

STANDARD OPERATING PROCEDURE SHARING PERSONAL DATA WITH THE POLICE

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VALIDITY – All local SOPS should be accessed via the Trust intranet

CHANGE RECORD

Version	Date	Change details
V1.0	Aug-2007	IG Committee with the final version approved by Caldicott Guardian in June 2008 Coinsultation with Humberside Police, Hull City Council East Riding of Yorkshire Council, IG Committee, Acute Care Forum, Legal Services.
V1.1	July 2012	Reviewed, minor changes
V2.0	March-144	Reviewed, minor changes
V3.0	Dec 2018	Updated to new Trust Format, added further legal duty to disclose from IGA guidance, updated references to DPA 2018/GDPR, new police form name.
V4.0	Feb 2019	Further updates: reference to The Police and Crime Act 2017, referring staff to Trust policy. Reference to the National Partnership Protocol for managing risk and investigating crime in mental health settings. Adding that staff should seek advice/support from their manager <u>or</u> qualified member of staff. Consultation with Mental Health Response Service and Safeguarding
V4.01	Feb 2021	Included information from NHSx guidance in relation to police inspecting records on Trust premises. Added a reference to the MAPPa information sharing agreement Consultation with MHCIT, Safeguarding, DPO, H&S Advisor and Security Lead. Approved by the Information Governance Group January 2022

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1. Introduction

This procedure details how requests for personal data from the police should be dealt with.

2. Scope

This procedure applies to all employees of the Trust, including all staff who are seconded to the Trust, contract, voluntary, temporary and agency staff and other people working on Trust premises. This includes members of staff with an honorary contract or paid an honorarium.

This procedure applied to all personal data (staff and patients).

Staff should seek advice and support from their manager prior to disclosing information to the police. Advice and support is also available from Information Governance and Legal Services.

The “National Partnership Protocol for managing risk and investigating crime in mental health settings” will be followed in instances such as crimes against NHS staff or property. The Trust’s Local Security Management Specialist should be contacted for all security related incidents and violence and aggression in crimes against NHS staff or property.

3. Legal basis for disclosure

3.1 Consent

Wherever possible, the informed explicit consent of the individual will be gained prior to the release of information to the police. Where the individual has given consent, proof of the consent, e.g. a signed consent form should be retained in the patient’s record. Only the minimum information to satisfy the request should be given. An example consent form is included in Appendix A. The patient must understand what information is to be disclosed and that it may be disclosed to third parties, including the defence and may also be referred to in open Court.

If consent cannot be gained or gaining it might jeopardise the investigation, consider whether there is a legal duty or power to share the information.

1.2 Legal Duty to Disclose

Court Order

Where the courts have made an order, information must be disclosed strictly within the terms of that order unless the Trust decides to challenge the order at court. The Trust must comply with the decision of the judge.

Where a disclosure is ordered by a court the patient should be informed as soon as possible and ideally before the disclosure is made. Clarification should be sought as to whether this has occurred. (Reference: The Queen on the

Application of TB v The Combined Court at Stafford and the CPS and South Staffordshire Health Care NHS Trust [2006].)

Prevention of Terrorism Act 1989 and Terrorism Act 2000

There is a statutory duty to inform the police of information, including personal information, about terrorist activity.

The Road Traffic Act 1988

There is a statutory duty to inform the police, when asked, the name and address of drivers who are allegedly guilty of an offence. Clinical information should not be disclosed.

Misuse of Drugs Act 1971

Under Section 8 of the Misuse of Drugs Act 1971, a person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following activities to take place on those premises, that is:

- a) Producing or attempting to produce a controlled drug
- b) Supplying or attempting to supply a controlled drug to another or offering to supply a controlled drug to another
- c) Preparing opium for smoking
- d) Smoking cannabis, cannabis resin or prepared opium.

The Police will be informed where patients are suspected of supplying illicit drugs to other patients.

The Female Genital Mutilation Act 2003, as amended by the Serious Crime Act 2015

Under Section 5(b) there is a statutory duty to report to the police where it appears that a girl under the age of 18 has been subject to genital mutilation. Staff should follow the Safeguarding Children Policy or the Safeguarding Adults Policy.

Policing and Crime Act 2017

Under Section 80, a police officer must, where practicable, consult a health professional before exercising a section 136 power. Staff should follow the Trust policy for the "Implementation of Section 136 of the Mental Health Act 1983".

Coroners Court

The Coroner's Office may request a medical record in order to investigate the cause of death of a person in suspicious or unnatural deaths.

Information may be requested by a police officer on behalf of the coroner. Staff can confirm this with the Coroners Office on Tel. 613009. Identification should be requested from the police officer and the officer's name, rank and number logged. A receipt for the record should be obtained from the police officer's property book.

Such requests will be dealt with by Legal Services. Original health records will not be provided, except in exceptional circumstances. The requirement for an original record must always be confirmed in writing by the coroner. A copy of the original health record will be retained by the Trust. Legal Services will ensure that the records are returned to the Trust.

1.3 Legal Duty to Co-operate

Section 325 Criminal Justice Act 2003 establishes a duty to co-operate with the Responsible Authority for Multi Agency Public Protection Arrangements (MAPPA). Co-operation may include the sharing of information but any information shared must also comply with other legal responsibilities such as the Data Protection Act 2018, General Data Protection Regulation and the Common Law Duty of Confidence.

MAPPA assesses and manages the risks posed by violent and sexual offenders who may cause serious harm to the public. All disclosures to MAPPA should follow the [MAPPA Protocol](#) and the guidance detailed in the [MAPPA Information Sharing Agreement](#).

1.4 Legal Power to Disclose

Under Schedule 2 Part 1(2) Data Protection Act 2018, the police may request information without the consent of the individual when making enquiries concerned with the prevention and detection of crime or the apprehension and prosecution of offenders and consent would prejudice the purpose.

The Police must produce the “Request to external organisation for disclosure of personal data to the police” Form to request the information. This form is commonly referred to as a “DP9 Form”.

Information should only be supplied to the police if it is in the public interest to do so. The decision should be made by health professional who is responsible for the relevant aspect of the patient’s health care at the time. Staff should seek advice and support from their manager or a qualified member of staff prior to disclosing information. Further advice may be sought if necessary from the Information Governance and Legal Services team. The Caldicott Guardian or Senior Information Risk Owner will make the final decision in complex cases.

Information may also be proactively disclosed to the police if it is in the public interest to do so.

The following must be considered when making the decision: -

- Is the request in relation to a serious crime or to prevent serious harm or abuse to an individual (See further advice in Appendix B).
- How do the benefits of making the disclosure balance against the harms associated with breaching a patient’s confidentiality?
- Without disclosure, would the task of preventing, detecting or prosecuting the crime be seriously prejudiced or delayed?
- Could the data subject be persuaded to disclose the information voluntarily?

- Is the information limited to what is strictly relevant to a specific investigation? The police should be specific about the information required and why. The police should not ask for a full copy of the record using the exemption in the hope that it might contain information to satisfy this purpose, even if a serious offence has taken place.

The decision to disclose or not to disclose must be recorded in the patient's record. Clear evidence of the reasoning used and circumstances prevailing should be documented. The individual concerned should be informed about the disclosure unless it would defeat the purpose of the investigation. Police advice should be sought to check whether this would be the case.

Information should only be released before the person has been charged, unless there are highly exceptional circumstances. If the person has been charged, a court order for the release of any information should be presented.

Staff should be aware that the police are not entitled to take patient's records, even with a search warrant. A court order or a witness summons requiring the release of the record must be presented. Staff should contact the Head of Information Governance and Legal Services who will provide support for such disclosures.

In some cases, the police may want to inspect the record on Trust premises, rather than have a copy sent. In these cases, you should agree on a time for the visit (which should be as soon as possible). The above guidance must still be followed ensuring a legal basis for the disclosure. The record must be reviewed ahead of the visit to ensure that you will not inadvertently disclose information that is irrelevant to police inquiries. A clinician should be available to help the police understand any medical terms or content that might be unfamiliar to them.

The above guidance should also be followed in instances where the Trust wishes to pro-actively release information to the police in the public interest.

If the information requested relates to a deceased person, the Data Protection Act 2018 no longer applies, however, confidentiality obligations remain and the guidance above must be followed.

4. Procedure for disclosure

The flowchart detailed in Appendix C should be followed when dealing with a request for information. In particular: -

- Ensure a lawful basis for the disclosure
- Only disclose information that is relevant to the enquiry.
- Disclose information securely, following the Trust's Safe Haven Procedure.
- Seek advice from colleagues and line managers when making a decision about a disclosure

- Record the reasoning used, circumstances prevailing and decisions made in the patient's record.

Even talking to the police about a patient will constitute a disclosure and must follow this procedure.

Staff may face disciplinary proceedings if information is disclosed outside the remit of this procedure.

The Caldicott Guardian or Senior Information Risk Owner will make the final decision in complex cases.

5. Witness Statements

It is the decision of the member of staff whether they wish to provide a statement to the police. Patient details must not be included unless the patient has given consent. Consent may be sought using the example Form of Authority detailed in Appendix A. The service user must be clear that this information could be heard in a court of law and therefore in the public domain. Staff could provide general information about a particular condition without providing any patient details unless the information has already been released in the public interest, see section 3.2.

Further information can be found in the staff advice sheet in Appendix D.

6. Liaison meetings with the police

Person identifiable information disclosed during meetings with the police must comply with this procedure e.g. disclosure must be with the consent of the individual, required by law or in the public interest to prevent a serious crime or abuse or harm to others. The decision to disclose or not to disclose must be recorded in the patient's record. Clear evidence of the reasoning used and circumstances prevailing should be documented. The individual concerned should be informed about the disclosure unless it would defeat the purpose of the investigation or if there is a significant risk of a violent response.

Information that has already been shared with one of the above justifications may be discussed further with police during a post incident review.

7. Persistent callers to the police

On occasion, the police may refer persistent callers on to Mental Health Services. In such circumstances, any information disclosed must follow the above procedure.

Police may request to undertake a joint visit to the person with Mental Health Services. Any information disclosed either before, during or after the visit must follow the above procedure. The police will contact the Mental Health Crisis Intervention Team in the first instance.

8. Police response on a mental health unit

Where the police have responded to an incident on NHS premises, all partners should consider a multi-agency incident review, to assess the incident, establish why the police were called, whether or not the request was necessary and recommend any immediate improvements for the both the organisation and the police. The proforma in Appendix E from the “National Partnership Protocol for managing risk and investigating crime in mental health settings” will be used for this process. The health professional will review the form prior to sharing with the police to remove any confidential health information that is not relevant to the review.

9. Links to associated documents

- Humber Information Sharing Charter
- Caldicott and Data Protection Policy

10. References

- Confidentiality: NHS Code of Practice
- [Sharing information with the police - NHSX](#)
- National partnership protocol for managing risk and investigating crime in mental health settings.

Appendix A - FORM OF AUTHORITY

Full name

Date of birth

Address

I (insert name of patient) of the above address

AUTHORISE AND REQUEST (name of police force) to have access to (specify information requested) held by Humber Teaching NHS Foundation Trust pertaining to my health care and assessments at, from onwards.

FURTHER, I UNDERSTAND that the said Police Force will be referring to the said records in connection with a criminal investigation and therefore the content of the said records may be disclosed to third parties, including the Defence and may also be referred to in open Court.

SIGNED

PRINT NAME

WITNESS

PRINT NAME

DATED

Appendix B - Disclosures to the police in the public interest

Disclosures to the police in the public interest - Extract from Confidentiality: NHS Code of Practice, pg 34

Public Interest

Under common law, staff are permitted to disclose personal information in order to prevent and support detection, investigation and punishment of serious crime and/or to prevent abuse or serious harm to others where they judge, on a case by case basis, that the public good that would be achieved by the disclosure outweighs both the obligation of confidentiality to the individual patient concerned and the broader public interest in the provision of a confidential service.

Serious Crime and National Security

The definition of serious crime is not entirely clear. Murder, manslaughter, rape, treason, kidnapping, child abuse or other cases where individuals have suffered serious harm may all warrant breaching confidentiality. Serious harm to the security of the state or to public order and crimes that involve substantial financial gain or loss will also generally fall within this category. In contrast, theft, fraud or damage to property where loss or damage is less substantial would generally not warrant breach of confidence.

Risk of Harm

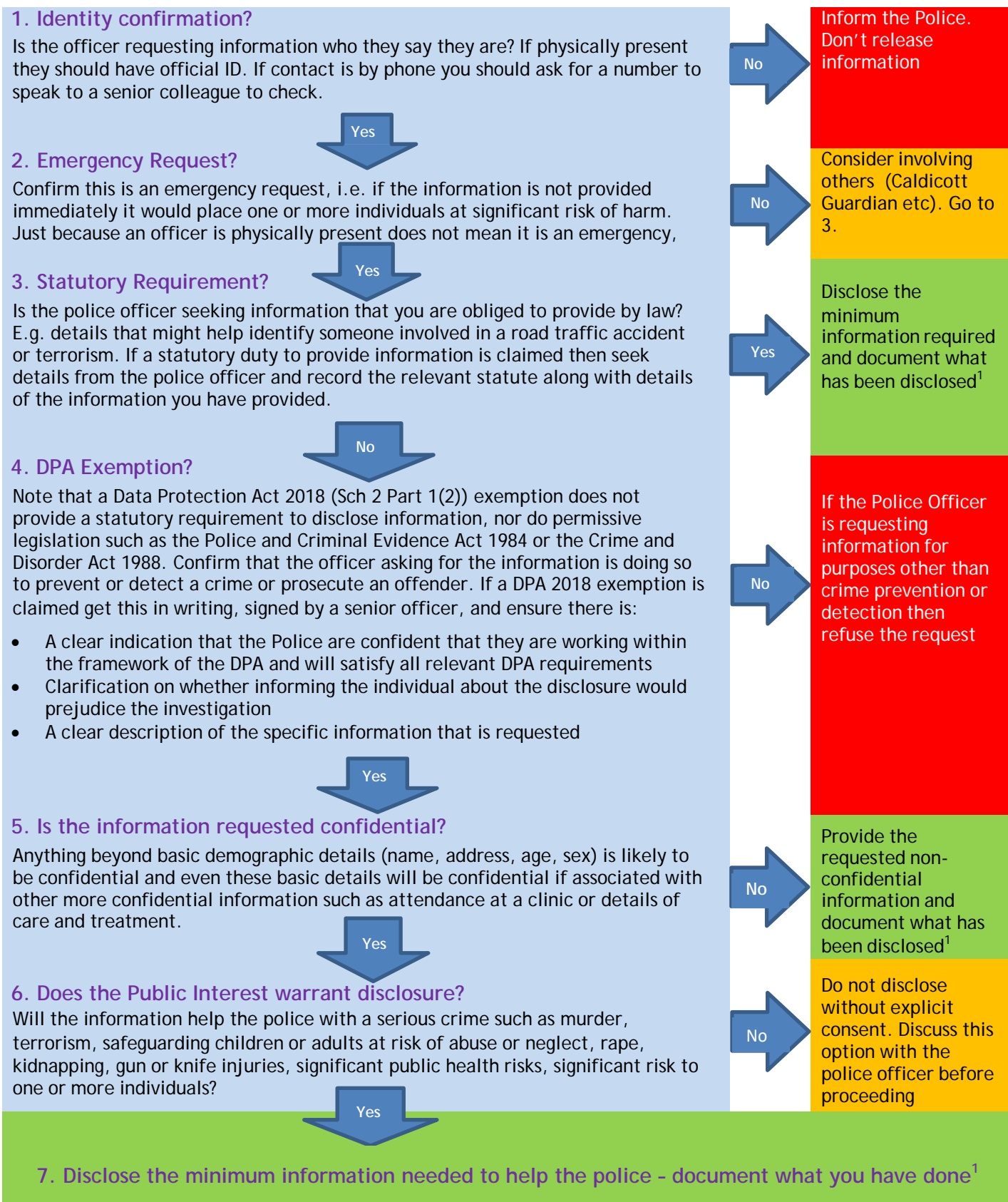
Disclosures to prevent serious harm or abuse also warrant breach of confidence. The risk of child abuse or neglect, assault, a traffic accident or the spread of an infectious disease are perhaps the most common that staff may face. However, consideration of harm should also inform decisions about disclosure in relation to crime. Serious fraud or theft involving NHS resources would be likely to harm individuals waiting for treatment. A comparatively minor prescription fraud may actually be linked to serious harm if prescriptions for controlled drugs are being forged. It is also important to consider the impact of harm or neglect from the point of view of the victim(s) and to take account of psychological as well as physical damage. For example, the psychological impact of child abuse or neglect may harm siblings who know of it in addition to the child concerned.

For further information and exemplar cases please see DH Supplementary Guidance: Public Interest November 2010. [Click here for a copy](#)

Appendix C – Disclosure of information to the police for crime related purposes

Disclosure of information to the police for crime related purposes.

Flowchart from the Information Governance Alliance “Disclosure of personal information to police” guidance (July 2016) updated by the Trust for the Data Protection Act 2018.



1. Document the information disclosed, to whom, when, and on what basis; and whether the data subject was informed or not.

Appendix D – Staff advice sheet – providing witness statements to the police

- Staff should not feel pressured to give witness evidence.
- Witness evidence, in some circumstances, is not a mandatory requirement.
- Providing witness evidence always exposes the witness to be called to attend Court to give oral evidence. Once a witness statement is signed, a subsequent unwilling witness can be ordered to attend Court (subpoenaed / witness summons).
- Witness evidence should be given:
 - at an appropriate time, for example; not in the immediate aftermath of a serious untoward incident, particularly if the potential staff witness is distressed.
 - in an appropriate place.
 - by the most appropriate person to be a witness. Staff should feel confident that they have had direct involvement with the factual circumstances and / or are confident to deal with the Court process giving regard to the witness' experience / band.
- To avoid inadvertently acting in haste and breaching the Data Protection Act, a Senior Manager can support staff to avoid such breaches, utilising statutory exceptions to make disclosures.
- Member of staff who are making a statement as a result of an assault against them, may be accompanied by their manager or another member of staff who they feel comfortable with.
- The intended purpose of witness evidence can change overtime. At the outset, an incident may be treated as a criminal investigation (and very serious offences under investigation), as criminal investigations can be scaled downwards, as evidence is gathered. Thereafter evidence may then be redirected for a Coroner's Inquest and / or civil proceedings.
- Witness evidence can be utilised for any purposes, including disciplinary proceedings, where Codes of Conduct are breached by the witness and / or others.
- Witness statements and documentary evidence (for example patient records) may be disclosed to a wider group after initial disclosure. Criminal and civil court proceedings are bound by rules of disclosure. Head of Information Governance and Legal Services can advise further upon this.
- Patient records and / or any other documents should be available and referred to when interviewed.
- Police involvement will involve completion of documentation including; Adverse Incident Report Form, Briefing Report and other relevant documents. Senior Managers will guide and support staff through these processes.

- The Head of Information Governance and Legal Services can provide support to staff attending Court as a witness.
- Court proceedings may attract media attention. Involve a Senior Manager from the outset. Ensure external communication is managed by the Communications Department where there may be media interest.

CONFIDENTIAL WHEN COMPLETED

Multi Agency Review of Police response on a mental health unit, following request to assist with the management of a situation.

Police involvement in the care people receive at our mental health units is a rare and significant event.

Datix Number/Police Log		
NHS Number		
Name of patient		
Date of birth		
Ethnicity		
Mental Health Act status		
Diagnosis		
Consultant psychiatrist/primary nurse		
Ward and contact telephone number		
Date of admission		
Responsible CCG		
Date of incident		
Author(s) of this report/date		
Agreed by ward manager		
Decision to call the police		
Why were the police called? How was the decision to call the police made?		

CONFIDENTIAL WHEN COMPLETED

Was the DSN involved in making the decision?	
Who made the call to the police, and when was the call made?	
Police Log Number	
Patient risk management	
Risk assessment and care plan for patient prior to incident	
Was the increase in risk/change of behaviour anticipated?	
What interventions were considered or delivered in response to the increased risk/change in behaviour	
Joint planning	
Name of police officers attending (if recorded)	
Who was involved in planning the joint approach?	
What plans were agreed?	•
Management of Incident	
Describe how the incident was managed – identifying who took responsibility for particular actions or interventions (ETL, ward staff and police)	•
Describe the interventions/equipment used by the police e.g. shields, hand cuffs, leg strap, Taser etc	•
MAPA training level of all staff involved	
Details of restraint (if appropriate)	
Who undertook which role in the restraint intervention at which point?	•
Was any part of the restraint in the prone position – if so for how	•

CONFIDENTIAL WHEN COMPLETED

long?	
Duration of overall restraint	•
Who took responsibility for monitoring vital signs throughout all stages of the restraint?	•
Administration of treatment (if appropriate)	
What medical treatment was administered by whom?	•
Was treatment administered whilst the patient was restrained? If so, who was involved in the restraint during the administration of medicine?	•
Post incident management and debriefing	
Details of any staff patient or police injury	•
What debrief occurred following the incident? Who was involved	•
What immediate learning/actions were identified?	•
What longer term review/action is required?	•
What legal action is required in response to incident?	•

Thank you for completing this form. By reporting the incident and by giving this information you have helped to ensure that services are improved and made safer.

Datix Report Details