

Victims of Mentally Disordered Offenders

The Victims' Commissioner for England and Wales, Claire Waxman, is calling for amendments to the Victims and Courts Bill to improve transparency and strengthen accountability when hospital managers withhold information from victims of offenders detained under the Mental Health Act.

These victims, like all victims of crime, experience long-lasting, life-altering trauma. For around a hundred families each year, this trauma involves the most devastating loss – the murder of a loved one. Typically, these offenders are detained on a Hospital Order with restrictions under the Mental Health Act, which means they are treated as patients. Through the [Victim Contact Scheme](#) eligible victims¹ can request specific information about the offender post-conviction, including any conditions imposed upon leave and/or discharge. **However, despite the severity of harm in these cases, these victims receive significantly less information after conviction and face additional hurdles compared to other victims whose offenders have been given a sentence of imprisonment.**

Information on the offender is held by hospital managers and clinicians. To request information, victims in the victim contact scheme must contact a Victim Liaison Officer (VLO) who can request the information on their behalf. Evidence from campaigners, including Julian Hendy, founder of a [Hundred Families](#), shows **hospital managers prioritise patient confidentiality without balancing and giving due regard to the safety and wellbeing of victims. This means requests for information by victims are often disregarded or the information provided is minimal.**

While the Victims and Courts Bill aims to improve transparency by extending the specified information made available to victims, as currently drafted, hospital managers must provide the information only when they decide it is '*appropriate to do so*'. This risks further embedding a culture where an offender patient's privacy is prioritised over the needs of victims. Managers are not required to give reasons for their decisions to withhold information, nor are victims able to challenge their decisions. The Bill is an opportunity to address this procedural unfairness and challenge a **systemic culture of disregarding the wellbeing of victims of often the most brutal crimes.**

The proposal

The Victims' Commissioner, with support from Julian Hendy, is pushing for legislative change to ensure greater accountability for hospital managers. This includes:

- Ensuring **hospital managers take a balanced approach** when deciding whether to disclose information offenders by placing a statutory requirement on them to consider the safety and wellbeing of victims.
- When a hospital manager has decided not to disclose part or all of the information requested, a placing a requirement on them to **provide written reasons to the victim for that decision**, demonstrating how they have considered the victims' safety and well-being.

¹ [The Domestic Violence Crime and Victims Act \(DVCVA\) 2004](#) sets out who is eligible for the scheme. This includes: victims of serious sexual or violent offence where an offender receives a custodial sentence of 12 months or more ([the Victims and Courts Bill](#) extends this); victims of offenders who have been made subject to a hospital order with restrictions, or a hospital direction (section 45A), for a specified sexual, violent or terrorism offence, under the Mental Health Act (MHA) 1983 (restricted patients); victims of offenders who have been made subject to a hospital order without restrictions for a specified sexual, violent or terrorism offence, under MHA 1983 (unrestricted patients); the next of kin or close family member(s) of a victim as specified in one of the aforementioned categories, who died as a result of the offence ([Victim Contact Scheme Policy Framework](#))

- Introducing a requirement for the Secretary of State for Justice with the Secretary of State for Health to **create an independent route of appeal for victims where a hospital manager has decided not to share information requested.**

How this will improve victim's experiences

Under Right 11 of the Victims' Code, victims are entitled to receive information about the offender following a conviction. By requiring hospital managers to undertake a balanced approach, victims will finally be able access their full entitlements under the Code. The Victims' Commissioner's proposals aim to:

- Put victims in the centre of decisions:** When victims of serious offences are not assured that their wellbeing and safety are being considered, they are left feeling unheard and unsafe. Requiring hospital managers to take victims' needs into account places victims at the centre of decision-making and that they are not overshadowed by the sole focus being placed on patient privacy.
- Improve transparency:** When requests for information are refused, victims do not receive reasons behind the decision. This lack of transparency prevents victims from challenging decisions and holding decision makers to account. Requiring hospital managers to provide clear reasons would inform victims and build greater trust and understanding of the process.
- Empower victims and hold agencies to account:** Currently, if victims are denied the information they request, there is no independent route to challenge the decision. Victim Liaison Officers lack authority to compel hospital managers to share information, leaving victims powerless. Creating an independent adjudicator and a clear appeals process would give victims a voice, ensure oversight of hospital managers' decisions, and create a level playing field.

Amendments to the Victims and Courts Bill

This Bill presents a pivotal opportunity to get things right for victims of offenders detained under the Mental Health Act. For too long they have been overlooked and sidelined.

The Victims' Commissioner will be advocating for the following amendments to the Victims and Courts Bill at Committee Stage in the House of Lords and is seeking support from Peers:

schedule 2, page 57, line 23, at end insert-

440

1. In respect of clauses 44F and 44K, for the purposes of determining whether it is appropriate to share information with the 'provider of probation services' or the 'person' who has made the information request, the hospital manager must consider the following;
 - a. The need to safeguard victims from further physical or psychological harm; and
 - b. whether refusal to share the information could lead to the victim experiencing further physical or psychological harm; and
 - c. whether refusal to share the information could mean that victim is less able to safety plan or otherwise mitigate the likelihood of suffering further physical or psychological harm.

Member's explanatory statement

This amendment will ensure hospital managers balance the needs of the victim with the patients, including considering the risk of further physical or psychological harm is the information is not provided upon request.

44P

1. Where the hospital manager determines it is inappropriate to provide the 'provider of probation services' or the 'person' who made the information request with the information either partially or in its' entirety, they must, with reference to the factors in clause 44O and any other factors they deem relevant, provide the 'provider of probation services' or the 'person' who made the information request with their reasons for determining it was not appropriate to provide the information in its' entirety. These reasons must be provided:
 - a. In writing, and;
 - b. within 14 days of the decision being made.

Member's explanatory statement

This amendment will ensure hospital managers provide written reasons for their decision to not provide information to the person who made the request, or the provider of probation services.

44Q

1. In respect of clauses 44F and 44K, the Secretary of State for Justice in consultation with the Secretary of State for Health must create a route of appeal for 'providers of probation services' or 'persons' who have made the information request, where the hospital manager has determined that it is not appropriate to share the information requested in its' entirety.
2. The appeal scheme must incorporate the following:
 - a. An independent adjudicator who can balance the rights of victims to information with the right to privacy of the patient who is the subject of the information request; and
 - b. A time limit of not less than 21 days from notification of the decision not to share information for the 'provider of probation services' or the 'person' requesting the information to submit the appeal; and
 - c. A time limit of not more than 28 days for the adjudicator to determine the outcome of the appeal and notify the appellant.

44R

1. The Secretary of State must issue guidance about the operation of the appeal process under section 44Q.
2. Before issuing guidance under this section, the Secretary of State must consult the Commissioner for Victims and Witnesses and such other persons as the Secretary of State considers appropriate (and it is immaterial for these purposes whether the consultation is carried out before or after this section comes in force).

Member's explanatory statement

This amendment creates an independent appeals process for decisions by hospital managers not to disclose information requested under clauses 44F or 44K. It enables victims or probation providers to challenge such decisions and requires guidance to be issued on how the process will operate.

Case studies

Anonymous (case study provided by Hundred Families)

A seriously mentally ill man repeatedly stabbed and killed his wife in front of their young children who had to wait 20 minutes at knife point before an armed police response. Sentenced to a hospital order at a secure unit less than 20 minutes away from where the family currently live, his doctors have now applied to give him leave, just a year after his conviction.

The family are extremely worried and have asked if he remains at the same hospital close by or if he is now hundreds of miles away. (They would be more reassured if the latter). They've asked on what day and time would his leave be granted, so they could make arrangements not to be about at this time. They were told they were not entitled to any of this information even though it is for their safety and peace of mind and have not been offered any explanation. They are now frightened to go out at any time lest they run into him. The children are asking if Daddy is coming to kill them now.

Karin R (case study provided by Hundred Families)

"Just under five months from sentencing to a section 37/41 hospital order I was sent an email advising that C's [the offender's] responsible clinician now intends to request leave; escorted, unescorted and overnight as part of a treatment plan. This is the same clinicians whose reports were used in court to state C was very sick and from which we were informed by all authorities involved that his detention would be for 'a very long time' with the figure of 15-20 years being mentioned.

I was also informed I had no rights to know when this leave would commence or any details in this regard. Any faith I had in the justice system and other governmental authorities is now completely non-existent. My life is completely altered and I must exist with a feeling of overwhelming dread for what C will do next."

Teresa Maher (as in the [telegraph](#))

The mother of a man stabbed to death by a paranoid schizophrenic has described how the killer was freed from a psychiatric hospital four years later without any warning or explanation.

Kyle Maher, 21, was living in supported accommodation in Tooting, south London, in January 2017 when he was attacked and killed by his housemate, Richard Wilson-Michael. Wilson-Michael, 29, was subsequently convicted of manslaughter on the grounds of diminished responsibility and given an indefinite hospital order.

But a year after the killing, he was allowed out on day release, and three years later was freed following a closed mental health tribunal.

Kyle's family were not informed of the reasons behind the decision and have since fought a legal battle to understand why Wilson-Michael was released so quickly, arguing that such secrecy risks putting the public in danger.

Decisions about whether to release potentially dangerous mental-health offenders are made behind closed doors at tribunals that are shrouded in secrecy owing to "patient confidentiality".

Ms Maher said: "When the judge said (Wilson-Michael) would be going away indefinitely, we thought that is what it meant. We thought that if he was ever going to be up for release, or there was going to be any change, that we would be notified. Instead, he was placed in a hospital at the end of my road and then a year later was allowed out on day release without me being informed."

Kyle's family were not told the mental health tribunal was taking place and were not allowed to attend or participate. "When I found out that he had been released, I was anxious and scared. I am still frightened to leave my house now," she said.

Melanie P (case study provided by Hundred Families).

"I stated [to the Victim Liaison Officer] how heart breaking it was to find out that the person who murdered my brother was out and about after just 8 months after sentencing. I had been told that I would be informed before any changes and am devastated that this hasn't happened. There was a real possibility that family could have come face to face with the murderer without knowing it."

