NHS
Mersey Care
NHS Foundation Trust

Community and Mental Health Services

TRUST-WIDE CLINICAL POLICY DOCUMENT

VICTIMS' RIGHTS

Policy Number:	**SD50**
Scope of this Document:	**All staff working in a clinical or clinical support role**
Recommending Committee:	**SpLD Divison Policy Group**
Approving Committee:	**Executive Committee**
Date Ratified:	**September 2019**
Next Review Date (by):	**March 2021**
Version Number:	**Version 2**
Lead Executive Director:	**Executive Director of Nursing and Operations**
Lead Author(s):	**Associate Director of Social Care** **Deputy Associate Director of Social Care**

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2019 – Version 2

Striving for perfect care and a just culture

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Further information about this document:

Document name	**VICTIMS' RIGHTS**
Document summary	**This document contains guidance relating to victims' rights under the Domestic Violence, Crime and Victims Act (DVCVA) 2004 and Section 48 and Schedule 6 of the Mental Health Act 2007, relating to chapter 2 patients - (with effect from 3 November 2008).** **Through this Policy, the service will enable victims to exercise their rights and will ensure that all relevant staff are aware of their responsibilities and are enabled to fulfil these as required by the MHA 2007 and DVCVA 2004.**
Author(s) Contact(s) for further information about this document	**Lindsay Foy** **(Deputy Associate Director of Social Care)** **0151 473 2808** **Lindsay.foy@merseycare.nhs.uk**
Published by Copies of this document are available from the Author(s) and via the trust's website	**Mersey Care NHS Foundation Trust** **V7 Building** **Kings Business Park** **Prescot** **Merseyside** **L34 1PJ** **Trust's Website www.merseycare.nhs.uk**
To be read in conjunction with	**MCT Policy MH01: MHA 1983 Overarching Policy** **Mental Health Act Code of Practice 2015 edition chapter 40** **'The 'Victims' Code' - The Code of Practice for Victims of Crime. Ministry of Justice. 2013** **Domestic Violence, Crime and Victims Act 2004** **Section 48 and Schedule 6 of the Mental Health Act 2007**
This document can be made available in a range of alternative formats including various languages, large print and braille etc	

Version Control:

		Version History:
Version 1		March 2017
Version 2	Lindsay Foy	September 2019

SUPPORTING STATEMENTS - this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child / adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child / adult;
- knowing how to deal with a disclosure or allegation of child /adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child / adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line the with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

Contents

1. INTRODUCTION

The purpose of this document is to provide information and guidance on the actions to be taken by Trust staff to meet the requirements of the Mental Health Act 1983 (as amended) and the Domestic Violence, Crime and Victims Act 2004 (DVCVA) as they relate to victims of crime and in relation to people considered to be potential victims.

2. OUTCOME FOCUSED AIMS AND OBJECTIVES

To provide information and guidance on the actions to be taken by Trust staff to meet the requirements of the Mental Health Act 1983 (as amended) and the Domestic Violence, Crime and Victims Act 2004 (DVCVA) as they relate to victims of crime and in relation to people considered to be potential victims.

The victims of specified violent and sexual offences have certain rights to information about the offender. This includes offenders who are subject to the Mental Health Act 1983 (MHA) and are detained in hospital or subject to compulsion in the community. The victims also have rights to make representations about the release of the offender from detention under the MHA.

All hospital and community-based staff with a responsibility for the care and treatment of patients affected by this legislation, whether the patients are perpetrators of the crime or victims, must have a clear and structured response to any occasions where actions must be taken to comply with the MHA and DVCVA.

3. SCOPE OF PROCEDURE

The procedure applies to:

a) All patients in the Trust who have committed a specified violent or sexual offence and meet the criteria under the DVCVA

b) All patients in the Trust who have been a victim of crime that falls within the criteria of the DVCVA

c) All staff employed by or seconded to the Trust working in a clinical or clinical support role.

4. DEFINITIONS

DVCA Domestic Violence, Crime and Victims Act (2004)

MHA Mental Health Act (1983)

MCA Mental Capacity Act

MAPPA

MDO

VCS Victim Contact Scheme

VLO Victim Liaison Officer

RC Responsible Clinician

MDT Multi Disciplinary Team

NOMS National Offender Management Scheme

AMHP Approved Mental Health Practitioner

5. TRUST DUTIES

5.1 **Chief Executive** is responsible for ensuring that the Trust has policies and procedures in place and complies with its legal and regulatory obligations.

5.2 **Accountable Director** is responsible for the development of relevant policies and procedures and to ensure they comply with applicable standards and criteria. They are also responsible for trust wide implementation and compliance with the policy or procedure. The accountable director for this procedure is the Executive Director of Nursing and Operations.

5.3 **Managers** are responsible for ensuring policies and procedures are communicated to their teams / staff. They are responsible for ensuring staff attend relevant training and adhere to the policy or procedure detail. They are also responsible for ensuring policies and procedures applicable to their services are implemented.

6. PROCESS

IDENTIFY At point of referral, transfer, review and MDT discussion

Is the patient: Subject to a hospital order with restrictions (Sections 37/41 MHA), or
Made subject to a hospital and limitation direction (Sections 45A MHA), or
Transferred to hospital with a restriction direction while serving a sentence (Sections 47)

N → Was the patient convicted of a qualifying offence on or after 3 November 2008?

Y → Is the patient: Unrestricted (S37, '37N' and S47)

N → The victims are not entitled to statutory contact

Y → The VLO asks if the victims want contact. If the victim does not consent at this point, no details will be passed to the hospital managers.

Y → The VLO passes the victim details to the Trust **GROUP B CHAPTER 2 'UNRESTRICTED PATIENTS',** legal duties pass to the Hospital Managers. The Probation role is limited to identifying the victims and – if the victim consents – passing on their details to hospital managers, ongoing statutory responsibility sits with the Trust.
SEE SECTION 9

N → The victims are not entitled to statutory contact

Y → Was the patient convicted of a qualifying offence on or after 1 July 2005?

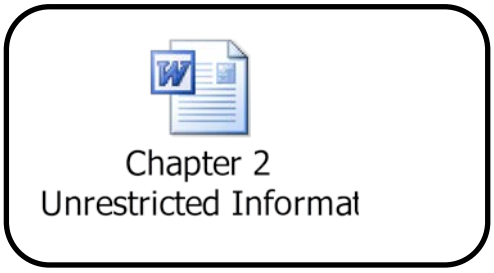
Y → Were the restrictions removed on or after 3 November 2008?

Y → The VLO asks if the victims want contact. If the victim does not consent at this point, no details will be passed to the hospital managers.

N → **GROUP A, 'RESTRICTED PATIENTS'**, the probation service retains lead responsibility. However, the Trust has a responsibility to liaise regularly and effectively with NPS Victim Liaison Officers.
SEE SECTION 8

RECORD on PACIS, RIO and Care Notes and Share Point

Victim identifiable information should not be stored in patient records. Patient record should only note that there is a victim and if they are accessing VLO via probation or have requested information the Trust regarding unrestricted patients. All copies of letters should be stored by MHA Administrators in: Folder Name: Victims Location: Common Drive (T:)



→ RC and MDT complete Group B Victim and patient details. Forward to MHA Admin, to be saved on electronic patient record system

NOTIFY AND CORRESPONDENCE

Group B

Confirm Victim with VLO

letter 1 to VLO
request victim details

Y

Advise Victim of rights

Letter 2 Group B
letter to victim advisi

Group B Victims -
YOUR RIGHTS - leafl

Victim identifiable information should be stored in patient records. Patient record should only note that there is a victim and if they are accessing VLO via probation or have requested information the Tryst regarding unrestricted patients. All copies of letters should be stored by MHA Administrators in:
Folder Name: Victims
Location: Common Drive (T:)

7. CONSULTATION

The following staff members / individuals have been consulted as part of the policy review process:

- High Secure Service Forensic Social Worker
- Team Manager Forensic Social Worker
- Low Forensic Social Worker
- Medium Secure Unit Forensic Social Worker
- Mental Capacity Act and Mental Health Act Lead
- Associate Director of Social Care & Nominated Officer for Safeguarding in Forensic Services
- Forensic Community Services Lead
- Specialty Support Team Forensic Social Worker
- Whalley Lead for Forensic Social Work & Safeguarding
- Whalley Forensic Social Worker
- Forensic Social Care Manager

8. TRAINING & SUPPORT

Though there are currently no statutory or mandatory training requirements, teams in Divisions in which MAPPA applies to can request delivery of an awareness session at any time. This will be delivered by Social Care Leads.

9. LEGISLATIVE PRINCIPLES

9.1 From 1st July 2005, under the provisions of the **DVCVA 2004** the victims of certain offenders (who are detained in hospital under Part 3 of the MHA as ***restricted patients*** or in the community subject to a conditional discharge) have rights to receive information. The victims also have rights to make representations about the conditions to which the offender may be subject on their discharge from hospital. These victim rights in respect of restricted patients are not new.

9.2 /The **MHA 2007 amended the DVCVA**, extended these rights to the victims of ***unrestricted patients*** from 3rd November 2008, placing statutory duties on

Hospital Managers (effectively, the Trust Board). The MHA Code of Practice includes guidance on the DVCVA and sharing limited information with victims (Chapter 40).

9.3 The **Victims Code of Practice 2015 (Victims Code)**, paragraph 6.14 states that victims:

"… of an offender who committed a specified violent or sexual offence but has been detained in a hospital for treatment because he or she has a mental disorder, you will still be entitled to participate in the VCS [Victim Contact Scheme]. If the offender's detention was made subject to 'restrictions by the court (a 'restricted patient'), a victim will be provided with information by a VLO [Victim Liaison Officer]. If no restrictions are imposed (a 'non-restricted patient'), hospital managers will provide you with information."

The Code goes on to say: "In these circumstances, as the offender has been diverted away from the criminal justice system and is being treated in hospital as a patient, some of the decisions about the offender's management will be related directly to his or her medical treatment, and as such will be confidential medical information."

The Code also states that this group of victims are entitled to make representations about the MDO's conditions of discharge, such as conditions that prevent the offender making contact with the victim or entering the area in which they live. This Section of the Victims' Code gives victims of MDOs whose offender's detention was made subject to "restrictions of the court" the same entitlement for support as equivalent victims whose offenders have been given a custodial sentence. Victims whose offenders have no restrictions imposed by the courts do not receive the support of a VLO. The expectation is that hospital staff will provide information. This is an important distinction.

10. STATUTORY DUTIES

10.1 The Department of Health (DoH) has produced comprehensive guidance for clinicians and Hospital Managers, 'Mental Health Act 2007, Guidance on the extension of victims' rights under the Domestic Violence, Crime and Victims Act 2004:

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_089407.pdf

10.2 National Offender Management Scheme (NOMS) published the Victim Contact Scheme Guidance Manual, chapter 36 of which relates to mentally disordered offenders:

http://www.justice.gov.uk/downloads/offenders/probation-instructions/pi-48-2014-victim-contact-scheme-guidance-manual.doc

10.3 The tribunal service has issued guidance on victims' rights at tribunal proceedings.

http://www.mentalhealthlaw.co.uk/Practice_Guidance_on_Procedures_Concerning_Handling_Representations_from_Victims_in_the_First-tier_Tribunal_(Mental_Health)

10.4 Statutory Duties specified in the DVCVA and the MHA

To enable victims to exercise their right to receive information and to forward their representations on specified occasions, statutory duties fall upon:

a) **Providers of probation services**: to identify eligible victims and, with their consent, to pass on their details to Hospital Managers (in respect of unrestricted patients) or Victim Liaison Officers (in respect of restricted patients);

b) **Ministry of Justice**, **Mental Health Casework Section** (MHCS): where discharge is considered the Justice Secretary must inform the National Probation Service. MHCS caseworkers will liaise with Victim Liaison Officers;

c) **The First-tier Tribunal - Mental Health**: When victim liaison has been established, the tribunal service must inform the Victim Liaison Service of planned tribunals and the results of tribunals. The tribunal service will also receive representations from victims;

d) **Hospital Managers**: (defined in s.145 of the MHA) to give information to victims and to pass on any representations they make to clinicians or the tribunal service;

e) **Responsible Clinicians** (RC): to inform Hospital Managers if they are considering discharging relevant unrestricted patients and if they make certain decisions relating to those patients. They must also consider victims' representations when deciding what conditions to include in a CTO;

f) **Approved Mental Health Professionals** (AMHP): to consider victims' representations when considering a proposal for a Community Treatment Order (CTO); and

g) **NHS Bodies**: responsible for NHS patients placed in independent hospitals, when considering discharge, including patients subject to CTO.

11. DEFINITION OF VICTIMS

11.1 The term 'victim' within this policy relates to any person who has or may act for the victim of a specified violent or sexual offence under Schedule 15 of the Criminal Justice Act, 2003.

11.2 Chapter 2 (of Part III), DVCVA 2004, sets out victim rights regarding receiving information and making representations. The purpose of victim contact and liaison is to:

- provide general information about supervision
- be a point of contact for the victim to express concerns
- provide details of the patient's release planning at key stages – such as unescorted leave or discharge
- determine proportionate exclusion zones based on the victim's home, family or workplace addresses
- provide victims with an opportunity to express views about conditions of release. The specific rights or entitlements of victims of "Chapter 2 Patients" are set out below.

11.3 In general, patients detained under Part III, MHA 1983 have the same rights to protection of confidentiality as any other patient. Consent is not required for the disclosure of information, which is required under the provisions of the DVCVA (2004). It is good practice to ensure that relevant patients understand the process around the sharing of information under this legislation.

12. CATEGORIES OF PATIENTS

12.1 The 'eligible' patients may be considered as falling into two groups, restricted and unrestricted.

12.2 Restricted patients – Group A

- subject to a hospital order with restrictions (Sections 37/41 MHA), or
- made subject to a hospital and limitation direction (Sections 45A MHA), or
- transferred to hospital with a restriction direction while serving a sentence (Sections 47/49 MHA)

Group A, 'restricted patients', the probation service retains lead responsibility. However, the Trust has a responsibility to liaise regularly and effectively with NPS Victim Liaison Officers.

12.3 Unrestricted (Sections 37, '37N' and Section 47) – Group B

Group B Chapter 2 'unrestricted patients', legal duties pass to the Hospital Managers. The Probation role is limited to identifying the victims and – if the victim consents – passing on their details to hospital managers, with whom the ongoing statutory responsibility then rests. Duties are also imposed on Responsible

Clinicians (RCs) and Approved Mental Health Practitioners (AMHPs). If the victim does not consent at this point, no details will be passed to the hospital managers.

13. GROUP A - RESTRICTED PATIENTS. PROBATION LED

13.1 Contact will be made with hospital staff by the Probation assigned Victim Liaison Officer (VLO). This should be the route of all communication. Contact will only be made if the victim has asked to be provided with information about the offender.

13.2 The Probation assigned Victim Liaison Officers (VLOs) should liaise with the clinical team.

Victims will be entitled to:

a) make representations about the conditions that the patient may be subject to if they are conditionally discharged from hospital (and therefore to be informed in advance when discharge is being considered);and,

b) receive information at key stages, including:

- the patient's discharge from hospital subject to conditions
- the details of any conditions which relate to the victim or their family
- changes to those conditions, or if they are removed;
- the patient's unconditional discharge from hospital, or if the patient ceases to be the subject of a conditional discharge
- if a restricted patient is to otherwise cease to be subject to restrictions; and,
- any other information which the relevant authority considers to appropriate to the circumstances of the case

13.3 No information regarding the patient's health and related care should be shared with the victim.

13.4 Probation assigned VLOs remain responsible for all contact with the victim, and will remain the single point of contact with the victim and should keep the clinical team informed of victim concerns, and the clinical team must provide adequate information to allow this duty to be discharged.

13.5 The victim contact provisions continue to apply if the patient is conditionally discharged (restricted patients) or discharged onto Supervised Community Treatment, SCT (s17A, MHA 2007).

14. GROUP B - UNRESTRICTED CHAPTER 2 PATIENTS

14.1 Where someone is detained under a "notional 37" (37N) (restriction lifted on or after 3 November 2008), this would fall under Group B or Patients who, on or after 3 November 2008, were:

a) made subject to an 'unrestricted' hospital order (Section 37, MHA), or
b) made subject to an 'unrestricted' prison transfer (transfer direction with no restriction) while serving a sentence (Section 47, MHA).

14.2 Victims are entitled to:

a) make representations about the conditions that the patient may be subject to if they discharged from hospital onto a Community Treatment Order (CTO); and,
b) receive information at key stages, including:
    - the patient's discharge from hospital subject to conditions (through CTO) and any conditions which relate to the victim or their family;
    - changes to those conditions, of if they are removed;
    - the patient's unconditional discharge from hospital, of if the patient ceases to be the subject of CTO;
    - any other information which the relevant authority considers to appropriate to the circumstances of the case.

14.3 The **Hospital Managers** have the following responsibilities in respect of group b - unrestricted chapter 2 patients

These responsibilities will be delegated to the MHA Administrators to carry out on a day-to-day basis. Responsible Clinicians and clinical teams must accept responsibility for identifying those patients who fall within the scope of the DVCVA known as Chapter 2 (Group B), DVCVA patients. This information must be passed to the site MHA Office/Administrator who should:

- Keep records of victims on patient electronic record system (used by the service) who have asked to make representations and/or receive information
- Invite (using Trust templates) and pass on representations from victims to the RC and AMHP when discharge or a CTO is being considered.
- Provide information to victims, as specified by RC about patients discharged by the RC, hospital managers and Tribunal, including decisions not to renew detention or extend a CTO.
- Inform new Hospital Managers (the new detaining authority) where patients are transferred or assigned.

14.4 Responsible Clinicians have the following responsibilities:

- Inform the MHA Office in advance if they are considering discharging an unrestricted 'Chapter 2' patient, placing the patient on a Community Treatment Order (CTO) or varying conditions of the CTO. Any decision to discharge should not be unduly delayed for the purpose of allowing a victim to make representations.

- Consider any representations made by the victim about the conditions to be included in a new CTO or one that is to be varied.
- Inform the MHA Office of any other event about which the victim will have a right to receive information i.e. expiry of detention, decision not to renew detention or extend the CTO (where they relate to the victim), variation of the conditions of the CTO (where they relate to the victim) or revocation of the CTO.
- Liaise with a Victim Liaison Officer (if he/she has made contact with the hospital on behalf of the victim). This may happen for restricted patients.
- Decide whether to provide additional information to victims (i.e. proposals for leave, absconding or transfer to another hospital, all subject to the general principles of patient confidentiality).

14.5 Tribunals and Hospital Mangers Hearings

14.5.1 The MHA Office will inform the Tribunal if the patient being considered is a Chapter 2 unrestricted patient and there is a victim who wishes to make a representation. Any representations received will be forwarded to the RC.

14.5.2 If the victim wishes any part of the submission to be withheld from the patient this must be clearly specified, including the reasons for the request. Victims should be made aware that there can be no guarantee that the information will be withheld and that the expectation is that all documents will be disclosed to the patient. The decision to withhold information is taken by the tribunal; when information is withheld from the patient it will still be made available to the patient's legal representative.

14.5.3 The victim can apply to attend a hearing, at the discretion of the chairman of the tribunal.

14.5.4 Victims may also make written representations to Hospital Managers hearings, at which the patient may be discharged. The MHA office will write to the victim and will ascertain whether the victim wishes to make representations. The MHA office will pass any such representations to the RC and to the patient's legal representative. If the victim wishes any part of the submission to be withheld from the patient this must be clearly specified, including the reasons for the request. Victims should be made aware that there can be no guarantee that the information will be withheld

14.5.5 The MHA office is responsible for advising the victim of the outcome of the hearing. The victim is not entitled to a copy of the decision form.

14.6 Approved Mental Health Professionals have the following responsibility:
When asked by the RC to agree an unrestricted Chapter 2 patient's placement on a CTO, to consider any representations from victims before agreeing to the proposed conditions to be included in the CTO.

15. PATIENTS WHO ARE VICTIMS UNDER THE DVCVA

15.1 A patient in the Trust may be the victim of a relevant violent or sexual offence and be entitled to receive information about the offender. Contact will initially be made with the patient by the Victim Liaison Service following the court case. Trust staff will offer support and guidance to the patient and offer to work with the VLO to gain an understanding of what information is to be shared with the patient.

16. POTENTIAL VICTIMS

16.1 When conducting risk assessments of patients, RCs and care teams should identify individuals who may be at risk from the patient in the future. This could include family, friends, neighbours or others. This may include people who currently have contact with the patient or who wish to have contact in the future.

16.2 The RC and care team should consider whether the risk of harm is such that it warrants disclosure of information to the potential victim.

16.3 On-going support should be offered to the potential victim by members of the care team, usually the social worker. (See the MHA Code of Practice 40.21)

17. NOTIFY AND CORRESPONDENCE

17.1 ***PLEASE NOTE*** No victim identifiable information should not be stored in patient records. Patient record should only note that there is a victim and if they are accessing VLO via probation or have requested information the Trust regarding unrestricted patients. All copies of letters should be stored in: Folder Name: Victims , Location: Common Drive (T:)

Access to this folder is restricted to Social Care Leads in each service, MHA, MCA Lead and MHA Administrators.

17.2 Letter 1 – to be sent to VLO (Probation where a victim has been identified but contact not confirmed). **Appendix 1**

17.3 Letter 2 Group B – To be sent to victim once confirmed wishes to receive information. **Appendix 2**

17.4 Information sheet to be sent with Letter 2 – Group B. **Appendix 3**

18. SYSTEMS & RECORDING

18.1 Once identified as Group A or B patient:

- Information about the status of patients under the DVCVA must be recorded on electronic clinical records and service specific assessment

documentation, indicating if VLO responsibility sits with Probation or the Trust

- The RC must notify the MHA Office/Administrator of identified Group B 'Chapter 2' patients. Information sheet to be completed by RC and MDT and shared with MHA administrator. **Appendix 4**
- The MHA Office add details to electronic patient record system
- The MHA Office must maintain a list of victims or VLOs who have a right to receive information or make representations and have made contact with the hospital to enact these rights. If the initial request for information is made to the RC or another clinical team member, the MHA Office must be informed.
- The MHA Offices will keep a list of Trust patients who are known 'Chapter 2' patients. The list can be manual or electronic. It is envisaged that the clinical record system will capture relevant data associated with the DVCVA and provide lists for use by clinical teams and the MHA Office.

19. CONFIDENTIALITY AND DISCLOSING INFORMATION

Guidance on confidentiality is provided at the following sources:
DoH Confidentiality NHS Code of Practice:
https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice

DoH Confidentiality: NHS Code of Practice - Supplementary Guidance: Public Interest Disclosures November 2010:
https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice

Information Commissioner's Office Data sharing code of practice:
https://ico.org.uk/for-organisations/guide-to-data-protection/data-sharing/

20. TRANSFERRING PATIENTS FROM PRISON TO HOSPITAL OR BETWEEN HOSPITALS

20.1 If a detained Chapter 2 patient is transferred to another hospital the RC will inform the receiving hospital of the patient's status under the DVCVA. This requirement is also applicable to CTO patients if they are assigned to a different hospital managed by another Trust.

20.2 When the MoJ transfer a restricted patient (who is subject to the provisions of the DVCVA) from prison to hospital, the caseworker will pass this information to the relevant offender manager who, in turn, will pass this to the VLO and ultimately, the Trust and RC.

21. MONITORING OF PROCEDURE

A review of this policy will be carried out every three years unless a need is identified sooner. Compliance will be monitored by Victims Operational Group.

22. APPENDICES

Appendix 1

Mental Health Act and Mental Capacity Lead
V7 Building
King's Business
Park
Prescot
Merseyside
L34 1PJ

Date

Addressee:

Dear

Re: [Patients Name] [Patients DoB]

Mersey Care NHS Foundation Trust have been advised that you are the nominated Victim Liaison Officer with regards to the above named patient.

With regards to Access to information under the Domestic Violence, Crime and Victims Act 2004, we have not been informed who the victim/victims were.

I would be grateful if you could ascertain from the victim/victims if they wish to receive information relating to any changes in [Patients Name] care and treatment as they are entitled to receive such information under the above Act as it affects the Mental Health Act 1983.

Should I receive no reply two weeks from receipt of this letter then I will assume that the victim/victims do not wish to receive the information.

Yours sincerely

Appendix 2

Mersey Care
NHS Foundation Trust

Community and Mental Health Services

V7 Building
King's Business Park
Prescot
Merseyside
L34 1PJ

<Date>
<Victim's Name
Victim's Address>

Dear **<Mr/Ms Victim's Surname>**

RE: Access to information under the Domestic Violence, Crime and Victims Act 2004 as it affects the Mental Health Act 1983

We are writing to you on behalf of the Hospital Managers of Mersey Care NHS Foundation Trust.

<NAME> Probation Service has informed us that you have been formally identified as a victim in respect of offence(s) carried out by **<Mr/Ms Patient's Name>** and that, furthermore, you have requested information relating to any changes in **<her/his>** care and treatment such as you are entitled to receive under the Domestic Violence, Crime and Victims Act 2004 as it affects the Mental Health Act 1983.

YOUR RIGHTS (*please refer to attached explanation sheet)*

Under the above Act you are entitled to receive to receive certain information from ourselves and other information may be shared with you on a discretionary basis. The information will be regarding the following:-

1. Tribunal Service Appeal Hearings

2. Hospital Managers Hearings

3. Discharge from Detention and /or Hospital

4. Supervised Community Treatment/Community Treatment Order

5. Section 17 Authorised Leave of Absence - Discretionary

6. Section 18 Absent Without Leave - Discretionary

7. Transfer to another Hospital

I hope the above clarifies your rights and the processes involved but if you require further information please contact ourselves at your convenience

Yours sincerely

(on behalf of the Hospital Managers of Mersey Care NHS Trust)

Enc.

YOUR RIGHTS

Under the above Act you are entitled to receive information from ourselves regarding the following:-

1. Tribunal Service Appeal Hearings

The Tribunal Service is a statutory, independent body that hears appeals submitted by patients who wish to contest their detention in hospital. The hearing carries the status of a Court of Law. A patient may appeal once during each period of detention (note, however, that patients detained under section 37 of the Act have no right of appeal during the first 6 month period of detention). The Tribunal Service has the power to either uphold the compulsory detention or, conversely, discharge the patient from detention.

You are entitled to:-

1. Formal notification of the date, time and venue of any Tribunal Hearing that is to take place.

2. Formal notification of the outcome of any such hearing.

In addition you are entitled to:-

3. Submit a written report stating your reasons why you believe this patient should not be discharged from compulsory detention under the Mental Health Act 1983.

OR

4. Instruct a representative to submit a written report on your behalf, again stating the reasons why you believe discharge from compulsory detention is inappropriate at this time.

You may request that any written report submitted by, or on behalf of yourself, is for to be considered for non-disclosure. This means that the patient will not have access to that report (**nb.** the patient's solicitor will have access to non-disclosed documents but only on the understanding that this is not then disclosed to the patient).

However, please note that the Tribunal may decide to over-rule any request for non-disclosure. Consequently, there is no absolute guarantee that a patient will not get access to information marked for non-disclosure.

Furthermore, you may request a private meeting with the Tribunal Panel members who will decide whether to grant or refuse your request.

Should you decide to exercise any of the above you should communicate directly with the Tribunal Service at the following address:-

First Tier Tribunal
Mental Health,
North Team
PO Box 8793
5th Floor
Leicester LE1 8BN

2. Hospital Managers Hearings

The Hospital Managers form part of the Trust Board (in our case, Mersey Care NHS Foundation Trust Board). They have a number of duties which they must perform by law.

These duties include considering any appeals against compulsory detention and/or considering any renewals of detention.

A patient may appeal to the Hospital Managers at any time during each period of detention (including the first period) and unlike Tribunal hearings, there is no limit on the number of times a patient may appeal during their detention.

In addition, each time the detention is renewed the Hospital Managers have to hold a review meeting

As with the Tribunal Hearing, the Hospital Managers have the legal authority to either uphold the detention or discharge the patient from detention.

Your rights are the same as for Tribunal Hearings (See above).

A Review Meeting following renewal is compulsory, even if the patient does not intend to contest the renewal itself. Where the Renewal is uncontested, the Hospital Managers may decide to hold a 'Paper Review'. A Paper Review is one where nobody attends and the Hospital Managers consider the reports only. You will be notified if this is the case.

On being informed that a Hospital Managers Hearing is to take place you should communicate directly with ourselves stating your intentions at the following address:-

<MHAA/Health Records Office
Office Address>

3. Discharge from Detention and /or Hospital

Along with the Tribunal Service and the Hospital Managers, the patient's Responsible Clinician (RC) has the power to discharge the patient from compulsory detention. The RC can also discharge the patient from hospital. If the Responsible Clinician decides to discharge from hospital this can be either an absolute discharge (i.e. discharge without conditions) or under a Community Treatment Order (CTO) where discharge from hospital is dependent upon the patient meeting specified conditions (See 4 Supervised Community Treatment/Community Treatment Order below).

If the patient is to be discharged from detention and/or hospital by whatever route (i.e. Responsible Clinician, Tribunal Service, Hospital Managers) you will be duly informed by ourselves, in writing, accordingly.

4. Supervised Community Treatment/Community Treatment Order

The Responsible Clinician may decide not to grant an absolute discharge from detention, but instead place the patient on a Community Treatment Order (also called Supervised Community Treatment). This means that the patient would be discharged from hospital but under specified conditions. Where necessary, any failure to comply with those conditions provides the Hospital Managers with the authority to immediately recall the patient to hospital.

As with Tribunals and Hospital Managers Appeals/Reviews you can submit representations regarding what conditions the patient should be subject to, and this can be done after the patient has been discharged on a Community Treatment Order. If this is done then the Responsible Clinician should consider your representation when deciding what conditions should be made.

Should the patient be placed under a Community Treatment Order you will be notified by ourselves in writing of its commencement. You cannot ordinarily be informed of the conditions UNLESS they relate directly to yourself (for example a condition may be that the patient must not try to contact yourself by any means, in which case you would be made aware of this).

The patient also has the right to appeal to the Tribunal Service against the Community Treatment Order. Where this occurs your rights are the same as for appeals to the Tribunal Service outlined in 1.Tribunal Service Appeal Hearings above.

5. Section 17 Authorised Leave of Absence

The patient's Responsible Clinician has the authority to grant the patient leave of absence from hospital whilst still detained under the Mental Health Act 1983.
There is no statutory requirement under the DVCVA 2004 to disclose details of a patient's leave in the community. However, this information may be disclosed on a discretionary basis. This is because leave may be part of a patient's medical treatment, and disclosure may breach medical confidentiality.

Subject to the Responsible Clinician's approval, you may be notified by us of the commencement date. Even where the Responsible Clinician thinks it appropriate that you be notified of the date of leave, you cannot ordinarily be informed of the terms and conditions of any leave of absence granted UNLESS they relate directly to yourself (for example a condition may again be that the patient must not try to contact yourself by any means whilst on leave, in which case you would be made aware of this).

6. Section 18 Absent Without Leave

Under the DVCVA 2004, it is also discretionary to notify you if at any time the patient manages to leave the hospital without having been formally granted section 17 leave of absence, or, if the patient fails to return from section 17 leave of absence at the specified time, then, subject to the approval of the Responsible Clinician, you will be notified as soon as is practicable. In such cases, you will also be informed of patient's return to hospital following any period of unauthorised absence.

7. Transfer to another Hospital

If the patient is formally transferred to another hospital whilst still detained under the Mental Health Act 1983 we will notify you accordingly. The duty to inform you of subsequent events concerning the patient will then lie with the Hospital Managers of the receiving Trust (effective from the day of transfer) and we will provide you with their contact details.

Appendix 4

NHS
Mersey Care
NHS Foundation Trust

Community and Mental Health Services

Mersey Care NHS Foundation Trust
Chapter 2 Unrestricted – Information Sheet to be stored on patient electronic record
3rd PARTY INFORMATION CONFIDENTIAL – NOT TO BE DISCLOSED TO PATIENT

<table>
<tr><td colspan="2">Patient Name:</td><td>Hosp. No:</td></tr>
<tr><td colspan="2">DOB:</td><td>NHS. No:</td></tr>
<tr><td>PNC No:</td><td>CRO No:</td><td>Prison No:</td></tr>
<tr><td>Date Admitted:</td><td>Order:</td><td>Order Dated:
(unrestricted order dated on or after 03/11/08)</td></tr>
<tr><td colspan="3">Offence:

(as set out in Schedule 15 of the Criminal Justice Act 2003)</td></tr>
<tr><td rowspan="2">Court:</td><td>Date of Conviction:
(on or after 01/07/05)</td><td rowspan="2">Sentence:</td></tr>
<tr><td>Date of Sentence:</td></tr>
<tr><td rowspan="3">Victim Liaison Officer (VLO):</td><td colspan="2">Name:</td></tr>
<tr><td colspan="2">Address:</td></tr>
<tr><td colspan="2">Tel. No:</td></tr>
<tr><td colspan="3">(a) Letter to Sent to VLO: …… ( ) Date
(b) Reply Received from VLO: …… YES / NO
(c) Are Victims Known …….. YES / NO</td></tr>
<tr><td rowspan="3">Victims Details:</td><td colspan="2">Name:</td></tr>
<tr><td colspan="2">Address:</td></tr>
<tr><td colspan="2">Tel. No:</td></tr>
<tr><td colspan="3">(d) Letter Enclosing Victims Rights Information Sheet Sent: ( ) Date Sent _____

(e) Reply Received from Victim: …… YES / NO

(f) Does Victim wish to receive information / make representations regarding the following:-</td></tr>
</table>

	Receive Information	**Make Representation**
Mental Health Review Tribunal	YES / NO	YES / NO
Hospital Managers Hearing	YES / NO	YES / NO
Discharge	YES / NO	YES / NO
CTO / SCT	YES / NO	YES / NO
Section 17	YES / NO	YES / NO

Section 18	YES / NO	YES / NO
Transfer to Hospital	YES / NO	YES / NO
Death	YES / NO	YES / NO

Equality and Human Rights Analysis

Title: Victim Rights
Area covered: T*rus*t Wide Non Clinical Procedure

What are the intended outcomes of this work?

The purpose of this procedure is to provide information and guidance on the actions to be taken by Trust staff to meet the requirements of the Mental Health Act 1983 (as amended) and the Domestic Violence, Crime and Victims Act 2004 (DVCVA) as they relate to victims of crime and in relation to people considered to be potential victims.

The victims of specified violent and sexual offences have certain rights to information about the offender. This includes offenders who are subject to the Mental Health Act 1983 (MHA) and are detained in hospital or subject to compulsion in the community. The victims also have rights to make representations about the release of the offender from detention under the MHA.

All hospital and community-based staff with a responsibility for the care and treatment of patients affected by this legislation, whether the patients are perpetrators of the crime or victims, must have a clear and structured response to any occasions where actions must be taken to comply with the MHA and DVCVA.

Who will be affected? Service users/patients/Carers/Staff

Evidence

What evidence have you considered?

The procedure contained within the document

The Equality and Human Rights Analysis of the related policies

SD01: v2 Leave for inpatients who are either managed informally under section 131 of the Mental Health Act or under the general powers of the Mental capacity Act (Sections 5&6)
SD05: Service users missing from an inpatient area
SD21: v3 Corporate Policy and Procedure for the Care Programme Approach
HSS 12: Policy and Procedure for Care Programme Approach
SD46: Multi Agency Public Protection Arrangement (MAPPA)
HSS 05: Multi Agency Public Protection Arrangements (MAPPA) Protocol

SD-G3: Section 117 - Aftercare under the Mental Health Act 1983
MH01: MHA 1983 Overarching Policy
MH20: Mental Health Act Managers' Policy
HSS 14: Policy & Procedure for Patients Temporary Absence from Hospital

Disability (including learning disability) Protected under this policy
Sex Protected under this policy
Age Protected under this policy
Gender reassignment (including transgender Protected under this policy
Sexual orientation Protected under this policy
Religion or belief Protected under this policy
Pregnancy and maternity Protected under this policy
Carers Protected under this policy
Other identified Protected under this policy
Cross Cutting The purpose of this procedure is to provide information and guidance on the actions to be taken by Trust staff to meet the requirements of the Mental Health Act 1983 (as amended) and the Domestic Violence, Crime and Victims Act 2004 (DVCVA) as they relate to victims of crime and in relation to people considered to be potential victims.

Human Rights	**Is there an impact?** **How this right could be protected?**
Right to life (Article 2)	Human Rights Based Approach Supported
Right of freedom from inhuman and degrading treatment (Article 3)	Human Rights Based Approach Supported
Right to liberty (Article 5)	
Right to a fair trial (Article 6)	Human Rights Based Approach Supported <u>The right to make representations</u> If a victim wishes to make representations regarding the discharge of a restricted Chapter 2 patient they must do this through the

	VLO or directly to the tribunal service.
Right to private and family life **(Article 8)**	Human Rights Based Approach Supported **DISCLOSING INFORMATION AND PATIENT CONFIDENTIALITY** The use and disclosure of patient information is governed primarily by the Data Protection Act 1998 and the Human Rights Act 1998. Additionally there is the NHS Code of Practice on Confidentiality (2003) and the MHA Code of Practice (2015) providing guidance on confidentiality. Ordinarily, information about a patient is not to be disclosed to a third party such as a victim without the patient's consent. However, it can be disclosed if other statutes permit this such as the DVCVA
Right of freedom of religion or belief **(Article 9)**	Human Rights Based Approach Supported
Right to freedom of expression **Note: this does not include insulting language such as racism (Article 10)**	Human Rights Based Approach Supported
Right freedom from discrimination **(Article 14)**	Human Rights Based Approach Supported

Engagement and Involvement *detail any engagement and involvement that was completed inputting this together.*
N/A

Summary of Analysis

Eliminate discrimination, harassment and victimisation

This procedure aims to provide awareness of and make clear duties that staff have in relation to victims of specified violent and sexual offences (see sections 4.6 and 8) Victims have certain rights to information about the offender. This includes offenders who are subject to the Mental Health Act 1983 (MHA) and are detained in hospital or subject to compulsion in the community. The victims also have rights to make representations about the release of the offender from detention under the MHA.

Advance equality of opportunity

N/A

Promote good relations between groups

N/A

What is the overall impact?

No negative impact detected

Addressing the impact on equalities

This procedure aims to provide awareness of and make clear duties that staff have in relation to victims of specified violent and sexual offences (see sections 4.6 and 8) Victims have certain rights to information about the offender. This includes offenders who are subject to the Mental Health Act 1983 (MHA) and are detained in hospital or subject to compulsion in the community. The victims also have rights to make representations about the release of the offender from detention under the MHA.

Action planning for improvement

See below

For the record

Name of persons who carried out this assessment:

Phil Appleton

George Sullivan

Date assessment completed:

06/03/2017

Name of responsible Director:

Director of Nursing and Patient Experience

Date assessment was signed:
March 2017

Action plan template

This part of the template is to help you develop your action plan. You might want to change the categories in the first column to reflect the actions needed for your policy.

Category	Actions	Target date	Person responsible and their area of responsibility
Monitoring	An audit of this policy will be carried out every three years unless a need is identified sooner by the local Mental Health Law Governance groups.		
Engagement	Policy to be placed on the Trust website Staff to be informed of their responsibilities via Safeguarding training.		
Increasing	The right to receive information in a format or language as		

accessibility	requested		

IMLEMENTATION PLAN FOR: **DATE:** **AUTHOR:**			
	Issues identified / Action to be taken	**Lead**	**Time-Scale**
1. Co-ordination of implementation • How will the implementation plan be co-ordinated and by whom? *Clear co-ordination is essential to monitor and sustain progress against the implementation plan and resolve any further issues that may arise.*			
2. Engaging staff • Who is affected directly or indirectly by the policy? • Are the most influential staff involved in the implementation? *Engaging staff and developing strong working relationships will provide a solid foundation for changes to be made.*			

3. Involving service users and carers • Is there a need to provide information to service users and carers regarding this policy? • Are there service users, carers, representatives or local organisations who could contribute to the implementation? *Involving service users and carers will ensure that any actions taken are in the best interest of services users and carers and that they are better informed about their care.*			
4. Communicating • What are the key messages to communicate to the different stakeholders? • How will these messages be communicated? *Effective communication will ensure that all those affected by the policy are kept informed thus smoothing the way for any changes. Promoting achievements can also provide encouragement to those involved.*			

5. Resources • Have the financial impacts of any changes been established? • Is it possible to set up processes to re-invest any savings? • Are other resources required to enable the implementation of the policy eg. increased staffing, new documentation? *Identification of resource impacts is essential at the start of the process to ensure action can be taken to addess issues which may arise at a later stage.*			
6. Securing and sustaining change • Have the likely barriers to change and realistic ways to overcome them been identified? • Who needs to change and how do you plan to approach them? • Have arrangements been made with service managers to enable staff to attend briefing and training sessions? • Are arrangements in place to ensure the induction of new staff reflects the policy? *Initial barriers to implementation need to be addressed as well as those that may affect the on-going success of the policy*			

7. Evaluating • What are the main changes in practice that should be seen from the policy? • How might these changes be evaluated? • How will lessons learnt from the implementation of this policy be fed back into the organisation? *Evaluating and demonstrating the benefits of new policy is essential to promote the achievements of those involved and justifying changes that have been made.*			
8. Other considerations			