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# Ambiguity in Section 136 of the Mental Health Act 1983

## A survey of Section 12(2) approved doctors in the West Midlands

### AIMS AND METHOD

To investigate the interpretation of Section 136 of the Mental Health Act 1983 by Section 12(2) approved doctors and to describe a pathway that facilitates early assessment of people detained under Section 136. We surveyed a random sample of Section 12(2) approved doctors in the West Midlands.

### RESULTS

A response rate of 70% was achieved. Approximately 65% believe that it would be illegal to transfer a person under Section 136 from the police station to a further place of safety, such as hospital. Thirty-five per cent believed that this could be done legally or were unsure.

### CLINICAL IMPLICATIONS

Ambiguity still remains about the legal interpretations of the provisions of Section 136 of the Mental Health Act 1983, which needs to be rectified.

Section 136 of the Mental Health Act (MHA) 1983, which allows the police to remove people who may be suffering from mental disorder from a public place, remains controversial. There are concerns that it empowers a police officer, often without any psychiatric training, to detain a person with mental disorder. However, the relevant section of the Act is silent about the legality of transferring that person from a police station (a place of safety) to a hospital (another place of safety) under the Section. The Code of Practice (1999) discourages transferring a patient from one place of safety to another: "Once the person has been removed to a particular place of safety, they cannot be transferred to a different place of safety." This is reiterated by The Maudsley Guidelines (1999). It has been accepted, therefore, by most NHS trusts in England and Wales that patients cannot be transferred from one place of safety to another. This delays the disposal of people detained under the Section.

Historically, it was not considered illegal to transfer a person from one place of safety to another more suitable place of safety, and this used to be the practice in the London area in the 1980s: ". . . in many districts in London, it appears that mentally disordered persons are picked up by the police from public places, taken to the police station where the necessary Section 136 papers are completed, and then taken to a hospital to be assessed by a doctor and a social worker" (Dunn & Fahy, 1987). This would be appropriate particularly when the need for detention was for the treatment of mental disorder rather than the control of dissocial behaviour. Whether a transfer from one place of safety to a more suitable place of safety under Section 136 of the MHA 1983 legislation would be legal remains unclear.

Arrangements usually exist locally for designating places of safety, but would it be legal to transfer a patient from one place of safety to another that was considered to be more appropriate? There is no direct reference in the 1983 Act itself about a transfer of a person from one place of safety to another more suitable place of safety but the Codes of Practice discourage it. However, the Codes of Practice to the Police and Criminal Evidence Act

1984 (Revised 1999) advise police officers not to "delay the transfer of a person to a place of safety under Section 136 of the MHA 1983 where that is applicable". This implicitly means that a transfer under Section 136 from one place of safety to a more appropriate place of safety may not be against the spirit of the 1983 MHA. The lack of clarity about how best to interpret the provisions of Section 136 has been highlighted previously (Dunn & Fahy, 1987; Rassaby & Rogers, 1987) but it remains. We therefore conducted this survey to investigate how clinicians deal with this ambiguity in day-to-day practice.

## Method

### Design

The study was designed as a cross-sectional, questionnaire survey of Section 12(2) approved doctors in West Midlands, England. Included in the survey was a randomly selected sample of the 597 doctors on the Section 12(2) register in the region as of May 1999. Any randomly selected doctors who were unavailable during the study were excluded. We used a two-question instrument designed for this study. This instrument requests the doctors to identify whether "the 1983 MHA allows people detained under Section 136 to be transferred from a police station (a place of safety) to hospital (a place of safety) under this Section". Secondly, if they consider that this is illegal under the 1983 MHA, "whether the new MHA should make a transfer from one place of safety to another legal".

### Sample size

When Section 12(2) approved doctors in the region were surveyed (Bhatti *et al*, 1998), 46% were unable to define precisely the mental illness as contained in the Act. We assumed that a similar proportion may be unaware of the legal status of transferring a patient from one place of safety to another. We set out to survey the doctors with a precision of 10%. We therefore calculated that a sample



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size of 99 would be required. This sample size is more than 16% of the Section 12(2) approved doctors in the West Midlands, therefore by using the finite population correction (Moser & Katton, 1979) an adequate sample size for this survey would be 85.

## Procedure

The regional list of all Section 12(2) approved doctors in the West Midlands was used as the sampling frame. By simple probability sampling, we identified a random sample of 150 doctors from the list. We sent out a short questionnaire to the addresses of the doctors given on the register. No reminders or prompts were sent to the doctors to reply because an adequate response rate was achieved. We calculated the proportions of the responses in each group along with the confidence intervals.

## Results

Of the 150 doctors surveyed, 106 (70.67%) replies were received and 15 of these were returned uncompleted because the doctor was on long-term sick leave, retired or no longer at the hospital. Seventy-five were psychiatrists, most of them consultant psychiatrists, and the remainder were general practitioners (GPs) or police

surgeons. Approximately 65% (64.8%, 95% CI=55.71–73.89%) did not believe that a Section 136 detainee can be transferred legally from one place of safety to another under the Section. There is no difference between psychiatrists and GPs/police surgeons in this regard. But with respect to the reform of the Act, relatively more GP/police surgeons than psychiatrists believed that the new Act should make it possible for a person detained under Section 136 to be transferred to a hospital under the Section. The majority of psychiatrists do not want the new Act to allow the police to transfer people detained under Section 136 to hospital under the Section, but the majority of GP/police surgeons would like the new Act to make this possible. This difference is statistically significant ( $P=0.047$ ).

## Discussion

The majority of Section 12(2) approved doctors in our survey follow the Code of Practice and had not been advising the transfer from a police station to hospital of people detained under Section 136. This may lead to people being detained in the police station longer than necessary (to convert Section 136 to Section 2 or 3). A significant minority of 34.8% (95% CI=25.71–43.29%) were either unsure or advised transfer in order for the detained person to gain faster access to mental health care. Whether approved social workers would be more unanimous in their view about the legal status of such transfer is unclear.

Nevertheless, this survey demonstrates the need for parliament to make clear its intention about the treatment of people found in public places, by the police, who appear to be suffering from mental disorders. Early access to mental health care of people detained under the Act can be achieved if the legislation is clearer in allowing the transfer from one place of safety to another using the same Section under which the person was detained. This will empower the police to transfer people from the police station to a hospital or directly from a public place to a hospital, although this may pose a problem of inappropriate admissions. It is notable that the police have not been found to substantially abuse 'police power' of arrest of people with mental disorder under the 1959 Act (Kelleher & Copeland, 1972), nor under Section 136 of the 1983 MHA (Mohktar & Hogbin, 1993). A pathway is suggested (Fig. 1) to avoid such inappropriate admissions. The police surgeon will be required to discuss the matter with a consultant psychiatrist, and both doctors will agree to the appropriateness or otherwise of further psychiatric assessment either in hospital or at the police station. In the former case, the police should transfer the person to hospital under Section 136 within 24 hours of arrest. In the latter case, the person should continue to be detained under Section 136 until the consultant psychiatrist arrives for further assessment. The person then should be discharged or admitted under Section 2 of the MHA, this being completed within 36 hours of arrest.

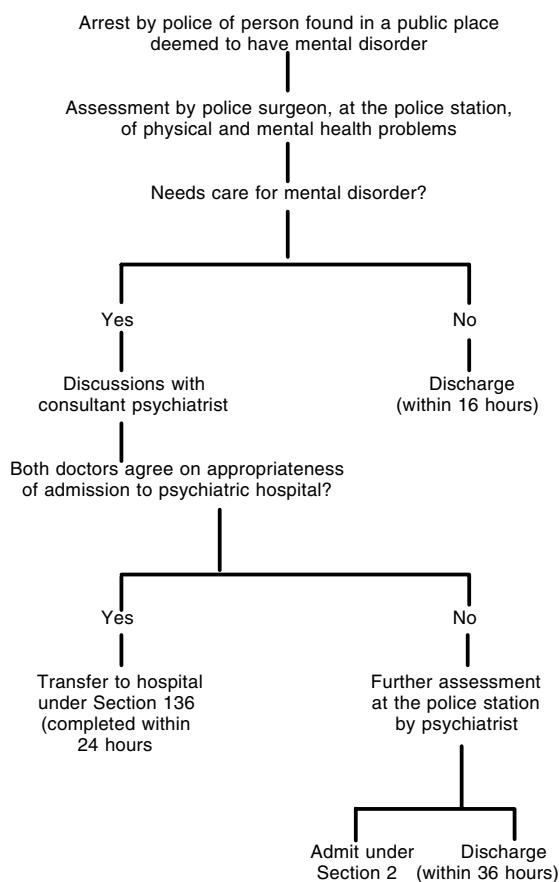


Fig. 1. Pathway to achieving early assessment of people detained under Section 136 of the Mental Health Act 1983



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## Conclusion

Clinical practice with respect to the disposal of people detained under Section 136 of the MHA 1983 differs between clinicians. This is due to the perceived ambiguity in the legality of transferring people from one place of safety to another, even if the second place of safety is deemed to be more appropriate. Perhaps the new MHA should make explicit the intention of parliament with respect to the legality of a transfer from a place of safety (e.g. a police station) to another, more appropriate, place of safety (e.g. a hospital) of people found in public places who may have mental disorder.

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