

Protecting your NHS



*A framework for reporting and dealing with non-physical
assaults against NHS staff and professionals*

Non Physical Assault Explanatory Notes



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1. Introduction

Aim

- 1.1 The NHS Security Management Service (NHS SMS) has policy and operational responsibility for the management of security in the NHS. This includes tackling physical and non-physical assaults against staff.
- 1.2 Explanatory notes on tackling physical assaults against NHS staff and professionals were issued to health bodies¹ in May 2004 following Secretary of State Directions in November 2003.
- 1.3 Incidents of non-physical assault against NHS staff and professionals constitute the vast majority of violent incidents reported. It is the responsibility of each health body to develop or review local procedures for tackling non-physical assaults that are consistent with their identified needs and risks as well as compliant with Secretary of State Directions issued in November 2003. This document is designed to provide a consistent yet flexible framework and guidance to assist health bodies in the development and implementation of procedures to suit local needs and circumstance to effectively tackle non-physical assaults on staff by patients, relatives and visitors in accordance with new requirements introduced by Directions and existing obligations under Health and Safety legislation. The document follows the structure of the seven areas of generic action as outlined in the NHS SMS strategy document *A Professional Approach to Managing Security in the NHS* in order to ensure a comprehensive, consistent and professional approach in tackling the problem of non-physical assaults, starting by creating a pro-security culture.
- 1.4 This document defines what constitutes non-physical assault for reporting purposes in the NHS, describes the overall national framework within which such assaults should be dealt with, outlines reporting procedures and provides an overview of and practical advice on courses of action available where matters have not been resolved by other means in order that health bodies may take consistent action. It supersedes guidance previously issued under the NHS Zero Tolerance campaign.
- 1.5 It is essential that the Local Security Management Specialist (LSMS), or in the interim period until LSMS are trained and accredited – the Security Management Director – takes responsibility for ensuring compliance with Secretary of State Directions and this document in respect of tackling non-physical assaults and delivering an environment that is safe and secure so that the highest standards of clinical care be made available to patients.
- 1.6 It has been produced in consultation with staff, Security Management Directors and staff and professional representative bodies including UNISON, the Royal College of Nursing, the British Medical Association, the National Institute for

¹ Health body is used in the wider sense of the term and includes NHS Trusts (acute, mental health and ambulance), Primary Care Trusts, Strategic Health Authorities, and Special Health Authorities. It refers to premises where healthcare is being provided, including ambulance vehicles and the community, not just NHS premises.

Mental Health in England and the Ambulance Service Association. Partnership working between health bodies, health and safety representatives and staff representative bodies is essential in ensuring that staff are protected and supported from all aspects. It also forms a vital strand of the NHS human resource strategy and modernisation agenda.

Definition and Background

- 1.7 Everyone has a duty to behave in an acceptable and appropriate manner. Staff have a right to work, as patients have a right to be treated, free from fear of assault and abuse in an environment that is properly safe and secure.
- 1.8 The following baseline definition of a non-physical assault was introduced in November 2003 as part of Secretary of State Directions on work to tackle violence against staff and professionals who work in the NHS and replaced any other definitions previously in use across the NHS.

“The use of inappropriate words or behaviour causing distress and/or constituting harassment”.

- 1.9 This definition ensures that health bodies and staff are clear about what to report and can overcome local interpretations of what constitutes non-physical assault.
- 1.10 It is very difficult to provide a comprehensive description of all types of incidents, that are covered under this non-physical assault policy, however, examples of the types of behaviour covered are summarised below:
 - offensive language, verbal abuse and swearing which prevents staff from doing their job or makes them feel unsafe;
 - loud and intrusive conversation;
 - unwanted or abusive remarks;
 - negative, malicious or stereotypical comments;
 - invasion of personal space;
 - brandishing of objects or weapons;
 - near misses i.e. unsuccessful physical assaults;
 - offensive gestures;
 - threats or risk of serious injury to a member of staff, fellow patients or visitors;
 - bullying², victimisation or intimidation;

² Staff on staff bullying does not fall into the remit of security management. Any such issues will be dealt with by the NHS Employers Organisation.

- stalking;
- spitting;
- alcohol or drug fuelled abuse;
- unreasonable behaviour and non-cooperation such as repeated disregard of hospital visiting hours; or
- any of the above linked to destruction of or damage to property.

1.11 It is important to remember that such behaviour can be either in person, by telephone, letter or e-mail or other form of communication such as graffiti on NHS property for example.

1.12 The appropriate and proportionate response to be made to incidents will depend on the individual circumstances of each incident. It is the responsibility of the health body to ensure that staff are properly trained to handle this kind of aggression so that it does not escalate and is diffused wherever possible. It is also important that staff are aware of reporting procedures for non-physical assaults, encouraged to report incidents and that they are fully supported to do so.

Action

1.13 Local procedures must recognise that taking action is appropriate where non-physical assault or abusive behaviour is likely to:

- prejudice the safety of staff involved in providing the care or treatment; or lead the member of staff providing care to believe that he/she is no longer able to undertake his/her duties properly as a result of fearing for their safety;
- prejudice any benefit the patient might receive from the care or treatment;
- prejudice the safety of other patients; or
- result in damage to property inflicted by the patient, relative, visitor or as a result of containing them.

1.14 A range of measures can be taken by health bodies depending of the severity of the non-physical assault which may assist in the management of unacceptable behaviour by seeking to reduce the risks and demonstrate acceptable standards of behaviour, these may include:

- verbal warnings;
- Acknowledgement of Responsibilities Agreements (ARA);
- written warnings;

- withholding treatment;
 - the use of secure environments and transfer to a PCT Violent Patient Scheme;
 - civil injunctions and Anti Social Behaviour Orders (ASBOs); and
 - criminal prosecution.
- 1.15 The NHS SMS Legal Protection Unit (NHS SMS LPU) will provide health bodies with consistent and cost effective legal advice on avenues available for dealing with those who cause harm or distress to NHS staff and professionals in specific cases.
- 1.16 Depending on the individual circumstances and seriousness of each case, the outlined options can be taken in conjunction with one another or in isolation.
- 1.17 Whilst a verbal warning would precede an Acknowledgement of Responsibilities Agreement and this would precede the Withholding of Treatment, there is no requirement to escalate the response in any particular order if the situation warrants immediate action. The aim of this document is to give practical advice on both a generic and specific range of measures that can be taken depending on the severity of the non-physical assault and aggravating factors.
- 1.18 Not all of the measures outlined in this document will be applicable to all sectors or services within the NHS. For example, the Ambulance Service will continue to provide healthcare to individuals who may be subject to one or more of the outlined interventions. The crew attending an incident may not have prior knowledge of such details or the fact that the patient is considered a risk. It may not be possible to obtain further details at short notice. The Ambulance Service may not always have a contact name or address for the perpetrator in which case preventative measures such as training for staff in de-escalation and conflict resolution may be of more value. This is particularly important for patients under the influence of drugs or alcohol, or with a mental disorder. A verbal warning or Acknowledgement of Responsibilities Agreement may not be appropriate or possible in a mental health or learning disability setting if the perpetrator is not aware or considered responsible for their actions. In cases like these more emphasis needs to be placed on preventative measures, robust risk assessments and reporting so that there is a clear log of incidents that can be used should it become necessary to take action further down the line. If all else fails it may be necessary to take legal action and the NHS SMS Legal Protection Unit (NHS SMS LPU) will assist health bodies in specific cases.
- 1.19 A vital part of ensuring the safety of staff working in the community is robust lone worker policies and the application of these. The NHS SMS is currently developing a lone working policy and is trialling a particular device that in addition to such a policy could help protect lone workers. The policy will be launched in the new year and for this reason, lone working does not form part of this document.

1.20 This document outlines the requirements and the framework within which non-physical assaults should be tackled, so that it can be utilised and adapted locally based on risk and need.

2. Pro-Security Culture

- 2.1 The development of a pro-security culture is integral to all strands of security management work, including tackling non-physical assaults, as it underpins all other areas of generic action that follow. A pro-security culture amongst staff, professionals, patients, visitors and members of the public is one where the responsibility for security is accepted by all and the actions of a small anti-social minority who breach security not tolerated. In essence, building a pro-security culture is about raising awareness by communicating to staff and members of the public the necessity to be vigilant, to report incidents and ensuring that staff are aware of procedures in place to deal with security-related incidents. A key element of the pro-security culture is to encourage staff to take an active part in delivering a safe and secure environment within the NHS, usually best done through practical measures such as awareness campaigns, regular updates and briefings on security matters.
- 2.2 It is important that patients are fully aware of the standards of conduct expected of them and of the sanctions that may follow unacceptable behaviour. All those who work in or use the NHS need to be aware of the seriousness of non-physical assaults and the detrimental effect it has both on the staff involved and the NHS as a whole. All staff, patients and members of the public should be made aware that they have a collective responsibility to ensure that incidents are reported and that they take part in action to tackle the problems.
- 2.3 Copies of local procedures for tackling non-physical assaults must be made available to all managers and staff. Managers should also ensure that patients, relatives and other visitors are made aware of the procedures, copies of which should be displayed in waiting rooms and other public areas, or where this is not possible, on the trust website. This is an important aspect of engendering a pro-security culture, where responsibility for security is accepted by all and a strong message communicated to staff, patients and members of the public alike that violence whether physical or non-physical will not be tolerated.
- 2.4 Collective responsibility, partnership working and local ownership is essential to the creation of a pro-security culture and it is therefore important to ensure that all relevant parties are involved in the development or review of local procedures. Local procedures should therefore reflect:
- the views of staff and their union safety representatives or professional representatives;
 - the views of patients, service users and their representatives;
 - clear links to other relevant procedures and health body policies;
 - clear outline of responsibilities and lines of accountability in respect of any action to tackle non-physical assaults; and

- legal advice from the health body's own legal team (or the NHS SMS LPU in specific cases) on the precise terms and application of procedures in appropriate cases.

2.5 All staff must be appropriately trained in local procedures and reporting requirements so that they understand what, when and how to report an incident as well as be aware of the comprehensive measures in place to protect them.

3. Deterrence

- 3.1 Using publicity and the media, both nationally and locally, is a highly effective way of promoting what the NHS is doing to protect itself against those who would seek to attack it in a variety of ways, from assaulting its staff, whether physically or non-physically, through to damaging its property.
- 3.2 The NHS SMS is continuing to communicate to staff, patients, visitors and members of the public that violence whether physical or non-physical is not acceptable and will be dealt with consistently and appropriately through the use of national publicity campaigns.
- 3.3 Publicising appropriate cases can assist in developing and promoting a pro-security culture amongst the general public by raising awareness of the consequences of non-physical assaults within the NHS. They are also utilised to send out an important deterrent message to those who may be minded to assault NHS staff and professionals that they will be detected and, where appropriate, consistent and concerted action taken against them. It also conveys to staff in the NHS that professional and consistent action will be taken to protect them and the environment they work in.
- 3.4 Examples of cases where publicity has been used appropriately to send a deterrent message can be found at the end of this document. However, it is important that only appropriate cases are considered in this context and that where cases are publicised, solutions and preventative measures are also highlighted so that both the problem and the solutions are jointly publicised. Part of creating a pro-security culture involves ensuring that staff feel safe and secure through identifying both the reality and the perception of the problem. If problems are identified but no solutions addressed, staff may get a perception that nothing is being done and consequently their perception of the problem will be distorted, adding to their fear of violence in the workplace.
- 3.5 The LSMS will play a key part in identifying appropriate matters for both local and national publicity to ensure the deterrent effect is relevant and effective.
- 3.6 Other measures to ensure a deterrent message is communicated to staff, patients, visitors and members of the public include physical security measures where appropriate and based on thorough risk assessments and consultation with all relevant parties within the health body.

4. Prevention

- 4.1 The key to preventative action is a profound understanding of how and why incidents occur and to learn from that understanding. In order to achieve this, the following factors should be considered:
- profile of non-physical assaults addressing causes, frequency, severity, location, cost (human and financial) and staff group(s) involved;
 - key weaknesses that allow non-physical assaults to take place e.g. policy, procedures and systems; and
 - training needs analysis of staff within the health body in relation to the prevention and management of violence or the correct use and operation of security systems e.g. alarms, CCTV, access controls etc.
- 4.2 Prevention is essentially about using information to ensure that the risk of similar future incidents can be minimised. This includes learning from operational experience about previous incidents but also taking an inclusive approach by involving staff and stakeholders in the risk assessment process.
- 4.3 Detection and investigation are the main tools for developing robust preventative measures. Techniques such as analysis of causes of incidents, post-incident reviews and risk assessments are vital elements in this process. These need to be undertaken and reviewed on a regular basis to ensure that they are appropriate to the current risk and threat to the organisation.
- 4.4 A key preventative measure introduced by the NHS SMS to ensure that staff and professionals are given the necessary skills to be able to recognise and prevent potentially violence incidents from occurring through effective de-escalation is the national syllabus which has been introduced in conflict resolution. Separate syllabi specially adapted for mental health, learning disability settings and the Ambulance Service are being developed.

5. Detection

5.1 Detection is an integral part of the security management business process. It allows the necessary information to be gathered to:

- identify the problem;
- assess and manage the risk; and
- develop solutions.

5.2 Incident reporting is key to the detection of non-physical assaults. Detection allows appropriate incidents of non-physical assault to be investigated by professionally trained LSMS in order to ensure that lessons learnt can be fed back into risk management procedures. It also facilitates the development or revision of policy, procedures or systems to ensure that the risk of similar incidents occurring again can be minimised. In short, it facilitates the preventative process.

Reporting - the NHS SMS and the police

5.3 All staff must be made aware of what, how, when and to whom non-physical assaults should be reported. They should be encouraged to report and when reporting, fully supported by their health body. They must never be prevented or discouraged from reporting non-physical assaults to the police. In appropriate cases, the clinical condition of the assailant should be considered as part of this decision making process. Where the LSMS (or in the interim the Security Management Director) has concerns and the matter has not been reported to the police, they should where appropriate, arrange for this.

5.4 The following is a list of possible aggravating factors which should be considered when deciding to report an incident to the police. It is by no means exhaustive:

- the effect on the victim and/or others present;

However, the fact that none of the individuals present are adversely affected does *not* mean that a criminal offence has not been committed, or that the incident should not be reported to the police;

- the assailant's behaviour is motivated by hostility towards a particular group or individual on the grounds of race, religious belief (or lack of), nationality, gender, sexual orientation, age, disability or political affiliation;
- a weapon, or object capable of being used as a weapon, is brandished or used to damage property;
- the incident was an attempted, incomplete or unsuccessful physical assault;
- the incident involves action by more than one assailant;
- the incident is not the first to involve the same assailant(s);

- there is an indication that a particular member of staff or department/section is being targeted;
- there is serious concern that any threats made will be carried out;
- there is a concern that the individual's behaviour may deteriorate or that other NHS bodies should be advised or alerted; or
- the response to the incident has caused significant alteration to the health body's security policies or caused significant additional expenditure.

6. Investigation

Reporting Procedure

- 6.1 Following a non-physical assault on a member of NHS staff or professional, the LSMS (or where an LSMS has not been appointed, the Security Management Director), must in accordance with Secretary of State Directions ensure that effective arrangements have been put in place in order that:
- they are informed of the incident;
 - in appropriate cases, assessed by reference to their nature and seriousness, the police are contacted as soon as reasonably practicable and that full co-operation is given to the police in any subsequent investigation;
 - in all instances, regardless of whether or not the police decide to prosecute, the health body considers, in consultation with relevant staff and representatives, what preventative action, if any, should be taken to reduce further or related incidents with reference to this guidance;
 - the details are recorded in accordance with the NHS body's recording or incident reporting system (and that staff have received appropriate training in how to report incidents); and
 - the victim of the incident is informed of the progress of any investigation or action taken and is offered the full support of their health body such as debriefing, counselling services or other appropriate support that is necessary or desirable in the circumstances.
- 6.2 The Security Management Director must ensure that full co-operation is given to the police and the NHS SMS in respect of an investigation and any subsequent action, including ensuring access to personnel, premises and records whether electronic or otherwise which are considered relevant to the investigation.
- 6.3 Health bodies should ensure non-physical assaults are reported on their local incident reporting system and dealt with as per Secretary of State Directions and this policy. The NHS SMS is currently looking at ways in which this information can be utilised in a format that will enable the LSMS to take action in appropriate cases of security incidents and breaches whether they are non-physical assaults, physical assaults or thefts or damage to property.
- 6.4 A summary of issues relating to patient confidentiality and the Data Protection Act can be found at Annex E. Queries or requests for further information regarding releasing patient details for the purpose of reporting or any assistance with specific cases should be forwarded to the NHS SMS Legal Protection Unit lpu@cfsms.nhs.uk
- 6.5 Thorough investigation will form the basis for any subsequent action. Investigation is essential in order to ensure that contributing factors are identified which will ensure that lessons are learnt and vital information utilised for risk assessment purposes and preventative action. However, where appropriate, evidence gathered will also ensure that appropriate sanctions are

sought. The LSMS will be working with the police to ensure that consistent action is taken against those who assault NHS staff or professionals.

- 6.6 It is important that each case is judged on its own merits. The sections below outline a range of options that can be taken in order to effectively tackle non-physical assaults, depending on severity of the incident and aggravating factors.

Verbal Warnings

- 6.7 Verbal Warnings are a method of addressing unacceptable behaviour with a view to achieving realistic and workable solutions.
- 6.8 They are not a method of appeasing difficult patients, relatives or visitors in an attempt to modify their behaviour, or to punish them, but instead to determine the cause of the behaviour so that the problem can be addressed or the risk of it reoccurring minimised.
- 6.9 It is important that patients, relatives and visitors are dealt with in a demonstrable fair and objective manner. However, whilst staff have a duty of care, this does not include accepting abusive behaviour. Every attempt should be made to de-escalate a situation that could potentially become abusive. Where de-escalation fails, the patient, relative or visitor should be warned of the consequences of future unacceptable behaviour. The incident should also be reported and recorded locally in accordance with Secretary of State Directions.
- 6.10 Where it is deemed appropriate to approach to a patient, relative or visitor in respect of their behaviour, this should (where practicable) be done informally, privately and at time when all parties involved are composed.
- 6.11 The aim of the verbal warning process is twofold:
- to ascertain the reason for the behaviour as a means of preventing further incidents or reducing the risk of them reoccurring; and
 - ensure that the patient, relative or visitor is aware of the consequences of further unacceptable behaviour.
- 6.12 A meeting should be arranged and conducted in a fair and objective manner. A formal record should be made and maintained, utilising the health body's existing incident reporting system.
- 6.13 Verbal Warnings will not always be appropriate and should only be attempted when it is safe to do so with relevant and appropriate staff present (including security staff if necessary).
- 6.14 Where the process has no effect and unacceptable behaviour continues, alternative action must be considered.

Acknowledgement of Responsibilities Agreement (ARA)

- 6.15 ARAs are an option that can be considered for individuals, either patients, relatives or visitors, to address unacceptable behaviour where verbal warnings have failed, or as an immediate intervention depending on the circumstances. ARA is a written agreement between parties aimed at addressing and preventing the recurrence of unacceptable behaviour and can be used as an early intervention process to stop unacceptable behaviour from escalating into more serious behaviour.
- 6.16 All key stakeholders and relevant personnel, including staff union or professional representatives, should organise and attend a pre-meeting to discuss conditions. Where it is considered safe to do so, the perpetrator should then be invited to attend a meeting where the agreement is made. Appropriate persons should attend, but careful consideration should be given to the number of staff attending as the situation could be perceived as intimidating and threatening to the perpetrator if too many are present. Involving the perpetrator in the process is important as it may encourage them to recognise the impact of their behaviour, take responsibility for their actions and improve their behaviour.
- 6.17 The agreement itself should specify a list of acts or behaviours which an individual (either patient, relative or visitor) has been involved in with a view to get agreement and cooperation from them not to continue their behaviour.
- 6.18 ARAs should last at least for a period of six months, however, any reasonable period can be specified depending on the nature of the behaviour addressed, with a balance of both general and specific recommendations.
- 6.19 The terms of the ARA should be outlined formally in a written document for the perpetrator. A template for such a letter can be found at Annex A to this chapter, a copy of which they should be asked to sign. This template can be adapted to suit local needs. The terms of the agreement must be written in a manner which can be easily understood by the individual concerned. If they sign, and the unacceptable behaviour ceases, it may be appropriate to acknowledge this in a letter to the perpetrator, thereby encouraging continued good behaviour.
- 6.20 The meeting should be planned and organised appropriately in order to avoid intimidation. Cultural and ethnic sensitivities should be borne in mind in order to ensure that all possible aggravating factors are excluded at the outset. ARAs are in no way linked to criminal proceedings and it is important that the greatest care is taken to ensure the meeting is not misinterpreted as such. If a risk of violence is identified, consideration must be given to conducting this interview within a safe environment.
- 6.21 In the rare circumstances where a person who has not yet reached the age of 16 is interviewed, they must be accompanied by their parent, guardian, or appropriate adult to whom all correspondence must be issued.
- 6.22 Appropriate senior personnel representing the health body should ahead of any ARA meeting consider:
- the desired outcome; and

- appropriate conditions of the behavioural agreement.

6.23 During the meeting the following issues should be covered:

- reason for agreement;
- explanation as to why the identified behaviour is unacceptable;
- clear explanation that such behaviour must stop;
- consequences of continued unacceptable behaviour; and
- details of the mechanism for seeking a review e.g. via local complaints procedure.

6.24 Where a patient, relative or visitor fails to attend the meeting without good reason or notification, reasonable attempts to contact them should be made. If it is a patient with a mental disorder, the clinical team should be contacted as it may be prudent to ensure this is included in the Care Programme Approach.

6.25 If it is clear that they will not attend, or a pattern of non-attendance becomes evident and their behaviour continues to deteriorate, a letter explaining future expectations of their behaviour and consequences of non-compliance should be issued. A template for such a letter can be found at Annex B and can be adapted to suit local needs.

6.26 The use of ARAs would not be appropriate in the following circumstances:

- where the patient's GP, or Security Management Director in the health body having consulted with relevant staff and obtained clinical advice has reached the conclusion that the incident was clinically induced, such as a mental disorder, and where an ARA could adversely affect the patient's well-being or recovery, for example.³ However, the presence of a mental disorder should not preclude appropriate action from being taken, and it is important to note that the incident must still be recorded in accordance with Directions: and
- other than in exceptional circumstances, for anyone under the age of 16 (a ARA with the child's parent(s) or guardian(s) may however be appropriate).

6.27 Monitoring is essential if the ARA is to be effective. Roles and responsibilities in respect of monitoring must be clearly outlined so that any further unacceptable behaviour is recorded and appropriate action can be escalated should that become necessary.

6.28 Where a patient, relative or visitor fails to comply with the terms outlined in the ARA, consideration should be given to alternative procedural, civil or criminal action. The NHS SMS LPU will provide assistance in specific cases should this be necessary.

³ i.e. not intentional as the patient did not know what he was doing, or did not know that what he had done was wrong, due to a medical illness, mental disorder, a severe learning disability or as a result of treatment administered. In this instance, clinical advice should be sought on how to deal with the patient in question, ensuring that adequate and appropriate information is used for risk assessment purposes to minimise the risk of reoccurrence if possible.

6.29 ARAs may not be a possible or suitable option for the Ambulance Service where details of the perpetrator may be unknown or for a Mental Health Trust where a perpetrator may not be responsible for their actions. In the case of the Ambulance Service, legal action such as ASBOs may be the safest and most appropriate measure. In the case of mental health, any action which may or may not include legal action must be made in conjunction with clinical opinion.

Withholding of Treatment

6.30 The withholding of treatment raises a number of ethical as well as clinical issues for clinicians and managers. However, where such policies and procedures have been introduced, there is a clear indication that they can act as a deterrent to potentially violent patients and visitors and ensure that those who work hard to deliver quality patient care and services can do so in a safe environment. Health bodies should consider developing local procedures for withholding treatment, but remain clear that it should only be applied where appropriate and always as a last resort.

6.31 Local procedures should seek to engage both staff and patients in its development and include:

- a clear outline of behaviours (non-physical) that are considered unacceptable as well as an outline of sanctions or action that will be taken;
- details of the entire procedure to be followed where treatment is withheld from a patient;
- legal advice on the implementation of local procedures by the health body's own solicitors or the NHS SMS LPU;
- clear lines of accountability on the instigation of the withholding of treatment, (i.e. a senior clinician may provide advice, following a clinical assessment, to the Chief Executive or his deputy to issue a formal letter withholding treatment) including the role of the Security Management Director and the LSMS. It is essential that these roles are clearly defined in order to ensure impartiality;
- information about the period for which treatment will be withheld – this should normally not exceed 12 months, as well as how the decision will be monitored and reviewed;
- information on how to arrange treatment for those patients who have a life threatening condition; and
- consider details of arrangements for notifying other relevant personnel within the health body such as security, relevant local NHS services such as the Ambulance Service, and other agencies such as the police, where appropriate, of patients who are subject to withholding of NHS treatment. For example, if a hospital has decided to withhold treatment from a patient, the Ambulance Service need to know about it so that they can take appropriate precautions if they take a call from the person in question and so that they do not take them into that particular hospital.

- 6.32 Any decision to withhold treatment must be based on a proper clinical assessment and the advice of the patient's consultant or senior member of the medical team (on call team for Out of Hours) on a case by case basis. Under no circumstances should it be inferred to a patient that treatment may be withheld without appropriate consultation taking place. The withholding of treatment should always be seen as a last resort, and only ever following legal advice.
- 6.33 It would *not* be appropriate to withhold treatment in the same circumstances outlined in the preceding section on ARAs, for example, withholding of treatment may not be possible or appropriate for mental health and learning disability trusts or the Ambulance Service. In circumstances which require further action in order to ensure that non-physical assaults are appropriately dealt with, it may be more prudent to ensure that incidents reported form the basis of thorough and robust risk assessments and Care Programme Approach, so that the best possible measures to protect staff and prevent the patient from harming themselves, or other patients can be taken. If the unacceptable behaviour persists, these records will be invaluable for any subsequent sanctions or legal action, where this is appropriate. It may also be necessary to consider ASBOs or civil injunctions. It is imperative that the Security Management Director and the LSMS seek clinical opinion in matters relating to service users or patients with mental health problems or learning disabilities, and that the needs of the individual patient are balanced against the needs of other patients and the right of all staff to work in a safe and secure environment. Each case has to be judged on its own merit and where necessary and appropriate, legal opinion should be sought.
- 6.34 In the case of the Ambulance Service, information recorded through reports of non-physical assaults should be utilised by control staff to inform ambulance crews of individuals who pose a risk when they are called to attend incidents, where such information is available. However, where this is not possible, it may be that legal action is the only appropriate measure to take. Withholding treatment is difficult on practical grounds for the Ambulance Service and alternative solutions or measures must be considered.
- 6.35 Before withholding of treatment is considered, that is, as a first step towards dealing with abusive behaviour, it is recommended that a verbal warning is given. If this fails, mediation and an ARA or formal written warning should be considered. Before withholding of treatment is instigated, a final written warning should be issued to the patient by a senior staff member (preferably the Chief Executive or a Director) and must be copied to the patient's consultant and GP. The letter or written warning should:
- explain the reasons why the withholding of treatment is being considered (including relevant information, dates and times of incidents);
 - explain that the behaviour demonstrated is unacceptable;
 - explain that appropriate sanctions which will apply to violent or abusive patients;
 - give details of the mechanism for seeking a review of the issue, e.g. via local patient complaints procedures; and

- explain that the patient's GP and consultant will be sent a copy of the letter.
- 6.36 A template for such a letter can be found at Annex C. This can be adapted to suit local needs.
- 6.37 However, there may be instances where the nature of the assault is so serious that the health body, having obtained legal advice, can decide to withhold treatment immediately.
- 6.38 Where it is decided that a patient should be excluded from health body premises and treatment withheld, a written explanation for the exclusion must be provided. This letter must state:
- the reason why treatment is being withheld (including specific information, dates and times of incidents);
 - the period of the exclusion (the period of exclusion should normally not exceed 12 months, after which the decision must be reviewed);
 - details of the mechanism for seeking a review of a decision to withhold treatment; e.g. via local patient complaints procedures;
 - the action that the health body intends to take if an excluded individual returns to health body premises for any reason other than a medical emergency;
 - each case is judged on its own merits to ensure that the need to protect and ensure the safety of staff is properly balanced against the need to provide health care to individuals; and
 - that the GP and consultant will be notified in writing of the decision.
- 6.39 It is recommended that this letter is signed by the Chief Executive of the health body, and be copied to the LSMS, the patient's consultant, key worker⁴ and GP. A copy should also be kept on the patient's medical records. A sample letter is contained at Annex D which can be adapted to suit local needs.

Withholding of Treatment in Primary Care - Removal of Violent Patients from General Practitioner's (GP) List

- 6.40 GPs have the right to remove from their list, with immediate effect, any patient who has been violent or threatened violence to the GP or a member of their staff where the incident has been reported to the police. Changes made in the *NHS (Choice of Medical Practitioner) Amendment Regulations 1999* state that health bodies (i.e. PCTs) no longer need to consider distance when reallocating a patient who has been removed from the list for reasons of actual or threatened violence. This means that violent or potentially violent patients can now be seen at the most appropriate facilities to deal with such individuals. Such facilities are described in paragraph 6.49 onwards.

⁴ As assigned in the Care Programme Approach

- 6.41 In deciding whether or not to remove a patient from their list, GPs should use their clinical judgement to determine if the behaviour was a result of a clinical condition or treatment administered. GPs should exercise their judgement to ensure that the risks identified are balanced against the health care needs of the patient. An appeals system agreed between the PCT and Local Medical Committee should also be in place.
- 6.42 In exceptional circumstances it may be appropriate to exclude a patient where the behaviour of other members of the household is considered unacceptable. In such circumstances it may be appropriate for GPs to terminate responsibility for the entire household.
- 6.43 Any decision to withhold treatment must immediately be notified to the appropriate PCT in order to ensure the continuous provision of health care for that patient.
- 6.44 Whilst GPs are not legally required to advise patients of the reason behind the decision to remove them from the GP list, it is recommended that a letter similar to Annex D is issued in order to:
- demonstrate high standards of professionalism; and
 - avoid speculation and criticism of the GP's motives for such action.
- 6.45 Once a notification to remove a patient from the GP list has been issued, the following additional action should be taken;
- the LSMS (once accredited and in post), security personnel and any other relevant staff are informed; and
 - a record of the decision and action taken must be entered onto the patient's medical records.
- 6.46 Any decision must be made in the context of a defensible local procedure applied to the facts of the individual case. GPs should arrange access to the NHS SMS LPU through their PCT.
- 6.47 Where a patient responds positively to the intervention and no longer displays unacceptable behaviour, the following actions should be taken:
- the patient's care should continue without prejudice; and
 - any correspondence should be removed from medical records within twelve months.
- 6.48 GPs and health bodies must ensure that where they do provide treatment or care to previously or potentially violent and aggressive patients, staff are aware of local procedures for doing so and have received appropriate training on the application of those procedures. GPs and health bodies should also ensure that adequate and appropriate provisions for secure facilities or environments are made and that they and practice staff are given the necessary conflict resolution training.

Secure Facilities and Violent Patient Schemes

- 6.49 A secure environment describes an environment or process that allows for the safe consultation of violent patients. A secure environment may vary in form and resources depending on the individual health body (PCT) and its needs. This may for example include a specially designed safe consultation room, a special purpose mobile unit, the provision of a security guard present during consultation of the patient, or procedures that allow for the safe consultation of violent patients.
- 6.50 Safe environments for the treatment of violent patients in primary care services can be accessed through PCTs under the Directed Enhanced Services (DES), Violent Patient Scheme (VPS). It is a requirement for PCTs to have VPS in place. The details of such a scheme should be agreed in consultation with the Local Medical Committee. The scheme creates access to the provision of General Medical Services to violent patients who have been subject to immediate removal from a practice list, and covers support services to staff and the public in respect of the care and treatment of patients who are violent. The LSMS will be able to provide practical advice on its application.
- 6.51 The DES VPS allows for the enhancement of resources (such as the development of security measures to practice property), for the provider of the service, with the aim of reducing the difficulty of treating violent patients, minimising the risk of violence or disruption to GPs, practice and attached staff and other patients.
- 6.52 In order to undertake provision of the DES VPS, GP practitioners / practices are required to enter into a Service Level Agreement (SLA), with the PCT, determining roles, responsibilities as well as costs and remuneration. Health bodies should further develop policies that inform staff and patients of the processes and procedures subsequent to the VPS. The key features contributing to a secure environment under the VPS might include:
- policies that outline the procedures involved in the provision of the VPS;
 - minimum criteria for registering patients onto the scheme;
 - the importance of and need for a police incident reference number for confirmation of eligibility for the VPS;
 - procedures advising patients of their placement onto the scheme; and
 - a review procedure in line with the SLA with the PCT.
- 6.53 A process of making appointments should be devised. Appointments with patients should be made at times that will be least disruptive to other patients and the practice. However, this must not be perceived as preferential treatment, that is, it must be made clear that they are not receiving better or more prompt care than other patients.
- 6.54 A notice of the patient's inclusion on the VPS, including specific details relating to their behaviour, should be added to patient's medical record to alert staff of their status.

- 6.55 Staff involved in the treatment of the patient must undergo a minimum standard conflict resolution training course as per mandatory guidance issued under Secretary of State Directions on work to tackle violence against staff and professionals. Health bodies should carry out full risk assessments in order to comply with its duty of care and identify measures for reducing risk in consultation with all relevant parties, including the LSMS, other staff, union and professional body health and safety representatives.
- 6.56 Consideration should be given to developing security features in consultation with appropriate professionals e.g. local crime prevention officers or equivalent. The lead for this should be the LSMS. Examples of features are:
- security locking doors for safe access and exit to the service and the building;
 - shatter proof glass;
 - clear desk policy;
 - secure storage of medication;
 - panic buttons;
 - easy access to doorway;
 - alternative escape routes;
 - minimal suitable furniture;
 - fixed furniture;
 - CCTV;
 - additional staff in attendance (security guard, nurse trained in the management of violence); and
 - registration of patients on arrival.
- 6.57 Procedures for Out of Hours provision should be in place, consideration may be given to developing an agreement with local police or the employment of security guards for attendance at home visits if required.
- 6.58 The LSMS should ensure that strong links are made within PCTs to enable the promotion of security management work and reporting as best practice to GP practices.

7. Sanctions

- 7.1 There are a range of legal sanctions which can be taken against individuals (or groups) who abuse NHS staff and professionals. These range from criminal prosecution and ASBOs through to civil injunctions. Much of the behaviour to which this guidance relates may, depending on the particular circumstances of the incident(s), fall into one or more of the categories. For advice on the most appropriate sanctions available for specific cases health bodies should contact the NHS SMS LPU.
- 7.2 Once the appropriate authorities (police/Crown Prosecution Service) have advised that they will not be taking action, the NHS SMS would in conjunction with the health body consider what further action to take. Health bodies should be aware that the NHS SMS LPU will provide guidance and advice to assist in obtaining the best service from the police/CPS.
- 7.3 Where a health body wishes legal action to be considered by the NHS SMS LPU, it is important that as much information and supporting documentary evidence is provided by the health body from the outset.
- 7.4 It is important to note that much of the behaviour covered by this policy may be subject to a 6 month time bar on criminal proceedings. This means that the court must agree to proceedings being commenced a maximum of 6 months from the date of the last incident. In some cases incidents over 6 months old may be excluded. It is imperative therefore, that delays are kept to a minimum in order that the full range of legal options remains open.
- 7.5. Since April 2004 the NHS SMS (LPU) have advised on number of cases involving non-physical assaults which have resulted in a criminal prosecutions, ASBOs and civil injunctions.

8. Redress

- 8.1 Assaults whether physical or non-physical in nature have a direct impact on the resources allocated to the NHS to deliver high quality patient care. Time and money spent on dealing with the consequences of violence is time and money diverted from the delivery of health care.
- 8.2 It is therefore important that where assaults cannot be deterred or prevented and a loss is incurred as a result, health bodies should seek redress from those that are responsible for causing them, where that is appropriate.
- 8.3 Through good incident investigative work carried out by the LSMS, the health body will be able to identify resources lost as a result of incidents.
- 8.4 Two principles lie behind effective recovery:
 - monies lost through violent incidents and breaches can be returned to patient care; and
 - recovery delivers an important deterrent message to staff, patients and the public that crime simply does not pay and that the NHS will always pursue redress from those who attack it and deprive it of valuable resources.
- 8.5 Further guidance can be obtained from the NHS Security Management Manual or the NHS SMS LPU.

9. Case Examples

- 9.1 A man was sentenced at a Crown Court for abusive behaviour in an Accident and Emergency Department. In September 2004 Mr X pleaded guilty and was sentenced to three months imprisonment for public order offences. The 35 year old abused the hospital staff verbally, threatened them and was physically menacing during an incident that took place in March. Police, liaising with specialists from the NHS Security Management Service, investigated the incident and charged Mr X with Section 4 of the Public Order Act.
- 9.2 Working with an Ambulance Trust, a NHS Trust and the local police the NHS SMS LPU were successful in obtaining a civil injunction against a 63 year old man who had been misusing NHS services and abusing NHS staff and other patients since 2001, effectively banning him from accessing ambulance and A&E services, except in the case of genuine medical emergencies.

<Date>

Dear

Acknowledgement of Responsibilities Agreement between <insert name of patient, visitor or member of the public> and < insert name of health body or location>

It is alleged that on the <insert date> you <insert name> used/threatened unlawful violence/acted in an anti-social manner to a member of NHS staff/whilst on NHS premises (delete as applicable).

Behaviour such as this is unacceptable and will not be tolerated. This trust is firmly of the view that all those who work in or provide services to the NHS have the right to do so without fear of violence or abuse. This was made clear to you at the meeting you attended on <insert location and date> to acknowledge responsibility for your actions and agree a way forward.

I would urge you to consider your behaviour when attending the < insert name of trust/ location> in the future and comply with the following conditions as discussed at out meeting:

<list of conditions>

If you fail to act in accordance with these conditions and continue to demonstrate what we consider to be unacceptable behaviour, I will have no choice but to take one of the following actions: (to be adjusted as appropriate):

- The matter will be reported to the police with a view to this health body supporting a criminal prosecution by the Crown Prosecution Service.
- The matter will be reported to the NHS Security Management Service Legal Protection Unit with a view to this health body supporting criminal or civil proceedings or other sanctions. Any legal costs incurred will be sought from yourself.
- Consideration will be given to obtaining a civil injunction in the appropriate terms. Any legal costs incurred will be sought from yourself.

A copy of this letter is attached. Please sign the second copy and return to me to indicate that you have read and understood the above warning and agree to abide by the conditions listed accordingly.

If you do not reply within fourteen days I shall assume tacit agreement.

Sincerely,

Signed by senior staff member

Date

I, <insert name> accept the conditions listed above and agree to abide by them accordingly.

Signed

Date

<Date>

Dear

Acknowledgement of Responsibilities Agreement between <insert name of patient, visitor or member of the public> and < insert name of health body or location>

I am writing to you concerning an incident that occurred on <insert date> at <insert name of health body or location>.

It is alleged that you <insert name> used/threatened unlawful violence/acted in an anti-social manner to a member of NHS staff/whilst on NHS premises (delete as applicable).

Behaviour such as this is unacceptable and will not be tolerated. This trust is firmly of the view that all those who work in or provide services to the NHS have the right to do so without fear of violence or abuse. This was made clear to you in my previous correspondence of <insert date> to you. We have attempted to contact you <insert details> to invite you to a meeting to discuss the matter and agree an acceptable conduct when attending these premises. However, we have not had a response from you.

I would urge you to consider your behaviour when attending the <location> in the future and comply with the following conditions

<list of conditions>

If you fail to act in accordance with these conditions and continue to demonstrate unacceptable behaviour, I will have no choice but to take the following action: (to be adjusted as appropriate):

- The matter will be reported to the police with a view to this health body supporting a criminal prosecution by the Crown Prosecution Service
- The matter will be reported to the NHS Security Management Service Legal Protection Unit with a view to this health body supporting criminal or civil proceedings or other sanctions. Any legal costs incurred will be sought from yourself.
- Consideration will be given to obtaining a civil injunction in the appropriate terms. Any legal costs incurred will be sought from yourself.

I enclose two copies of this letter for your attention, I would be grateful if you could sign one copy, acknowledging your agreement with these conditions and return it to me in the envelope provided. In the event that I receive no reply within the next fourteen days, it shall be presumed that you agree with the conditions contained herein.

I hope that you should find these conditions acceptable. However, if you do not agree with the details contained in this letter about your alleged behaviour or feel that this action is unwarranted, please contact in writing < insert details of local complaints procedure> who will review the decision in light of your account of the incident(s).

Yours faithfully,

Signed by senior staff member.

I, <insert name> accept the conditions listed and agree to abide by them accordingly.

Signed

Dated

<Date>

Dear

FINAL WARNING

I am writing to you concerning an incident that occurred on <insert date> at <insert name of health body or location>.

It is alleged that you <insert name> used/threatened unlawful violence/acted in an anti-social manner to a member of NHS staff/whilst on NHS premises (delete as applicable).

Behaviour such as this is unacceptable and will not be tolerated. This trust is firmly of the view that all those who work in or provide services to the NHS have the right to do so without fear of violence or abuse. This has been made clear to you in <insert details of previous correspondence/ meetings>. A copy of this health body's policy on the withholding of treatment from patients is enclosed for your attention.

If you act in accordance with what this trust considers to be acceptable behaviour, your care will not be affected. However, if there is a repetition of your unacceptable behaviour, this warning will remain on your medical records for a period of one year from the date of issue and will be taken into consideration with one or more of the following actions:

(to be adjusted as appropriate)

- The withdrawal of NHS Care and Treatment, subject to clinical advice.
- The matter will be reported to the police with a view to this health body supporting a criminal prosecution by the Crown Prosecution Service.
- The matter will be reported to the NHS Security Management Service Legal Protection Unit with a view to this health body supporting criminal or civil proceedings or other sanctions. Any legal costs incurred will be sought from yourself.
- Consideration will be given to obtaining a civil injunction in the appropriate terms. Any legal costs incurred will be sought from yourself.

In considering withholding treatment this trust considers cases on an individual basis to ensure that the need to protect staff is balanced against the need to provide health care to patients. An exclusion from NHS premises would mean that you would not receive care at this trust and (title, i.e. clinician) would make alternative arrangement for you to receive treatment elsewhere.

If you consider that your alleged behaviour has been misrepresented or that this action is unwarranted, please contact in writing < insert details of local complaints procedure> who will review this decision in the light of your account of the incident(s).

A copy of this letter has been issued to your GP and consultant.

Yours faithfully,

Signed by senior staff member

Date

<Date>

Dear

Withholding of Treatment

I am writing to you concerning an incident that occurred on < insert date> at <insert name of health body or location>.

It is alleged that you <insert name> used/threatened unlawful violence/acted in an anti-social manner to a member of NHS staff/whilst on NHS premises (delete as applicable).

Behaviour such as this is unacceptable and will not be tolerated. This trust is firmly of the view that all those who work in or provide services to the NHS have the right to do so without fear of violence or abuse. A copy of this health body's policy on the withholding of treatment from patients is enclosed for your attention.

Following a number of warnings <insert details of correspondence and meetings> where this has been made clear to you, and following clinical assessment and appropriate consultation, it has been decided that you should be excluded from health body premises. The period of this exclusion is <insert number of weeks /months> and comes into effect from the date of this letter.

As part of this exclusion notice you are not to attend health body premises at any time except:

- in a medical emergency; or
- where you are invited to attend as a pre-arranged appointment.

Contravention of this notice will result in one or more of the following actions being taken (*to be adjusted as appropriate*):

- Consideration will be given to obtaining a civil injunction in the appropriate terms. Any legal costs incurred will be sought from yourself.
- The matter will be reported to the police with a view to this health body supporting a criminal prosecution by the Crown Prosecution Service
- The matter will be reported to the NHS Security Management Service Legal Protection Unit with a view to this health body supporting criminal or

civil proceedings or other sanctions. Any legal costs incurred will be sought from yourself.

During the period of your exclusion the following arrangement must be followed in order for you to receive treatment <list arrangements>.

In considering withholding treatment this health body considers cases on their individual merits to ensure that the need to protect staff is balanced against the need to provide health care to individuals.

If you consider that your alleged behaviour has been misrepresented or that this action is unwarranted, please contact in writing <insert details of local complaints procedure> who will review this decision in the light of your account of the incident(s).

A copy of this letter has been issued to your GP and consultant.

Yours faithfully,

Signed by senior member of staff

Date

Confidentiality and Data Protection – Executive Summary

In November 2003, the Secretary of State issued Directions to NHS bodies as to the measures they should take to deal with violence against NHS staff and professionals. Pursuant to these Directions, each NHS body must nominate one of its executive directors to take responsibility for measures to deal with violence against staff. In order to discharge its responsibilities, NHS SMS has established a Physical Assault Reporting System (PARS) which includes a computer database.

A difficulty has arisen because some Health Bodies, Directors and some NHS staff are refusing to pass relevant and necessary information about incidents of violence to NHS SMS. It is being suggested by those who should but refuse to pass on this information that to do so would involve a contravention of the Data Protection Act or would otherwise be a breach of confidence.

Confidentiality

The right to confidentiality is not absolute and it can be waived or over-ridden in a number of circumstances, e.g.:

- where a patient has expressly or impliedly consented to information being disclosed, e.g. when a victim makes a witness statement and details the injuries suffered;
- regardless of consent, it can be over-ridden by primary or secondary legislation, e.g. Directions, The Public Health (Control of Disease) Act 1984 etc.; or
- regardless of consent, if disclosure is in the public interest then the duty of confidence can be over-ridden.

The NHS, as an employer, owes a duty to its employees to take appropriate steps to keep the working environment safe. The employees also have a similar duty. The duty between employer and employee to comply with measures designed to prevent or investigate workplace violence are enshrined in health and safety legislation.

Disclosure can be justified in the public interest in the investigation of crime and the prosecution of offenders. The right of a patient to keep their medical records secret does not extend to the right to prevent relevant and necessary details of an assault they have committed being passed to the relevant authorities. The doctor/patient confidentiality regime is to encourage a patient to be frank with their doctor and so receive the best treatment, and not to enable them to commit assaults without recourse. Details of the assailant's medical condition/treatment would only be required if they are **relevant** e.g. they may have in some way influenced his behaviour.

The appropriate offence with which an assailant is charged is selected in large part according to the extent of the injuries suffered by the person assaulted. Details of the injuries and subsequent medical treatment would be required for this purpose. The balance would be correctly struck where there was no more

disclosure of the patient records than was necessary for the proper investigation of the assault.

Disclosure can also be ordered by the courts. The courts have wide-ranging powers to order disclosure of any material except where it is protected by legal professional privilege etc. No such privilege exists however regarding communications between a patient and his/her doctor or other health care worker. Any potential breach of confidentiality should be pointed out to the Judge who will then weigh up the arguments made for and against disclosure and will then make the decision on disclosure.

The Data Protection Act 1998 (DPA).

Exemptions from certain provisions in the DPA 1988 have been created for a variety of purposes and the main ones appear in part IV of the Act. Each of the exemptions authorises non-compliance with various parts of the Act's provisions. For NHS SMS purposes the most likely exemptions would come under the following categories:

- the investigation of crime;
- the apprehension or prosecution of offenders;
- where the disclosure is required by or under any enactment, (i.e. Secretary of State for Health's Directions);
- by rule of law or by order of the court;
- in connection with legal proceedings (including prospective legal proceedings);
- for the purpose of obtaining legal advice; or
- is otherwise necessary for the purposes of establishing, exercising or defending legal rights

The Office of the Information Commissioner is the body responsible for enforcing the DPA. Guidance on the use and disclosure of health data published by this body make specific reference to the duty of confidentiality and the DPA and in both instances states that disclosure of medical information would most likely be justified in the event of an assault on a member of staff.

In summary, it is the view of the NHS SMS, supported by detailed legal advice and the guidance of the Information Commissioner, that disclosure of the personal details and relevant medical information of those involved in assaults against NHS staff is a justifiable breach of confidentiality, required by law and covered by various exemptions to the DPA.