be considered by authorised officers in deciding whether there is reason to believe that a person requires medical advice, treatment or care or whether removal under Section 120 would endanger the person's physical or mental health,
- f) the procedure to be followed by authorised officers or NHS staff authorised by them before using the power of removal under Section 120,
- g) the degree of force that may be appropriate for authorised officers or NHS staff authorised by them to use to remove a person under Section 120,
- h) arrangements for ensuring that persons on NHS premises are aware of the offence in Section 119 and the power of removal in Section 120,
- i) the keeping of records.

Section 2 of this guidance offers an explanation of the offence of causing a nuisance or disturbance on NHS premises. Section 3 then provides practical advice on how an authorised officer could reasonably suspect that a person has committed an offence and whether they could be considered for removal. Scenarios are provided to illustrate some key considerations. Sections 4, 5 and 6 explain the responsibility of NHS bodies in their use of the power of removal, covering the nomination of appropriate NHS staff, communications to other NHS staff, patients and visitors and the need for appropriate record keeping. Section 7 concludes by explaining how these powers link with other statutory duties and responsibilities.

This guidance does not provide specific advice to NHS bodies in relation to prosecuting a person for committing the offence in Section 119. NHS bodies should refer any cases to the Local Security Management Specialist (discussed further in section 6.3 of this document) for investigation and subsequent consideration of prosecution.

## 1.2 Principles of this guidance

Use of the power of removal should be part of a holistic approach to the security and safety of NHS staff. The underlying principle is one of prevention of hostile situations before they arise but when they do arise, de-escalation of the situation using non-physical methods wherever

possible. The use of the Section 120 power of removal is voluntary, and it should be considered as a last resort if all other efforts to deal with the behaviour prove unsuccessful. However when the power is considered for use, particular attention should be paid to recognising potentially vulnerable people and ensuring they are not removed from the premises.

When incidents of nuisance and disturbance do occur, NHS bodies are encouraged to deal with situations in line with their current policies and using their existing training if they feel this is more appropriate than using the power of removal. However, where it is necessary for NHS bodies to remove a person causing a nuisance or disturbance, this guidance will provide them with advice and examples of best practice, with the aim of producing a safe environment for all those who work in or use NHS services.

### 1.3 Overview of the offence and power of removal

Section 119 is an offence of causing a nuisance or disturbance on NHS premises. A person commits an offence if they satisfy **all** of the following:

- a) the person causes, without reasonable excuse and while on NHS premises, a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with their work, and
- b) the person refuses, without reasonable excuse, to leave the NHS premises when asked to do so by a police constable or an NHS staff member, and
- c) the person is not on the NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself.

Section 120 gives police constables, authorised officers (and appropriate NHS staff members authorised by an authorised officer) the power to remove a person reasonably suspected of committing an offence under Section 119. A person may be removed using reasonable force if necessary. An authorised officer cannot remove a person (or authorise another person to do so) if they believe a person requires medical advice, treatment or care, or that removal would endanger their physical or mental health.

## 2. Offence of causing a nuisance or disturbance on NHS premises

### 2.1 What is a nuisance or disturbance?

For the purpose of these provisions, a nuisance or disturbance against an NHS staff member can be described as any form of low-level anti-social behaviour on NHS premises that breaches the peace. This can include but is not limited to:

- Using foul language and verbally abusing NHS staff
- Using intimidating gestures towards NHS staff, patients or visitors
- Creating excessive noise in waiting areas or wards
- Obstructing thoroughfares

Physical violence or assault on NHS staff, patients or visitors is covered by existing criminal offences and may not be described as nuisance or disturbance behaviour.

Should a person display behaviour that disrupts the work of NHS staff on NHS premises but could not be described as a nuisance or disturbance, the NHS body should consider dealing with this behaviour through other means, such as contacting the police.

In considering why people cause a nuisance or disturbance, NHS bodies should take account of the physical environment in which they provides NHS services and how this may affect the behaviour of those attending the premises. For example, lengthy waiting times, infrequent information provided to patients and visitors, misunderstandings in communication and poor quality waiting facilities may create frustration and contribute to the creation of nuisance or disturbance behaviour. NHS bodies should note, however, that these examples will not constitute a reasonable excuse for a person committing a nuisance or disturbance on NHS premises.

## 2.2 Reasonable excuse for causing a nuisance or disturbance

It is important that consideration is given to a person who may have a legitimate reason for committing a nuisance or disturbance on NHS premises. If a person has a reasonable excuse for committing a nuisance or disturbance, they cannot commit an offence under Section 119 and therefore cannot be considered for removal from the premises using Section 120 powers.

An example of a reasonable excuse could be that a person may have earlier received distressing news about a friend or relative who they had accompanied to hospital and their behaviour may be difficult for them to control.

There is also the possibility that a person's nuisance or disturbance behaviour could be the result of a mental health condition or learning disability<sup>1</sup> (herein referred to as a mental impairment) and may be beyond their control. For example, behaviour associated with an Autism Spectrum Disorder (ASD)<sup>2</sup> can include stereotyped movements, poor awareness of personal space, repetition of strange sounds and words, lack of flexibility of thought or becoming increasingly upset or angry because of changes in routine. Symptoms of dementia can include aggression, anxiety and hallucinations. These are symptoms that can be exacerbated when a person is in an unfamiliar environment.

Persons causing a nuisance or disturbance whilst under the influence of drugs or alcohol will not automatically be able to use this as a reasonable excuse for their behaviour. However, authorised officers should be objective in their decision making and take into account the person's physical or mental state when deciding if the person creating the nuisance or disturbance should be removed from the premises using these powers.

## 2.3 NHS staff member

An NHS staff member is defined as a person employed by an NHS body or otherwise working for it. The term includes contractors and volunteers. Some examples of NHS staff members include, but are not limited to:

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<sup>1</sup> For the purpose of these provisions, 'mental health condition or disability is defined as any "mental impairment which has substantial and long term adverse effect on his ability to carry out normal day-to-day activities" (Section 1 of the Disability Discrimination Act 1995).

<sup>2</sup> As referred to by the National Autistic Society

- Clinical and medical staff
- Administrative and managerial staff
- Maintenance and housekeeping staff
- Security staff
- Volunteer staff

For the purpose of committing the offence, an NHS staff member must be on NHS premises in connection with their work at the time the nuisance or disturbance is caused to them. This includes if staff are arriving or leaving the NHS premises in which they work at the beginning or end of their working day or shift.

An NHS staff member would not be on the premises in connection with their work if, for example, they were accompanying a friend to the Accident and Emergency (A&E) department of the hospital in which they work and a nuisance or disturbance was caused to them. A person could not be considered as committing this offence against the 'off-duty' NHS staff member as they are not on the premises in connection with their work.

## 2.4 NHS premises

NHS premises are defined as English NHS premises or Welsh NHS Premises. This guidance refers to English NHS premises only and are defined by Section 119 as any hospital vested in, or managed by, an NHS body, and any building, structure or vehicle associated with the hospital and situated on hospital grounds, including administrative buildings. The definition of English NHS premises also covers buildings situated on the hospital premises but not necessarily managed by that particular English NHS body. For example, an NHS hospital may lease part of its land to a private hospital but the land in which the private hospital stands is still the property of the NHS body, and therefore the land is still part of the NHS premises for the purposes of Section 119.

If an NHS staff member was in a private building situated on the NHS premises, was there in connection with their work and had a nuisance or disturbance caused to them, then the person causing the nuisance or disturbance could commit the offence.

Vehicles associated with the hospital include, but are not limited to:

- ambulances
- air ambulances
- paramedic vehicles

The term ‘hospital’ should be given its ordinary meaning so as not to restrict the definition to a certain type of hospital premises. The definition generally applies to secondary care facilities that provide acute services, but it can also include facilities such as mental health, dental or community hospitals if the NHS body considering use of these powers believes their organisation falls within the definition of ‘a hospital’.

The definition of NHS premises does not include healthcare premises located outside the hospital, such as primary care facilities. The definition, therefore, does not include the following, **unless** they are located within the hospital grounds:

- GP surgeries
- Dental practices or surgeries
- Pharmacies
- Walk-in centres
- Polyclinics
- Hospices

Some NHS premises may be spread across multiple sites or be separated across different locations, for example by a road. Provided the premises in question meet the definition of ‘hospital grounds’ in Section 119 (that is, on land in the vicinity of a hospital and associated with that hospital), then such premises will still fall within the definition of NHS premises and will be covered by these provisions.

## 2.5 Refusal to leave the premises

In order to satisfy the second element of the offence, a person causing a nuisance or disturbance to an NHS staff member must refuse to leave the premises when asked to do so by a police constable or an NHS staff member. The NHS staff member asking the person to

leave does not have to be the same NHS staff member to whom the nuisance or disturbance was caused.

NHS bodies should make every effort to ensure the request to leave has been understood by the person being asked to leave. The provision of access to communication facilities such as visual aids, a language interpreter or sign language interpreter can help to meet the needs of those who cannot understand a verbal request to leave in English.

If the person has comprehended the request for them to leave, their refusal may come in a number of ways. They may respond verbally with a simple 'no' or may respond verbally using wording that is a clear refusal. A person who is deaf or does not speak English may not be able to offer a verbal refusal to leave, so consideration should be given to other signals provided by people that could signal a clear refusal to leave the premises. For example, hand gestures or simply a lack of motion to leave from the place at which they are causing the nuisance or disturbance. Every effort should be made to ascertain that a person has clearly refused to leave the premises when asked to so.

The NHS staff member requesting that the person leave the premises must not use physical intervention methods to encourage the person to leave.

## **2.6 Reasonable excuse for refusing to leave the premises**

A reasonable excuse for refusing to leave the premises can be different from a reasonable excuse for committing a nuisance or disturbance. A person may have a reasonable excuse for not leaving if, for example, they were accompanying a child or dependent to the hospital and leaving the premises would leave that child or dependent alone. Similarly a person may be a carer for a patient in the hospital and leaving the premises would leave this patient alone or vulnerable.

## **2.7 Patients and those seeking medical advice, treatment or care**

A person who is on NHS premises for the purpose of seeking medical advice, treatment or care cannot commit the offence. This means that patients, those registered with the hospital to be clinically or medically assessed (including those with a scheduled appointment or

presenting themselves at A&E), or people who have attended the premises seeking medical advice, treatment or care cannot commit the offence.

A person is not on the NHS premises for the purpose of obtaining medical, advice, treatment or care if that person has already received the advice, treatment or care they claim to be seeking. They could, therefore, commit the offence if this is the case. A person may also be able to commit an offence if, within the last 8 hours, they have been refused the advice, treatment or care they claim to be seeking.

## 3. The power of removal

If a constable reasonably suspects that a person is committing or has committed an offence under Section 119, the constable may remove the person from the NHS premises using the power of removal in section 120(1). A constable is defined as a Police Officer or a Special Constable but does not extend to Police Community Support Officers (PCSOs)<sup>3</sup>. PCSOs, therefore, do not have the power to remove a person suspected of committing an offence under Section 119 of the Act.

If an authorised officer reasonably suspects that a person is committing or has committed an offence under Section 119, they may remove the person from the NHS premises concerned or authorise an appropriate NHS staff member to do so. Authorised officers are defined as staff who have been authorised by the relevant NHS body to exercise the power conferred by Section 120. These persons should have received appropriate training about the exercise of this power. More information on the roles and responsibilities of authorised officers is provided in section 4 of this guidance.

In practice, the authorised officer may not be present at the time the nuisance or disturbance is caused and may have to be contacted by NHS staff to attend the incident. The authorised officer will therefore have to verify what has taken place before he or she can reasonably suspect a person of committing an offence under Section 119.

If an NHS staff member believes a person is causing a nuisance or disturbance to them and that the person should be removed from the premises, the NHS staff member should contact the authorised officer immediately to assess whether the person is suspected of committing the offence and could be considered for removal.

### 3.1 Assessment of whether a person should be removed

It is recommended that the authorised officer follows a defined procedure for assessing whether a person has committed an offence under Section 119 and whether they can be considered for removal from the premises. This is to ensure safeguards present in the

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<sup>3</sup> Definition provided by the Police Federation for England and Wales

legislation are considered and vulnerable people are not removed from the premises inappropriately.

Below are some practical steps that the authorised officer may wish to follow when making their assessment. It should be noted that these steps do not necessarily have to be followed in order.

### Step 1 – has the person caused or created a nuisance or disturbance to an NHS staff member on NHS premises?

When the authorised officer arrives at the incident, they must first consider if the person is creating a nuisance or disturbance as described in section 2.1 of this guidance or if the person's behaviour requires different action. For example, the person's behaviour may be more serious and they may have physically assaulted a member of NHS staff, in which case the police should be called immediately.

It is possible that at the time the authorised officer attends the incident, the person's nuisance or disturbance behaviour may have ceased. This does not, however, mean that the person may not have already committed the offence, but may mean that the need to remove them from the premises no longer exists. It is important that on attending the incident, the authorised officer speaks to the NHS staff member(s) to which the alleged nuisance or disturbance has been caused in order to ascertain what behaviour the person has displayed. The authorised officer should consult the NHS staff member for a description of the person's behaviour but it is for the authorised officer to make their judgement of whether this description falls within the definition of a nuisance or disturbance to an NHS staff member, as described in section 2.1 of this guidance.

In investigating the alleged nuisance or disturbance, it is essential that the authorised officer determines:

- the type of behaviour that the person has displayed or is displaying
- which member(s) of staff has had the alleged nuisance or disturbance caused to them

- where on the NHS hospital premises the alleged nuisance or disturbance has taken place (this may be different from where the person is at the time the authorised officer arrives)

### Step 2 – does the person have a reasonable excuse for their behaviour?

When the authorised officer has determined that a nuisance or disturbance has been caused to an NHS staff member, he or she must then engage the person causing the nuisance or disturbance. It is recommended that with the first interaction, the authorised officer uses the skills identified in their Conflict Resolution Training<sup>4</sup> to attempt to calm the person's behaviour. Sufficient warning should be given to the person of the potential to commit an offence and the possibility that they may be removed from the premises if they do not calm or cease their behaviour.

In this early interaction with the person, the authorised officer should make efforts to determine if the person has a reasonable excuse for causing the nuisance or disturbance. Enquires can be made of the NHS staff member to whom the nuisance or disturbance has been caused, but the authorised officer should interact with the person themselves or anyone accompanying them and make their own judgement. The authorised officer should tell the person that their behaviour is unacceptable and enquire as to why they are displaying this behaviour. If the person responds coherently and, in the opinion of the authorised officer, has a reasonable excuse for their behaviour, then the person may not have committed an offence.

In some cases, any line of questioning by the authorised officer to assess whether the person has a reasonable excuse may be unsuccessful. This could include situations in which the person's behaviour may be the result of a mental impairment. For example, a person with a mental impairment may not acknowledge their condition and may respond to any enquiries in a seemingly normal manner, yet their behaviour would not appear to be normal. It is important that the authorised officer uses their mental health awareness training (part of the recommended training for authorised officers) to assess whether the person has a reasonable excuse for their behaviour. If the authorised officer suspects the person has a mental impairment, they should contact a mental health practitioner (or learning disability practitioner)

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<sup>4</sup> Conflict Resolution Training is provided by the NHS Security Management Service.

immediately and not consider the person as having committed the offence nor for removal from the premises.

The scenario below outlines a situation in which a person would have a reasonable excuse for their behaviour and how the authorised officer could handle the situation.

### **Scenario**

Person A has Asperger Syndrome. His friend has a minor injury and Person A has accompanied them to the local hospital's Accident & Emergency (A&E) department for treatment. Person A is already distressed when he arrives, as he is worried about his friend. People with an autism spectrum disorder can lack social skills and Person A is very direct in his conversation with the receptionist, coming across a little aggressive in his questioning of when his friend will be seen.

The A&E receptionist explains to Person A that his friend may have to wait for up to an hour to be seen. Person A is also very sensitive to the bright fluorescent lighting in the waiting room and this contributes to his anxiety. He waits for exactly 60 minutes and then interrupts a conversation at reception to ask what is happening as his friend has still not been seen. The receptionist asks Person A to sit down and wait, but does not give him any further instructions or information about what will happen next. Person A becomes increasingly agitated and begins shouting. Staff and patients feel threatened by his behaviour and as he is not a patient, the A&E receptionist believes Person A should be removed from the premises. The receptionist calls the Authorised Officer to decide if removal is appropriate.

The authorised officer arrives and obtains details from the A&E receptionist. Person A's behaviour has continued and the A&E receptionist is keen for him to be removed. However, the authorised officer believes that Person A's behaviour may not be of his own making. The authorised officer decides not to remove Person A using these powers and considers his trust's local procedures to deal with Person A's behaviour.

### **Step 3 – has the person been asked to leave the premises?**

If Section 119(1)(a) has been satisfied and the authorised officer reasonably suspects a person of causing a nuisance or disturbance to an NHS staff member without reasonable excuse, the

authorised officer should verify that the person has been asked to leave the premises by an NHS staff member or police constable. If not, they should ask them to leave the premises themselves. If the person accepts the request to leave the premises, then they cannot commit an offence under Section 119.

It is important at the stage of asking a person to leave the premises that the NHS staff member making the request does not risk their own safety in addressing the person's nuisance or disturbance behaviour. It is recommended that, if an NHS staff member has not undertaken Conflict Resolution Training, then they should not engage with the person or request that they leave. If the NHS staff member has received Conflict Resolution Training, then it is advised, at this stage, that they use this training to attempt to calm the person's behaviour. If this is unsuccessful, the NHS staff member should request that the person leave and identify whether the person has accepted or refused this request.

Steps should then be taken by the authorised officer to ensure the person being asked to leave understood this request, with consideration given to the person's ability to understand a verbal request. For example, a person who does not speak English may not understand a verbal request in English, or a person who is deaf may also not be able to understand a verbal request at all. The authorised officer may wish to write the request to leave and show it to the person, or gesture towards the exit. If the authorised officer does not believe the person has understood the request to leave, they should not proceed with assessing whether the person is suspected of committing an offence and can be removed from the premises.

#### Step 4 – does the person have a reasonable excuse for refusing to leave the premises?

If a person has refused to leave the premises when asked to do so by a NHS staff member, then the authorised officer must take steps to determine if the person has a reasonable excuse for refusing to leave. They should inquire as to why the person is refusing to leave and, if clear reasoning such as the examples in section 2.6 of this guidance are given, then the person should not be considered as committing the offence. It is important to note that the authorised officer must use their own judgement as to what is a reasonable excuse in the circumstances of each particular case.

The assessment of why a person is refusing to leave provides a further opportunity to safeguard against removal of vulnerable people. If the response as to why the person is refusing to leave is incoherent or inexplicable, then the authorised officer should refer to their

mental health awareness training to ascertain if it is a mental impairment that may be causing them to refuse to leave. If this is suspected, the authorised officer should contact an appropriate mental health practitioner (or learning disability practitioner) immediately. It must be emphasised, however, that a confused response does not always mean a person's behaviour is a result of a mental impairment, so the services of a mental health practitioner should only be called upon if there is justified reason they are needed.

The scenario below presents a situation in which a person may have a reasonable excuse for refusing to leave the premises.

### Scenario

Person B has Alzheimer's disease. She has been taken to hospital by her carer after complaining of stomach pains. The carer is worried about Person B and becomes increasingly frustrated by the length of time they have to wait to be seen, particularly as Person B suffers from Alzheimer's. The carer loses her temper with the receptionist and verbally abuses him. The receptionist calls the authorised officer.

The authorised officer arrives and finds Person B's carer continuing to cause a disturbance. The authorised officer uses his conflict resolution training and asks the carer to calm her behaviour, but this is unsuccessful and the carer continues to cause a disturbance. The authorised officer then asks the carer to leave the premises but she refuses this request, explaining that leaving Person B alone may cause them distress. The authorised officer believes the carer has a reasonable excuse for refusing to leave the premises and decides not to use these powers to deal with their behaviour. The authorised officer decides to continue using his Conflict Resolution Training to calm the carer's behaviour and considers his local trust policy to decide what to do next.

### Step 5 – is the person on the premises to seek medical advice, treatment or care?

If the person appears to be causing or have caused a nuisance or disturbance to an NHS staff member without reasonable excuse, and has refused to leave the premises without reasonable excuse when asked to do so, the next step is for the authorised officer to verify that the person causing the nuisance or disturbance is not on the premises for the purpose of obtaining medical advice, treatment or care.

The authorised officer can determine this by asking the relevant questions of the person and if they claim to be on the premises to seek medical advice, treatment or care, then they cannot commit an offence. While the need for medical advice, treatment or care may be obvious in some situations (such as a bleeding wound), others may be less clear. For example, a head injury or a diabetic hypoglycaemic attack can result in behaviour that resembles drunkenness. Therefore the authorised officer could speak to administrative staff in the relevant hospital department to verify the above. If steps to verify that the person is on the premises for this purpose prove unsuccessful, this does not automatically mean that the person is not on the premises to receive medical advice, treatment or care. In short, if a person makes this claim, an appropriate medical practitioner should be consulted in the first instance and the person's medical need assessed accordingly.

In verifying if the person is, in fact, on the premises to seek medical advice, treatment or care, the authorised officer should take into account Sections 119(3)(a)-(b) of the Act, as in section 2.7 of this document. A person is not on the premises for the purpose of seeking medical advice, treatment or care once they have already received this. To verify this, the authorised officer, in his or her enquires to the relevant hospital department, should enquire as to whether medical practitioners in that department have seen or assessed the person for the advice, treatment or care they claim to be seeking or have sought and that this advice, treatment or care episode is complete. Ideally this should be done in person so as not to confuse a person's identity.

A person is also not on the premises for the purpose of seeking medical advice, treatment or care if they have been refused this within the last 8 hours. In his or her enquires to the relevant hospital department, the authorised officer should verify with an appropriate medical practitioner that the person has indeed been refused medical advice, treatment or care. They should also ensure that the treatment claimed to be sought is the same as the advice, treatment or care that which was earlier refused.

The following scenario illustrates an example:

## Scenario

Person C has arrived at the Minor Injuries Unit of the local hospital. He approaches the receptionist and asks to be seen, stating that he has pain in his knee. Person C is triaged and is seen by a doctor within 30 minutes of arriving. The doctor examines Person C and decides that he does not need any specific treatment at the hospital. The doctor advises Person C to go home and rest, taking Paracetamol if he is in pain. Person C leaves the hospital.

After an hour Person C returns to the Minor Injuries Unit of the same hospital. He states that he is still in pain with the same knee problem and demands to be seen again. Person C walks into the consultation area to find the doctor who saw him earlier. He finds the doctor and begins shouting at them, demanding to be seen. The doctor feels nervous about Person C's aggressive behaviour and asks a colleague to call security officers. The security officers arrive and find Person C continuing to cause a disturbance and believe he should be removed from the premises. A security officer calls the authorised officer.

The authorised officer attends the incident and finds Person C shouting at the doctor. She asks Person C to calm his behaviour but he refuses. The authorised officer makes her assessment of whether Person C has committed the offence and verifies with the doctor that he has been medically assessed and the treatment he is asking for has been refused previously. The authorised officer decides to remove Person C from the premises.

The scenario presents a clear situation where a person has been refused advice, treatment or care within the last 8 hours, but incidents may not always be this clear and authorised officers should take the appropriate steps to verify if the person has been refused advice, treatment or care or already received this within the last 8 hours. An appropriate medical practitioner should be consulted in each case.

### 3.2 Safe removal of a person suspected of committing the offence

If the authorised officer has followed steps 1-5 and reasonably suspects that the person has committed an offence under Section 119 of the Act, they can then decide if it is appropriate to remove the person from the premises.

Consideration should be given to the number of appropriate NHS staff required to remove a person from the premises. For example, using four or five appropriate NHS staff members to remove an older person may be excessive for the situation. Conversely, this number of appropriate NHS staff members may be more suitable for removal of a number of persons suspected of simultaneously committing the offence. Authorised officers should also consider other issues such as the person's gender or culture. For example, some women may find it distressing to be physically handled by a man. If possible, NHS bodies are advised to make provision for male and female NHS staff members who can assist in removing persons from the premises.

When deciding to remove a person from the premises, the authorised officer should consider their own safety, the safety of NHS staff authorised by them to remove the person, and the safety of the person being removed and the safety of patients and visitors around them. It is recommended that in the outset, authorised officers and appropriate NHS staff members use non-physical methods to remove a person from the premises in line with their Conflict Resolution Training.

Reasonable force should only be used as a last resort if non-physical methods prove unsuccessful in removing the person from the premises. There is no legal definition of what is 'reasonable' when considering using force to remove a person, and this will depend on the circumstances of the particular case. However the degree of force used should be proportionate to the situation. If the authorised officer decides that reasonable force is necessary to remove a person, they should ensure the degree of force is appropriate and not excessive and should be in line with their Physical Intervention Training. Using reasonable force should take into account the safety of all those involved in the incident. For example, if the person to be removed has a medical condition (but they are not on the NHS premises to receive advice, treatment or care for this condition), then removing them using reasonable force may not be appropriate as this may cause them harm.

The authorised officer should then consider where a person should be removed to and ensure this is a place that will not leave them vulnerable or at risk.

If while exercising the power of removal the person being removed becomes physically injured by the methods used to remove that person, appropriate medical advice should be sought

immediately. If while removing the person their behaviour escalates to more serious offences such as assault, the police should be called immediately.

### 3.3 When can a person not be removed?

A person reasonably suspected of causing a nuisance or disturbance to an NHS staff member cannot be removed by an authorised officer or appropriate NHS staff member if the authorised officer has reason to believe that the person requires medical advice, treatment or care or that the removal of the person would endanger their physical or mental health.

This is intended to protect vulnerable people where removal may put them at risk and it ensures that persons who have not sought treatment but nevertheless are in need of clinical or medical care will not be removed from the premises. The scenario below provides an example:

#### **Scenario**

Person D is 16 years old and is committing a nuisance in the maternity building of the local hospital. She has been arguing with a friend in the entrance to the building for some time and this is bothering mothers who are outside having some fresh air. A midwife walks past and is anxious that Person D's behaviour is upsetting some mothers. The midwife is affected by the behaviour and feels obliged to attempt to calm it, but for her own safety she calls the authorised officer.

The authorised officer attends and finds Person D arguing with the midwife. Person D's friend has since left. The authorised officer assesses the situation and reasonably suspects that Person D has committed an offence and should be considered for removal from the hospital premises. It is after 11.30pm on a cold December night and Person D does not appear to have a jacket. The authorised officer asks Person D if she has a means of getting home but she does not drive and uses public transport, which has stopped running for the evening. The authorised officer believes removing Person D would endanger her physical health so decides not to remove her from the premises. The authorised officer continues to try and calm Person D's behaviour using non-physical methods and considers the trust's own policy in order to deal with the situation.

In considering whether removing a person may endanger their physical or mental health, separate consideration should be given to the homeless. Although the NHS does not have a duty to provide shelter for the homeless, such persons could be considered at risk if they are removed from the premises. Under guidelines issued jointly by the Department for Communities and Local Government and the Department of Health<sup>5</sup>, NHS bodies should consider this vulnerable group in their hospital discharge and admission protocol and establish effective links with the local authority housing department, social services and voluntary sector agencies who work with the homeless. NHS bodies using these powers to remove the homeless should consider their vulnerability in line with this protocol.

If an authorised officer believes that either of these situations applies, then they will need to take steps to establish whether it is in fact safe and lawful to remove the person, or choose not to carry out the removal.

If they can satisfy themselves that the person does not require medical advice, treatment or care, and that the removal of the person would not endanger his physical or mental health, they may proceed to removing the person. In order to ascertain this, the authorised officer should seek the appropriate medical advice.

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<sup>5</sup> Hospital Admission and Discharge: People who are homeless or living in temporary or insecure accommodation (December 2006)

## 4. The authorisation of NHS staff

### 4.1 The authorisation of authorised officers

Only constables or authorised officers may use the power of removal under Section 120. NHS bodies authorising NHS staff to be authorised officers under Section 120 of the Act should consider the grade and role of the NHS staff members being authorised.

The procedure for authorising NHS staff is not laid out in the Act, but it is recommended that authorisation is made in writing by a person at Board Executive level who is able to represent the NHS body. It is recommended that the NHS body's Security Management Director<sup>6</sup> fulfils this role.

The role of the authorised officer is an important one, carrying significant responsibility. It is recommended, therefore, that the authorised officer is someone in a managerial position in the NHS body who has decision making responsibility attached to their current job description. Decision making responsibility can cover decisions relating to a person's health or decisions relating to the operations or running of the NHS body in which they work. The authorised officer can, for example, be a clinician or an NHS manager and suitable roles may be, but are not limited to:

- Registrar/Consultant Doctor
- Senior Nurse (Grade F and above)
- Senior Midwife (Grade G and above)
- Operations manager
- Clinical site manager
- Modern matron
- Local Security Management Specialist

The NHS body should ensure they have sufficient provision for authorised officers, particularly if the health body is responsible for a number of hospital sites which vary in size. Separate

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<sup>6</sup> Security Management Directors have responsibility for overseeing the protection of NHS staff in their respective health body

consideration should also be given to the need for sufficient numbers of authorised officers present on the premises to use the power 24 hours a day, 365 days a year. Finally, NHS bodies should ensure authorised officers attend a relevant training programme, one of which will be available from the NHS Security Management Service<sup>7</sup> (NHS SMS). Details of this are contained in section 4.3 of this guidance.

NHS bodies should retain a record of their authorised officers and periodically review these records to ensure there are sufficient numbers to cover the premises and be able to use the power of removal if necessary.

NHS staff in NHS bodies should be aware of who their authorised officers are and how to contact them, so NHS bodies should ensure that a list of authorised officers is made available to staff along with the times at which they can be contacted.

## **4.2 The authorisation of appropriate NHS staff by authorised officers**

Authorised officers will need to satisfy themselves that the NHS staff they authorise to carry out the removal of a person under Section 120(2)(b) of the Act are suitably trained in line with requirements in section 4.3. If possible, it is recommended that authorised officers draw on the services of security officers in NHS hospitals and authorise these members of staff to assist in removing persons from the premises when incidents occur. Where NHS hospitals make provision for security staff, this is generally on a 24-hour, 365-day basis so it is considered that these members of staff are appropriate for this role.

Where NHS bodies do not make provisions for full-time security officers, consideration should be given to nominating an appropriate alternative. This should be a person for whom conflict resolution and physical intervention is part of their current job description.

Once decided, the NHS body should make available to all authorised officers a list of NHS staff who have received appropriate training to assist in exercising the power of removal. This list should detail the names and roles of NHS staff who can be authorised and where practicable, this should cover issues such as their hours of work. In reality, some authorised officers and

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<sup>7</sup> The NHS Security Management Service part of the NHS Counter Fraud and Security Management Service (NHS CFSMS), a division of the NHS Business Services Authority

NHS staff members able to be authorised may work shifts meaning their availability will change regularly. It is recommended, therefore, that NHS bodies have a procedure in place to account for this and ensure suitable availability of NHS staff to assist authorised officers.

### 4.3 Training requirements

Training for authorised officers and appropriate NHS staff able to be authorised to assist with the removal will be available from the NHS SMS.

#### Authorised officers

In order for authorised officers to fulfil their duties, they will need to have undertaken training. It is recommended that authorised officers undertake training covering the following areas:

- a) Sections 119-120 of the Criminal Justice and Immigration Act 2008
- b) How to assess whether a person has committed an offence
- c) How to safely remove a person from NHS premises
- d) Health and safety (including risk assessments)
- e) Diversity awareness
- f) Mental health awareness (including learning disabilities and autism)
- g) Conflict resolution
- h) Physical intervention techniques
- i) How to authorise appropriate NHS staff members to assist with removal

#### Appropriate NHS staff members

It is recommended that NHS staff able to be authorised by authorised officers to remove a person from NHS premises undertake training in the following areas:

- a) An overview of Sections 119-120 of the Criminal Justice and Immigration Act 2008
- b) How to safely remove a person from the premises
- c) Health and safety (including risk assessments)
- d) Conflict Resolution Training
- e) Physical intervention techniques

It is important that NHS bodies making provision to use the power of removal ensure authorised officers and appropriate NHS staff undertake refresher training as appropriate. There is no defined frequency for refresher training, but it is recommended that this is undertaken if the legislation changes or if new techniques in conflict resolution or physical intervention training become available.

### Mental health awareness

Guidelines from the National Institute for Health and Clinical Excellence (NICE) in 2005<sup>8</sup> suggest that appropriate staff groups in hospital A&E departments should receive training in the recognition of acute mental illness and awareness of organic differential diagnoses. It is recommended that NHS bodies follow this guidance. The provision of conflict resolution training specifically designed for use in mental health and learning disability settings is also considered important for staff in A&E departments. The national syllabus on Promoting Safer and Therapeutic Services is designed specifically for staff when dealing with potentially violent situations to ensure that they can be prevented and managed in a safe and therapeutic manner. This is supported by NICE and the National Institute of Mental Health England.

The 2005 NICE guidelines also recommend hospital A&E departments to ensure they have access to an identified consultant psychiatrist for liaison with providers of local mental health services and appropriate psychiatric assessment. This mental health professional should be able to respond within 1 hour of alert from the A&E department at all times. The guidelines also suggest that there should be at least one registered mental health nurse working with every hospital A&E department. It is highly recommended that NHS bodies implement these recommendations before seeking to make use of these powers.

To supplement the above, a mental health awareness session specific to recognising potential reasonable excuses for behaviour will be available as part of the training programme offered by the NHS SMS.

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<sup>8</sup> Violence: the short term management of disturbed/violent behaviour in in-patient psychiatric settings and emergency departments (February 2005)

## 5. Public awareness of the offence and power of removal

### 5.1 Signage, leaflets, posters etc

NHS bodies should ensure the public are aware of the offence of causing a nuisance or disturbance to an NHS staff member on their premises and the power that NHS staff have to remove people suspected of committing this offence. Appropriate signage can act as a deterrent as well as a communication tool for explaining the powers to members of the public.

Appropriate signage should be displayed in a number of areas in NHS hospitals as the offence can be committed anywhere on the premises.

NHS bodies should also develop and display patient leaflets explaining the above and these should be available in formats that meet the need of their health population. For example:

- Different languages
- Easy read<sup>9</sup>
- Braille
- Audio

The NHS SMS will make available a communications toolkit for NHS bodies wishing to use the power of removal. This will contain templates of signage, leaflets, posters etc. which can be adapted to local requirements.

### 5.2 Complaints

Members of the public should follow the NHS body's main complaints procedure if they would like to make a complaint.

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<sup>9</sup> Guidance on producing literature for people with an autism spectrum disorder is available here [http://www.autism.org.uk/content/1/c6/01/65/16/NAS0014\\_DED\\_A5\\_v12.pdf](http://www.autism.org.uk/content/1/c6/01/65/16/NAS0014_DED_A5_v12.pdf)

## 6. Record keeping and monitoring

### 6.1 Why are records required?

It is important that NHS bodies using the power of removal make a record of its use. This is to ensure transparency if NHS bodies are questioned on their use of the powers. Maintaining a record will enable NHS bodies to correctly justify their use of the powers and such records may be required as evidence in any possible prosecutions of offenders. These records may also be required as evidence against persistent troublemakers, for example in seeking an Anti Social Behaviour Order or injunction in the civil courts.

If NHS bodies wish to prosecute individuals under Section 119(2) of the Act, they will need to make a record of using these powers, including collection of identity details of offenders if possible. It will be important for any prosecution that the authorised officer who used the section 120 powers makes a detailed record of the situation, and the steps taken, as soon as possible once the situation is resolved. Records of earlier incidents may also be useful in assessing the seriousness of a new incident and may help to gather evidence needed for a prosecution.

### 6.2 Statutory requirements on record keeping

All NHS records are public records under the terms of Section 3(1)-(2) of the Public Records Act 1958. The Secretary of State for Health and all NHS organisations have a duty under the Public Records Act to make arrangements for the safe keeping and eventual disposal of all types of their records. The Department of Health has published the document 'Records Management: NHS Code of Practice'<sup>10</sup>, outlining statutory duties that NHS organisations must follow. This includes the format in which records can be kept and retention and disposal periods for different types of record. It is recommended that NHS bodies follow this guidance when deciding how to collect and store records of using these powers.

NHS bodies may have a duty to release records under the Freedom of Information Act 2000 and/or the Data Protection Act 1998. Information recorded by the NHS body on incidents

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<sup>10</sup> [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4131747](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4131747)

where the power of removal has been used will be subject to requests under both pieces of legislation so it is important that records are held in an appropriate manner in line with the NHS Code of Practice on Records Management and Data Protection Act 1998.

### 6.3 Who should keep records?

#### The NHS body

NHS bodies should keep records of their authorised officers, detailing the following:

- The name of the person authorising the authorised officer
- The name of the authorised officer
- The authorised officer's job title and role in the NHS body
- The date of authorisation and details of when use of the power commences or ends
- The authorised officer's availability to respond to incidents, including working hours (where possible)
- A short summary of why this staff member has been selected as an authorised officer
- The training that the authorised officer has received, the organisation(s) who provided the training and the date this was undertaken

It is recommended that NHS bodies, through their Local Security Management Specialist, monitor the use of the power of removal and collect data on:

- Frequency of the use of the power of removal
- Frequency of prosecution (if available)
- Incidents where the power of removal was not used where, for example, removal was considered to risk the person's physical or mental health
- Ethnicity and disability data of persons removed
- Levels of complaint arising from the use of the power of removal

NHS bodies should use the above information for audit purposes and to assess whether the power of removal is being used appropriately.

## The authorised officer

As the person who assesses whether a person is suspected of committing an offence and authorises their removal from the premises, the authorised officer has a responsibility to keep a record of incidents as they take place. Recommended information that should be recorded by the authorised officer includes:

- The name and contact details of the person committing the offence (if obtainable) and/or a physical description
- The circumstances and description of the incident
- The date and time of the incident
- The location of the incident
- The sex, ethnicity and disability status of the person removed using the power of removal
- The name and role of the NHS staff member who has had the nuisance or disturbance caused to them
- The name and role of the NHS staff member who asked the person causing a nuisance or disturbance to leave the premises
- The assessment process followed to ensure the person committing the offence did not have a reasonable excuse for their behaviour, nor for refusing to leave the premises
- The assessment process followed to ensure the person committing the offence was not on the premises to seek medical advice, treatment or care
- The assessment process followed to remove an offender from the premises, including how many NHS staff members were authorised to remove the offender, who these NHS staff members were and where the person was removed to
- Justification for any departure from following this guidance

NHS bodies may wish to record the above information in line with their incident reporting policy/procedure.

## The Local Security Management Specialist

Directions to NHS Bodies on Security Management Measures 2004<sup>11</sup> require all NHS bodies in England to nominate a Local Security Management Specialist (LSMS). The LSMS is responsible for ensuring security management work in their respective NHS body is carried out within a professional and ethical framework guided by the NHS SMS. This role includes investigating incidents when the power of removal has been used in a fair, objective and professional manner and, if necessary, assisting in the prosecution of offenders.

LSMSs should investigate incidents of nuisance or disturbance behaviour where the power of removal has been used in line with the NHS Security Management Manual, issued and updated regularly by the NHS SMS.

## 6.4 Monitoring

The NHS SMS has a responsibility to collect information and data relating to the number of security incidents that have taken place in NHS bodies in England. The NHS SMS will therefore be requesting information from NHS bodies via their LSMSs on the number of incidents of nuisance or disturbance behaviour that have taken place where the power of removal has been used<sup>12</sup>. This is to monitor the effectiveness of the provisions.

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<sup>11</sup> <http://www.cfsms.nhs.uk/doc/sms.general/lsms.nomination.pdf>

<sup>12</sup> This requirement is subject to ROCR approval

## 7. Other statutory duties, responsibilities and guidance

### 7.1 Disability Equality Duty

It is important that NHS bodies have due regard to disability equality when using the power of removal and do not discriminate against those who fall within this category. The NHS has a Disability Equality Scheme and guidance is available via the Department of Health.<sup>13</sup>

### 7.2 Race Equality Duty

The Race Relations (Amendment) Act 2000 places a statutory duty on NHS organisations to promote race equality. This duty covers all aspects of an organisation's activities, including policy, service delivery and employment practices. As part of this duty, NHS bodies using the power of removal should ensure they do not discriminate against people on the grounds of their race.

### 7.3 Health and Safety

The Health and Safety at Work etc Act 1974 and the Management of Health and Safety and Work Regulations 1999 place a responsibility on NHS bodies to consider appropriate health and safety arrangements for their staff, patients and visitors. Health and safety is paramount for both NHS staff and those being removed when the power of removal is being exercised.

This guidance should be followed in conjunction with existing health and safety policies and procedures.

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<sup>13</sup>[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4139666](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4139666)