



Policy:

NP 024 - Information for Victims' Rights (formerly Victims' Rights policy)

Executive Director lead	Executive Director: Nursing and Professions
Policy Owner	Director of Quality
Policy Author	Head of Mental Health Legislation

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Summary of policy

A policy to describe the duties in respect of the provision of information to victims of serious violent or sexual offences with regard to patients subject to Part III MHA.

Target audience	Staff involved in the administration of the Mental Health Act and in providing care and treatment under the Mental Health Act 1983 to patients subject to Part III MHA where there is victim or a bereaved victim of serious violent or sexual crime
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Keywords	Information; Victim; Rights
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Storage

Version 3 of this policy is stored and available through the SHSC intranet/internet. This version of the policy supersedes the previous version (V2). Any copies of the previous policy held separately should be destroyed and replaced with this version.

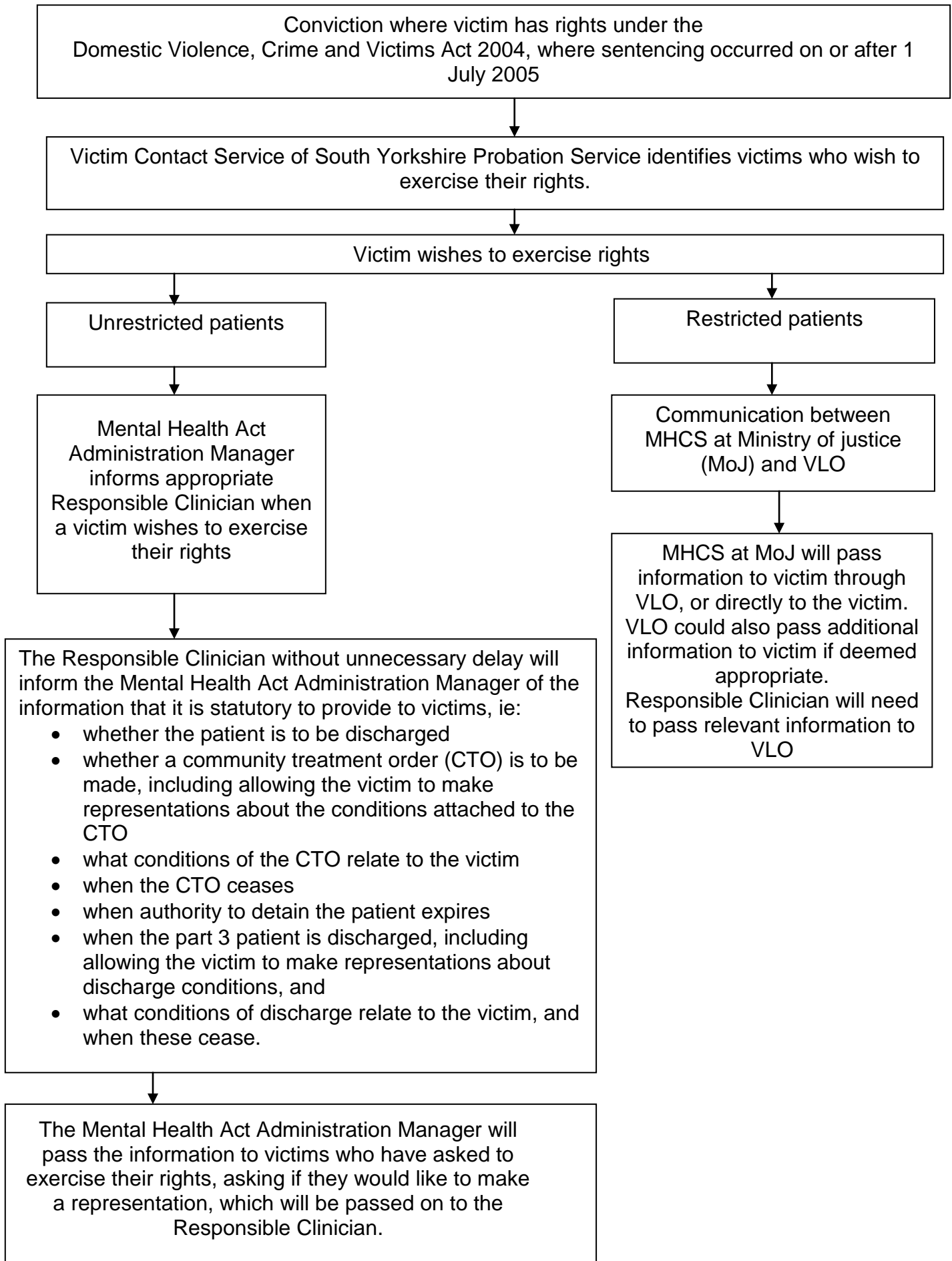
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Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
0.1	New draft policy created	July 2015	New policy commissioned by EDG on approval of a Case for Need.
1.0	Ratification and issue	Sept 2015	Amendments made during consultation, prior to ratification.
2.0	Review / ratification / issue	Nov 2016	Early review undertaken to update the policy to in order to comply with new regulatory requirements. Committee structure updated
3.0	Review on expiry of policy	July 2019	Full review completed as per schedule; Policy re-named to reflect Code of Practice Chapter 40 Flow Chart amended to reflect statutory information in the same language as the Code of Practice; 'relevant' & 'specified' offences' defined as per Code of Practice; Requirement for Trust to identify patients who have committed relevant or specified offences removed (not required by Code of Practice) Description of duties in respect of victims aligned to Code of Practice job titles updated;

Flowchart



1 Introduction

Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (DVCVA) gave certain rights to victims of specific violent and sexual offenders. These victims have the right to receive information over the course of the offender's sentence and to make representations if they wish about the conditions to which the offender is subject on release.

These rights have applied to the victims of restricted Chapter 2 patients since 1st July 2005 but are managed by the Probation Service and the Ministry of Justice Mental Health Unit.

From 3rd November 2008 these rights have also applied to the victims of unrestricted Chapter 2 patients detained under Part 3 of the Mental Health Act including those subsequently discharged onto Community Treatment Orders.

To enable these victims to exercise their rights the Mental Health Act places statutory duties on NHS providers. These duties are detailed in Mental Health Act 2007: Guidance on the Extension of Victims' Rights under the Domestic Violence, Crimes and Victims Act 2004 and this policy outlines how SHSC will fulfil these duties

2 Scope

This is a Trust-wide policy but will primarily apply to those staff working with Mental Health Act Part 3 patients who were sentenced on or after 1 July 2005 for serious violent and sexual offences, as defined in Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004.

It applies to the victims of offender patients whose offences meet the criteria specified below.

3 Purpose

The purpose of this policy is to ensure SHSC staff members are aware of their responsibilities to victims as defined below and to enable these victims to exercise their statutory rights.

4 Definitions.

Approved Clinician (AC)

A person approved under the Mental Health Act to act as a Responsible Clinician

Responsible Clinician (RC)

The approved clinician with overall responsibility for a patient's care. Certain decisions (such as renewing a patient's detention or placing a patient on a community treatment order) can only be taken by the responsible clinician.

Approved Mental Health Professional (AMHP)

A social worker or other professional approved by a local social services authority (LSSA) to carry out a variety of functions under the Act.

Mental Health Tribunal (MHT) – First Tier Tribunal Mental Health

A judicial body which has the power to discharge patients from detention, Community Treatment Order, Guardianship and conditional discharge.

Hospital Managers

The organisation (or individual) responsible for the operation of the Act in a particular hospital (e.g. an NHS trust, an NHS foundation trust or the owners of an independent hospital). Hospital managers have various functions under the Act, which include the power to discharge a patient. In practice, most of the hospital managers' decisions are taken on their behalf by individuals (or groups of individuals) authorised by the hospital managers to do so. This can include clinical staff. Hospital managers' decisions about discharge are normally delegated to a 'managers' panel' of three or more people. These are known in SHSC as Associate Mental Health Act managers (AMHAMs)

MHA Part 3 Patient

A patient concerned in criminal proceedings or under sentence. Unrestricted patients may be discharged onto a Community Treatment Order (MHA s17A-G)

Unrestricted Patients

A patient subject to a hospital order or guardianship order under Part 3 of the Act, or who has been transferred from prison to detention in hospital under that Part, who is not also subject to a restriction order or direction. For the most part, unrestricted patients are treated in the same way as patients subject to MHA Part 2 (compulsory admission to hospital and guardianship).

Restricted Patients

A Part 3 patient who, following criminal proceedings, is made subject to a restriction order under section 41 of the Act, or to a limitation direction under section 45A, or to a restriction direction under section 49. The order or direction will be imposed on an offender where it appears that it is necessary to protect the public from serious harm. One of the effects of the restrictions imposed by these sections is that restricted patients cannot be given leave of absence or be transferred to another hospital without the consent of the Secretary of State for Justice, and only the Tribunal can discharge them without the Secretary of State's agreement.

Domestic Violence, Crime and Victims Act 2004

An Act that introduced powers for the police and courts to deal with offenders, while improving support and protection that victims receive. Chapter 2 of Part 3 of this Act gave certain rights to victims of specific violent and sexual offenders. These victims have the right to receive information over the course of the offender's sentence and to make representations about the conditions to which the offender is subject on release.

Victim

For the purpose of the legislation and this policy, victim includes any person who appears to be, or to act for, the victim of the specified sexual or violent offence in question. As a matter of practice this should be taken to include a victim's family in a case where the offence has resulted in the victim's death or incapacity and in other cases where the victim's age or personal circumstances make it appropriate to approach a family member in the first instance.

Victim Contact Scheme (VCS)

Under the VCS victims as define above, have a right to be informed of key developments in the part 3 patient's progress and to make representations about conditions that should be in place on discharge.

Relevant or Specified offences

Are offences described in the MHA Code of Practice at Chapter 40.9. They are those set out in section 45(2) of the DVCVA 2004:

- murder or an offence specified in Schedule 15 to the Criminal Justice Act 2003
- an offence in respect of which the patient is subject to the notification requirements of part 2 of the Sexual Offences Act 2003, or
- an offence against a child within the meaning of part 2 of the Criminal Justice and Court Services Act 2000.

The full list of offences can be found at:

<http://www.legislation.gov.uk/ukpga/2003/44/schedule/15>. This list can change as new offences can be added.

Victim Liaison Officer (VLO)

Victim Liaison Officers work with the probation service to offer support to victims of crime.

Mental Health Case Work Section

Mental Health Case Work Section is part of the Ministry of Justice. All restricted patients have a Mental Health Case Worker. These are responsible for passing on, through the VLO, information that is to be shared on certain key stages.

5 Detail of the policy

This policy is concerned with statutory duties under the Mental Health Act

6 Duties

It is the **Hospital Managers'** duty:

- To identify any patients who are 'Chapter 2' patients for the purposes of ensuring that the responsibilities are discharged and to pass on any representations to clinicians. To keep records of victims who have asked to make representations and/or receive information
- To liaise with identified victims regarding their wishes to receive information or make representations about the patient who is an offender
- To invite and pass representations from victims to the responsible clinician (and also to the approved mental health professional when supervised community treatment is under consideration).
- To provide information to victims about patients discharged by the responsible clinician, hospital managers or mental health review tribunal, including decisions not to renew detention and/or to discharge under supervised community treatment. In the case of supervised community treatment, this information includes any variation of conditions, revocation or extension of CTO
- To provide additional information to victims about proposals for leave of absence, absconding or transfer to another hospital, all subject to the general principles of confidentiality and the approval of the Caldicott Guardian
- To inform the managers of a hospital (including independent hospitals or a care home), to which the patient is transferred, of existing information relating to victim's rights in each case, and to inform the victim of the details of transfer
- Where patients are subject to restrictions, to establish the details of any attached Victim Liaison Officer (VLO), to ensure victim representation is received. Support in obtaining this information, can be provided by Trust Safeguarding and Public Protection Team.

These duties will be delegated to the Head of Mental Health Legislation, Mental Health Act Administration Manager and Responsible Clinicians.

It is the **Responsible Clinician's** duty to inform Hospital Managers if they are considering discharging relevant unrestricted patients and if they make certain decisions relating to these patients, as detailed in the flow-chart. They must also consider victims' representations when deciding what conditions to include in the Community Treatment Order of an unrestricted Part 3 patient they discharge onto a CTO.

It is the Approved Mental Health Professionals' duty to consider victims' representations when deciding whether to agree to the proposed conditions to be included in a CTO for a relevant unrestricted Part 3 patient being discharged onto a CTO.

The **Head of Mental Health Legislation** is the nominated individual responsible for understanding the Victims Code, VCS, promoting the rights of victims and developing, overseeing and reporting on policy and initiatives to support all victims.

Service Director, Associate Service **Directors and deputy Directors** are responsible for ensuring that practice within their service areas is carried out in accordance with legislations and policy and that staff within their service are aware of who the named individual is to raise concerns or complaints with Ward/Team Managers are responsible for ensuring that staff are aware of the policies that apply to their areas of practice and for monitoring such practices.

The **Mental Health Act Administration Manager** is responsible for implementing the policy on a day to day basis.

All staff implementing the provisions of the Mental Health Act must be aware of their duties and responsibilities under the Act.

7 Procedure

7.1 Identifying victims

Under the Domestic Violence, Crime and Victims Act 2004 (DVCVA), where the Part 3 patient was sentenced on or after 1 July 2005, victims of serious violent and sexual offences have the right to information from the National Probation Service (NPS) under the Victim Contact Scheme (VCS). Under this scheme, these victims ('statutory victims') have a right to be informed of key developments in the Part 3 patient's progress and to make representations about conditions that should be in place on discharge. (CoP 40.2)

Where a patient has been identified as a victim they will receive the appropriate support from either the VLO or the Hospital Manager in conjunction with the clinical team.

7.1.1 Specified Offences

For relevant offences (as defined above) committed on or after 1 July 2005, the police or joint police and Crown Prosecution Service Witness Care Unit should send details of statutory victims to the appropriate NPS Victim Liaison Unit (VLU). The VLU should offer victims the opportunity to engage with the VCS if the part 3 patient is:

- convicted of a specified sexual or violent offence and made the subject of a hospital order with a restriction order (section 37 and section 41 of the Act)
- found unfit to plead in respect of a specified sexual or violent offence, but has committed and been charged with the offence
- found not guilty by reason of insanity under the Criminal Procedure (Insanity) Act 1964 in respect of a specified sexual or violent offence, and made subject to a hospital order with special restrictions (section 37 and section 41 of the Act)
- convicted of a specified sexual or violent offence and then made the subject of a hospital direction and limitation direction (section 45A and section 45B of the Act), or
- sentenced to 12 months imprisonment or more for a specified sexual or violent offence, and transferred to hospital under a transfer direction and restriction direction (section 47 and section 49 of the Act). (CoP 40.8)

7.2 Information Rights for Victims of Restricted Patients

Under the VCS, victims of restricted patients must, as a minimum, be:

- offered the opportunity to engage with the VCS by the VLU
- assigned a VLO (for restricted patients and prisoners transferred under section 47 who are subject to restriction directions made under section 49 who have not passed their licence expiry date)
- offered the right to make representations to whoever is responsible for making the decision on the patient's discharge, either the Secretary of State for Justice or the Tribunal, about the patient's discharge conditions – victims typically request geographic exclusion zones or 'no contact' conditions
- informed of discharge conditions which relate to them, and
- informed about any other key information about the patient's progress, which it is appropriate to share in all the circumstances of the case. (CoP 40.10)

7.2.1 Expiry of Restrictions

Information about restricted patients that has previously been provided by the VLO to the victim will come directly to the victim from hospital managers or clinicians once any relevant licence or restrictions have expired, as for unrestricted patients.

Where a part 3 patient is transferred from prison to hospital with a restriction order (s47/49), or is transferred without a restriction order as the custodial part of their sentence was about to end (ie they are a 'notional s 37 patient'), they will be treated as an unrestricted patient when they reach their sentence end date.

At this time, if there is a victim identified in the NPS VCS, the VLU will send the victim's details to the hospital. The hospital manager or responsible clinician then becomes responsible for providing information to the victim. The VLO should continue to provide updates to the victim until the end of the licence period, even if the patient remains in hospital, and, in particular if they are released on licence.

7.3 Information Rights for Victims of Restricted Patients – Duties of the Ministry of Justice Mental Health Casework Section (MHCS)

The MHCS will, through the VLO, contact victims who are in the VCS. Information will be shared on certain key stages of the patient's progress, including:

- when the patient is transferred to hospital thus becoming a restricted patient
- if the prisoner is transferred to hospital under section 47 of the Act
- when the Secretary of State for Justice is considering a proposal for discharge, to request representations from the victim
- if the Secretary of State for Justice decides to discharge the patient
- the conditions of discharge relating to the victim or their family
- any variation of conditions of discharge relating to the victim or their family
- if the restricted patient is recalled for further treatment under the Act
- if the part 3 patient is absolutely discharged, resulting in the cessation of conditions and the removal of the part 3 patient's liability to be recalled to hospital
- when the patient's restrictions are lifted or expire
- if a patient previously found unfit to plead is remitted back to court to continue legal proceedings
- if a patient is to be remitted to prison
- if the MHCS has approved or rescinded escorted or unescorted leave. (CoP 40.13)

The MHCS may pass on additional information directly to the victim. Similarly the VLO may provide victims with more information only if appropriate in all the circumstances of the case, and whilst being mindful of patient confidentiality including in respect of medical confidentiality.

The Responsible Clinician will make sure the VLO is informed so as to provide information to the victim as appropriate.

7.4 Information Rights for Victims of Unrestricted Patients - Duties of Hospitals

The VLU should offer victims the opportunity to engage with the VCS if the part 3 patient has been made subject to a hospital order without a restriction order (MHA section 37).

The probation VLO will pass details of victims of unrestricted patients who wish to receive information to the hospital, and liaison should then take place between the hospital and the victim. This liaison will be undertaken by the RC in conjunction with the Head of Mental Health Legislation on behalf of the Hospital Managers. (CoP 40.18)

The RC and the Head of Mental Health Legislation on behalf of the Hospital managers must ensure that the statutory minimum of information is communicated to victims. Statutory information consists of:

- whether the patient is to be discharged
- whether a community treatment order (CTO) is to be made, including allowing the victim to make representations about the conditions attached to the CTO
- what conditions of the CTO relate to the victim
- when the CTO ceases
- when authority to detain the patient expires
- when the part 3 patient is discharged, including allowing the victim to make representations about discharge conditions, and
- what conditions of discharge relate to the victim, and when these cease.

The entitlement will continue to apply when such patients are conditionally discharged and discharged subject to Community Treatment Order'

7.4.1 Non-Statutory Information in Respect of Unrestricted Patients

The decision about whether to pass more information to victim than the statutory minimum will be for the relevant Responsible Clinician to decide.

Some decisions to disclose information could include:

- Leave of Absence
- Absent Without Leave
- Transfer of patients

If accommodation is to be offered as part of the after care plan to patients who are offenders, the circumstances of any victim of the patient's index offence and their families should be taken into account when deciding where the accommodation should be offered.

7.5 Information to be given to patients who are offenders

It is good practice to ensure the patient knows the effects of the DVCV and what information may be disclosed.

The use of information about any patient in a healthcare institution is governed by the NHS Code of Practice 2003 and the 2015 Revised Code of Practice for the Mental Health Act 1983. These sets of guidelines are consistent with the principles of the Data Protection Act and Human Rights Act and, ordinarily, information about a patient should not be disclosed to a third party such as a victim without the patient's consent.

However, an exception to this rule is where it can be justified that there is a valid public interest justification, such as where the health and safety of a victim would be put at risk if the information was not disclosed.

These discussions must be recorded in the patient's medical records and this should be done on a regular basis as appropriate to the patient's capacity to understand and their length of stay on the ward. It will be the Responsible Clinicians duty to ensure this information is provided although in practice this may be performed by another member of the team.

7.7 Tribunals and hospital manager hearings

Victims are entitled to make representations to the Ministry of Justice MHCS, the Trust or Tribunal about the patient's discharge and any attached conditions, which could include exclusion zones or 'no contact' conditions. The VLO will usually be the most appropriate person to inform the victim of a hearing pending for restricted patients.

7.7.1 Hospital Managers retain the responsibility for liaison with victims in unrestricted cases. The Mental Health Act 2007 included amendments to the DVCA2004 to the

extent that victims of unrestricted patients should be provided with the same level of information as restricted patients in terms of consideration for discharge and the victim's right to make representations to the Tribunal or Managers' Hearing with regard to discharge conditions and to be informed of these conditions.

7.7.2 When they have been advised of the timetable for submitting representations, the VLO should consult the victim. Any representations should be forwarded to the MHU Caseworker, MH Tribunal in the same way that they would forward representations about a standard prisoner's licence conditions to the Parole Board.

7.7.3 Where the patient is the victim and a current inpatient, the clinical team must ensure the following is arranged in respect of the offender's Tribunal/hearing:

- Leave Conditions
- Support prior to the hearing
- Documentation available
- Travel arrangement
- Support following the hearing

7.7.4 Where the patient has committed the offence the Responsible Clinician will work with other members of the team to ascertain documentation including risk plans are in place in respect of the victim; giving particular attention to:

- Room arrangements
- Reports
- Disclosure issues
- Contact with VLO/Tribunal/Managers

7.8 Additional support for victims who are family, carers or friend

Professionals may need to balance the needs and rights of victims who are also family, friends or carers of the offender, to reduce the risk of harm arising from contact with the patient. Such victims may require additional support in order for them to maintain contact, and keep them safe, especially if the victim is a child or young person, or adult at risk.

7.9 Capacity issues

Where the patient is the victim of or has committed an offence and lacks capacity to understand the implications of the MHA and DVCV the Responsible Clinician should consider what actions should be taken and an agreement or care plan should be placed in the patients note.

7.10 Non-Statutory Victims

The Victims' Code and the Victims Contact Scheme apply to victims in respect of restricted and unrestricted part 3 patients. Where victims of part 3 restricted patients do not fall within the scope of the DVCVA 2004 for statutory contact under the VCS (i.e. non-statutory victims), it is good practice for the National Probation Service (NPS) to consider providing VCS services to any victim of a restricted patient who requests information. Examples include:

- where the conviction occurred prior to the DVCVA 2004, but the victim has now made contact

- the victim of a non-qualifying offence or sentence length (for prisoners transferred under sections 47 who are subject to restriction directions made under section 49) where the victim has expressed concerns about their safety, or
- to the victims of co-defendants convicted in connection with the same incident.

Once the discretion has been exercised to offer such a non-statutory victim contact under the VCS, they should be offered the same service as statutory victims. This means that, once the NPS has decided to offer the VCS to these non-statutory victims, they should be assigned a victim liaison officer (VLO), provided with the opportunity to make representations about discharge conditions, and provided with information which the NPS considers to be appropriate in all the circumstances of the case, in the same way as statutory victims.

7.11 Informing New Hospital Managers on Transfer

If an unrestricted Chapter 2 patient is transferred or assigned to a different hospital with new Hospital Managers the Mental Health Act Administrator will inform them of:

- The fact that the patient is an unrestricted Chapter 2 patient
- The names and contact details for any victims who have requested to make representations or receive information
- Any representations already made

The Mental Health Act Administration Manager will also inform the victim of the name and address of the new Hospital Managers.

7.12 Sheffield Patients in Independent Hospitals

NHS bodies funding placements in Independent Hospitals have specific responsibilities for the extension of victims' rights. Mental Health Act Administration Manager will communicate with Hospital Managers of independent hospitals and with NHS bodies funding placements (e.g. CCG and NHS England Specialist Commissioning Group) to ensure that our duties can be effectively fulfilled when patients move between hospitals within the independent sector and the Trust.

8 Development, consultation and approval

This policy was developed by the Mental Health Legislation Committee (MHLC) in line with the requirements of the Mental health Act 1983 and its Code of Practice (2015). This review has updated job titles and Executive responsibility. It has been reviewed by the MHLC for submission to the Executive Directors' Group for approval.

9 Audit, monitoring and review

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
	Checks with services for the presence of offender patients and /or statutory victims	MHLC	Ad hoc	Include in Quarterly report to Executive Directors' Group if necessary	MHLC	Quality Assurance Committee

Policy to be reviewed 3-yearly

10 Implementation plan

Action / Task	Responsible Person	Deadline	Progress update
Upload new policy onto intranet and internet and remove old version	Policy Governance		
Advise staff of updated policy	SHSC Comms team		
Ward/Team Managers to ensure that staff are aware of policy	Associate Directors & Associate Clinical Directors		

11 Dissemination, storage and archiving (Control)

This policy replaces the previous version (v2) on SHSC Intranet and Internet. In addition Associate Directors and Associate Clinical Directors and Ward/Team Managers will be asked to ensure all staff are made aware of this policy.

The previous policy will be removed from the Trust website by the Policy Governance Team/Communications team. Ward Managers will be responsible for ensuring that it is also removed from any policy and procedure manuals.

A paper version of previous policies will be archived in the Mental Health Act Administration Office

12 Training and other resource implications

The Trust delivers training on the Mental Health Act and the process of giving information forms part of that training

13 Links to other policies, standards (associated documents)

Mental Health Act 1983
Mental Health Act Code of Practice
All other Mental Health Act policies.
Mental Capacity Act 2005
Mental Capacity Act Code of Practice

14 Contact details

<i>Title</i>	<i>Name</i>	<i>Phone</i>	<i>Email</i>
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