AWOL patients

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This page provides guidance on the police response to people with mental ill health or vulnerabilities who have been reported as absent from their home or a secure setting. Police forces should also be guided by:

- **authorised professional practice (APP) on Missing persons**
- chapter 28 of both the **Mental Health Act 1983 Code of Practice** (for England) and the **Mental Health Act 1983 Code of Practice** (for Wales) covers search and recovery of patients who are absent without leave (AWOL), including using warrants under the **Mental Health Act 1983 (MHA 1983) s 135(2)**

Definition of ‘absent without leave’

The definition of when a patient is AWOL is contained in the **MHA 1983 s 18(1)**. This definition is key to understanding when police powers to re-detain an AWOL patient apply, and the circumstances in which a warrant may be required under the **MHA 1983 s 135(2**).

Section 18(1) states that a patient becomes AWOL if they:

- absent themself from the hospital without leave granted under **MHA 1983 s 17**
- fail to return to the hospital at the expiration of any period of leave or on being recalled from leave
- absent themself without permission from any place where they are required to reside in accordance with conditions imposed on any grant of leave

The term can also be applied to community treatment order (CTO) patients who have failed to return to hospital when recalled, or who subsequently abscond from hospital. In the context of a CTO, recall occurs when the patient’s responsible clinician requires the patient to return to hospital.

Patients subject to guardianship are considered to be AWOL when they are absent without permission from the place they are required to live by their guardian.

When will the police get involved?

The MHA 1983 Code of Practice (para 28.15) indicates that there are three situations that should always and immediately be reported to the police by healthcare services:

- patients subject to **MHA 1983 Part III** – this means patients connected to criminal proceedings, either before or after trial or conviction
- patients who are dangerous
- patients who are particularly vulnerable

There is no obligation in law for hospital staff to report any other relevant matters immediately or at all. As the police have a role in searching for missing people, however, expectations around AWOL patients outside of the above three situations should be set out in a clear protocol (see Missing persons APP – forthcoming).

Guidance on police intervention in mental health care wards and hospitals is available in:

- **Hospital patients presenting healthcare management problems**.

What role will healthcare staff play?

Healthcare staff duties include:

- searching the hospital
- providing appropriate and relevant information (including the date on which a police ability to use **MHA 198 s 18** to bring the patient back expires (it is the duty of the reporting mental health professional to specify the date on which the power to re-detain the patient expires)
- providing any available photographs of absent patients to assist the police in conducting missing persons investigations

Powers to re-detain an AWOL patient

Section 18 of the MHA 1983 provides a power for any AWOL patient to be re-detained and returned to the hospital by:

- an approved mental health professional (AMHP)
- anyone on the staff of the hospital
- a constable
- anyone authorised by hospital managers (authorisation must be in writing)

Entry cannot be forced to premises for this purpose and a warrant under the **MHA 1983 s 135(2)** is required if consent to enter premises is not provided.

Section 18 of the MHA 1983 is a power of arrest for the purposes of the Police and Criminal Evidence Act 1984 (PACE) and therefore reasonable force may be used under **PACE 1984 s 117** where necessary and proportionate. The MHA 1983 detainees may be searched under **PACE 1984 s 32** where sufficient grounds are met.

Re-detention of absconded patients

Section 138 of the MHA 1983 provides the police with a power to detain or recover someone who has absented themselves from lawful custody in one of two situations:

- recover someone who absconded from **s 135(1)** or **s 136** and return them to a place of safety (this power lasts for 24 hours after they went AWOL or after arrival at the place of safety, whichever is sooner)
- detain someone who absconded after being sectioned but before being admitted to hospital (this is known as someone who is ‘liable to be detained’)

For further information, see **s 135(2) – Warrant to enter and remove an absent patient**.

Absconded inpatients held under section 5 MHA

If a hospital inpatient who is subject to a **MHA 1983 s 5** holding power (for assessment) absconds from hospital within the 72 hour limit of the holding power, an AMHP, constable or anyone else authorised by the hospital (authorisation must be in writing by the hospital managers) may return them to the hospital at any time during the remainder of that period.

Where someone absents themself from detention one hour after being held (under MHA 1983 s 5(2)), they may be re-detained at any time within the remaining 71 hours. After this period, other legal powers must be relied on to intervene, such as MHA 1983 s 135(1) or s 136 (see s 5 – holding powers).

Further information on the **Mental Health Act 1983 s 35, s 36 and s 38 (re-detaining patients subject to hospital orders)** is available on the **Mental health – detention** page.

Multi-agency protocols on missing or AWOL patients

The **Mental Health Act 1983 Code of Practice** (for England) and the **Mental Health Act 1983 Code of Practice** (for Wales) both require that forces and agencies develop a joint protocol for the search and recovery of AWOL patients, including using warrants under **MHA 1983 s 135(2)** . This protocol should be created and maintained between police forces, hospitals, mental health unit facilities and ambulance services at a local level. It should include the duties of the police and NHS staff before, during and after making reports**.**

Items for inclusion within multi-agency protocols (AWOL patients)

Police forces should consider including the following matters in their locally agreed multi-agency protocol for AWOL patients.

- Agreed timescales for reporting particular kinds of cases.
- Response and communication strategies so that partner agencies understand what police actions and resources will be deployed as a result of reporting someone absent.
- Joint risk assessment for returning the patient, when it is appropriate for NHS professionals to return a patient whose whereabouts is already known and when police support will be provided. Factors that may influence such a decision include:
  - time since becoming AWOL
  - whether or not the patient is known to be under the influence of substances or likely to be experiencing the effects of withdrawal from necessary medication
  - any known history of resistance, aggression or violence
- Transport and arrangements for returning AWOL patients – locally, outside of local area, and cross-border (see Transfer and supervision, and Cross-border absconding).
- Agreed actions following the return of an AWOL patient, including a debriefing process which involves:

  - checks relating to the individual's safety and wellbeing
  - recording their whereabouts and behaviour while absent
  - assessing, recording and investigating any ongoing concerns, such as allegations of abuse in the institution or any offending while the patient was absent

- Agreed actions for the effective management of recurring calls for police assistance to find and return particular vulnerable individuals, or frequent calls from a single location or home. Officers should identify the reason for the persistent issues and manage this effectively with those responsible.
- Details of the nature of any local preventive strategies and measures of their effectiveness.
- Escalation procedure for resolving operational disputes arising from risk or resourcing problems in all agencies.

Analysis and demand management

Through multi-agency protocols, police forces should also work with other agencies to reduce repeat reports of AWOL patients and ensure more effective multi-agency responses. This includes the appropriate use of systems for reporting and recording unauthorised absences (for example, people who have not returned at an agreed time).

While the focus should always be on the individual's vulnerability, reports can usefully distinguish between those:

- who are repeatedly AWOL
- for whom being absent is unusual
- who are late returning and are not necessarily at risk

Risk management and response considerations

Protocols should ensure that risk assessment and management are linked to a reporting strategy that ensures an appropriate and proportional response when a hospital patient becomes AWOL.

An absent patient may not automatically trigger a report to the police for response. It should be expected, for example, that all reasonable steps have been taken to discover the whereabouts of patients before reporting them missing to the police.

When a patient overstays their authorised absence, the situation should be evaluated and risk assessed. In some cases, the hospital may extend leave to allow the individual to return – for example, where transport arrangements are delayed or when family circumstances have caused a delay.

Locally agreed multi-agency protocols should include guidance on hospital reporting and police response levels for times when the patient or public may be at risk and the patient's discovery is deemed to be critical. In such cases, the police and hospital staff should report and respond urgently and consider a **media strategy**.

Multi-agency protocols for AWOL situations should also cover voluntary (informal) patients. Additional considerations that should be included in the relevant protocol include a shared understanding of:

- the police's lack of legal authority to recover voluntary patients from private premises such as their own address
- the NHS duty of care (which may necessitate timely support to the police in order to prevent patients being left where they are found because the police do not have a legal authority to recover or convey them to a place of safety)

Multi-agency risk assessment conferences (**MARACs**) may be held and attended by a representative of the police force. By understanding why a person goes AWOL, strategies may be developed to deal with the issues relating to them.

For further information see:

- **Multi-agency responses/mechanisms**
- **Critical incident management**

Police involvement in transporting AWOL patients

Police assistance in returning a patient to hospital should not be considered a matter of routine. According to the **MHA 1983 Code of Practice** for England, responsibility for the return transport arrangements rests with the hospital, as follows.

- Where a patient who is AWOL from a hospital is taken into custody by someone working for another organisation, the managers of the hospital from which the patient is absent are responsible for making sure that any necessary transport arrangements are put in place for the patient's return.
- When making arrangements for the return of patients temporarily held in police custody, hospital managers should bear in mind that police transport to return them to hospital will not normally be appropriate – decisions about the kind of transport to be used should be taken in the same way as for patients being detained in hospital for the first time.
- If the patient's location is known, the role of the police should, wherever possible, be only to assist a suitably qualified and experienced mental health professional in returning the patient to hospital.

Similar guidance is given in chapter 17 of the **Mental Health Act 1983 Code of Practice** (for Wales).

For further information see:

- **Moving and transporting detainees**
- **Transfer and supervision**
- **National Ambulance section 136 Protocol 2014**
- **ACPO/Department of Health (2011) Template Protocol for the Management of Detainees Who Require Hospital Treatment**

Problem solving

Lack of hospital beds

If a patient is AWOL for more than a certain period of time (often 24-48 hours), the NHS will often reallocate the bed to new patients. If the patient is found after this time, **the police have no legal authority to hold that person in a police cell** until a suitable bed can be arranged.

If a patient is returned to the hospital from which they are AWOL and no bed is available, this is also a matter for the health staff and not the police. In general, the individual should be left with the health staff. In certain circumstances, for example, where the patient presents an immediate safety risk to themself or staff, and/or where they seem very likely to quickly re-abscond and harm themself or others, the police may decide to remain with the patient until a bed is made available.

Section 18 of the MHA 1983 allows that AWOL patients ‘subject to the provisions of this section, be taken into custody and returned to the hospital or place’. In this sentence ‘taken into custody’ does not mean taken into a police custody cell. It means taken into a condition of legal custody by the detaining authority exercising a duty under MHA 1983 s 18.

Lack of available transport

Despite the clarity around responsibility (see **Police involvement in transporting AWOL patients**), police officers may encounter a situation where the hospital from which the patient is AWOL cannot provide transport to collect the individual. Should this situation occur, the matter should be escalated for resolution and consideration at a strategic level in line with local protocols.

Long distance or cross-border repatriation

The duty to repatriate an AWOL patient belongs to the hospital from which the patient is absent. If there is any failure or refusal by the hospital to do this within a reasonable timescale, officers undertaking any long-distance journey should refer to the considerations in **Transfer and supervision** and **Cross-border absconding**.

Voluntary (informal) patients

When a psychiatric unit inpatient is not detained there under MHA 1983 but has embarked on voluntary treatment, different legal frameworks apply to their recovery if they absent themselves from care. Legal recovery may not be possible at all without a full MHA 1983 assessment coordinated by an AMHP.

Nurses (of the prescribed class) and doctors have authority under MHA 1983 to detain voluntary (informal) patients in certain circumstances, but once patients have crossed the threshold and left the immediate hospital grounds, these authorities cease to apply.

The police have no authority to detain a voluntary patient because they have absented themselves from care, or because of any perceived need that they should return. They may only detain under the MHA 1983 s 136 if the criteria for that apply. Although such patients are regarded as missing, they are not formally AWOL under the MHA 1983 s 18 and liable to immediate re-detention.

Where voluntary patients are reported missing and the police locate them in a private dwelling, officers have no authority under MHA 1983 to detain them.

Patients who fail to return after a period of leave from medical facilities

Many reports of patients going AWOL are actually better described as patients 'becoming AWOL' because they have failed to return from leave. A **legal condition of being AWOL** occurs in various circumstances and not just in relation to patients who suddenly decide to leave a mental health unit without permission. Often, it is because they have been granted an authorised period of 'section 17 leave' and failed to return from it.

Powers and responsibilities

Section 17(1) covers the responsible clinician's (RC's) entitlement to grant leave with any conditions that may be necessary in the interests of the patient or for the protection of other people. The RC also has a right under s 17(4) to recall patients from leave, revoking their leave of absence.

Where a patient who has been granted leave fails to return to hospital on its completion, or where they fail to return if recalled from such leave when it is revoked, then they become AWOL under MHA 1983. This then entitles an AMHP, anyone on the staff of the relevant hospital, a constable or anyone else authorised (in writing) by the hospital managers to take the patient into detention under the **MHA 1983 s 18** and return them to the hospital.

There is no power of entry in respect of this authority. Should entry need to be forced in order to detain someone under section 18 who is AWOL from s 17 leave, then a warrant needs to be obtained under the **MHA 1983 s 135(2)**.

Why is section 17 leave granted if there is a risk that the individual may not return?

Section 17 leave is an important part of care and recovery and is used in relation to many longer-term mental health patients. It should not be confused with discharging a patient subject to a CTO, which is granted under the **MHA 1983 section 17A**.

Section 17 leave may be used to grant shorter periods of leave from hospital in the build-up to discharging patients on to a CTO, but they are distinct legal concepts. Appropriate use of s 17 leave may assist in preparing patients for discharge and by allowing them to build up personal confidence and a level of personal responsibility that ensures they are prepared for discharge when it arrives. If on discharge, the imposition of a CTO is appropriate to continue to ensure recovery, then that can also be considered.

Community Treatment Orders (CTOs)

A CTO can be applied to the discharge of a patient who has been detained in hospital under **MHA 1983 s 3** or s 37. It allows for certain conditions to be applied to the care a patient subsequently receives in the community and can include requirements around residence, supervision of medication, drug testing and others.

Where the RC, usually a psychiatrist, in charge of a CTO patient's care believes it necessary, they can recall the patient from their CTO. This means that the patient may be detained for up to 72 hours in hospital. During that time, the RC may take a decision to fully revoke the CTO and the patient then becomes a s 3 patient again.

Police officers may be requested to assist in recalling a CTO patient. Once mental health professionals have served a recall notice and it has taken effect, a CTO patient is for policing purposes an AWOL patient. Officers may therefore rely on the **MHA 1983 s 18(1)** to re-detain the patient and return them to hospital.

A warrant under **MHA 1983 s 135(2)** is required if entry to premises needs to be forced. As with all AWOL patients, paragraphs 28.14 of the **Mental Health Act 1983 Code of Practice** (for England) and the **Mental Health Act 1983 Code of Practice** (for Wales) apply.

Where the location of a patient is known, it is for mental health professionals to return a patient to hospital and to seek police support only where this is proportionate to the risks involved.

Cross-border absconding

The United Kingdom, for policing and legal purposes, operates in several legislative jurisdictions:

- England and Wales
- Scotland

- Northern Ireland

There are further jurisdictions for the Isle of Man and for Jersey and Guernsey, referred to collectively as the Channel Islands in English law, even though they have separate mental health law. England and Wales have separate health services despite their common legal jurisdiction for policing.

Chapter 31 of the **Mental Health Act Reference Guide** for England and Wales provides various reference tables which summarise the appropriate actions as they relate to the return of AWOL patients across these jurisdictions. While the rules are complex, the following list provides a basic quick reference guide for officers.

The police in England or Wales can detain AWOL patients who are absent from:

- England and Wales – under the MHA 1983 s 18
- Scotland – under the **Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005, Article 8**
- Northern Ireland – under the **MHA 1983 s 87**
- Isle of Man or the Channel Islands – under the **MHA 1983 s 89**

The police in Scotland can detain AWOL patients absent from:

- England and Wales, Northern Ireland, and the Isle of Man or the Channel Islands – all under the **Mental Health (Absconding Patients from Other Jurisdictions) (Scotland) Regulations 2008, Article 8**.

Northern Irish police can detain AWOL patients absent from:

- England and Wales – under the **MHA 1983 s 88**
- Scotland – under the **Mental Health (Northern Ireland) Order 1986. Article 132**.

Isle of Man police can detain AWOL patients who are absent from:

- any ‘relevant territory’ under the **Mental Health Act (Isle of Man) 1998 s 95**. ‘Relevant territory’ includes England, Wales, Scotland, Northern Ireland and the Channel Islands

Regardless of geographical position, the ability to re-detain anyone who is AWOL or absconded is time-limited, even within one country.

For example, a patient who absents themselves from a Birmingham hospital after having been detained under the MHA 1983 s 2, can only be re-taken for a period of 28 days after their original admission, even if found in Birmingham. This timescale would also apply to a Scottish constable, if that person were to be found in Glasgow.

Tags

Mental health