

## Concern for Welfare Policy: Right Care Right Person

<b>Version</b>	1.4
<b>Date of Commencement</b>	January 2022
<b>Date of Next Review</b>	January 2025
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<b>Equality Impact Assessment</b>	Complete
<b>Status</b>	Complete
<b>Retention Expiry Date</b>	

### 1. Summary

This policy assists officers and staff to make operational decisions when responding to calls for service involving requests to carry out welfare checks on members of the public.

### 2. Aims

The overall aim of this policy is to ensure that Lancashire Constabulary's (hereinafter 'Constabulary') responses in respect of Concerns for Welfare are proportionate and in compliance with our legal duties. It is important to be robust and ensure that Constabulary employees do not miss critical information that would significantly change the risk assessment. As with all calls for service, a risk assessment will be carried out for each Concern for Welfare incident using the National Decision Model (Appendix 1).

The [Code of Ethics](#) published in 2014 by the College of Policing requires all police officers and police staff to do the right thing in the right way. It also recognises that the use of discretion in policing is necessary but in using discretion, states that you should, '*take into account any relevant policing codes, guidance, policies and procedures into consideration.*' All officers and staff must be aware of the content of the Code of Ethics 2014.

This policy will enable police staff and police officers within Contact Management to determine the specific concern and ensure that the right person with the appropriate skills,

expertise and knowledge responds, and, that where appropriate, police officers are acting within their police powers.

### **3. Details**

#### **3.1 Introduction**

3.1.1 The police service are being contacted by partner agencies and private citizens to carry out Concern for Welfare checks on a person with whom they have concerns for, in the belief that the police are the appropriate agency and responsible or liable for the welfare of identified individuals deemed to be vulnerable or at risk.

3.1.2 'Welfare Check', 'Safe and Well Check' and 'Concern for Safety' are all terms used to describe a request to ensure the safety and wellbeing of an individual.

3.1.3 The police do not generally owe a duty of care at common law to protect individuals from harm, either harm caused by themselves or others. There are exceptions to this, including:

- The police may owe a duty of care to protect persons from harm where the police have assumed responsibility to care for them, or where the police have created (directly or indirectly) the risk of harm.
- The police may owe responsibility to take reasonable steps to assist where there is a real and immediate risk to the life of a person, or a real and immediate risk of that person being subject to serious harm or other inhumane treatment. The risks of harm where a duty will arise on the police will generally, but not always, be from the criminal acts of a third party.

3.1.4 This policy will provide clarity to the police and its partners on when a Concern for Welfare (hereinafter 'CFW') request will, and will not, become a police responsibility to respond. The legal duties of care and liabilities towards an individual cannot be passed to the police unless the police accept that responsibility. In such cases where responsibility is not accepted, the duty of care will remain with the partner agency or individual concerned.

3.1.5 This policy does not seek to avoid the police's responsibility to deal with core policing matters. In respect of the circumstances in 3.1.4 above, the following are core roles of the police and any CFW request that includes one of the following will be considered appropriate for police attention:

- Common Law Policing Powers
- Prevention and Investigation of crime
- To keep the Queens Peace

However, these are not CFW calls that give rise to a duty to act but are simply reflections of the usual business of policing. When the police do respond to welfare requests, touching on these issues, that is not to be taken as an assumption of responsibility of care for an individual.

3.1.6 A CFW request can also be initiated by a private individual and the policy makes it clear that where an individual is unable, due to circumstances beyond their control, to carry out such a check, or seek support from an agency who could do so, the police will assist.

## **3.2 Authority Levels**

3.2.1 There are no authority levels within this Policy.

## **3.3 Information**

3.3.1 Definition:

The terms 'Welfare check', 'Well-being', 'Concern for Welfare' 'Concern for Safety' or 'Wellness check', are to be considered the same for the purposes of this policy.

3.3.2 Definition explained:

3.3.3 These concerns are made directly or indirectly to the police in the expectation that the police will deal with the subject of the call and check on a person's safety or minimise any apparent risk posed to them.

### **3.4 Police Powers**

3.4.1 In accordance with what is set out above, the police will only attend a CFW call for service if it is deemed to:

- a) Be a genuine emergency – i.e. that an individual is at a real and immediate threat of death or serious harm.
- b) Or, it is assessed that the individual(s) has been subjected to at least serious harm.
- c) The individual(s) is a person within the care of the police and is facing some harm.

Unless this threshold is reached the police have no duty to take action.

### **3.5 Implementing the Policy**

3.5.1. In order to continue to respond appropriately to calls that warrant our attention, we will adopt a robust and timely triage system to clearly identify them. All calls for service will be subject to the following threshold tests for police intervention:

- Is there a real and immediate risk to life or serious harm to an identified person/persons?
- Is it a medical emergency?
- Is a child at risk of significant harm?
- Is the person suspected to have a mental health problem?
- Has a crime been committed?
- Is this a missing person report?

**3.5.2 Is there is an immediate risk to life or serious harm to an identified person?**

A real risk is one that is present and continuing. The risk does not have to be a probability, but the risk has to be substantial.

The risk has to relate to death, serious harm or some other form of degrading or inhumane treatment - such as being subjected to a sexual offence.

The police will also deal with calls where these events – i.e. death or serious violence etc. – may have just happened.

Calls regarding suicidal ideation by people who are at home and with no immediate threat or risk of harm, are not a matter for the police. That is to say there has been no suggestion that the person intends to cause themselves harm imminently or actually. Police cannot use their s.136 Mental Health Act powers within a private residence and under these circumstances an appropriate service namely ambulance or mental health services should be called.

In circumstances where there is an imminent or actual risk of harm then this does require a police response as we will owe a common law duty to save life in accordance with Article 2 ECHR.

The police apply this high threshold when dealing with calls for service because it reflects the extent of the police's duty to act. This will identify the risk foreseen and prioritise the threat anticipated. It will also focus attention and available resources on the most serious concerns, which clearly meet the high threshold and legislative powers.

Guidance will be followed when a call for service is received. All CFW calls for service are recorded in an incident log, irrespective of whether it is or is not resourced. This ensures that all calls are auditable, retrievable and able to be recalled should it be required.

A process map is available to identify those calls that clearly meet the threshold for police intervention. There are specialised processes depending on whether the caller is a private individual (Appendix 2) or a partner agency (Appendix 3).

### **3.5.3 Is it a medical emergency?**

Guidance from the ambulance service is that, where possible, callers at the scene of an incident should speak directly to their service to obtain the best support and advice. Accordingly, the police will:

- Advise the caller that they must ring for an ambulance, if practicable - otherwise the police will ring one for them.
- That no other action will be taken by the police, unless it is mandated for the reasons set out above.
- The National Decision Model is required to assess any other issues relevant to the situation.

#### **3.5.4 Is a child at risk of significant harm?**

Obtain full details and create a log for consideration by dispatch.

Special care is required when assessing risks to children. They are usually vulnerable and special concern must be exercised to ensure children's best interests are protected.

If there is an immediate and significant risk to a child then the default for us would be deployment. If the risk is not immediate or likely to cause significant harm of any kind, then this is where we can look to the most suitable agency to put appropriate safeguarding measures in place.

#### **3.5.5 Is the person suspected to have a mental health problem?**

Cases involving mental health issues can require the support of police officers using their powers under the Mental Health Act and the Mental Capacity Act as well as following the guidance within the Joint Agency Protocol for the Partnership Delivery of Mental health Services across Lancashire.

Where a CFW request is made, the Mental Health Toolkit will be accessed, which provides specific guidance on responding on behalf of a partner agency and private individuals.

#### **3.5.6 Has a crime been committed?**

A CFW call can often be associated with a suspected crime and the police have a clear duty to investigate crime. In these circumstances the police will respond to the request so that any investigation can be managed as efficiently and effectively as possible. Contact Management will:

- Create a log for dispatch and grade using the National Decision Model.

Just because the police investigate a crime that is not to be taken as assumption of any care towards a person(s).

### **3.5.7 Is this a missing person report?**

Cases involving missing persons are subject to specific policies which will be followed by Contact Management when taking the initial call. It is often the case that CFW reports become missing person enquiries once initial actions have been completed. The missing person's guidance gives clear instructions on what actions are required by reporting agencies or members of the public and when a CFW case is designated as a missing person enquiry.

## **3.6 Partner Agency or member of the Public Requesting a CFW Check**

### **3.6.1 Call for service from a partner agency/statutory body:**

A call for service from a partner agency may indicate that the duty of care of the individual concerned is within that partner agency's remit. If so, the partner agency retains that responsibility and should take all necessary steps to ensure the citizen's care and welfare. If this requires a welfare check to be carried out, it is the partner agency's responsibility to do so and any deficiency in their ability to carry this out should be brought to the attention of their manager. Any deficiency in the partner agency's ability to carry out a welfare check does not make the situation a police matter and in these circumstances the police will not attend.

There are a range of non-health partners who may be unable to carry out a CFW check and in these circumstances the police will consider all the information available before deciding whether there is a need for them to do so.

If the threshold for the police to attend is not met, the partner agency will be informed the police will not be attending, but advised to call back immediately should more information become available or the situation changes in a way that requires the police to re-evaluate their decision.

It is important to place responsibility on the other agencies to bring relevant information to the police's attention.

### 3.6.2. Call from a member of the public requesting a CFW check:

It is useful to recognise and distinguish between a general member of the public and a family member who call police for assistance or expresses concern for a person. This is in order to accurately assess the information as a family member will likely have a detailed history of the person they are calling about and this can assist with decision making.

The caller may be a Good Samaritan or well-meaning member of the public acting in good faith or exercising their public-spirited duty. It is of the utmost importance to maintain trust and confidence in the ability of the police to meet their needs and to be seen as sympathetic and engaged with our communities.

In the first instance the police will establish all the facts, so far as possible, from the caller and consider if another partner agency is better placed to give support and assistance. If so, the caller will be signposted to that partner agency and given sufficient information and contact details to do so themselves. If due to circumstances beyond their control the caller is unable to gain support from a partner agency and they are unable to do their own CFW check the police may take on that responsibility. Whether the police do take that responsibility will depend on the facts known at that time.

In such circumstances, the police will create a log and using the National Decision Model grade for dispatch to resource in the most appropriate way. The caller will be informed the police will be attending to carry out a CFW check and report back to them their findings.

## 3.7 Legal Powers

### 3.7.1 Common Law

It is important to note that in the context of CFW checks, **Police have no general common law responsibility for 'safety' or 'welfare' of members of the public.** The central principle is that police will respond to requests to carry out a 'welfare check' ONLY when they engage the core duties of police:

- To prevent and detect crime
- To keep the Queen's peace, and
- To protect life and property.

The carrying out of this type of check is simply the discharge of the general duty to investigate crime and perform other core policing functions. It is not an assumption of care for the safety of any particular individual.

### 3.7.2 Article 2 ECHR (European Convention on Human Rights)

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".

There are two main aims to this convention right – namely

- A prohibition on the state from taking a life and
- A positive duty placed upon the state to protect life

### 3.7.3 Article 3 ECHR (European Convention on Human Rights)

"No one shall be subjected to torture or to inhumane or degrading treatment or punishment".

Conduct qualifying under Article 3 may include being subjected to serious violence/serious injury, being the victim of sexual offending.

### 3.7.4 PACE (Police and Criminal Evidence Act) 1984 – Section 17

17(1) Subject to the following provisions of this section, and without prejudice to any other enactment, a constable may enter and search any premises for the purpose

e) of saving life or limb or preventing serious damage to property (see notes iv and vi below).

iv) Section 17(1)(e) life and limb refers to humans only but animals can be property.

vi) See below for the case of *R v Syed* which is an important case for any officer using the power under section 17(1)(e).

In the case of *Syed v DPP [2010]* the High Court ruled that this provision *did not justify entry where there was a general concern for the welfare of someone within the premises* and therefore officers were not in the execution of their duty when purporting to rely on s17 to force entry against the wishes of the person who answered the door.

Mr Justice Collins said:

*“It is plain that Parliament intended that the right of entry without any warrant should be limited to cases where there was an apprehension that something serious was otherwise likely to occur, or perhaps had occurred, within the house....Concern for welfare is not sufficient to justify an entry within the terms of section 17(1)(e). It is altogether too low a test.*

*I appreciate and have some sympathy with the problems that face officers in a situation such as was faced by these officers. In a sense they are damned if they do and damned if they do not, because if in fact something serious had happened, or was about to happen, and they did not do anything about it because they took the view that they had no right of entry, no doubt there would have been a degree of ex post facto criticism. But it is important to bear in mind that Parliament set the threshold at the height indicated by section 17(1)(e) because it is a serious matter for a citizen to have his house entered against his will and by force by police officers.”*

### 3.7.5 Use of Force

#### S3 Criminal Law Act

“A person may use such force as is reasonable in the circumstances in the prevention of crime, or in the effecting or assisting in the lawful arrest of offenders or suspected offenders, or of persons unlawfully at large”

Police powers do not extend to physical intervention with persons an officer considers to having mental health issues (MCA 2005 – Officers cannot make this assumption). The exception is under s136, in a public place or police station.

### **S117 PACE**

Power of constable to use reasonable force.

Where any provision of this Act—

- (a) confers a power on a constable; and
- (b) does not provide that the power may only be exercised with the consent of some person, other than a police officer, the officer may use reasonable force, if necessary, in the exercise of the power.

### **Mental Health Act – Section 136**

If a person appears to a constable to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other person:

Remove the person to a place of safety within the meaning of section 135, or  
If the person is already in a place of safety within the meaning of that section, keep the person at that place or remove the person to another place of safety.  
The power of a constable under subsection (1) may be exercised where the mentally disordered person is at any place, other than:

Any house, flat or room where that person, or any other person, is living, or  
Any yard, garden, garage or outhouse that is used in connection with the house, flat or room, other than one that is also used in connection with one or more other houses, flats or rooms.

For the purpose of exercising the power under subsection (1), a constable may enter any place where the power may be exercised, if need be by force.

Before deciding to remove a person to, or to keep a person at, a place of safety under subsection (1), the constable must, if it is practicable to do so, consult:

A registered medical practitioner

A registered nurse

An approved mental health professional or

A person of a description specified in regulations made by the Secretary of State.

A person removed to, or kept at, a place of safety under this section may be detained there for a period not exceeding the permitted period of detention for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved mental health professional and of making any necessary arrangements for his treatment or care.

In subsection (2), “the permitted period of detention” means –

The period of 24 hours beginning with –

In a case where the person is removed to a place of safety, the time when the person arrives at that place;

In a case where a person is kept at a place of safety, the time when the constable decides to keep the person at that place, or where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.

A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the permitted period of detention mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

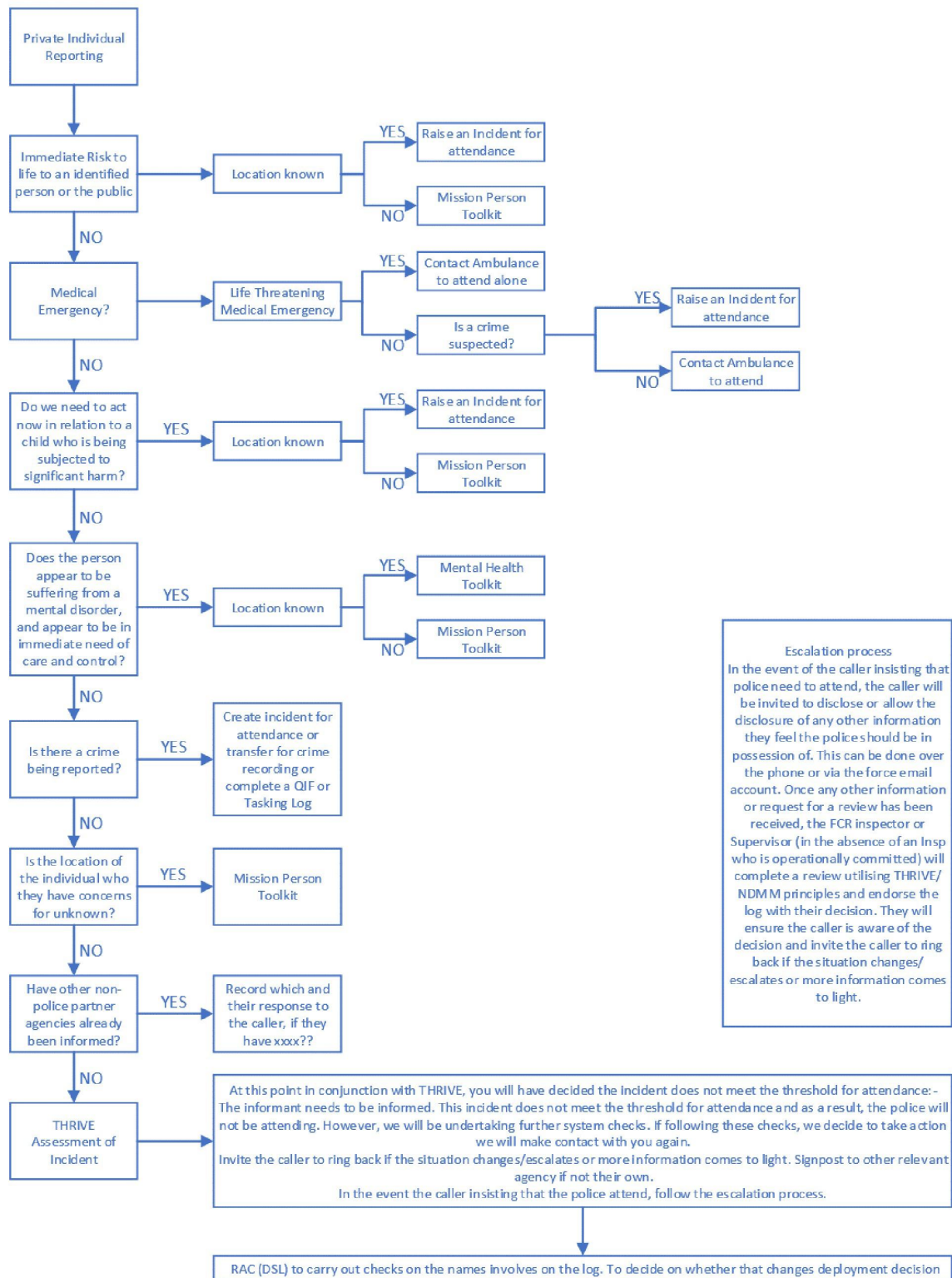
A person taken to a place of safety under subsection (3) above may be detained there for the purpose mentioned in subsection (2) above for a period ending no later than the end of the permitted period of detention mentioned in that subsection.

This section is subject to section 136A which makes provision about the removal and taking of persons to a police station, and the keeping of persons at a police station, under this section.

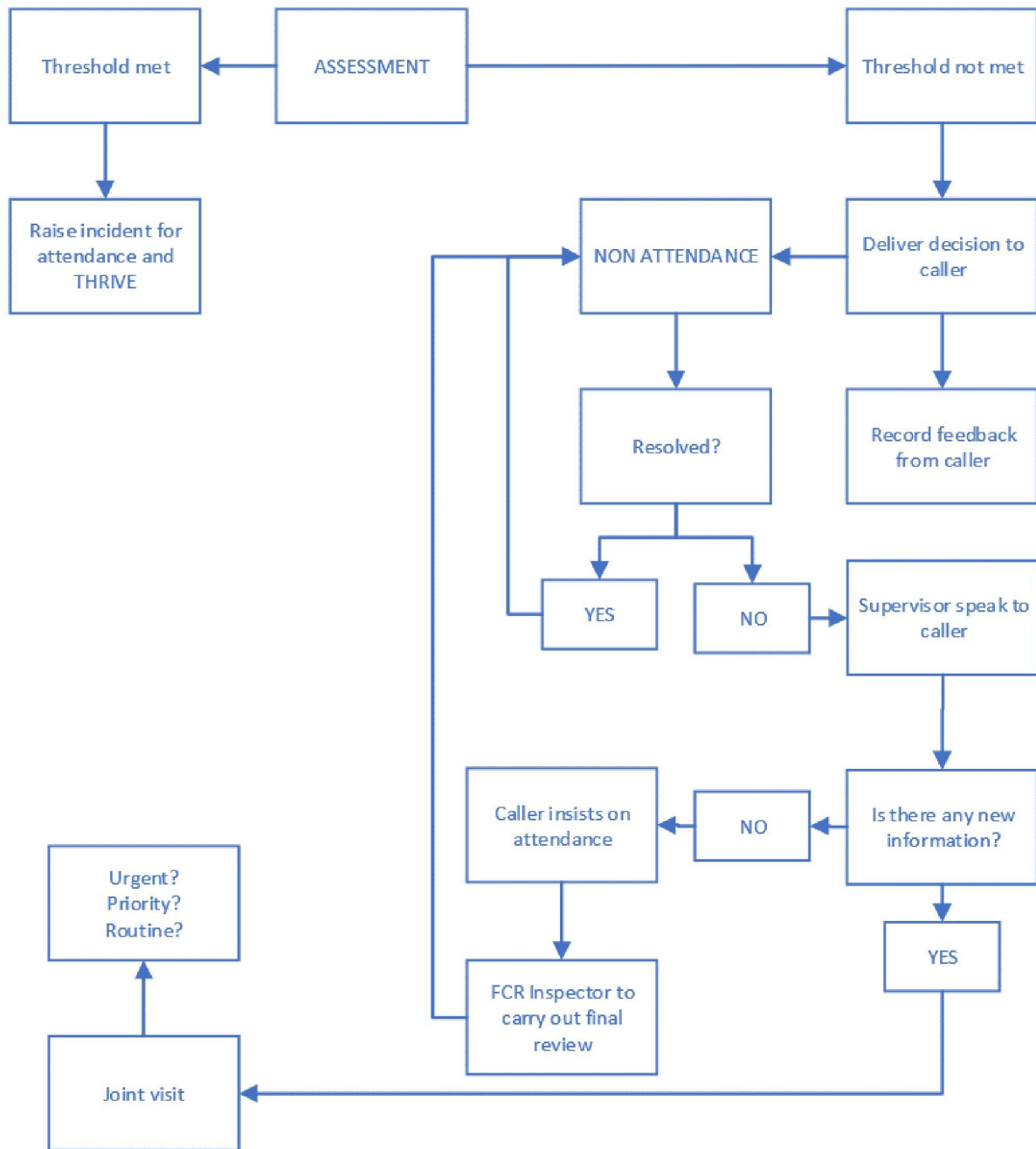


## 4. Documents

### 4.1 Request for CFW Visit – Private Citizen



## 4.2 Request for CFW Visit – Partner Agency



#### 4.3 **Governance and call-taking role**

The Constabulary seeks to promote professional decision making based on a rationale and modelled approach through the National Decision Model. Decision making is supported by Policy, Guidance, Experience and Leadership.

All those working within the Constabulary, from the Chief Constable to all levels of officer (Staff or Police) should be open to challenge and where they think a decision is flawed, they should challenge (appropriately).

##### **Call-taker**

When a call is received into Contact Management the first decision made is that by the Call-taker. They are trained, have experience and employ a rationale decision making tool – National Decision Model. This supports their decision making and ensures that calls that are non-police issues are dealt with appropriately.

##### **Dispatcher**

The dispatcher will receive the details of an incident from the call-taker that will include an assessment in respect of response (Schedule, Priority or Urgent) based on the NDM. It is correct that the dispatcher should assume the detail on the log correct. The dispatcher should then consider the decision and before dispatching a resource ensure the incident is appropriate and the deployment grade suitable. Dispatchers should always review an incident and be prepared to change it as necessary (again based on a rationale).

##### **Supervisor**

Dispatchers, if in doubt, should share the decision making with their Supervisor, the Centre Manager or FIM (the FIM will always have the final decision in the case where agreement cannot be reached).

Staff should remember sending police officers to issues in which they have no powers; little training or understanding (i.e. Mental Health) creates a significant risk for the officer, the individual concerned, the call-taker and controller as well as the

organisation. The presumption that to deploy if in doubt as a positive act is flawed. We should always seek to send the most appropriate resource

**5. References (if applicable)**

**6. Revisions**

A summary list of amendments between minor releases of each document to aid staff to see what has been updated (this is not a cut and paste copy of the sections that have been amended). As an example;

1.2	
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Prior to the development or review of corporate strategies, policies or procedures, the owning division or department must consult with the Constabulary Policy Officer based in Corporate Development. The Policy Officer will provide appropriate management advice and support throughout the process, helping to determine the most appropriate route for development of a corporate document.

## 7. Appendices

### Toolkit for RCRP – CFW

*Quick Guides for CFW*

# RCRP - MH - 7 - Walking out of Health Care Facilities

### Walking out of Health Care Facilities

RCRP identifies someone who has walked out of health care facilities as a CFW call.

THIS TYPE OF CALL WILL NOT BE CLASSED AS A MISSING PERSON UNLESS AND UNTIL ALL REASONABLE ENQUIRIES HAVE BEEN MADE BY THE ESTABLISHMENT REPORTING
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This policy relates to walking out of ED, a GP Surgery and Mental Health establishments as well as any other NHS facility where a patient may have attended for treatment, whether medical or psychological.

*It should be assumed that a patient has capacity to leave a health care facility until proven otherwise.*

*The police service do not have the power to bring patients back to a health care facility against their will unless they are under arrest (i.e. have committed a crime) or have been placed under section 136 (authorises a police officer to remove a person to a place of safety if he believes that person is suffering from a mental illness).*

RCRP will apply the thresholds for police attendance in line with Force Policy;

**Immediate risk to life;**

If medical, tell the caller to call an ambulance  
(see below)

**Health matter;**

Call an ambulance

If behaviour posing immediate risk to self or  
others (suicide), police will attend

~~Ambulance may not attend if it is not known  
if ambulance will not attend a medical matter or  
where the person is. Have they gone home?  
are unable to resource the police will not attend  
National research indicates 90% of people who  
leave ED unannounced go home and are found  
safe and well.~~

Action: See next box

**Risk of significant harm to a  
child / especially vulnerable  
people (elderly and or  
dementia)**

RCRP applies as above. NDM may require police  
attendance

Where reasonable efforts to locate someone who has walked out of a health care facility have not been successful they may be reported as a missing person. The police will follow the policy for managing missing persons in these circumstances.

## RCRP - CFW - (MH) - 1 - Agency or Public Calling

### Concern for Welfare Mental Health – Agency Calling

What is the concern and why do they think there is a role for the Police.

A request to check a person's welfare due to their mental health is the responsibility of the agency calling.

The Police do not carry out welfare checks on people who are or have recently been a patient at a mental health or main hospital **UNLESS THERE IS AN IMMEDIATE RISK TO LIFE.**

Any request from an agency to check a person's mental health will be based on previous history and risk factors. Some agencies cannot carry out the check so the police may do so after considering all the information available.

Such examples would be Department of Works and Pensions, Coastguard.

AN IMMEDIATE RISK TO LIFE MUST BE PRESENT

### Concern for Welfare - Mental Health – Member of the Public Calling

Can the caller attend the person's location to check on their welfare? If not is there a justified reason for them not going.

Obtain as much previous history as possible about the person - medication, risk factors etc.

Establish why specifically they are concerned about the person and what they have done to try and resolve the situation themselves.

If the concern is a medical ask the caller to ring an ambulance or we will ring one for them. See Suicidal Ideation guidance

If you are satisfied this matter cannot be resolved without police attendance generate a SmartSTORM Incident, conduct relevant checks and transfer to dispatch.

## **RCRP - CFW - (MH) - 2 - Suicidal Ideation**

### Suicidal Ideation

Suicidal Ideation means thoughts about suicide.

Callers talking about harming themselves through suicide where no harm has or is about to take place should be directed to ring the ambulance service where a mental health professional is available.

If they are unable to ring an ambulance the police will do so for them.

The Police do not attend calls in the <u>HOME</u> where people have thoughts of suicide and these should be an ambulance response.
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Responses available to the call taker:

Yes, the police will attend

## RCRP - Police Involvement - End Statement

Please Note - to be used only in conjunction with the Right Care, Right Person process

At this point in conjunction with the NDM you will have decided that the incident does meet the threshold for attendance.

The caller needs to be informed, as follows:

***“This incident does meet the threshold for attendance and as a result the police will assist you in this matter”.***

- Document what you have arranged / agreed with the caller.
- Who is the lead agency in any response?
- More than likely it will not be us—we will just be assisting.
- Clarify this!
- Invite the caller to ring back if the situation changes or escalates.
- Signpost to other relevant agency if not their own:
  - Child Welfare concerns outside of significant harm – Local Authority Social Services.
  - Medical Emergency – None Life threatening - Ambulance
  - Mental Health Problems – Crisis Team, CMHT, IRS

No, the police will not attend

## RCRP - No Police Involvement - End Statement

Please Note - to be used only in conjunction with the Right Care, Right Person process

At this point in conjunction with the NDM you will have decided that the incident does not meet the threshold for attendance.

The caller needs to be informed, as follows:

***“This incident does not meet the threshold for attendance and as a result the police will not be attending”.***

PCRO to close the Log remembering to add the relevant tags and qualifiers.

- Invite the caller to ring back if the situation changes or escalates.
- Signpost to other relevant agency if not their own:
  - Child Welfare concerns outside of significant harm – Local Authority Social Services.
  - Medical Emergency – None Life threatening - Ambulance
  - Mental Health Problems – Crisis Team, CMHT, IRS

The police may attend

## **RCRP - Maybe Police Involvement - End Statement**

**Please Note - to be used only in conjunction with the Right Care, Right Person process**

At this point in conjunction with the NDM you will have decided that the incident may meet the threshold for attendance:

The caller needs to be informed:

***“At this time, I am not sure if the incident meets the threshold for attendance and as a result, I will be asking my Supervisor to check for me. We will be undertaking further checks. Following these checks, we will make contact with you again.”***

**Transfer the Incident to the Supervisor and inform them without delay.**

· Invite the caller to ring back if the situation changes / escalates or more information comes to light.

· Remind the caller to consider other relevant agencies:

- Child Welfare concerns outside of significant harm – Local Authority Social Services.
- Medical Emergency – None Life threatening - Ambulance
- Mental health problems – Crisis Team, CMHT, IRS

**Appeal** – Police decision is no but caller is unhappy and asks for a supervisor review

## **RCRP - No Police Involvement APPEAL - End Statement**

**Please Note - to be used only in conjunction with the Right Care, Right Person process**

At this point in conjunction with the NDM you will have decided that the incident does not meet the threshold for attendance; but the caller is insisting the Police attend.

The caller needs to be informed, as follows:

***“This incident does not meet the threshold for attendance and as a result the police will not be attending. However, I will refer the matter to my Supervisor and we will ring you back”.***

**Transfer the SmartSTORM log to Supervisor and inform them of the log without delay**

- Invite the caller to ring back if the situation changes or escalates.
- Signpost to other relevant agency if not their own:
  - Child Welfare concerns outside of significant harm – Local Authority Social Services.
  - Medical Emergency – None Life threatening - Ambulance
  - Mental Health Problems – Crisis Team, CMHT

AWOL

## **RCRP - MH - 1 - AWOL**

### AWOL (Absent Without Leave)

Someone can only be AWOL if they are a Sectioned patient, such as;

Those who escape from a hospital – jump over the wall etc.

Fail to return from authorised leave – S17 leave

Run away from staff when on escorted leave – S17 leave

Fail to return to hospital after a Community Treatment Order (CTO) has been revoked

Conditionally discharged restricted patients, whom the Secretary of State for Justice has recalled to hospital (s42 warrant)

Guardianship patients (s7 MHA) who are absent without permission from the place where they are required to live by their guardian

**MAKE SURE THEY ARE A SECTIONED PATIENT**

They are retaken under S18 MHA

The hospital manager has the legal responsibility to return an AWOL patient. All staff authorised by the hospital to return a patient back to the hospital have the same powers as the police under S18 of the Mental Health Act.

MH services must tell the police if an AWOL patient is one of the following;

1. Dangerous
2. Especially Vulnerable (not just vulnerable)
3. Subject to Part III of the MHA (placed in hospital by the courts)

**WE NEED TO CLEARLY UNDERSTAND WHY A PERSON IS 1 OR 2 ABOVE. ASK THE CALLER TO EXPLAIN IN FULL. ASK FOR DETAILS IF THEY ARE 3 ABOVE**

**ANYONE REPORTED AWOL AS ABOVE WILL BE A 'MAYBE' LOG TO \*\* FOR CHECKS AND FOR THE ATTENTION OF A SUPERVISOR**

**IF THE PATIENT HAS BEEN GIVEN S17 LEAVE OR HAS HAD THEIR CTO REVOKED THE POLICE WILL NOT ASSIST UNLESS a, b or c BELOW APPLY**

The police will consider support to MH services to return their patient in the following circumstances;

- a. Following all reasonable enquiries and efforts by the hospital the Patient cannot be found. In these circumstances the patient should be reported 'missing'.
- b. The Patient's whereabouts is known but they cannot be returned without the use of a warrant to gain entry to a premises (S135 (2) MHA). If the agency has obtained a warrant, the police may attend to assist them if the patient's refusal is current and live. Any past refusal must be retried by the hospital before the warrant will be used.
- c. The Patient's behaviour is so violent or aggressive towards hospital staff that they are unable to retake them without Police support.

The hospital manager should arrange transport for the patient back to hospital by ambulance, but where the patient is so violent, a police van could be used. In the circumstances of the use of a police van, Lancashire Police require a member of ambulance or hospital staff to travel in the police vehicle with the patient in accordance with the Codes of Practice of the Mental Health Act, wherever possible.

## **RCRP - MH - 3 - Retaking an AWOL MH Patient with a Warrant - S18 MHA**

Retaking an AWOL patient with a Warrant – S135 (2) Mental Health Act

Section 135 (2) MHA - Power to Force Entry to Premises to retake AWOL patient

Warrant obtained by MH services from Magistrate’s Court

Allows the police, no one else, to force entry to retake an AWOL patient.

Once inside the premises anyone authorised (see AWOL), doesn’t have to be the police, can use S18 to retake the patient.

If the agency has obtained a warrant, the police may attend to assist them if the patient's refusal is current and live. Any past refusal must be retried by the hospital before the warrant will be used.

The Police will assist in retaking a Patient using a warrant only in support of a suitably qualified and experienced mental health professional present at the scene.

<p><b>THE PATROL STAFF ATENDING WILL NEED TO KNOW THE FOLLOWING;</b></p> <p><u>Place, date, time the MH/ relevant staff are attending the address</u></p> <p>Intelligence – nominal and PNC Authorised mental health professional (AMHP) or relevant hospital staff attending for the AMPH - name/ number People in house Method of Entry required Dogs in the house Mental health history of the patient Transport afterwards</p> <p><b>INCIDENT TO DISPATCH WHERE CHECKS WILL BE DONE BEFORE DEPLOYMENT</b></p>

*Transport*

# **RCRP - MH - 4 - Transportation of MH Patients**

## Transportation of Mental Health Patients

Refer to the North west regional Policy and Guidance for transporting Mental health Patients.

Transport requests between hospitals for a patient who is sectioned will not be undertaken by Lancashire Police. The hospital will need to arrange secure transportation themselves.

Transporting highly violent or aggressive people is high risk and is not a role for police. The hospital should arrange a secure ambulance to do so.

## Transport requests after a Mental Health Assessment in the Community

If the AMHP is with the patient, normally at home and the application is completed and the person is liable to be detained under the MHA, they will arrange transport for the patient to a hospital by ambulance. The police may assist as per below;

The police will not consider transport requests unless the patient Poses a real risk due to their active Resistance, Aggression, Violence or risk of Escape (RAVE risk) and the MH staff or ambulance staff are unable to safely transfer to hospital in an ambulance.

In the circumstances of the use of a police van, Lancashire Police require a member of ambulance staff to travel in the police vehicle with the patient in accordance with the Codes of Practice of the Mental Health Act.

## **RCRP - MH - 2 - Absconder - Someone in Legal Custody who Escapes**

### Absconding from Legal Custody – Retake using S138 MHA

Escape from police or MH services detention after being detained under S135 or S136 but **before** being assessed by an Approved Mental Health Professional (AMHP)

The absconder can be retaken by the staff member who had custody of the Absconder immediately before they escaped, or a police officer or an Approved Mental Health Professional (AMHP).

Part II Absconders (from legal custody). Liable to be detained means an application for admission to hospital has been made, but the patient has absconded before arrival there

The power for Part II absconders (s2/3/4) lasts for the relevant time relating to that section from the date they abscond. Part II absconders may be retaken by the person who had immediate prior custody – this could be a constable or an AMHP.

Patients can also abscond before being received into Guardianship under s7 – this power lasts for 6 months from the date they abscond.

Patients subject to s37 (hospital order) or s37/41 (restriction order) if abscond before arriving at hospital may be redetained within 6 months (s37) or anytime (s37/41) after the date they abscond.

THE POLICE WILL ASSIST ONLY IF THERE IS AN IMMEDIATE RISK TO LIFE OF THE PATIENT OR ANOTHER PERSON, WHEN THEY HAVE NOT ESCAPED AFTER BEING DETAINED BY POLICE.
--

## **RCRP - MH - 5 - Assessment in the Community & at Home**

### Mental Health Act Assessment in the Home – Section 135 (1) Warrant

The AMHP (approved mental health professional) requires assistance assessing someone at home

Warrant is obtained by MH services from a Magistrate

We will assist in the execution of the warrant.

If MH services have been to court to obtain a warrant this means that they need the help of the police. The warrant gives the police the power to enter the property, if need be by force and also the power to restrain the patient and remove them to a place of safety.

The police are the only people who can execute this warrant.

Details to be obtained for the SmartSTORM Incident:

#### **THE PATROL OFFICERS WILL NEED TO KNOW THE FOLLOWING**

- Place, date, time the MH staff and relevant DR's are attending the address
  - Confirm presence of s135(1) warrant
  - Intelligence – nominal and PNC
  - AMHP name and mobile number
  - People in house
  - Method of Entry required
  - Dogs in the house
  - Mental health history of the patient
  - Transport afterwards
  - Place of Safety should the person require removing from the address

**INCIDENT TO DISPATCH AND CHECKS TO BE DONE BEFORE DEPLOYMENT**

## **RCRP - MH - 6 - Violence in a Mental Health Hospital**

### Violence in a Mental Health Hospital

What exactly is the incident?

What are the risks?

Who is at risk?

Why are they at risk?

Consider:

- Immediate Risk to Life and Limb
- Immediate Risk of Serious Harm
- Serious Damage to Property
- Hostages
- Offensive Weapons
- Any other risks

How does the caller expect the police to assist them to resolve the situation?

Copy the following to the SmartSTORM Incident and answer these questions on the Incident log;

1. What is the name of the staff member police will speak to on arrival?
2. What is the RV point for officers

Generate an Emergency log to Dispatch.

Add the following comments onto the Incident log;

NOTIFY OUTSIDE SUPERVISOR (Insp or Sgt) THAT OFFICERS ARE BEING DISPATCHED TO AN INPATIENT MENTAL HEALTH FACILITY

## RCRP - CFW - (MH) - 3 - DoLS

### Deprivation of Liberty Safeguards (DoLS)

DoLS are made as part of the Mental Capacity Act and are put in place when a person is unable to make a decision for themselves about certain aspects of their life. In police scenarios we are usually called to assist with moving or returning someone from a place to where they live. The DoLS will signify this is what should happen 'in the person's best interests' for their care and welfare.

If the Police are asked to assist social carers and partners with a person who is subject to (DoLS) the following must be adhered to.

The Police must ensure:

*1) A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.*

*2) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.*

*3) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.*

*This means:*

*If the Police help to take someone home, for example, this must be done with the least amount of force and or restraint possible so as not to restrict someone's rights unnecessarily.*

Before taking action the police will need to ask:

1. What is the request?
2. What does the DoLS compel the person to do, i.e. live at a certain care home?
3. Does the person lack capacity?
4. Is the request in the person's best interests for their care and welfare?
5. Will the use of restraint be a proportionate response to the likelihood of them suffering harm?
6. Is there a less restrictive way to achieve the aim rather than using restraint?

If the answer is 'YES' to questions 3, 4 and 5 and 'NO' to 6 (i.e. have all other options been explored before potential use of police force?), then the police would be able to assist. It will be for the officers attending the scene to properly assess all the above before taking action to move a person using proportionate restraint, to the place required by the DoLS.

# RCRP - Community Treatment Order (CTO)

## Community Treatment Order (CTO) Recall to Hospital

A patient who is on a Community Treatment Order (CTO) may be recalled back to the hospital if they fail to follow their care plan. If they refuse they are considered to be AWOL after serving notice of recall.

Mental Health Services have the same power under S18 of the Mental Health Act as the Police. Mental Health Services should return the patient back to the hospital on their own?

We may assist in returning a patient who has been recalled if certain circumstances apply.

1. Mental health services must serve the recall notice on the patient explaining that they have been recalled to the hospital?
2. This can be in person - If the notice is delivered in person the recall is effective immediately.
3. It can also be delivered to the patients last known address - If it is delivered to the address, what time and date was this delivered?  
  
(If CTO recall served by personal deliver – effective the next day  
If CTO recall served by first class post – effective two working days later, ie: exclude weekends / bank holidays.)

The recall is not legally enforceable until one minute past midnight on the following day. This is to give the patient time to return home and see the recall notice.

Before the Police will become involved;

If Mental Health Services have attempted but there is active Resistance, Aggression, Violence or risk of Escape (RAVE risk) then the police will assist.

However, a S135(2) warrant will be required if the patient's whereabouts are known but we cannot gain access, e.g. they have returned to their home address but are refusing to leave. The MH services will obtain the warrant. The mental health services also need to organise an ambulance to transport the patient and should be in attendance at the same time as the police are merely assisting in this matter.

## Partners

# Reasonable Actions To Be Taken By Partners

### Adults

- Checking the person's care plan or other relevant information
- Calling the person's mobile phone as well as any other contact numbers
- Contacting appropriate next of kin
- Searching the immediate area
- Informing other staff members
- Speaking to other patients or service users to establish any recent events that may be relevant
- Check CCTV recordings to check for possible sightings or signs that they have left the premises
- Recording the actions that have been taken, people who have been spoken to, and the rationale for any decisions about risk and when to escalate to another agency or not.
- Checking the person's home address if appropriate.

### Children

- An initial search of the child's home and any grounds/ surrounding area
- Attempting to contact the child's friends, family members and known associates (where appropriate) to establish the child's whereabouts.
- Carers making the enquires should keep a record of all the actions that they undertake, which should also include notifying the child's social worker as soon as possible after realising a child's whereabouts is unknown.
- Arrangements about contacting a child's family if the child's whereabouts is unknown to the carer should be outlined in the placement plan.
- If a child is missing outside of office hours, the carer should notify the Children's Services Out of Hours duty team (or equivalent) in the responsible, and where applicable, 'host' local authority; and if relevant, of their return.
- Where a child is placed outside of their home local authority area, the carer /the child's social worker/home local authority should also liaise with the 'host' local authority's Children's Social Care department regarding the child being missing, and of their return.

Toolkit Question flow

INDIVIDUAL REPORTING

1. Is there an immediate risk to life or of serious harm to an identified person or the public?
  - a. Does the risk relate to a medical only issue?
    - i. Is their location known?

Yes. Deploy

No. Does this fit the definition of a missing person?
    - ii. Is there an immediate and significant risk to the partner agency? Or a requirement for police to attend?

No. Transfer call to ambulance SEE END STATEMENT

Yes. Deploy (Ambulance as a lead agency)
2. Does the concern relate to a medical issue?
  - a. Is there a crime reported or suspected?

Yes. Contact ambulance, grade and consider deployment

    - i. Do we need to act now in relation to a child being subjected to or is at imminent risk of significant harm?

No. Caller to contact ambulance SEE END STATEMENT

      1. Is their location known?

Yes. Call ambulance and deploy

No. Call ambulance and deploy, consider if this fits the definition of a missing person
3. Is there a crime reported or suspected?

Yes. Grade, consider deployment and crime class
4. Do we need to act now in relation to a child being subjected to or is at imminent risk of significant harm?
  - a. Is their location known?

Yes. Deploy

No. Deploy and consider if this fits the definition of a missing person
5. Does the concern relate to a mental health issue?
  - a. Is their location known (to the caller or professional?)

No. Does this fit the definition of a missing person? Consider deployment

    - i. Is there an immediate and significant risk to the partner agency?

Yes. Deploy (Mental health service as lead agency)

No. Refer to MH services. Consider IRS, CAMHS, crisis team, SEE END STATEMENT
6. Is the location of the individual who they have concerns for unknown?

Yes. Consider if this fits the definition of a missing person? What is the risk? Consider deployment?
7. Have other non-police partner agencies been informed?

Yes. Record which agencies and their response to caller, Consider if we need to recall them.

PARTNER AGENCY

8. Is there an immediate risk to life or of serious harm to an identified person or the public?
- a. Does the risk relate to a medical only issue?
    - i. Is their location known?
      - Yes. Deploy
      - No. Consider if fits the definition of a missing person/ deploy
    - ii. Is there an immediate and significant risk to the partner agency? Or a requirement for police to attend?
      - No. Transfer call to ambulance SEE END STATEMENT
      - Yes. Deploy (Ambulance as a lead agency)
9. Does the concern relate to a medical issue?
- a. Is there an immediate risk to the partner agency?
    - Yes. Deploy (Ambulance as lead)
  - b. Is there a crime reported or suspected?
    - Yes. Contact ambulance, grade and consider deployment
    - No. Do we need to act now in relation to a child being subjected to or is at imminent risk of significant harm?
      - No. Caller to contact ambulance SEE END STATEMENT
      - 1. Is their location known?
        - Yes. Deploy (Ambulance as lead)
        - No. Call ambulance and deploy, consider if this fits the definition of a missing person
10. Is there a crime reported or suspected?
  - Yes. Grade, consider deployment and crime class
11. Do we need to act now in relation to a child who is being subjected to or is at imminent risk of significant harm?
- a. Is their location known
    - Yes. Deploy
    - No. Consider if this fits the definition of a missing person/ deploy
12. Does the concern relate to a mental health issue?
- a. Is their location known (to the caller or professional?)
    - i. Have reasonable attempts been made to locate the individual?
      - No. Caller to make enquiries, THRIVE /NDM assessment of log and consider deployment
      - Yes. Consider incident class and risk assessment
    - ii. Is there an immediate and significant risk to the partner agency?
      - Yes. Deploy (Mental health service as lead agency)
      - No. Refer to MH services. Consider IRS, CAMHS, crisis team, SEE END STATEMENT
13. Is the location of the individual who they have concerns for unknown?
- a. Have reasonable attempts been made to locate the individual?
    - Yes. Consider if this fits the definition of a missing person
    - No. Caller to make enquiries, THRIVE /NDM assessment of log and consider deployment

# Right Care Right Person

## POLICY DECISION Police Intelligence System Checks

**ACC Russ Procter**  
**Chief Officer Sponsor for Right Care, Right Person**

### 1. Introduction

- 1.1 I am Assistant Chief Constable Russ Procter, the Chief Officer sponsor for the Right Care, Right Person (RCRP) Initiative. This document records my policy decision and rationale in relation to whether Lancashire Constabulary will conduct intelligence checks prior to making a decision relating to deployment for incidents relating to Concern For Welfare logs.
- 1.2 The policy decision specifically relates to instances where, when using the Right Care Right Person toolkit, Force Control Room (FCR) Contact Officers determine that there is no prima facie legal duty for Lancashire Constabulary officers to deploy to conduct a welfare check following a call for service. The policy decision relates to intelligence checks only and not around deployment.
- 1.3 I am mindful of the importance of this decision and have taken a great deal of time to explore the legal arguments around conducting intelligence checks. I have previously asked for other forces to be contacted to understand their stance on intelligence checks and any legal basis for their approach. In particular I have considered the legal advice provided to Humberside Police and the separate advice given to Lancashire. This decision has not been taken lightly.

### 2. Information / Intelligence - Background to Right Care Right Person

- 2.1 A significant amount of work has been undertaken to prepare Lancashire Police and Partners for the implementation of RCRP which is outlined in Appendix A.
- 2.2 The Force commenced consultation with a wide range of health and social care partners in the early part of 2021 to establish an approach to ensure that the right agency with the right training and experience attends Concern for Welfare (CFW) and Mental Health calls for service. This resulted in the creation of a multi-agency Task and Finish Group, created in December 2021, which agreed to a phased approach to implementing RCRP during 2022.
- 2.3 Key work streams were identified and a timeline for implementation agreed as per figure 1 below:

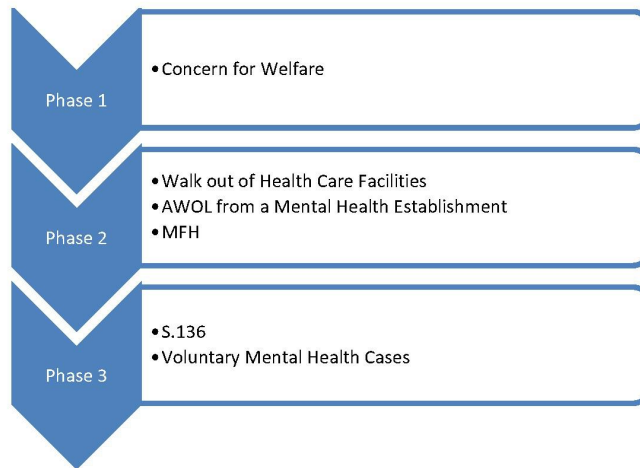


Figure 1: Right Care Right Person phasing

- 2.4 The process has been overseen by a Gold Group Chaired by myself as the Chief Officer lead, with frequent updates to the Chief Officer Group. The work around RCRP has resulted in the creation of a number of new policies around Concern for Welfare, Missing Persons and a Police & Partners Memorandum of Understanding (MOU). Specific training for RCRP has been provided to all FCR call takers and dispatchers in readiness for the change to our operating model, as well as training for all frontline staff and appropriate internal messaging for the whole force.
- 2.5 RCRP is predicated on the right service providing support to people who call the police seeking a welfare check or for a mental health matter. The role of the FCR call taker is to assess the circumstances using a newly devised Toolkit, the National Decision Making Model (NDM) and/or THRIVE, to decide whether the police should attend or whether another agency is better trained, equipped and experienced to do so. The current options available to the call taker under RCRP following an assessment of the circumstances are:-
- A police response required – log with system checks and staff deployed  
(The Police will take on responsibility for dealing with this call – A ‘yes’ response to the caller)
  - Police may be required to attend, possibly with partners – system check and supervisor decision  
(Further enquiries are required by the police which will include system checks and consultation with other agencies to assess which partner has the right skills and experience to respond – ‘Maybe’ response to the caller)
  - Not a police matter – No checks required, log closed, no deployment  
(The request does not fall within the core roles of policing and no Article 2 or 3 HRA exists – A ‘no’ response to the caller)
- 2.6 Partner agencies and private citizens contact the police service requesting welfare checks (concern for welfare) on persons whom they have concerns for, in the belief that police are the appropriate agency and responsible or liable for the welfare of identified individuals deemed to be vulnerable or at risk.
- 2.7 ‘Welfare Check’, ‘Safe and Well’ check and ‘Concern for Safety’ are all terms to describe a

request to ensure the safety and wellbeing of an individual. They originate from members of the public and partner agencies and seek to task the police with visiting a location to see if someone is okay.

- 2.8 'Walk out of Health Care Facilities' covers non mental health care facilities and mostly relates to acute hospitals. This generally occurs where someone leaves a healthcare facility prior to assessment or treatment.
- 2.9 'AWOL' relates to circumstances whereby a patient is absent without leave from a mental health establishment. 'Absent voluntary mental health patients' relates to informal patients who have absented themselves from mental health care.
- 2.10 'Police System Checks' relates to the process of checking the information or intelligence held by Lancashire Police within its own system, Connect, or on the Police National Computer (PNC).
- 2.11 Before declining the request without reference to a supervisor a policy decision is required on whether to carry out a 'system check' of information held by Lancashire Police or on the PNC.

### **3. Threat Assessment**

- 3.1 I am conscious that there are a number of implications and risks which I need to be minded of when making this decision including:-
  - The subject who the welfare check relates to may have already come to harm or may come to harm in the future
  - There may be a risk of harm caused to others (where they pose a danger to others)
  - The impact on family or relatives, resulting from any significant harm or loss of life to either the subject of the call or a third party
  - If the policy is not clear for members of staff within Lancashire Police they will be vulnerable to adverse scrutiny in any subsequent inquest or IOPC investigation
  - The reputation of the force could be harmed, eroding trust and confidence in the force and impact on police legitimacy
  - If the position of the force is not clear with partners, we could find ourselves in a situation whereby neither agency takes action as they think the other agency has responsibility (particularly if this is not made clear by the end of the call)
  - Financial implications should an injured party or their relatives take legal action over a perceived failure by Lancashire Police

### **4. Powers and Policy**

- 4.1 The aim of this policy decision is to determine whether, where a welfare check is requested on a member of the public that has walked out of a health care facility and that welfare check does not fall within the core roles of policing, Lancashire Police should conduct intelligence checks of police systems to determine whether they should deploy a resource or not.
- 4.2 In making a decision I have taken into account of the following:-

#### ***Legislation***

[Human Rights Act 1998/European Convention of Human Rights.](#)

[Equality Act 2010](#)  
[Crime and Disorder Act 1998](#)  
[Mental Health Act 1983](#)  
[Mental Capacity Act 2005](#)  
[Health and Safety at Work etc. Act 1974 and associated Regulations](#)  
[Data Protection Act 2018](#)  
[Freedom of Information Act 2000](#)  
[Common Law Powers](#)

### **Caselaw**

Numerous sources of case law including:

[Osman v United Kingdom \[1998\]](#)  
[Sherratt v Chief Constable of Greater Manchester Police \[2018\]](#)  
[Watts v UK \[2010\]](#)  
[Öneryildiz v Turkey \[2004\]](#)  
[Rabone v Pennine Care NHS Trust \[2012\]](#)

### **Other relevant Policy & Procedures**

[College of Policing - Risk Management 2013](#)  
[Lancashire Constabulary Missing Person Policy](#)  
[Lancashire Constabulary Child Protection Policy](#)  
[Lancashire Constabulary Attendance Policy](#)

### **When do the Police owe a Duty of Care to the Public?**

- 4.3 The core duties of police at common law are to:-
- Prevent and detect crime
  - Keep the Queen's peace, and
  - Protect life and property
- 4.4 The police are not normally under a duty of care to protect individuals from a danger of injury which they have not themselves created, including injury caused by the conduct of third parties, in the absence of special circumstances such as an assumption of responsibility (per Lord Reid in *Robinson v Chief Constable of West Yorkshire Police* [2018] AC 736 at §70).
- 4.5 The police do not generally owe a duty of care at common law to protect individuals from harm, either harm caused by themselves or others.
- The police may owe a duty of care to protect persons from harm where the police have assumed responsibility to care for them, or where the police have created (directly or indirectly) the risk of harm.
- 4.6 Police can owe duties under the Human Rights Act 1988 to protect individuals from harm caused by others, or harm caused by the person themselves.
- The police owe responsibility to take all reasonable measures to assist where there is a real and immediate risk to the life of a person (Article 2), or a real and immediate risk of that person being subject to serious harm or other inhumane treatment (Article 3). The risks of harm where a duty will arise on the police will generally, but not always, be from the criminal acts of a third party.

4.7 This policy does not seek to avoid the police's responsibility to deal with core policing matters. The following are core roles of the police and any concern for welfare request that includes one of the following will be considered appropriate for police attention:-

- Prevent and detect crime
- Keep the Queen's peace, and
- Protect life and property

***Article 2 ECHR – The Right to Life (Absolute Right) and Article 3 ECHR – Right to not be subject to Inhumane and degrading treatment.***

4.8 Articles 2 and 3 ECHR are relevant to this policy decision. Article 2 protects the Right to Life. Article 3 is the right to not be subject to inhumane or degrading treatment

4.9 As well as the right not to take life, Article 2 also places a positive duty to protect the Article 2 rights of persons in particular circumstances.

4.10 Articles 2 and 3 are of the upmost priority in my mind when making any decisions around whether to conduct intelligence checks.

4.11 Legal duties to act under Article 2 may arise on the police in the following general circumstances:

- a) A real and immediate threat to life of a person or identified group of persons:
- b) "Real and immediate" means a risk/threat that is present and continuing.
- c) The threat/risk will usually result from the criminal acts of a 3<sup>rd</sup> Party.

Legal duties to act may also arise under Article 3 ECHR. Whilst Article 2 deals only with a risk to life, Article 3 concerns threats/risks of really serious harm/torture/inhumane or other such conduct. Such threats/risks must be real and immediate for the duty to arise. Again, most usually the threat or risk will be from the criminal act of a third party.

4.12 The general view is that any threat would have to comprise all of the following before a duty to act would arise:

- a) For a duty to arise under Article 2 the threat must be of death. A threat of injury, even serious, is not enough to create a risk of death.
- b) Threats or risks that do not qualify under Article 2 may still qualify under Article 3. A duty may arise under Article 3 where there is a threat of serious injury, inhumane or degrading treatment. For example, a serious sexual assault would qualify as conduct breaching Article 3, even if no injury resulted from the attack.
- c) For both Articles 2 and 3 the threat/risk must be real and immediate. That means the threat must be present and continuing. Threats that are conditional on other events happening or said to occur at some point in the non-immediate future are not "real and immediate".

- d) The threat has to be against a specific and identifiable person or group of persons. Generalised threats do not give rise to a duty.

- 4.13 I specifically note that particular care must be taken in respect of any circumstances involving children. ECHR law requires that specific thought is given to the welfare of any child in any decision.
- 4.14 There are a large number of decided cases on these issues. The following cases are particularly relevant examples:

***Osman v United Kingdom [1998]***

- 4.15 This is the leading case in this area of the law. It is from this case that the term “Osman duty” arises. A legal duty to act was derived from the Osman (1998) criteria, ‘the police knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party’.

***Watts v UK [2010]***

- 4.16 Watts v UK 2010 also reinforces the view that the immediate risk to life is not dependent on a criminal act and situations outside of crime are also relevant. “Although the court originally explained that this positive obligation arose when there was a risk to life ‘from the criminal acts of another individual’ (Osman v United Kingdom (2000) 29 EHRR 245, para 115), it has since made it clear the positive obligations under article 2 are engaged in the context of any activity, whether public or not, in which the right to life may be at stake: see Öneriyildiz v Turkey (2004) 41 EHRR 325, para 71.”

Rabone v Pennine Care NHS Trust [2012] AC 72 (para 32).

For a duty to arise, the risk must be "real and immediate ". That is a term which carries its usual meaning. To be real and immediate a risk must be "present and continuing"

*Robinson v Chief Constable of West Yorkshire [2018] UKSC 4*

There is no general common law duty on the police to act to protect persons from harm. Where the police do act then they may be liable for negligence that causes harm.

***Sherratt v Chief Constable of Greater Manchester Police [2018]***

- 4.17 Sherratt v Chief Constable of Greater Manchester Police [2018] EWHC 1746 (QB) developed more on the issue of when a duty arises on the police having fielded an emergency 999 call from a member of public. No legal duty of care arises on the police to undertake a welfare check until it agrees to take on the responsibility. In Sherratt the 999 call-handler agreed to deploy officers to the caller’s daughter’s address, who was suffering a mental health crisis. This call may not have reached the Osman thresholds, but in taking on the responsibility, the police took on that duty.

**Common law**

- 4.18 The duty on the police to act to protect the public has been the subject of substantial litigation in the recent years. Generally speaking, the police are under no duty to act at common law to protect a person. Where the police do act, they can be liable if they act negligently. The extent of these duties is not clearly defined and is very fact-specific. See *Robinson*, above.

- 4.19 The common law rule that there is no duty to act is subject to exceptions. Most relevant to this policy is that the police may assume a duty to act. Where there is an assumption of a duty to act, that duty must be discharged. The case of *Sherratt v GMP* is an important case. A police call handler had assured a member of the public that the police would promptly act in response to a welfare call. That assurance was found to give rise to a duty.

#### **Section 18 MHA**

- 4.20 AWOL is defined by S18 MHA. It is the legal duty of the Hospital Manager to return AWOL patients, not the police.
- 4.21 AWOL patients are deemed to be unlawfully at large and hospital and delegated staff have the same powers as police officers when retaking patients under S18 MHA.
- 4.22 In law the following people must be reported to the police as AWOL;  
Detained patients who are AWOL **must** be reported to the Police by MH services if they are deemed to be;
- i. Especially Vulnerable (not simply vulnerable)
  - ii. Dangerous (to themselves or others)
  - iii. Subject to part 3 of the Act (restricted patients placed by the courts)
- 4.23 Reporting as above allows the police to consider risks to the person and the public. It does not confer a legal duty on the police to act. However, in circumstances such as in 4.21 above the FCR will create a 'Maybe' log for checks and a supervisors attention on whether the police will deal with the incident or not.
- 4.24 The police will generally support MH services to return their patient in the following circumstances;
1. Following all reasonable enquiries and efforts by the hospital the Patient cannot be found. In these circumstances the patient should be reported 'missing'.
  2. The Patient's whereabouts is known but they cannot be returned without the use of a warrant to gain entry to a premises (S135 (2)).
  3. The Patient's behaviour is so violent or aggressive towards hospital staff that they are unable to retake them without Police support.

#### **Specific statutory duties**

- 4.25 There are some limited circumstances where the police have a statutory duty to act. These are limited and not the focus of this decision. One such example is that the police have a duty to assist local authorities in their dealing with children.

#### **College of Policing – Management of Risk document**

- 4.26 The College of Policing document entitled Risk Management 2013 stresses that being helpful may create other risks for police and that the police service is not responsible for all forms of risk. The College of Policing Mental Health APP reiterates the view that if the Police know or ought to know of real and immediate risk to a person's life from an act or acts of violence, they must do all that can reasonably be expected to prevent the risk from materialising.
- 4.27 The police should not assume, directly or indirectly, responsibility for all forms of risks. They may have no legal right or power to do so and could compromise their reputation by exceeding their role. Other agencies may have more appropriate skills (e.g., in risk assessment), resources (e.g., ability to provide long-term interventions) and legal powers.

- 4.28 Officers should consider whether it is appropriate for them to accept, or to continue to accept, responsibility for a risk when there are more appropriate agencies or methods of tackling the problem. They should not encourage the public to think automatically of the police the first or most appropriate port of call for every problem. The police must work with partner agencies rather than take on their responsibilities." "Police officers and staff must make reasonable risk decisions. A decision cannot be unreasonable just because harm results, or reasonable because no harm results. The question is whether other officers or staff of a similar rank, specialism and experience would have made a similar decision in those particular circumstances. If a responsible body of such officers or staff would have made that decision and harm resulted, the standard of care will still have been met.

#### ***Code of Ethics***

- 4.29 The [Code of Ethics](#) published in 2014 by the College of Policing requires us all to do the right thing in the right way. It also recognises that the use of discretion in Policing is necessary but in using discretion, states that you should, "*take into account any relevant policing codes, guidance, policies and procedures into consideration.*"
- 4.30 In making this policy decision I am aware of the content of the Code of Ethics 2014. The relevance to Right Care, Right Person is that it will enable Contact Officers within the Force Control Room (FCR) to determine the specific concern and ensure that the right person with the appropriate skills, expertise and knowledge responds and that where appropriate police officers are acting within their police powers.

### **5. Other Police Force Research**

- 5.1 As part of the benchmarking for RCRP, a number of other forces were approached to ascertain whether they conduct systems checks.
- 5.2 Humberside Police do not conduct checks for non-attendance decisions; with their Chief Office Team choosing to go against the legal advice that they received. They implemented RCRP in 2020 and are 18 months into their phased delivery.
- 5.3 Most recently, between 26 June 2021 and 26 November 2021 Humberside has received a total of 5870 CFW calls and has deployed to 2059. This is approximately 79 calls per week with an attendance of 35%. Humberside does not currently differentiate between CFW calls received from its partners or the public.
- 5.4 Humberside has extrapolated this data to project that it will attend approximately 4000 CFW calls in the 12 month period. For comparison, in the same period in 2019 Humberside attended 8679 CFW calls, which is a projected reduction in attendance of 46%.
- 5.5 Hampshire Constabulary do not conduct checks for non-attendance decisions; they did not seek their own legal advice before implementing. They implemented RCRP in 2013 and have had 8 years of not conducting checks where there is clearly no requirement for the police to attend. They state that they have had no criticism in relation to their policy of doing 'no checks'.
- 5.6 The volume of incidents received into their control room and deployments over a 7 year period can be seen below (as provided to Humberside).

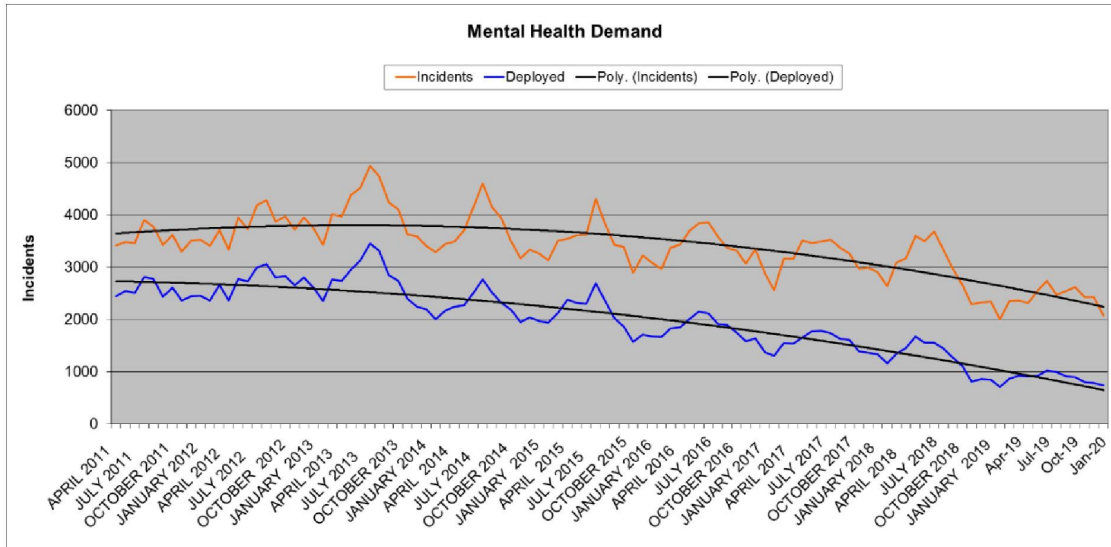


Figure 2: Hampshire Mental Health Demand

- 5.7 The latest figures we have, show that since 2013 Hampshire have gradually reduced their deployments from 47600 to 24800 year, which is 5.2% of the total demand through their control room.
- 5.8 Hampshire conduct checks where there is a possibility they should attend which are called 'maybe's'. Lancashire Police will follow this model by referring the matter to a supervisor for assessment and conducting the check at the same time.
- 5.9 Of the 23,500 non-deployments they are unable to say how many were definite 'no's' and how many were 'maybe's'. Therefore, we cannot make an assumption that all 23,500 had no checks conducted with no adverse consequences.
- 5.10 Table 1 below shows a snapshot of demand for a month prior to implementation and in comparison a month last year.

Hampshire Constabulary – Concern for Welfare and Mental Health Demand			
	April 2013	January 2020	% Change
Calls CFW and MH	3968	2073	-47.8%
Attended	2739	740	-73.0%
Not attended	1229	1333	+23%

Table 1: Hampshire: Comparison of demand and deployments for Concern for Welfare

- 5.11 Following our own scoping, Lincolnshire Constabulary advised us that they had taken legal advice and based on a disagreement over this advice, have chosen NOT to implement Right Care Right Person.
- 5.12 Hampshire Police commenced its model in 2013 and have been subject to scrutiny over its approach to Welfare Checks by Coroners Courts and the IOPC but neither have found fault in their operating model. Hampshire are also able to state that they are unaware of any situation where a check of police systems prior to making a decision not to attend a welfare check would reveal information that would change that decision. Professional experience within Lancashire Police supports this approach.

- 5.13 In summary there is no evidence from Hampshire or Humberside that not conducting 'checks' in certain circumstances has resulted in any adverse consequences.

## **6. SmartSTORM Considerations**

- 6.1 The use of SmartSTORM for the recording of incident logs poses a new perspective when considering whether or not to conduct system checks. In Lancashire there are two system check levels within the Force Control Room. The first level being within SmartSTORM, where any previous calls made from an address can be seen once an incident location or caller address is inputted into the system. This is also true for Firearms and Warning Markers associated with an address. This information is highlighted on a tab in a different colour should information sit behind that tab.
- 6.2 The second level of checks are external to the SmartSTORM system and require additional systems to be interrogated. In Lancashire this includes CONNECT and PNC. It is true that PNC checks can be conducted within SmartSTORM but they require the system user to undertake the check by accessing the PNC tabs within SmartSTORM and filling in the details of the person or vehicle the check relates to. For the purpose of this policy the PNC checks within SmartSTORM will sit under the second level of checks.

## **7. Decision**

- 7.1 The overall aim of this policy decision is to ensure Police responses in respect of 'Concern For welfare' calls are proportionate and in compliance with our legal duties. It is important to be robust and ensure that police are not missing critical information that would significantly change our assessment. As with all of our calls for service, our risk assessment model NDM and THRIVE will be applied. I am aware that in line with the Royal College of Emergency Medicine Guidance 2018 and the Mental Capacity Act, 'It should be assumed that a patient has capacity to leave a health care facility until proven otherwise'.
- 7.2 Throughout, Lancashire Legal Services have been engaged and provided support and guidance seeking independent Counsel Advice where necessary.
- 7.3 After careful consideration my decision is that checks of certain intelligence systems namely CONNECT and PNC will not be made where a welfare check is requested on a member of the public and it is clear from the facts of the request that the circumstances do not fall within the core policing roles (identified above). Cases where there is a real and immediate risk to life or of Article 3 treatment will come within the core policing functions.
- 7.4 Although I have made the decision that there is no requirement for checks to be conducted on PNC and CONNECT as above, my decision is that we will continue to conduct checks within SmartSTORM for all Concern For Welfare logs. These checks include any Warning Markers, Previous Calls and Firearms Markers available within the SmartSTORM system.
- 7.5 This policy decision only relates to calls where the police decide they will not deal with a request to carry out a concern for welfare check and that decision is made at the outset by the call taker in the Force Control Room. Where the police 'will' attend or 'may' attend all system checks will be completed.

## **8. Rationale**

- 8.1 To be clear, this is a policy decision around conducting police intelligence checks and not a policy decision around deployment. It is not straightforward translating the case law into operational policing. The duties arising under the Human Rights Act are focused on means rather than the results. Provided the assessment process in place is compliant, even if the result is wrong, this does not make the assessment a breach of the HRA.
- 8.2 The position of Lancashire Police in deciding whether system checks are required for 'Concern For Welfare' calls is clear. The existence of a duty on the police to act is decided through the assessment of a 'real and immediate risk' to life or of Article 3 treatment, which must be present and continuing using the NDM and where trained to, the national THRIVE model.
- 8.3 What is less clear is when the police should complete a check of their systems to discover what information is held which may identify an immediate risk to life that wasn't apparent from the original caller. This element is, 'know or ought to have known' of an existence of an immediate risk, as identified in the stated cases, Osman and others.
- 8.4 Within the policing context these threats will usually arise from the criminal acts of 3<sup>rd</sup> parties, although Watts v UK (2010) clearly states that the duty can arise from non-criminal acts.
- 8.5 The difference between the Osman case and the Sherratt case is also recognised. Osman was an immediate threat to life that was understood by the police who failed to act whilst in Sherratt a duty of care was accepted/assumed which was not suitably performed, even though it did not involve a core role of the police service.
- 8.6 Case law provides two separate approaches as to whether checks are required, citing Osman where a potential crime is identified and thereafter other cases, Watts, Rabone and Öneriyildiz, all of which involve circumstances not aligned to police activity (health and local authorities). Appreciating the difference between police and non-police cases is one part of the deliberations.
- 8.7 Further information from Humberside and Hampshire Police Forces also provides assistance in deciding whether checks should be made. Nothing in their experience or their professional judgement, has led them to believe checks are necessary in some circumstances. Humberside have a policy signed by their Chief Officer sponsor detailing a decision NOT to do any system checks where a decision has been made that there will be no police deployment. In Hampshire no policy exists to determine their attitude to making checks. This approach maybe sums up their considered view of this subject and the need not to police that view.
- 8.8 I therefore conclude that system checks on CONNECT and PNC are not required (level 2 checks) ***where a welfare check is requested on a member of the public (the exception being certain AWOL patients as described in para 4.22 above) and it is clear from the facts of the request that the circumstances do not fall within the core policing roles.***