

TRUST-WIDE CLINICAL POLICY DOCUMENT

LEAVE FOR INPATIENTS WHO ARE EITHER MANAGED INFORMALLY UNDER SECTION 131 OF THE MENTAL HEALTH ACT OR UNDER THE GENERAL POWERS OF THE MENTAL CAPACITY ACT (SECTIONS 5 & 6)

Policy Number:	SD01
Scope of this Document:	All Staff
Recommending Committee:	Patient Safety Committee
Approving Committee:	Executive Committee
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Lead Executive Director:	Executive Director of Nursing & Operations
Lead Author(s):	Senior Nurse

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2017 – Version 2.1

Striving for perfect care
and a just culture

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Further information about this document:

Document name	CORPORATE POLICY AND PROCEDURE FOR LEAVE FOR INPATIENTS WHO ARE EITHER MANAGED INFORMALLY UNDER SECTION 131 OF THE MENTAL HEALTH ACT OR UNDER THE GENERAL POWERS OF THE MENTAL CAPACITY ACT (SECTIONS 5 & 6) – SD01
Document summary	<p>This document explains:</p> <ul style="list-style-type: none"> • Why the policy is necessary (rationale) • To whom it applies and where and when it should be applied (scope) • The underlying beliefs upon which the policy is based (principles) <ul style="list-style-type: none"> • The standards to be achieved (policy) • How the policy standards will be met through working practices (procedure)
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Published by Copies of this document are available from the Author(s) and via the trust's website	<p>Mersey Care NHS Foundation Trust V7 Building Kings Business Park Prescot Merseyside L34 1PJ</p> <p>Trust's Website www.merseycare.nhs.uk</p>
To be read in conjunction with	<p>SA02 Risk Management Strategy SA02A Risk Management Policy SA03 Reporting, management and review of adverse incidents SA07 Health, safety and welfare SA10 Clinical risk assessment tools (to be applied in conjunction with portfolio of risk assessment tools) SD05 Service users missing from an inpatient area SD29 Physical health care (Local Division) HR21 Recruitment and selection</p>
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Version Control:

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SD01 Leave for Inpatients who are either managed informally under Section 131 of the Mental Health Act or under the general powers of the Mental Capacity Act (Sections 5 & 6)

Version History:		
Version 2	Approved	March 2015
Version 2.1	Consultation Draft	September 2017
Version 2.1	Executive Committee approved	February 2020

SUPPORTING STATEMENTS

this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child / adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child / adult;
- knowing how to deal with a disclosure or allegation of child /adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child / adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, sex, race, religion and belief (or lack thereof), sexual orientation, gender reassignment, pregnancy and maternity and marital and civil partnership status. The Equality Act also requires regard to socio-economic factors.

The trust is committed to promoting and advancing equality and removing and reducing discrimination and harassment and fostering good relations between people that hold a protected characteristic and those that do not both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

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1. PURPOSE AND RATIONALE

- 1.1 Hospital inpatient service users who do not satisfy the criteria for detention under the Mental Health Act are either:-
- Admitted as an informal inpatient under section 131 of the Mental Health Act* or
 - Admitted under the Mental Capacity Act where they lack capacity and/or are not trying to leave/refuse treatment.
- 1.2 The term Informal is exclusive to the Mental Health Act. Since the introduction of the Mental Capacity Act in 2007 the only hospital inpatients who qualify for informal status are those who have capacity and give their informed consent to hospital admission and care/treatment).
- 1.3 Hospital inpatient service users who are managed under the Mental Capacity Act are either managed under the general powers of the Act (sections 5 & 6) OR under Deprivation of Liberty Safeguards powers.
- 1.4 The policy and procedure considers the management of leave for those hospital inpatients (forthwith, collectively referred to as Qualifying service users) who are:-
- Admitted informally under the Mental Health Act.
 - Managed under the general powers (section 5 & 6) of the Mental Capacity Act.
 - Qualifying service users admitted to the inpatient wards “who are not legally detained have the right to leave at any time. They cannot be required to ask permission to do so, but may be asked to inform staff when they wish to leave the ward.” (Mental Health Act, Code of Practice, 2015 ed, para. 27.38).
 - Consequently, in most instances there is a mutually agreed planned move towards discharge and part of their care plan involves taking periods of leave from the inpatient ward in preparation for discharge. This policy aims to give a clear understanding of the trusts responsibilities to work in collaboration with service users and carers in ensuring leave arrangements are effectively planned and that support is available during periods of leave and that there is a process of review to better prepare the service user for discharge. The policy is underpinned by appropriate clinical risk assessment and service user safety.
- 1.5 This procedure should be read in conjunction with the following documents;
- SA02 Risk Management Statutory
 - SA02A Risk Management Policy
 - SA03 Reporting, management and review of adverse incidents
 - SA07 Health, safety and welfare
 - SA10 Clinical risk assessment tools (to be applied in conjunction with portfolio of risk assessment tools)
 - SD05 Service users missing from an inpatient area
 - SD29 Physical health care (Local Division)

- HR21 Recruitment and selection

1.6 The document explains:

- Why the policy is necessary (rationale).
- To whom it applies and where and when it should be applied (scope).
- The underlying beliefs upon which the policy is based (principles).
- The standards to be achieved (policy).
- How the policy standards will be met through working practices (procedure).

1.7 **Rational (Why)**

A Qualifying service user has the right to leave hospital at any time (unless at the time s/he exercises this right s/he satisfies the criteria for a Mental Health Act assessment). In most instances, however, it will be more appropriate to mutually plan periods of leave in order that appropriate support can be organised for service users.

The purpose of this policy and procedure is to establish a lawful framework that ensures:

- periods of leave are agreed between staff, service users and carers subject to an appropriate risk assessment.
- support is provided for service users and carers during periods of leave
- any medication is available during periods of leave
- any medication is available during periods of leave

1.8 **Principles (Beliefs)**

This policy and procedure is based on the belief that service users and carers have a right to expect appropriate arrangements to be in place for the continuing care of informal inpatients qualifying service users during periods of leave.

2. **SCOPE**

- 2.1 The policy and procedure applies to all qualifying inpatients receiving care informally in Mersey Care NHS Foundation Trust and the staff caring for them. It applies to extended periods of leave away from the ward incorporating an overnight stay. However, it would be good practice to follow the practice set out within this policy for other shorter periods of leave.

3. **DUTIES**

3.1 **Chief Executive**

The Chief Executive has overall accountability for health and safety management and will delegate responsibility (through directors, managers, staff) to ensure that adequate and

appropriate arrangements are made available to allow the Trust to meet its statutory obligations.

3.2 **Executive Director of Nursing**

The Executive Director of Nursing is responsible, to ensure that all managers are aware of this policy and are supported in implementing the policy with staff. They would work alongside the Director for Patient Safety who as Chair to the Health and Safety Committee reviews all incidents related to service user safety.

3.3 **Clinical Divisions**

The clinical divisions are responsible for ensuring effective leave arrangements are in place for informal service users within the service for which they have overall responsibility and ensure adherence to this policy.

3.4 **Matrons and Ward Managers**

Matrons and Ward Managers are responsible for ensuring that the staff who report to them comply fully with this policy and follow the principles of clinical risk assessment and work within the Mental Health Act.

3.5 **Nursing Staff**

Nursing staff have a responsibility to raise requests for leave at the multi-disciplinary meeting or discuss with relevant staff.

3.6 **Multi-professional Disciplinary Team**

The Multi-professional Disciplinary Team has a responsibility to agree appropriateness of leave.

3.7 **Key Workers**

Key workers have a responsibility to develop plans for leave with service users/carers and recurrent staff, monitor leave plans and review leave with service users.

3.8 **Clinical Staff**

All trust staff have a duty to familiarise themselves with the policy and comply fully with it.

4. **PROCESS**

4.1 All periods of leave should be discussed and a risk assessment undertaken by members of the multi-disciplinary team (the nurse-in charge and consultant at a minimum) with the involvement of service users and carers and documented in the clinical notes.

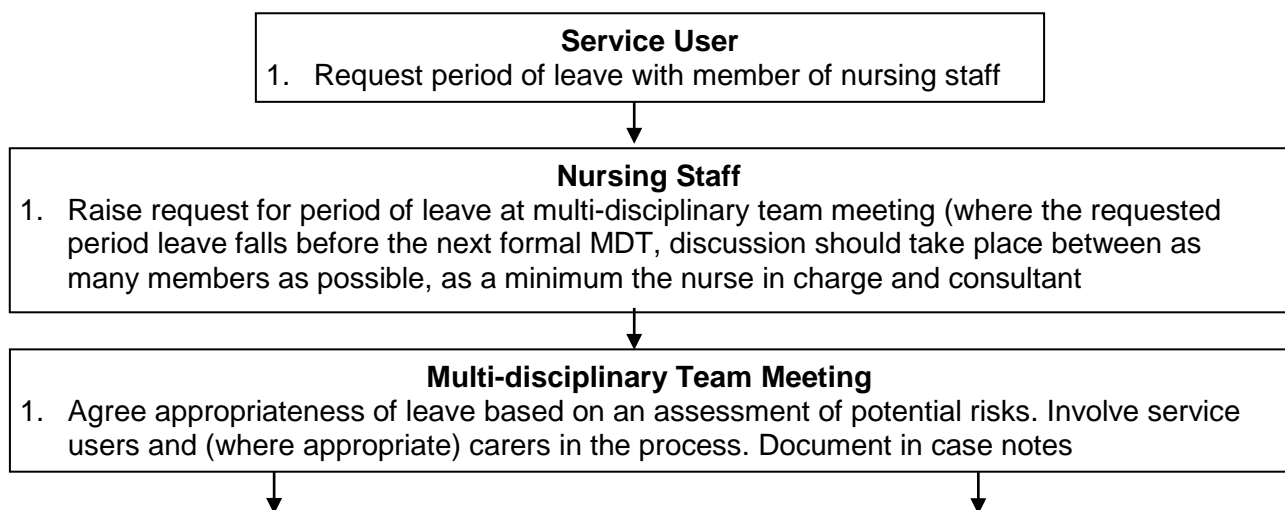
4.2 A plan for leave should be agreed between staff, service users and carers including:

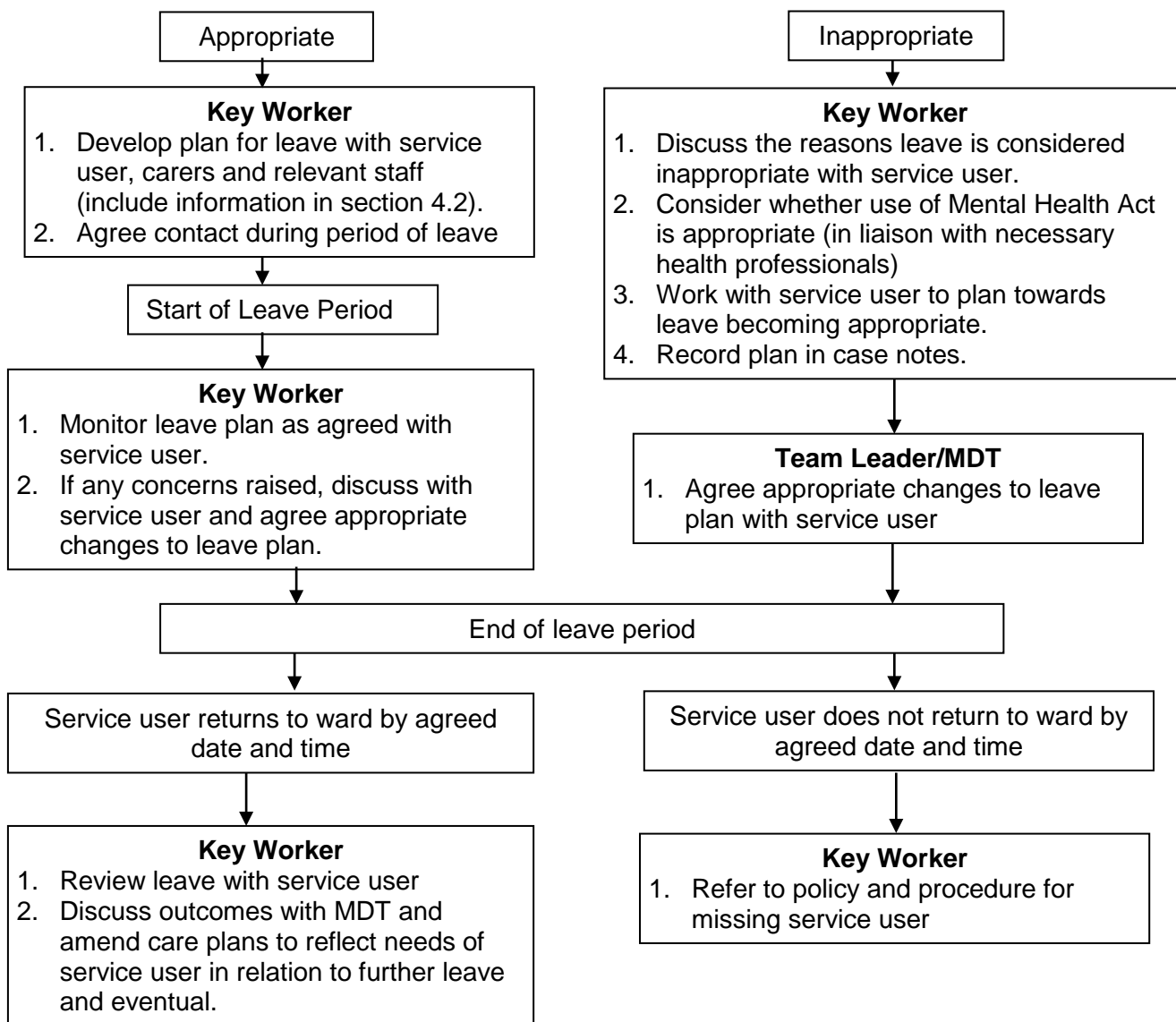
- Period of leave and a return date and time.
- Contact details for the service user whilst on leave.
- A phone number for the service user and carers to contact the ward whilst on leave.

- Arrangements for providing medication.
 - Any support needed from health professionals whilst in the community and that the relevant team is contacted.
 - A contingency plan if the service user fails to return from leave, ensuring that the service user and any carer are made aware of how to contact appropriate clinical support even if this help is required 'out of hours'.
- 4.3 Before leaving a ward for a period of leave the nurse in charge should ensure that a service user is assessed for:
- Where they are going.
 - When they will be returning.
 - How they are feeling.
 - Whether they have any feelings of harming themselves or others.
 - Whether they expect any problems during the period of leave.
- 4.4 If any concerns are elicited the nurse in charge should review the plan for leave with the service user and carer if appropriate and discuss as to whether it should go ahead at that time and ascertain if the service user will wait until such time that leave can be safely taken.
- 4.5 If the service user is not prepared to wait, and if the nurse in charge considers that leave at this time constitutes a risk of harm to the service user and/or other(s) OR that the service user's own health and/or safety would be at risk, a duty of care is owed to that service user to conduct a Mental Health Act assessment.
- 4.6 If the service user is not prepared to undergo a Mental Health Act assessment the nurse in charge must consider the need to apply the relevant Mental Health Act holding power (eg: section 5(4)) at that point.
- 4.7 Whilst on leave, if any difficulties arise, the plan for leave should be reviewed and changes agreed between the service user and care-coordinator/named nurse.
- 4.8 A review should be undertaken upon return to the ward area to enable care plans to be amended to reflect the needs of the service user in relation to further leave and eventual discharge. Service users, carers and other health professionals who had contact whilst on leave should be involved in the review.
- 4.9 Where a service user leaves an inpatient area unplanned or does not return from planned leave, the policy and procedure for missing service users should be followed.
- 4.10 **Corporate Procedure (HOW)**

This is an example procedure for Mersey Care Foundation NHS Trust. It is intended to provide an example framework for services to meet the policy statements. It is appropriate to develop alternative local procedures if needed that take account of local working contexts but must, however, continue to meet the key standards set out in the policy (section 4).

- 4.11 Flow chart illustrating the corporate procedure for arranging leave for a qualifying service user who states an intention to leave BUT agrees (or if lacking capacity, does not object, to the following process (If they do NOT agree or DO object, refer to 4.5 and 4.6 above)





5. CONSULTATION

5.1 The policy was originally developed in 2005 drawing on documents from the former Trust areas of Mersey Care Foundation NHS Trust. The review of the policy has involved wide consultation with appropriate services through their respective governance arrangements. Detailed procedures and protocols are also extant in service areas that are compliant with the expectations described in this policy. Further review has involved the senior nurse group within the trust.

6. MONITORING

6.1 The Divisions will monitor the number of reported incidents related to leave arrangements within their area via there adverse incidents governance groups. This will include 6 monthly analysis of indirect discrimination re analysis by protected characteristic.

- 6.2 Auditable standards are care plans and risk assessments and may include reported number of service users who do not return from leave as planned. Modern matrons and ward managers should review all incident reports, risk assessments, actions taken, interventions and care plans as appropriate.

7. SUPPORTING DOCUMENTS

- 7.1 Mental Health Act Code of Practice. 2015 ed,

8. EQUALITY AND HUMAN RIGHTS ANALYSIS

Title:

Corporate policy and procedure for leave for inpatients who are either managed informally Under section 131 of the mental health act under the general powers of the mental capacity Act (sections 5 & 6)

Area covered: Trust wide

What are the intended outcomes of this work?

To ensure appropriate arrangements are in place to support informal in patients during periods of leave. Review following update of policy 12/9/17

Who will be affected?

People who use services

Evidence
What evidence have you considered? Policy only. Update to policy following update, this included changes to Mental Health Act Code of Practice Page 6 1.4 part 3.
Disability (including learning disability) See cross cutting At Review: No change
Sex See cross cutting At Review: No change
Race See cross cutting At Review: No change
Age See cross cutting At Review: No change
Gender reassignment (including transgender) See cross cutting At Review: No change
Sexual orientation See cross cutting At Review: No change
Religion or belief See cross cutting At Review: No change
Pregnancy and maternity <i>See cross cutting</i> <i>At Review: No change</i>
Carers See cross cutting At Review: No change
Other identified groups No Identified
Cross Cutting At Review: No Change Monitoring process needs to include equality – leave not approved staff incident. Protected characteristics

Human Rights	Is there an impact? How this right could be protected?
Right to life (Article 2)	Supportive of a human rights based approach. The processes in place recognise the need for the Trust to enable people who are in hospital 'informally' to take leave whilst recognising the Trusts responsibility to protect life by ensuring safe

	guards re suicidal risk has been addressed.
Right of freedom from inhuman and degrading treatment (Article 3)	Supportive of human rights based approach
Right to liberty (Article 5)	Supportive of a human rights based approach. This policy ensures processes are in place to protect people who are able to take 'leave' from hospital are supported to do so .
Right to a fair trial (Article 6)	Does not engage
Right to private and family life (Article 8)	Supportive of Human rights based approach. This policy supports people taking leave from the inpatient setting to enable the process of successful discharge home.
Right of freedom of religion or belief (Article 9)	Does not engage
Right to freedom of expression Note: this does not include insulting language such as racism (Article 10)	Does not engage
Right freedom from discrimination (Article 14)	Does not engage

Engagement and Involvement
No indication of Service user/ Carer consultation in the development of the policy
Internal consultation only

Summary of Analysis
Eliminate discrimination, harassment and victimisation With the inclusion of the requirement to analyse the incident recording of leave unable to be granted or restricted by protected characteristic will seek to ensure any indirect discrimination is highlighted and addressed.
Advance equality of opportunity With the inclusion of the requirement to analyse the incident recording of leave unable to be

granted or restricted by protected characteristic will seek to ensure there is an equality of opportunity within the in patient area.

Promote good relations between groups

With the inclusion of the requirement to analyse the incident recording of leave unable to be granted or restricted by protected characteristic will seek to maintain good relations between groups within the in patient areas.

What is the overall impact?

Addressing the impact on equalities

This policy seeks to ensure that people who are using our inpatient facilities are supported to have leave from the ward area and to set systems in place to enable analysis if this is not met.

The process will enable the Trust to address any Human Rights issues re leave from ward area not being met and to ensure the possibility of indirect discrimination is examined and positive action being taken when required

Action planning for improvement

See below

Detail in the action plan below the challenges and opportunities you have identified. *Include here any or all of the following, based on your assessment*

- *Plans already under way or in development to address the **challenges and priorities** identified.*
- *Arrangements for continued engagement of stakeholders.*
- *Arrangements for continued monitoring and evaluating the policy for its impact on different groups as the policy is implemented (or pilot activity progresses)*
- *Arrangements for embedding findings of the assessment within the wider system, OGDs, other agencies, local service providers and regulatory bodies*
- *Arrangements for publishing the assessment and ensuring relevant colleagues are informed of the results*
- *Arrangements for making information accessible to staff, patients, service users and the public*
- *Arrangements to make sure the assessment contributes to reviews of DH strategic equality objectives.*

For the record

Name of persons who carried out this assessment: At Review

Maria Tyson
Meryl Cuzak, Equality and Human Rights Lead

Date assessment completed:

12th September 2017

Name of responsible Director:

Ray Walker, Executive Director of Nursing

Date assessment was signed:
September 2016 – Reviewed 12th September 2017

Action plan template

This part of the template is to help you develop your action plan. You might want to change the categories in the first column to reflect the actions needed for your policy.

Category	Actions	Target date	Person responsible and their area of responsibility
Monitoring, evaluating and reviewing	At Review: To include the requirement to analyse the incidents of leave not occurring as prescribed by protected characteristic using DATIX incident monitoring. Frequency to be determined once analysis is completed.	Nov 2017	Head of Nursing for Quality and Compliance (Corporate Division)
	At Review: Identify and prescribe positive action from monitoring process as necessary.	Nov 2107	
	At Review: To place on relevant divisional equality action plans for monitoring.	Nov 2017	
	At Review: Complete analysis for previous 2 years and agree future monitoring arrangements thereafter.	Nov 2017	