Browne Jacobson

Shared Insights: Managing violent, abusive and racist patients

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Kathryn Fearn, Associate Director of Legal Services at **University Hospitals of Derby and Burton NHS Foundation Trust (UHDB)** introduced the session and explained she had requested a Shared Insights call on this topic due to a spike in incidents with the hope of sharing good practice.

Rebecca Fitzpatrick, **Helen Badger** and **Carl May-Smith**, **Partners at Browne Jacobson** provided an overview of the legal frameworks in place that can assist Trusts when managing violent, abusive and racist patients. They focused on the legal aspects from the patient perspective, employment concerns and regulatory aspects.

We were delighted to be joined by **Sergeant Ben Wildman**, of **Derbyshire Constabulary** who spoke about the Police perspective when it comes to managing violent, abusive and racist patients and what Trusts can do to assist the police in investigating these incidents.

Rebecca Fitzpatrick explained that under the **NHS Standard Contract 2020/21 Technical Guidance**, where a patient behaves in a violent, aggressive or abusive way (including racism or homophobic abuse) the Trust can consider withholding treatment from that patient. She outlined a number of caveats and considerations Trusts must take into account when considering whether to withhold treatment:

- Whether the individual has mental health issues and take into account the patient's mental health and clinical presentation, as well as any other health conditions they have.
- Whether they are in need of emergency life sustaining care and treatment and whether without this there is an imminent threat to life. Section 4 (10) of the Mental Capacity Act 2005 states that life sustaining treatment means "treatment which in the view of the person providing the healthcare for the person concerned is necessary to sustain life".
- Whether the person has capacity to make decisions about their care and treatment, in which case the best interests provisions of the Mental Capacity Act apply
- Whether it is safe/practicable from a clinical point of view to continue to attempt to provide treatment given the patient's presentation

Where any of the first three caveats apply, it is likely there will be a legal duty to provide some form of treatment to prevent a deterioration. Where a Trust is entitled to refuse care due to a patient displaying violent or discriminatory behaviour, there is an obligation in these circumstances for the Trust to:

- Where reasonably possible, explain to the Service User, Carer or Legal Guardian (as appropriate), taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Operational Days);
- Tell the Service User, Carer or Legal Guardian (as appropriate) that they have the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
- Wherever possible, inform the relevant Referrer (and if the Service User's GP is not the relevant Referrer, subject to obtaining consent in accordance with Law and Guidance, the Service User's GP) in writing without delay before taking the relevant action; and
- Liaise with the Responsible Commissioner and the relevant Referrer to seek to maintain or restore the provision of the relevant care to the Service User in a way that minimises any disruption to the Service User's care and risk to the Service User.

In Primary Care settings, steps can be taken to manage risk for example arranging for appointments to be held outside of the home/doubling up of staff etc – there will need to be discussion with the MDT and commissioners to arrange this.

In some cases abusive relatives can cause issues for example obstructing patient care. If the patient lacks capacity to make decisions about their care and or contact, this can sometimes be managed via the decision making framework under the Mental Capacity Act (for example limiting/preventing contact during care or treatment periods/supervised contact/contact away from the care setting and so on). In some cases police involvement may assist if the relative's behaviour amounts to a criminal offence such as harassment.

In relation to vexatious or abusive complainers who for example constantly call blocking lines, constantly email blocking inboxes, record without permission etc, there are certain offences that may apply under miscellaneous legislation such as the Malicious Communications Act and contact restrictions may also be appropriate in some cases.

Helen Badger looked at the key points from an employer's perspective and explained that whilst it is difficult for an employer to be found liable in situations where an employee is harassed in the workplace by a third party, such as a patient, an employer's inaction in response to such incidents could lead to the following:

- **Constructive dismissal** - The most likely area of potential liability is a constructive dismissal claim where an employee resigns as a result of harassment and/or the employer's inaction in response to an incident or incidents of harassment by a third party.
- **Personal Injury** – Injury (physical or psychological) could lead to claims of personal injury against employers.
- Poor attendance and staff shortages and refusal to work in particular areas or on particular shifts
- **Injury Allowance** – these claims could increase an employer's liability to pay employees in addition to Sick Pay
- Increase in grievances and disclosures
- **Failure of Speak Up Process** - Trusts are progressing well on making sure it is known people can speak up freely and will be protected. Inaction of the employer when staff speak up about abuse from patients could be seen as failure of this process

She outlined some practical tips on what an employer can do to support employees who are victims of an incident:

- Consider creating a team of people within the Trust who have received training on how to support victims of abuse, violence etc. When an incident occurs, this team can offer wraparound support to the employee – this might include support in completing the relevant documentation – i.e. first statements, Datix reporting. Provide support in dealing with the police and/or ultimately courts, occupational health and counselling support.
- Consider setting up a network/forum/group for employees to be able to share experiences
- Find out from employees who have been through it what did or would have helped them to cope and respond better.

During the discussion that followed people shared their organisation's experiences of using body worn cameras, dealing with online/electronic harassment and practical tips such as training staff and standardising documentation for reporting to the police.

Sergeant Ben Wildman spoke about practical steps hospitals can take when incidents occur and set out his top tips for Trusts and staff to give the police investigation maximum impact/likelihood of a successful prosecution:

- **Staff are encouraged to report any assault or incident** - As part of the national crime and reporting standard the police will record every crime reported. This triggers the Victims Code 2020 and with that, the victim charter where the police pledge to make contact with the victim on a regular basis. Staff need to be made aware they are a victim of a crime.
- **Statement from Victim** – This should be taken by a police officer but make staff available to provide it. Often the member of staff is no longer on duty and sometimes other staff members refuse to give contact details from a Data Protection perspective. This can result in a gap of several days before the police are able to speak to the staff member who is the victim. If contact details can be provided that conversation can be held out of work.
- **Capacity** – Assist with providing capacity evidence as sometimes Police struggle to get confirmation from a treating clinician about whether the patient has capacity to commit the offence.
- **Provide a list of witnesses to the offence** – so the police have contact details readily available.
- **Provide details of the cost of any damage to property**
- **CCTV** - get footage prepared/saved
- **Body Worn Cameras** – These are a real positive if footage can be used appropriately and provided to the police. It is really damning to someone's case when they say they haven't done something, but it is clear they have on footage.
- Ensure staff understand what hate crime is and that they don't have to be subjected to that.
- Remember that this person may also be being abusive in the community e.g. in neighbour disputes and the information provided can be tied in with any actions elsewhere.

Checklist for NHS organisations of information to assist in police investigations when managing violent, abusive and racist patients

Below is a checklist that you can also download here:

- Full circumstances and details of the incident, including time / date & exact location.
- Full details of victim to be obtained / including DOB / address and contact details so they can be contacted out of work if required and importantly, if they wish to attend court and support a police prosecution.
- Full details of suspect to be obtained / including DOB / address and contact details.
- Full details of any witnesses that saw the incident.
- Any CCTV covering the offence happening to be downloaded by security ready for collection.
- Any body worn video footage from Security staff downloaded and ready for collection.
- Any photos of injuries taken so they can be emailed to police if they do not attend ASAP.
- Any photos of damage caused to be taken. Confirmation of approximate cost of any damage caused and member of the Trust to confirm they wish to prosecute.
- If capacity is an issue, a letter of capacity provided by the senior clinician authorised to do so to confirm mental capacity to commit a criminal offence.

THIS IS KEY TO THE INVESTIGATION FROM THE OUTSET IF CAPACITY COULD BE USED AS A DEFENCE IN COURT.

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