



# Procedures for placing a risk of violence marker on electronic and paper records

Protecting your NHS

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## 1. Introduction

- 1.1 This guidance document outlines the procedures that are relevant to providers of NHS services that operate a system for placing a risk of violence marker on the electronic or paper records of potentially violent individuals.
- 1.2 It will enable these providers to develop clear policies and procedures for using such markers and help prepare for the national availability of the violent patient indicator (VPI) on electronic records. It will also provide an opportunity for providers that currently operate a marker scheme to review existing policies and procedures. Any revision or development of policies should take account of the fact that the same individuals can often present themselves at different providers of NHS care and include provisions for the appropriate sharing of information.
- 1.3 It is expected that a process for managing a marker can be incorporated into a provider's work of preventing and managing violence. In particular, systems should already be in place for reporting, investigating and managing violence as well as alerting staff to the risks. Therefore existing local policies and procedures should be considered when reviewing and implementing this guidance.
- 1.4 We expect that, in NHS bodies, the Local Security Management Specialist (LSMS) will be responsible for managing the marker system as part of their existing management of violence and security management work. However we recognise that certain duties may be delegated to a nominated officer<sup>1</sup>, providing they do not replace the LSMS responsibilities for making important decisions and managing the process.
- 1.5 This guidance also recommends the use of a panel to assist the LSMS in the decision-making process. However, it is recognised that this needs to be tailored to fit in with systems that are operated locally.
- 1.6 Non-NHS bodies that provide NHS services, e.g. primary care medical contractors, may have their own statutory responsibilities for marking records. These providers should therefore look to align the processes relating to their statutory responsibilities with the recommendations in this guidance.
- 1.7 Finally, the proper operation of a marker will contribute to employers and employees in all providers fulfilling their obligations under health and safety legislation<sup>2, 3</sup>.

## 2. Definition

- 2.1 In terms of providing a context to this guidance, it is helpful first to define what is meant by workplace violence. For this purpose, the Health and Safety Executive provides the following definition:

*'Any incident in which a person is abused, threatened or assaulted in circumstances relating to their work'.*

- 2.2 Some providers, such as NHS primary medical care contractors, operate under their own statutory definition of violence<sup>4</sup>, in which case this should be taken into account when applying this guidance.

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<sup>1</sup> For example, administrative duties such as producing notification letters, etc.

<sup>2</sup> Health and Safety at Work etc Act 1974

<sup>3</sup> The Management of Health and Safety at Work Regulations 1999

- 2.3 In addition, the following NHS Security Management Service (NHS SMS) working definitions should be used to define violence for the purpose of the marker:

*Physical assault* – ‘the intentional application of force to the person of another, without lawful justification, resulting in physical injury or personal discomfort’.

*Non-physical assault* – ‘the use of inappropriate words or behaviour causing distress and/or constituting harassment’<sup>5</sup>.

### 3. Aim

- 3.1 The aim of the risk of violence marker is to help alert NHS staff to individuals who pose or could pose a risk of violence and enable them to reduce this risk.
- 3.2 The marker should achieve this by:
- serving as an early warning for NHS staff of a particular individual or situation that represents a risk to them, their colleagues or other patients
  - providing security warnings and handling advice to NHS staff to avoid or minimise the risk
  - where appropriate, enabling NHS staff to seek professional advice on what action should be taken
  - helping providers meet their obligations under the Health and Safety at Work etc Act 1974 and Management of Health and Safety at Work Regulations 1999
  - helping reduce the number of violent incidents at the local level
  - assisting in creating a safe and secure environment for staff, patients and visitors to the NHS.

### 4. Scope

- 4.1 This document outlines the process for providers to apply a marker where a member of NHS staff has been subject to violence. The term ‘NHS staff’ should include clinical and non-clinical employees of the NHS, as well as students and contractors working on behalf of the NHS.
- 4.2 A marker may be applied regardless of whether the act was intentional or not. The use of a marker will help reduce possible risks to NHS staff by enabling them to consider and implement measures for their protection.
- 4.3 A marker does not just apply to circumstances where the individual abusing the NHS staff member is a patient, but may equally apply where the person is the patient’s associate – for example, their friend, relative or guardian. It could also apply to a patient or associate who is responsible for a dangerous animal.
- 4.4 It is important to state that the marker is not a mechanism for attributing blame; it is a process for alerting staff to the possibility of violence, whether such actions are deliberate or take place as a result of a medical condition or as a response to treatment or medication.
- 4.5 The marker and associated additional information (such as warnings, handling advice, etc) should be available to all internal clinical and non-clinical NHS staff

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<sup>4</sup> NHS (GMS Contract) Regulations 2004 [SI2004 No. 291] as amended

<sup>5</sup> Directions on work to tackle violence against NHS staff and professionals who work in or provide services to the NHS, Department of Health (2003) annexes 2 and 3

who, because they may have face-to-face contact with a particular individual, may be subject to an increased risk of violence. This is in line with current health and safety guidance. Information-sharing with external NHS staff, including contractors delivering NHS care, is permissible where the risk justifies it (see section 15).

- 4.6 All incidents involving physical assault must be reviewed to consider placing a marker on records.
- 4.7 Non-physical assault (including threatening behaviour) can be equally serious and incidents should be reviewed to consider placing a marker on records.
- 4.8 This document outlines the process, roles and responsibilities that are relevant when an incident has taken place. It is therefore important that the following are aware of how the process will operate:
  - all NHS staff who may be subject to incidents of violence
  - the line managers of staff who have been subject to physical or non-physical violence and who share the responsibility for ensuring the safety and security of their staff
  - the LSMS with responsibility for investigating incidents, assessing the risks to staff, making a decision for a marker and placing the marker on the patient records
  - members of the provider's panel responsible for approving the LSMS's decision for a marker and/or reviewing decisions not to notify an individual of a marker and considering any complaints.

## 5. Systems needed for a marker

- 5.1 For the marker to be effective, providers should have the following in place:

### *NHS bodies*

- LSMS – NHS bodies must have a nominated and accredited LSMS in post<sup>6</sup>. This individual will have overall responsibility for investigating incidents of violence, gathering evidence from victims and witnesses, assessing the risks posed and making the decision on marking records. Where established, they will also refer appropriate cases to the panel for approval.
- Reporting system – Providers should already have in place systems for reporting all incidents of physical and non-physical assault. Providers should make it clear that staff are required to report all incidents of physical and non-physical assault using their in-house incident reporting form to the NHS body's LSMS for follow-up investigative action<sup>7, 8</sup>.
- Panel – It is recommended that providers have a panel to approve the decision of the LSMS to mark records. This will serve as a safeguard to ensure that the decision-making process is objective, transparent and fair. The panel should have clear terms of reference and agreed criteria for applying markers and reviewing existing markers.
- System for handling complaints – If an individual decides that they wish to

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<sup>6</sup> Directions to NHS bodies on security management measures, Department of Health (2004)

<sup>7</sup> Directions to NHS bodies on measures to deal with violence against NHS staff, Department of Health (2003)

<sup>8</sup> Tackling violence against staff : Explanatory notes for reporting procedures introduced by Secretary of State Directions in November 2003, CFSMS (2007)

challenge a decision to mark their records, they should be advised of the statutory complaints process in line with local complaint-handling procedures.

#### *Non-NHS bodies*

- 5.2 Non-NHS bodies providing NHS services may already have established governance arrangements in place for marking the records of potentially violent patients, but these should be reviewed in light of this guidance.
- 5.3 For example, if a primary care provider wishes to remove a patient from its list due to a violent incident, there are established processes to place the care of these individuals under the Violent Patient Scheme. Further advice for primary care contractors is available from their Local Representative Committee. However, as these patients may also access other NHS services, this information should be shared with other NHS partners, and patients' records marked.
- 5.4 Non-NHS bodies that provide NHS services should be aware of how to feed back information on potentially violent patients to the commissioning NHS body. Similarly, NHS bodies have a responsibility to share information on potentially violent patients who may be accessing NHS services provided by non-NHS bodies. Sharing of this type of information should be part of contractual arrangements.

## **6. Data Protection Act 1998**

- 6.1 The LSMS and individual panel members should make themselves aware of the provisions in the Information Commissioner's Office (ICO) guidance on the Data Protection Act 1998 (DPA)<sup>9</sup> and the use of violent warning markers<sup>10</sup> and ensure that their processes comply with these provisions.
- 6.2 For the purposes of the DPA, the provider of NHS services is the 'data controller' and will retain ultimate responsibility in relation to processing, notification and disclosure of risk information and the security and confidentiality of such information.
- 6.3 The ICO guidance on violent warning markers makes it clear that the employer has a duty of care towards its staff under health and safety legislation. The processing of marker information by the data controller – in this instance the provider – is necessary to comply with these legal obligations, so long as it is fair and justified.

## **7. Policies and procedures**

- 7.1 The provider's risk of violence marker policy should outline a process which will ensure that all staff are aware of the marker system and how to use it. LSMSs should also ensure that all relevant staff have access to the necessary information, particularly those working off-site or outside office hours.
- 7.2 In particular, when a marker is placed on an individual's records, staff should know what is expected of them. This should include being aware of the risks associated with the individual and necessary handling information and advice on

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<sup>9</sup> The Guide to Data Protection – Information Commissioner's Office (2009)

<sup>10</sup> Data Protection Good Practice Note – The use of violent warning markers, Information Commissioner's Office (2006)

putting in place preventative measures. They should also know who to contact (LSMS or another relevant member of staff) for further advice and guidance.

- 7.3 The policy should also outline the roles of specific staff and responsibilities for sharing information with staff internally and with other providers (see section 15).

## **8. Process for a marker**

- 8.1 This section highlights the process that providers need to go through when placing a marker on an individual's records.

### *Reporting*

- 8.2 If there is an immediate threat, staff should follow local protocols to contact the internal security service and/or the police.
- 8.3 The member of staff or line manager must inform the LSMS immediately after an incident occurs. They must also complete an incident reporting form and forward it to the appropriate individual within the service provider as soon as possible. The provider should ensure that the LSMS is given access to the security section of the electronic incident reporting system for this purpose.
- 8.4 The staff-side trade union representative should be included in this process, to encourage staff to report all incidents of violence and to act as an advocate for the victim.

### *Investigation*

- 8.5 The LSMS should review the incident reports and determine what level of further investigation is required. In most cases they will have to speak to the victim and any witnesses and seek the views of all relevant staff as an important part of the decision-making process. This will enable a thorough assessment of future risks to be made. Based on the severity of the incident, resulting risk rating and in line with local policy, this should determine the response time necessary for the LSMS to conduct an investigation before making a decision as to whether a marker is required.
- 8.6 While it is desirable to have as much information as possible to inform a decision regarding a marker, it may be necessary for the LSMS to make an immediate decision based on discussions with the appropriate members of staff if it appears that there is a serious or imminent risk to staff. Furthermore, in some instances, a detailed investigation may not be required for the purposes of the marker if the information provided on the incident report form is sufficient.

### *Decision-making*

- 8.7 The following risk factors should be considered when determining whether a record should be marked:
- nature of the incident (i.e. physical or non-physical)
  - degree of violence used or threatened by the individual
  - injuries sustained by the victim
  - the level of risk of violence that the individual poses
  - whether an urgent response is required to alert staff
  - impact on staff and others who were victims of or witnessed the incident
  - impact on the provision of services

- likelihood that the incident will be repeated
  - any time delay since the incident occurred
  - the individual has an appointment scheduled in the near future
  - staff are due to visit a location where the individual may be present in the near future
  - the individual is a frequent or daily attender (e.g. to a clinic or out-patients)
  - the individual is an in-patient
  - the incident, while not serious itself, is part of an escalating pattern of behaviour
  - the medical condition and medication of the individual at the time of the incident.
- 8.8 The decision to use a marker should be based on a specific incident and not personal opinion or hearsay. As part of the investigation into an incident, the victim should be asked by the LSMS for their opinion as to whether a marker would be justified, but this alone will not warrant a marker. The decision must follow an LSMS investigation which provides evidence that a marker is required and, where in place, that the panel has ratified the decision.
- 8.9 For the purposes of the marker, the incident should be categorised as physical or non-physical assault using NHS SMS definitions. Annex 1 gives examples of the types of incident that fall under physical and non-physical assault to assist in this. This list is not exhaustive, but should serve as a helpful guide.
- 8.10 If the police are called to an incident, the LSMS should liaise with the investigating officer to ascertain what action they are taking. Any wait to receive relevant information from the police should not delay the decision-making process for a marker. If a decision is made to mark a record, this should not prevent or replace any legal action being taken against the individual.
- 8.11 It is important to stress that, in relation to decisions on marking records, the role of the LSMS is not to establish whether the act was intentional or based on an underlying clinical condition, treatment or care, but to assist staff in managing future risks. For incidents where the individual is thought to be responsible for their actions, the LSMS should facilitate any police enquiries or consider further investigation in line with established policies.
- 8.12 The LSMS is responsible for making the final recommendation on the need for a marker, based on consultations with the victim, their line manager and any others, e.g. the nurse supervising the ward or unit, and after conducting a risk assessment in consultation with the risk manager.

*Marker required*

- 8.13 If the LSMS believes that the individual poses a risk to staff based on objective criteria (see section 8.7), they should arrange for a marker to be placed on the individual's records **as soon as possible**.
- 8.14 All decisions should then be referred to the panel for consideration and approval where a panel has been established for this purpose (see section 9.1).
- 8.15 The same principles apply when placing a marker on the records of a patient's associate, irrespective of whether a marker relates to a carer, relative, friend or animal. All decisions on marking records should be based on the risk to staff rather than on any relationship between the individuals concerned.

- 8.16 If an animal is involved in an incident (e.g. a dangerous dog) and the patient or the associate is responsible for the animal, their records should also be considered for a marker. If the animal is at a particular address, consideration should be given to marking the records of all those who live at this address.
- 8.17 If a marker is placed because of a risk associated with a particular address, this must be reviewed if circumstances change and these changes are brought to the attention of the provider, e.g. the potentially violent individual moves to a new address, the animal is destroyed, etc.
- 8.18 Finally, the decision to add a marker should not preclude any other existing lines of communication being used to inform staff if there is an imminent risk to them.

*No action required*

- 8.19 There may be circumstances where, following an investigation and risk assessment as part of the provider's risk management process, the LSMS decides that it is not appropriate to mark the record. This may be because, following an incident, the individual poses no further or significant risk. In this instance, the LSMS should not recommend a marker and should record the decision taken in accordance with local procedures.

## 9. Panel

*Role*

- 9.1 This guidance includes **two** models of how the panel's role may function:
- 1) The recommended model that providers have a panel to review each LSMS decision for a marker, as well as to review existing markers. However, it is accepted that, in some providers, this may not be possible – see annex 3 **MODEL 1**.
  - 2) *As a minimum*, a panel that meets either to approve decisions not to notify a person that a marker is being placed on their records or to review a decision when the person challenges their marker – see annex 4 **MODEL2**.
- 9.2 This guidance focuses on the recommended model in 1) above, that a panel is established to consider all decisions to mark a record, in which case, the LSMS should refer all recommendations to mark records to the panel for approval.

Depending on the level of available resources and volume of cases, the panel may either:

- a) assess the evidence and make the final decision as to whether a marker should be placed on the records; or
- b) objectively oversee the decision reached by the LSMS.

A suitable model should be agreed locally.

- 9.3 For the process described in either a) or b) above to work, the LSMS will be expected to submit a list of all individuals recommended for a marker to the panel with an accompanying copy of the incident report form for each. The victim should not be involved in the decision-making process by this stage. They should already have had the opportunity to contribute during the LSMS investigation into the original incident.

- 9.4 The level of supporting evidence accompanying this submission should be decided by the provider.

#### *Structure*

- 9.5 The NHS body's Security Management Director is responsible for identifying an appropriate forum to act as a panel to manage the decision-making process effectively. This can be an entirely new body or a subcommittee drawn from an existing body, e.g. the health and safety or risk management committees. The placing of markers on records should be a standing item on the agenda of the body concerned.
- 9.6 Consideration should also be given to nominating deputy panel members, or possibly a 'pool' of panellists. This would ensure that meetings are not cancelled and the process delayed if panel members are unavailable.
- 9.7 If, based on the volume of referrals and/or level of resources required, it is not practical for a provider to physically convene a panel to approve decisions for a marker, consideration should be given to forming a 'virtual panel', e.g. to review cases electronically via email.
- 9.8 The provider should determine who it would be appropriate to invite onto the panel. It may be practical only to appoint members that currently sit on an existing committee if one is used. However, additional panel membership might include a senior clinician or nurse representative based in the A&E department, inpatient area or unit directly affected by the violence, a medico-legal services manager, an on-call manager or a security manager. The LSMS is responsible for conducting an investigation and making a decision as to whether a marker is required and therefore, to ensure a separation of duties, they should not sit on the review panel.
- 9.9 The frequency of meetings should be decided by the provider according to the number of referrals, the availability of staff, existing meeting arrangements and the urgency of marking records. However, it is recommended that the panel meets at least once every month to avoid possible delays in approving markers.
- 9.10 Panel decisions should ideally be reached by a majority vote to ensure an outcome is reached in every case – therefore, it is desirable to have either three or five members, i.e. an odd number, to ensure the process of majority voting is effective. Otherwise, a system of voting whereby each panel member registers a vote and the chair has the casting vote is an alternative model.
- 9.11 One of the key responsibilities of the panel will be to review existing markers, (see section 13). Every panel's terms of reference should include roles and responsibilities for reviewing markers and there should be a planned schedule of meetings for this purpose.

## **10. Notifying the individual**

- 10.1 In the majority of instances, the individual should be informed in writing as soon as possible following a decision to mark their records.
- 10.2 The LSMS, or another nominated person, is responsible for sending a notification letter to the individual outlining the reasons for the marker. The letter should clearly explain:
- the nature of the incident

- that their records will show a marker
  - the reasons why the marker is being placed on their records
  - who the information may be shared with and for what purpose
  - when the marker will be reviewed for removal
  - the process for complaints
  - relevant contact details.
- 10.3 If the incident is committed by an associate of the patient, a letter should be sent to *both* the patient and the associate, if the associate's identity and whereabouts is known. The patient's letter should inform them of the decision that has been made, the associate's letter should include all the relevant information included in 10.2 above. Care should be taken not to disclose any confidential medical information when notifying associates.
- 10.4 There may be exceptional cases when it is decided that notifying the individual may increase the risk that they pose to staff and that notification is not appropriate. These may include situations where:
- informing the individual may provoke a violent reaction and put staff at further risk. A detailed record must be kept of any decision not to notify an individual and the reasons for this course of action
  - notification of a marker may adversely affect an individual's health. In this instance, the senior clinician responsible for the individual's care must review the case and make the decision that notification is not appropriate for clinical reasons.
- 10.5 Any decision, based on exceptional circumstances, not to notify an individual should be reviewed by a panel. In each instance, the LSMS is responsible for making the initial decision during the investigation and submitting the necessary evidence to the panel outlining the reasons not to notify. If the decision is based on health grounds, the evidence should include a written statement from a senior clinician explaining the reasons why notification may adversely affect an individual's health. If notification may provoke a violent reaction, the evidence should support this (e.g. the individual has a prolonged history of violence against NHS staff).
- 10.6 Please see annex 2 for a template notification letter.

## 11. Informing the victim

- 11.1 It is important that the LSMS informs the victim of the decision reached. When a marker is placed on records, this feedback will assist in developing a pro-security culture and encourage more staff to report future incidents. If a decision has been reached that a marker is not required, the LSMS should explain the reasons to the victim and offer them any further assistance that is necessary.

## 12. Complaints

- 12.1 When an individual is notified that a marker is to be placed on their records, they should be advised how to complain about the decision if they wish to and given the relevant contact details.
- 12.2 All complaints should be dealt with in accordance with The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, Department of Health guidance and the local complaints procedure.

## 13. Reviewing a marker

- 13.1 Best practice requires that markers are periodically reviewed, to ensure they are up to date and remain relevant. Any updates in relation to risks and handling advice should be included as necessary. Records should not be marked for longer than necessary and markers should be removed when there is no longer a risk. When a marker is first placed on the records, the LSMS is responsible for adding all relevant dates, including when the incident occurred, when the marker is effective from and a review date. When operating a paper and/or electronic system, the LSMS should ensure that these dates are recorded on the record itself and/or on other centrally held records.
- 13.2 Depending on the systems that are available locally, the LSMS should periodically identify those markers that require review and submit these with recommendations to the panel for consideration, where one is established for this purpose.
- 13.3 LSMSs should have in place a system that alerts them when a marker is due for review. All marked records should be kept secure and access controlled to prevent unauthorised use.
- 13.4 The review date should be agreed locally, but it is recommended that this is within 12 months of the incident. A review date after 6–12 months is advisable, subject to any considerations on the individual case.
- 13.5 If the decision is made to retain the marker on the record, a further date for review should be set. The same considerations will apply to notification of an individual of any decision to retain the marker as are specified in section 10.
- 13.6 As part of the decision-making process, those reviewing the marker should consider the original decision on which the marker is based, including:
  - the severity of the original incident and the impact on the staff member
  - any continuing risk that an individual may pose
  - any further incidents involving the individual
  - any indication that the incident is likely to be repeated
  - any action taken by other agencies, e.g. police or the courts.
- 13.7 When a decision is taken that the individual's behaviour gives no further cause for concern and the marker should be removed, the LSMS is responsible for ensuring that this is completed. The individual should be notified of the removal of the marker as soon as possible.

## 14. Placing a marker on records

- 14.1 As referred to above, those involved in the process should make themselves aware of the DPA and guidance issued by the ICO. The provider's data protection officer or information governance manager should be consulted.
- 14.2 The NHS body should ensure that the LSMS has access to patient records for the legitimate purpose of fulfilling their duties of placing a marker on the records to warn NHS staff of the potential risk of violence.

- 14.3 The physical process of marking a record will vary according to how records are kept and maintained locally. However, in all circumstances, it is the LSMS's responsibility to ensure that the marker is put in place in a timely manner.
- 14.4 If paper records are used, marking may simply consist of placing a visible physical marker discreetly inside the record, e.g. using a coloured sticker or symbol to indicate physical assault and a different colour or symbol to indicate non-physical assault.
- 14.5 If the provider has an electronic records system, the marker will alert staff when they securely access the records in line with local procedures. If paper records are used alongside an electronic records system, the electronic marker should be combined with tagging of paper-based records to ensure that the systems are consistent, as in 14.3 and 14.4.
- 14.6 If a visible marker is used to mark an individual's paper records, its meaning should be clear and unambiguous to staff, whilst at the same time being discreet and only recognisable to staff, not the individual concerned. There should also be a handling protocol in place so that staff know exactly how to respond or who to contact for further information, advice and guidance.
- 14.7 For all marker systems, the marker should include the following information:
- who, or what the marker applies to
  - a brief classification of the type of incident (see annex 1)
  - date the marker is effective from and review date
  - whether the individual has been notified
  - essential and relevant handling information or advice to staff about who to contact for further advice or guidance. This should include a relevant contact for staff who work off-site or out of hours.
- 14.8 Where possible, the marker should provide staff with additional information to manage the risks that an individual poses. It is suggested that the additional information may include<sup>11</sup>:
- advice that staff should exercise caution when dealing with the individual
  - a brief description of the incident, e.g. physical or non-physical assault
  - information relating to an individual's medical condition, treatment and care if relevant
  - advice that the individual should not be denied treatment and care
  - whether or not the individual has been notified that their records have been marked
  - security warnings, specific areas of risk or trigger factors
  - essential guidance on how to deal with the individual
  - advice for staff about who they should contact if another incident occurs, whether that is the LSMS, security personnel or police.
- 14.9 If the assailant is considered vulnerable, e.g. if they have a mental health condition or learning disability, a history of alcohol or other drug dependency, or a serious underlying clinical condition, the LSMS should seek advice from an appropriate senior health professional responsible for the individual's care to inform the handling information.

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<sup>11</sup> The outcome of any post-incident reviews and additional risk assessments by the staff or unit involved in liaison with the LSMS should also be considered.

- 14.10 If the incident was committed by a patient's associate, the LSMS is also responsible for ensuring that a marker is placed on the associate's record, where it is possible and appropriate, following the same process. Marking an associate's record (if their identity is known) should be seen as an essential part of the risk management process.
- 14.11 If it is difficult to make the relevant NHS staff aware of the identify of the associate, consideration may be given to including a photo or CCTV video stills of the associate to alert staff. This depends on the systems available locally.
- 14.12 Consideration should also be given to attaching a marker to the records of the patient with whom the violent individual is associated. However, in order not to stigmatise the patient unfairly, it should be made clear that the marker applies to the associate. In such cases, consideration should be given to using a descriptive label, such as 'patient's carer', 'patient's friend' or 'patient's relative'.
- 14.13 If an animal is involved in an incident (e.g. a dangerous dog) and the patient is responsible for the animal, their records should indicate that they have responsibility for a 'dangerous dog' and handling information relating to the animal should be included. The same principle should apply if the owner is a patient's associate, with their records marked and/or the patient's records marked.

## 15. Information-sharing

### *Principles*

- 15.1 In line with the ICO guidance<sup>12</sup>, and in compliance with the DPA<sup>13</sup>, sharing information relating to a marker between NHS colleagues internally or from one provider to another, to alert staff to the potential risks of violence, is permissible and legitimate, as long as the processing by the provider is fair and justified.
- 15.2 A first step should be for the organisation to conduct a risk assessment to identify those individuals and/or providers that may come into contact with the individual and/or their associate and determine who the information needs to be shared with. This should cover all NHS staff that have an input into the care of or come into contact with the individual, potentially including NHS trusts, ambulance services, GP practices, NHS pharmacies and social services.
- 15.3 An important provision before information-sharing is to ensure that the LSMS or nominated staff member explains to the individual in the notification letter (annex 2) that information associated with a marker may be shared with colleagues and other providers and for what purpose.
- 15.4 An objection that is sometimes raised as a reason not to share information is concerns over patient confidentiality. It is legitimate to share information (as outlined above) if there are identified risks of violence and it is perceived that the risk may affect those staff providing NHS services to the patient. Disclosures should be proportionate and limited to relevant details. This is also consistent with guidance published by the regulatory and professional bodies' for example the Nursing and Midwifery Council's standard on confidentiality contained within the *Code: Standards of conduct, performance and ethics for nurses and midwives*<sup>14</sup>.

<sup>12</sup> Data Protection Good Practice Note – The use of violent warning markers, Information Commissioner's Office (2006)

<sup>13</sup> The Guide to Data Protection, Information Commissioner's Officer (2009)

<sup>14</sup> Available at: <http://www.nmc-uk.org/aArticle.aspx?ArticleID=3056>

- 15.5 All providers that plan to share marker information with other providers should build this into their existing local information-sharing agreements, outlining how this process will work and be managed.
- 15.6 The provider should nominate a senior staff member to take responsibility for providing this information to either NHS staff members internally or a member of staff of an appropriate grade in the other provider for them to share with their internal staff.

*Process*

- 15.7 If the information-sharing is between internal and/or external staff, the information-sharing agreement should include a protocol to ensure that, where staff can access the electronic or paper records, there is a process for alerting them to the existence of the marker and associated information.
- 15.8 If the information is being shared internally or externally between staff who currently do not have access to the electronic or paper records, the information-sharing agreement should look at alternative means of advising all relevant staff of the information associated with the marker.

**EXAMPLE**

If an individual is likely to receive NHS pharmaceutical services, there may be an agreement with the local primary care trust (PCT) for it to share the marker information with all of its NHS community pharmacies that do not have access to the electronic records system and do not require patient registration. If the patient lives or works close to a PCT boundary, consideration should also be given to information-sharing between PCTs, with the neighbouring PCT being responsible for disclosing information to pharmacies within its area. This protocol should be kept under review as more NHS pharmacies are able to gain access to the electronic records.

**EXAMPLE**

The Violent Patient Scheme (VPS) is an Enhanced Service under the General Medical Practitioner contract regulations of 2004 and is designed to reduce the risks of violence to GPs and their staff by providing a mechanism by which violent patients could be excluded from a practice. The scheme ensures the excluded patients have access to adequate medical care in an environment prepared to handle any further adverse behaviour.

If an individual has been placed on the VPS as a result of an incident of violence in a GP practice, they should have a marker placed on their records. Information-sharing agreements and protocols should be in place within PCTs to share marker information with NHS professionals who need to be informed, including other GP practices, ambulance services, accident and emergency departments and out-of-hours providers.

The information-sharing process should ensure that NHS staff who do not have access to the paper or electronic marker system still have the full range of information about the marker. The process should specify in what format the information should be securely shared, whether paper, email or both.

## 16. Record-keeping

- 16.1 LSMSs should ensure that they keep a separate list of all individuals that have a marker on their records. This should be kept secure and access restricted, whether the records are paper-based or electronic.
- 16.2 Centrally held records should be reviewed regularly to ensure that they are up to date and accurate. When a marker has expired and has been removed from the patient's records, the LSMS needs to have in place a process to ensure records are revised accordingly.
- 16.3 An accurate centrally held record of markers will also facilitate information-sharing with the NHS SMS in the future for quality assurance purposes.

## 17. Publicity

- 17.1 The LSMS should liaise with the NHS body's communications team to ensure that appropriate publicity is generated regarding the use of the marking system. Individual cases should not be the subject of publicity.
- 17.2 All policies should be available to the public upon request and/or accessible on the body's website, except for any sections subject to exemption from disclosure.
- 17.3 This is a valuable tool to help create a pro-security culture and raise awareness amongst staff that these measures are in place for their safety and security.
- 17.4 Staff should be fully informed about all aspects of the process, to enable them to access and fully integrate the marker into their daily working.

## 18. Existing marker systems

- 18.1 Providers with existing marker systems should review their policies and procedures to take into account the guidance in this document.

## 19. References

Directions to NHS bodies on measures to deal with violence against NHS staff, Department of Health (2003)

<http://www.nhsbsa.nhs.uk/SecurityManagement/2286.aspx>

Tackling violence against staff: Explanatory notes for reporting procedures introduced by Secretary of State Directions in November 2003, CFSMS (2007)

<http://www.nhsbsa.nhs.uk/SecurityManagement/2286.aspx>

Directions to NHS bodies on security management measures, Department of Health (2004)

<http://www.nhsbsa.nhs.uk/SecurityManagement/2286.aspx>

The Health and Safety at Work Act (1974)

<http://www.hse.gov.uk/legislation/hswa.htm>

The Management of Health and Safety at Work Regulations (1999)  
ISBN0110856252

<http://www.opsi.gov.uk/SI/si1999/19993242.htm>

Data Protection Good Practice Note - The use of violent warning markers,  
Information Commissioner's Office (2006)  
[http://www.ico.gov.uk/what\\_we\\_cover/data\\_protection/guidance/good\\_practice\\_notes.aspx](http://www.ico.gov.uk/what_we_cover/data_protection/guidance/good_practice_notes.aspx)

The Guide to Data Protection – Information Commissioner's Officer (2009):  
[http://www.ico.gov.uk/for\\_organisations/data\\_protection\\_guide.aspx](http://www.ico.gov.uk/for_organisations/data_protection_guide.aspx)

Nursing and Midwifery Council - The code: Standards of conduct, performance  
and ethics for nurses and midwives  
<http://www.nmc-uk.org/aArticle.aspx?ArticleID=3056>

Also, Nursing and Midwifery Council - Advice sheet: Confidentiality  
<http://www.nmc-uk.org/aArticle.aspx?ArticleID=3614>

## Annex 1 – Examples of the type of incident that may warrant a marker

It is impossible to list every category of incident which may warrant marking on a person's records. Not only will the nature of the incident have to be considered but also the effect the incident has on all of those involved (staff, patients, relatives and visitors) and the likelihood of a further incident taking place.

The NHS SMS uses two definitions to establish a nationally consistent reporting standard for the NHS. **Staff** should be familiar with these definitions so that they know what types of incident should be reported to their LSMS. The following definitions and categories are applicable when considering placing a marker on records and each category should include appropriate handling information. Note: These lists are not exhaustive.

Physical assault is defined as: *'The intentional application of force against the person of another, without lawful justification, resulting in physical injury or personal discomfort'*.

Type of categorised physical assault
• Physical assault (no physical injury suffered)*
• Physical assault (physical injury sustained)

*\*Spitting is included in the definition of a physical assault, in circumstances where the spittle hits the individual.*

Non-physical assault is defined as: *'The use of inappropriate words or behaviour causing distress and/or constituting harassment'*.

Type of categorised non-physical assault
• Offensive or obscene language, verbal abuse and swearing*
• Brandishing weapons, or objects which could be used as weapons
• Attempted assaults
• Offensive gestures
• Threats
• Intimidation
• Harassment or stalking
• Damage to buildings, equipment or vehicles which causes fear for personal safety
• Offensive language or behaviour related to a person's race, gender, nationality, religion, disability, age or sexual orientation
• Inappropriate sexual language or behaviour.

*\*The use of swear words may warrant a marker depending on the circumstances in which they are used. For some individuals, swear words may be used in everyday speech, however a marker should be considered where swear words are used aggressively.*

***N.B. Some of the above examples of non-physical assault can be carried out by phone, letter or electronic means (e.g. e-mail, fax and text).***

## Annex 2 – Marker notification letter template

Dear

### Notification of risk of violence marker being placed on an NHS record

I am writing to you from (insert **name of trust**), where I am the Local Security Management Specialist (**or other job title**). Part of my role is to protect NHS staff from abusive and violent behaviour and it is in connection with this that I am writing to you.

(Insert summary of behaviour complained of, include dates, effect on staff/services and any police/court action if known)

Behaviour such as this is unacceptable and will not be tolerated. (Insert **name of 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, threats or abuse.

The NHS Constitution makes it clear that just as the NHS has a responsibility to NHS service users, so service users have a responsibility to treat staff with respect and in an appropriate way.

All employers have a legal obligation to inform staff of any potential risks to their health and safety. One of the ways this is done is by marking the records of individuals who have in the past behaved in a violent, threatening or abusive manner and therefore may pose a risk of similar behaviour in the future. Such a marker may also be placed to warn of risks from those associated with service users (e.g. relatives, friends, animals, etc).

A copy of the trust policy on risk of violence markers **is enclosed/can be obtained from [insert details]**

I (**or the panel – insert panel name**) have carefully considered the reports of the behaviour referred to above and have decided that a risk of violence marker will be placed on your records. This information may be shared with other NHS bodies and other providers we jointly provide services with (e.g. ambulance trusts, social services and NHS pharmacies) for the purpose of their health and safety.

This decision will be reviewed in 6/12 months' time (**insert date if known**) and if your behaviour gives no further cause for concern this risk marker will be removed from your records. Any other provider we have shared this information with will be advised of our decision.

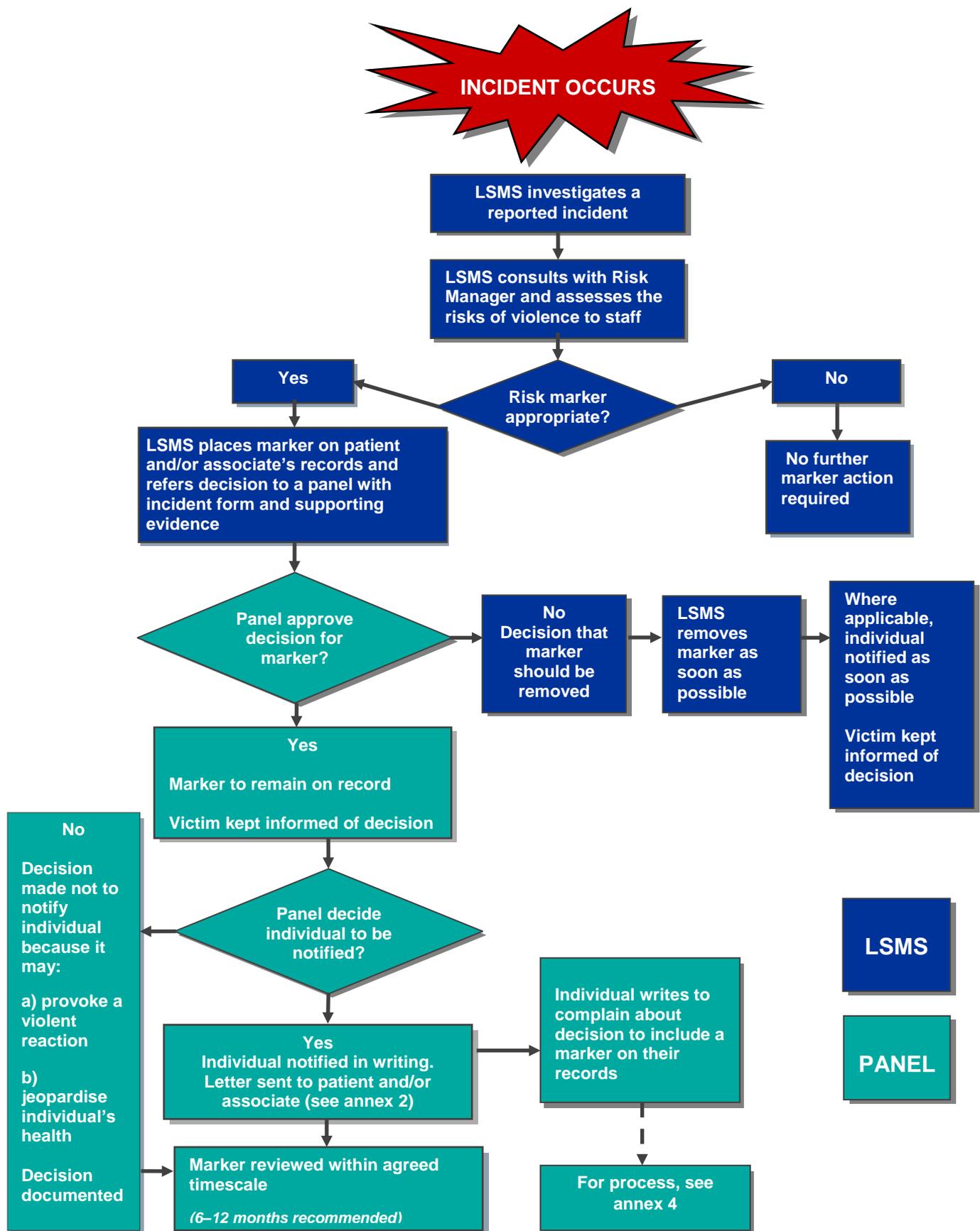
If you do not agree with the decision to place a marker on your record, and wish to submit a complaint in relation to this matter, this should be submitted in writing to:

(Insert complaints service/panel details. N.B. Even if a panel is being used details of complaints process should still be included.)

Yours (**sincerely/faithfully**),

**Insert name, job title and contact details**

## Annex 3 – Flowchart for placing a risk of violence marker on electronic and paper records – MODEL 1



## Annex 4 – Flowchart for placing a risk of violence marker on electronic and paper records – MODEL 2

