

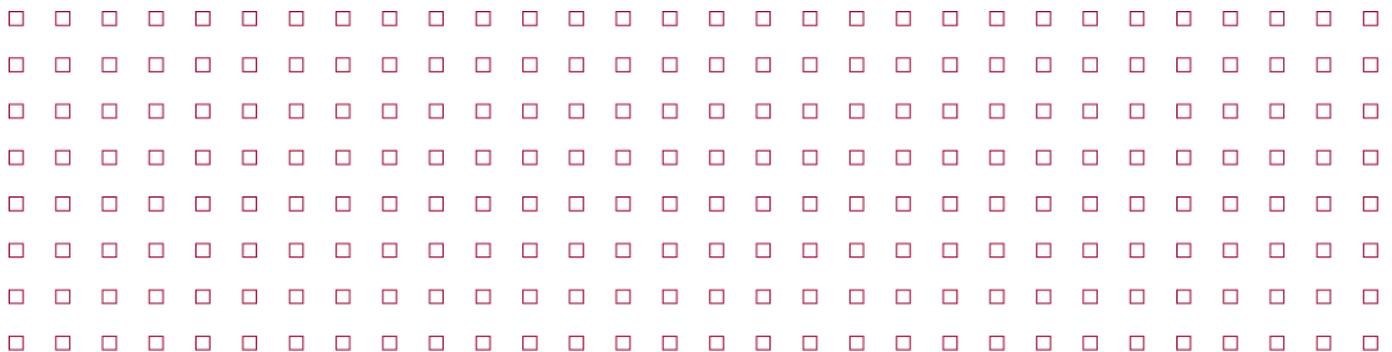


Ministry of
JUSTICE

Duties to victims under the Domestic Violence, Crime and Victims Act 2004

Guidance for clinicians

26 March 2009



Alternative format versions of this report are available on request from
public_enquiry.mhu@noms.gsi.gov.uk

© Crown copyright
Produced by the Ministry of Justice

Contents

Introduction	2
Detail of new victim provisions	3
Statutory requirements	4
Implications for clinicians	5
Non-statutory good practice	6

Introduction

1. This note sets out guidance on the legal provisions which give the victims of mentally disordered offenders the right to certain information about discharge and conditions of discharge. The provisions are in the Domestic Violence, Crime and Victims Act 2004 ("the DVCV Act") which came into force on 1 July 2005. They relate to the victim(s) of an offender who receives a restricted hospital order or a hospital and limitation direction, or who is transferred to hospital from prison under a transfer and restriction direction. The provisions do not place any statutory duty on clinicians to disclose information to victims, but this note gives guidance on relations with those authorities who are required to disclose information.
2. Details of the new provisions are set out at paragraphs 3 to 7 below; guidance for clinicians is set out at paragraphs 8 to 16 below.

Detail of new victim provisions

3. The new provisions:
 - Apply where a person is convicted of a sexual or violent offence and receives a restricted hospital order (including an order made under criminal insanity legislation) or a hospital and limitation direction. They also apply following the transfer to hospital of a sentenced prisoner where a transfer and restriction direction are made;
 - Confer the same rights on victims of such offenders as are available to victims of crimes whose perpetrator receives a prison sentence.
4. The provisions are not retrospective; they apply only to cases where an order or direction is made on or after 1 July 2005.
5. Under the DVCA Act, local probation boards are required to identify whether a victim, or someone else acting for the victim, wishes to:
 - Make representations about whether a patient should be subject to any conditions if discharged from hospital, and if so, what conditions should be imposed;
 - Receive information about any conditions to which the patient is to be subject in the event of his discharge.

The probation board must then provide such information to the victim; in practice, this will be done through the Victim Liaison Officer (VLO).
6. The definition of "victim" is taken to include any person in relation to an offence who appears to the local probation board to be, or to act for, the victim of the index offence. This includes 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 makes it sensible to approach a family member in the first place.

Statutory requirements

7. The Act places a duty on certain authorities to provide information as follows:
 - **Probation board:** must inform the victim whether the patient is to be subject to any conditions if discharged; provide details of conditions relating to contact with the victim or his/her family; notify the victim of the date when a restriction order ceases to have effect; and provide such information to the victim as the board considers appropriate in all the circumstances of the case.
 - **Justice Secretary:** where discharge is considered by the Justice Secretary, he must inform the probation board whether the patient is to be discharged; if so, whether it is a conditional or absolute discharge; and if a conditional discharge, what the conditions are. The Justice Secretary must inform the probation board if he varies the discharge conditions or recalls the patient to hospital; and if he lifts the restriction order, the date of this.
 - **The First-tier Tribunal - Mental Health (in Wales, the Mental Health Review Tribunal):** where an application is made to the Tribunal by the patient or referred by the Justice Secretary, the Tribunal must inform the probation board whether the patient is to be discharged; if so, whether it is a conditional or absolute discharge; if a conditional discharge, what the conditions are; of any variation of conditions by the Tribunal; and if the Tribunal lifts the restriction order, the date of this.

Implications for clinicians

8. The DVCV Act does not place any statutory requirements on clinicians to disclose information. The information whose disclosure is required under the DVCV Act relates to discharge and conditions of discharge. Under the Act, the probation board may also provide “such other information to the victim as the board considers appropriate in all the circumstances of the case”; this is intended to allow the probation board the discretion to give information which will reassure victims. It is not intended to lead to the disclosure of any information which is covered by patient confidentiality.

Tribunal applications

9. Clinicians are not required to notify the VLO when a patient applies or is referred to the Tribunal; this will be done by the Tribunal secretariat (where the patient makes his own application), or the Ministry of Justice if they have referred the case (i.e. under the three-year auto-referral rule or after the patient has been recalled to hospital). Where transferred prisoners are remitted to prison, the Ministry of Justice will notify the VLO.

Contact with VLO

10. There should be liaison between care teams and the VLO in each case where a victim decides that they wish to make representations or receive information under the Act.
11. Where the court makes an order or direction, the VLO will check whether the victim wishes to make representations or receive information. Where they do, the VLO will make contact with the Responsible Clinician (RC) for the patient concerned. Where a prisoner is transferred to hospital with a restriction direction, the Ministry of Justice will notify the relevant offender manager; the VLO concerned will then contact the RC.
12. It is for the clinical team and the VLO to decide the level of contact between them, e.g. whether or not the VLO should attend any meetings with the team about the case. It may be helpful for the team to know the views of the victim of the offence.

Non-statutory good practice

13. The requirements of the DVCV Act relate to discharge and conditions of discharge. The following guidance, on areas not covered by the DVCV Act, may be helpful regarding the disclosure of information to the VLO.

Transfer between hospitals

14. The Ministry of Justice will notify the VLO where a patient is transferred to a different hospital. The VLO will then make contact with the new RC. VLOs may inform victims of the fact of transfer, on the understanding that they should not inform them of the name or location of the hospital.

Absconds

15. Where the Ministry of Justice is notified that a patient has absconded, the Ministry of Justice may notify the VLO, depending on whether there is any perceived risk to the victim.

Leave

16. The DVCV Act does not change existing Ministry of Justice practice with regard to considering leave requests. When considering an application for community leave, the Ministry of Justice always takes into account any victim considerations. The Ministry of Justice may seek information from the VLO when considering an application, but it is not anticipated that this will happen in all cases or that the Ministry of Justice will always notify the VLO where leave is granted (although the VLO may be aware of this through contact with the clinical team). If the VLO is notified that a patient has been granted leave, it will be on the understanding that details of the timing and purpose of the leave should not be disclosed to the victim.

Other considerations

17. The Ministry of Justice will also notify the VLO when:
- a patient who has been previously found to be unfit to plead is remitted for trial;
 - a conditionally discharged patient is recalled to hospital;
 - a patient's restrictions expire (i.e. when they have been given a fixed term, as opposed to indefinite, hospital order).