

To: All clinical staff

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Mental Health Act (Covid response update)

“Devon Judgement 2021”

Considering the Covid-19 pandemic, NHS England issued a guidance document. The document offered specific advice and guidance on areas which were posing a particular challenge because of the pandemic. It indicated where temporary departures from the usual Mental Health Act Code of Practice might be justified in the interests of minimising risk to patients, staff and the public.

As revised in May 2020 the guidance included a new section on the use of digital technology in Mental Health Act assessments, which contemplated that, during the pandemic only, patients might be assessed remotely by means of video assessments.

Following on from this, there has been legal challenge around the legality of such a departure. This legal challenge has been upheld and subsequently any detention or Community Treatment Order (CTO) is deemed now to be illegal.

How will this affect EEAST staff responding to presenting need in the community?

Mental health Trusts will be identifying this patient group and where possible ensure that the patients remain safe and detained where appropriate. The challenge for all is the patients discharged in the community where they were previously under a CTO. These will become null and void following the legal outcome referred to as the Devon Judgement 2021

<http://www.bailii.org/ew/cases/EWHC/Admin/2021/101.pdf>

Your actions,

As with all patients where we can eliminate a physical health need and identify a mental health need or distress. Contact the appropriate mental health team for support and to facilitate a clinical conversation around the most appropriate pathway to undertake. Remember utilising this service should allow us to gain further details such as is the patient known to mental health services, does a care or crisis plan exist, or is the patient one of the small number of patients that may have previously been under a now removed CTO. These patients may share such information or confirm noncompliance to prescribed medication. Liaise with mental health services who will be able to support and identify a suitable care pathway.

- As always document Introduce yourself and ask for the MH clinicians name and clinical role.
- Think about the information the MH team may require.

CLINICAL INSTRUCTION

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- Document your conversation and the key elements relevant to the patient presentation.
- Ensure that any care and agreed safety/treatment plan is recorded.

These patients will not present with any heightened risk and in order that we support them to the best of our ability, early conversations are a key element to achieving the required outcome.

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