

Briefing Note on Providing Assistance with Pre-Planned Mental Health Assessments on Private Premises



May 2010

INTRODUCTION

This briefing note can be used by police officers and staff who are asked by mental health professionals to provide assistance when carrying out pre-planned mental health assessments on private premises. The status, role and function of the police means that there is an implied expectation that they will provide security and safety at any mental health assessment they attend, even in circumstances where the Approved Mental Health Professional (AMHP) has not obtained a section 135(1) warrant. Unless a warrant exists, however, police attendance is discretionary; there is no mandatory requirement for the police to attend as a matter of course.

MAJOR CONSIDERATIONS

When the police are asked to provide assistance with a mental health assessment on private premises, a supervisor should first conduct a risk assessment to determine whether there is sufficient reason to justify their attendance. The primary consideration will include the reason for police support, ie, (a) to manage risks or (b) promote cooperation.

(a) Police Attendance to Manage Risks

Assistance may be sought to manage one or more of the following risks:

- That entry to the premises is likely to be refused;
- That the person to be assessed, or anyone else inside the premises, may become violent;
- That the person to be assessed may harm, is in danger of harming themselves;
- That the person to be assessed is likely to abscond before the assessment or the application for compulsory admission to hospital has been completed;
- The risk of attack by an aggressive dog or other dangerous animal present inside the premises.

In order to manage risks, the police are able to attend a Mental Health Act assessment either with or without a warrant under section 135(1) MHA 1983. With a warrant, the police have the power to:

- Enter the premises, using reasonable force to execute the warrant if necessary;

- Restrict the movement of those inside the premises while the premises are being searched;
- Remove the individual to a place of safety for seventy-two hours and assess them at that place instead of their own home.

Where, however, the police attend assessments without a warrant, their powers to take control of the situation and ensure the safety of everyone present are limited. These points are illustrated in the following examples.

- **A risk that the individual who will be subject of the assessment, or anyone else inside the premises, will become violent.**

Where the police and mental health professionals are inside private premises without a warrant, they are present by consent only. In these circumstances anyone within the premises is at liberty to move around unimpeded. This includes access to areas where items are kept that could be used to cause injury (eg, hot liquids, kitchen utensils and similar equipment). Although police officers can rely, for example, upon section 3 Criminal Law Act 1967 to use reasonable force to prevent crime, the fact that a person is simply walking into a kitchen for an apparently legitimate reason is unlikely to provide grounds under this legislation to prevent such movement. The existence of a warrant, on the other hand, would permit the officers to lawfully contain the person subject to assessment in a safe area of the premises and at least offer some ability to control or restrict the movement of others inside the premises for everyone's safety, thereby preventing or at least reducing exposure to the risk of harm.

- **A risk that the person to be assessed will harm him or herself.**

While sections 5 and 6 MCA 2005 allow restraint to be used to prevent self-harm in certain circumstances, there are limitations to when it can be used. Where no warrant exists, officers will often feel compelled to rely upon this legislation regardless of the grey areas around its use. The existence of a warrant, however, not only puts the matter beyond doubt since it provides a power to restrain the service user (and remove them where necessary) but also permits preventive action (such as containing the subject of the assessment in an area away from possible weapons, windows and balconies).

- **A risk that the person to be assessed will abscond before the assessment or the application for compulsory admission to hospital has been completed.**

Where no warrant exists, the police officers and mental health professionals present will be powerless to prevent the person leaving the premises. This applies when the individual absconds or where a decision has been made to detain the person but the paperwork to authorise compulsory detention has not yet been completed. In these circumstances the person is clearly at increased risk of harm. Where a warrant has been obtained, it is however, permissible to restrain the person to prevent them from leaving.

These examples illustrate that where police attendance is deemed necessary because of concerns about safety then it is preferable that a warrant should be sought.

(b) Police Attendance to Promote Cooperation

Police assistance is sometimes sought to encourage the cooperation of the person to be assessed. This is usually where previous experience suggests the person will be significantly more cooperative if a police officer is present. However, this is not necessarily sufficient reason for the police to attend. Other relevant factors may include information sharing, the availability of officers, any local protocols, possible tactics in relation to various scenarios (for example, entry with consent, entry executed by warrant and rapid entry) and the effect on current operational demands.

OVERALL RESPONSIBILITIES

- The AMHP has overall responsibility for coordinating the process of assessment (unless, locally, it has been agreed otherwise).
- The AMHP is responsible for briefing all non-police personnel (such as medical practitioners) on the situation.
- The police are responsible for controlling the operation for the purposes of entry into the premises.
- The police are responsible, where a warrant exists, for ensuring the safe containment of risks.
- The AMHP is responsible for making and implementing any application for admission to hospital.

JOINT PLANNING PROCESS

Planning a mental health assessment on private premises can be by any means (for example, by telephone or in person) and should involve discussing the following points:

- Whether entry is to be by means of a warrant or by consent;
- Where entry is to be by warrant, the method the police will use to gain entry and secure the premises;
- That if entry is without a warrant, the police will only enter and remain on the premises if they are satisfied that they are doing so with consent, until the AMHP has completed the admission papers and the person is deemed to be in legal custody;
- The possibility of passive resistance and the planned response;
- Consideration of equality, diversity and human rights issues;
- When and how the AMHP will brief non-police personnel to ensure that each participant is fully aware of the plan for carrying out the assessment, including dealing with contingencies, and the role of each agency;
- How any contingencies will be managed, for example, if the person leaves the premises before the completion of the assessment, or consent is refused or withdrawn at any stage, or spontaneous risks arise in situations where a warrant does not exist.

ENTERING PRIVATE PREMISES

In most circumstances, entering premises without consent or without a warrant is trespass. Entry to private premises is only legal if:

- Consent is given by the individual or a co-occupier. Consent can be withdrawn at any point, in which case the AMHP and others should leave immediately. If, however, prescribed forms for compulsory detention have already been completed, the process can continue.
- A warrant has been granted under section 135(1) of the MHA. This authorises officers to enter premises, by force if necessary, and remove the patient to a place of safety to enable an application to be made under Part 2 of the MHA, or for making other arrangements for the person's treatment and care.

Where there is no consent and no warrant, it is inappropriate for the police to invite the person to join them in the street outside the private premises in order to use section 136 MHA to detain them.

POWERS FOR POLICE ATTENDANCE WITHOUT A WARRANT

Where the police agree to attend a mental health assessment on private premises without a warrant, the preventive powers accompanying a warrant will not apply. Officers who attend in these circumstances, however, can use the following powers in response to spontaneous situations where the risk of harm is likely (for example, events involving violence, self-harm or absconding).

- **Section 17(1)(e) Police and Criminal Evidence Act 1984** – permits entry to premises to save life or limb;
- **Section 3 Criminal Law Act 1967 3(1)** – ‘A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large’;
- **Sections 5 and 6 Mental Capacity Act 2005** – Provides protection for decision makers who decide to use restraint in certain circumstances, including where necessary to prevent self-harm.

ADDRESSING CONCERNS ABOUT WARRANTS

The police view is that a warrant under section 135(1) should be sought where it is believed or suspected that consent will be withdrawn either prior to attendance at the premises or while at the premises. However, health and social care professionals have expressed a number of concerns regarding warrants.

- That on certain occasions, executing a warrant will create unnecessary tensions.

The existence of a search warrant does not mean that it must be executed, either immediately or at all. Where officers assess that the warrant does not need to be executed on arrival, the decision is theirs. If officers later assess that lawful access to the premises is required (perhaps because permission for them to be there has been withdrawn), they can decide to execute the warrant at that point.

- That where a warrant exists, police officers will immediately remove the person to be assessed from the premises – as is permitted under section 135(1)(b) – and take the person to a place of safety.

Officers should not normally remove the person to a place of safety prior to completion of the assessment. They should only do so if there is a valid and appropriate reason for immediate removal – such as extreme violence, serious medical risks or other grave dangers.

- That where consent to entry is given or is likely to be granted, a warrant is not required and that an application for a warrant in these circumstances would be unlawful.

This is not the case. The presence or absence of consent for access is not relevant to whether a warrant is granted under section 135(1). When an application for a warrant is made, it is necessary only to satisfy the court of the matters stated in that subsection. However, because entry in this way is an interference with a person’s private and family life it must be justified under Article 8(2) of the ECHR. As such, where a section 135(1) warrant is being sought and consent to entry has been given or is likely to be given, then this should be clearly explained to the court (see below).

APPLYING FOR A SECTION 135(1) WARRANT

Although it is the responsibility of the AMHP to apply to the court for a section 135(1) warrant under the MHA 1983, the police can increase the likelihood of the warrant being granted by providing information to help prepare a report to magistrates in support of the application.

Subject

- Give full details.

Grounds

- What information is known that demonstrates this subject has been violent, has threatened violence, has self-harmed or absconded or attempted to abscond?
- What information is known to indicate that other people likely to be present at the premises may increase these risks or be violent themselves?
- What causes you to believe that the above risks still apply; for example, recent information from contact with the person, or the person's family, neighbours or friends?
- What other information is known that highlights further areas of risk, for example, the person is known to carry or use weapons?
- In light of the above risks, set out that a warrant is sought for the following reasons and quote all that apply:
 - a warrant will allow the person to be restrained or contained in an area of the premises, thereby preventing the person entering other areas of the property where access to balconies/weapons may be obtained (refer to R Regina (Munjaz) v Mersey Care NHS Trust and Others; Regina (s) v Airedale NHS Trust and Others [2003] EWCA Civ 1036; [2004] QB 395.
 - a warrant will permit a degree of control of others within the premises to ensure the safety of everyone present, thereby reducing the risks highlighted earlier in this application (refer to the case of DPP v Meaden [2003] EWHC 3005 (Admin); [2004] 1 WLR 945, 953 and the case of Connor v Chief Constable of Merseyside Police (2006) EWCA Civ 1549 [2007] HRLR 6).
 - in the event of a person attempting to abscond or self-harm, a warrant will allow immediate removal of that person.

Other Considerations

- Where consent to entry is expected to be granted, particularly in the case of shared premises where a co-occupier permits access, point out to the magistrates within this application that a warrant is not being sought to gain entry but to permit the management of the risks highlighted within the application that cannot safely be managed without a warrant.
- It could also be pointed out that in the event that violence occurs and a warrant is not available, the police would need to detain for a breach of the peace or a criminal matter. This would mean the service user would be immediately taken to a police station, which is a less suitable environment, and would delay any mental health assessment.

A SECTION 135(2) WARRANT

A warrant under section 135(2) allows the police to enter premises and take away someone already liable to be detained, for example, following going absent without leave (AWOL) from hospital. This warrant can be obtained by a constable or someone else authorised by the MHA to take or retake a patient to any place. In practice this could be, for example, a member of staff from the hospital where the person went missing.

When an application is made under section 135(2) – for entry to retake an AWOL patient, for example – it is necessary to satisfy the court that entry has been refused or that refusal can be anticipated. Using a checklist such as that shown above could be helpful.

EXECUTING SECTION 135 WARRANTS

According to section 135(4) MHA 1983:

- When executing a warrant issued under section 135(1), a constable must be accompanied by an AMHP and a registered medical practitioner;
- When executing a warrant issued under section 135(2), a constable may be accompanied by a registered medical practitioner.

The law, therefore, allows the officer to be accompanied by someone with the power to retake the patient, and it is good practice that they are accompanied by such a person. This may be any person with authority from the managers of the relevant hospital (or local social services authority if applicable) to take patients into custody and to take or return them to where they ought to be. For patients on supervised community treatment (SCT), the accompanying person should, where possible, be a member of the multi-disciplinary team responsible for the patient's care.

PASSIVE RESISTANCE AND REFUSAL TO GO TO HOSPITAL ONCE DETENTION IS AUTHORISED

Even when papers have been completed authorising detention in hospital, a person sometimes refuses to leave the premises and go to the ambulance. The person may not exhibit or threaten violence but simply declines to go. Effective joint planning should previously have considered how passive resistance and other contingencies will be dealt with. Examining the following factors may assist in resolving the situation:

- Reason for the person refusing to go to hospital;
- Any concerns the individual has, such as the security of their home or care for a relative or animal;
- Any medical or physical factors that need to be taken into account;
- Physical risks to the patient of lifting them against their will;
- Risks of not immediately removing the person to hospital;
- Risks posed to others (such as the police or healthcare professional) should they lift the person.

Persuasion should be the first option. If this fails, however, and the person remains passively resistant, there are further options:

- The police can stand by to prevent a breach of the peace while the AMHP and/or ambulance staff lift the person and remove him or her from the premises;

- The police can lift and remove the person from the premises if authorised by the AMHP (as the applicant) and under their guidance. Where ambulance staff are in attendance, any police intervention of this kind should be undertaken in their presence.

Where no violence is exhibited or threatened, it does not have to be the police who physically lift or remove the person. Ambulance staff or members of other health and social care agencies can also be authorised by the AMHP to do this. Although the AMHP can authorise removal by a police officer, they cannot direct the police to act. The decision whether or not to use the delegated power rests with the police officer.

All agencies should have an agreed protocol in place which makes clear the legal powers of individual agencies and sets out who will be responsible for dealing physically with passive resistance incidents.

HOSTELS AND HOTEL ROOMS

The requirement for a warrant to enter rooms within hostels and hotels to carry out an assessment can generate considerable debate between police and mental health professionals. Where a part of the premises is exclusively occupied by an individual, consent to enter that person's particular area is not always clear-cut. The case *R v Rosso (Rosario)* [2003] EWCA Crim 3242; [2003] MHLR 404 provides guidance when deciding on the requirement to obtain a warrant in these kinds of situations.

In this case the subject of the assessment was detained by the police, who forcibly entered a room without a warrant. The room entered was not exclusively occupied by the subject and was, in fact, a TV room that others could also use. The test applied by the court (at paragraph 19) as to whether a warrant would be required included the following considerations:

- Does the occupant have a right to exclusive occupation of the room?
- Does the occupant have a right to exclude others from the room?
- Does the occupant have the right to deny access?

It could be argued that where a hostel or hotel room is occupied exclusively by the occupant, that person does have the right to exclude others from the room; and in the absence of clear legal advice to the contrary, a warrant would be required for a mental health team and accompanying police officers to enter without consent. Tenancy agreements may be used by hostel managers to provide access to hostel rooms; this might include, for example, reasons such as to carry out cleaning and maintenance. Even where an agreement exists, it may not necessarily allow the entrance of a team of police officers, ambulance crew and community mental health team staff without the occupant's consent. Where doubt exists, a warrant should be sought and the application for the warrant should clearly set out the access and consent issues in relation to the premises, leaving the court to decide.

PRIMARY REFERENCE

This is ***ACPO (2010) Guidance on Responding to People with Mental Ill Health or Learning Disabilities***, which is available from force leads on mental health.

For further information, please contact:
Specialist Operations Centre
Wyboston Lakes, Great North Road
Wyboston, Bedford MK44 3AL

Telephone 0845 000 5463
Email: soc@npia.pnn.police.uk Website: www.npia.police.uk