NHS

Guidance Paper: Supporting Access To Secondary Care Mental Health Treatment Requirements (MHTRs)

In consultation with Ministry of Justice (MoJ), Department of Health and Social Care (DHSC), NHS England and NHS Improvement (NHSE/I), Her Majesty's Prison and Probation Service (HMPPS) and Office of Health Improvement and Disparities (OHID)

Version 2

NHS England and NHS Improvement

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Introducing Secondary Care Mental Health Treatment Requirements

> *"This guidance paper offers a real opportunity for people with* severe mental health conditions *who have committed a low-level offence and who would benefit from safe and effective treatment in the community. The potential benefits of better and safer treatment in this framework are significant, both for the individual and society as a whole."*
>
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This document provides guidance to Psychiatrists, Community Sentence Treatment Requirement (CSTR) steering groups, Liaison and Diversion services and secondary care mental health providers on facilitating access to MHTRs in conjunction with a community sentence or suspended sentence order for individuals whose mental health needs cross the secondary care threshold. This would form part of a full pathway within the local CSTR service provision. This document is to be used in conjunction with the MHTR Operating Framework

MHTRs can be split into those provided by:

Secondary care mental health services: When an individual's mental health condition reaches the threshold of secondary care services. It is more likely than not that individuals who are eligible for secondary care MHTRs are already known to secondary care mental health services. They are likely to be eligible within locally commissioned frameworks for secondary care.
Secondary MHTRs are made for individuals who have the capacity to understand their need to attend for treatment and confirm to the court that they are willing to do so. The order then supports that intent.

Primary care mental health services: When an individual has diagnosed/undiagnosed mental health needs that may be treated in primary care. Most MHTRs don't reach the clinical threshold for treatment in secondary care.

Where primary care MHTRs are commissioned they include early screen, assessment and psychological interventions. These services are in the process of being scaled up to cover the population of England through NHS England and NHS Improvement (NHSE/I)[1]. Experience to date has flagged a need for more secondary care input.

MHTRs were launched within the Criminal Justice Act 2003 and are completely distinct from mental health legislation. They are for individuals who have the capacity to understand their need to attend treatment and confirm they are willing to do so. The order then supports that intent.

This guidance focuses on secondary care MHTRs with a view to assisting clinicians, providers and commissioners to develop clinical pathways (in partnership with other organisations) to support individuals who may be eligible for secondary care mental health services subject to an MHTR,

To be clear, secondary care providers are not expected to provide services over and above their current contractual requirements.

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[1] NHSE/I is the collective name for the National Health Service Commissioning Board, the National Health Service Development Authority and Monitor, acting together in respect of the statutory functions of commissioning services which rest with National Health Service Commissioning Board (known as NHS England), part of the collective body.

Executive Summary

This guidance paper is to be used in conjunction with the Mental Health Treatment Requirement (MHTR) Operating and Commissioning Framework for the purpose of increasing the use of secondary care MHTRs. The term secondary care is used in this context to indicate the need for mental health support which crosses the threshold for referral into secondary care services.

An increase in these requirements can only be achieved through a consistent approach across, integrated, inclusive and formalised partnerships with the relevant criminal justice/health/substance misuse and social support partners in each site.

There is a national drive to increase the use of MHTRs with a view to reducing reoffending among individuals for whom a mental disorder is a contributory or relevant factor, through effective and coordinated health and social care treatment requirements. It is anticipated there would be significant benefits for the mental health of people under an MHTR as experience suggests that they are often prior service users who have lost contact with services. An issue for the Criminal Justice System (CJS) is the high number of individuals who receive short custodial sentences of less than one year, for repeated low-level non-violent crime. A high proportion of these individuals have a clinically significant mental illness, personality or developmental disorders, often with a range of substance misuse problems and/or intellectual disabilities. They may have associated social problems, which could, if resolved, reduce longer term offending and help support reintegration into society.

An MHTR would only be offered as a recommendation at the sentencing stage if the offence that was committed would be likely to attract a community disposal order due to its seriousness.

The Primary care MHTR Programme aims to improve local partnerships and communication across the CJS pathway. The Programme supports the development of clearly defined treatment pathways focusing on those with lower-level mental health problems gaining access to psychological interventions through an individualised treatment package provided by primary care mental health workers (e.g., assistant psychologists), clinically supervised by a registered psychologist. Any physical health care or prescription needs are provided by the general practitioner, this provision enables appropriate access to a clinician within the Magistrates or Crown Courts.

However, for individuals with complex and severe mental health conditions, often with social care problems, access to MHTRs through secondary care providers continues to be variable.

Partners will be working together to address various aspects to support the Individuals specific needs, for example working between NHSE/I Liaison and Diversion services, the probation service, the courts, substance misuse providers and services commissioned by Clinical Commissioning Groups, Local Authorities and, where appropriate, housing, Police and Crime Commissioners, and commissioned health services. This is intended to provide the individuals with the support needed, enabling increased engagement with secondary care MHTR professionals.

All Faculties of Royal College of Psychiatrists are likely to be able to contribute by guiding and supporting staff in their specialty, but those most likely to be involved are:

- General Adult Psychiatry
- Liaison Psychiatry
- Neuropsychiatry
- Intellectual Disability Psychiatry
- Old Age Psychiatry
- Addictions psychiatry
- Rehabilitation and Social Psychiatry
- Medical Psychotherapy
- Forensic Psychiatry

It is recognised there is a higher proportion of individuals with neurodivergence within the criminal justice system, it would be expected therefore, there may be a higher proportion of individuals with neurodivergent needs within the cohort sentenced to MHTRs. It is likely that some people will have neurodivergent needs which haven't been previously recognised or assessed. It is expected that reasonable adjustments will be in place across the MHTR process to enable the identification of neurodivergence and that processes are accessible and supportive with these needs in mind.

Increasing the use of Secondary Care MHTRs

Liaison and Diversion services (commissioned by NHSE/I) already undertake assessments of mental health and other vulnerabilities for relevant individuals during the court process. One of the outcomes of these assessments may be that the individual is deemed potentially suitable for a secondary care MHTR.

Ideally, assessment for MHTRs would occur as early as possible in the criminal justice process to allow for sound arrangements to be agreed. Thus, they could potentially occur in police custody, at court and/or within another relevant environment

- Identification of individuals who may benefit from an MHTR would then be highlighted to the registered medical practitioner or registered psychologist (Responsible Practitioner) where the individual is already known to the secondary care service.

- The service provider will confirm whether the individual is suitable /eligible or not, this is a key part of the secondary care pathway. Where an individual with these levels of needs are identified, but not known to secondary care services, such cases should be treated as an emergency referral.

- Where a mental health need is identified but a treatment requirement is not recommended, the Probation Court Team must record the reason why and highlight this to the Magistrate or Crown Court (e.g. no service available, individual did not provide consent). The Liaison and Diversion service will be informed and will be requested to support the individual into appropriate local services

- The Magistrate or Crown Court will only include treatment requirements as part of a sentence if they deem it appropriate and are satisfied the individual fully understands the requirement, has given consent to treatment, will keep appointments with support if necessary and consents to share specified information (such as attendance).

- If a treatment requirement is included as part of a sentence, the individual must receive, at point of sentence, a written/hard copy of information setting out the details of the MHTR including the name of the treatment provider, and the date, time, and

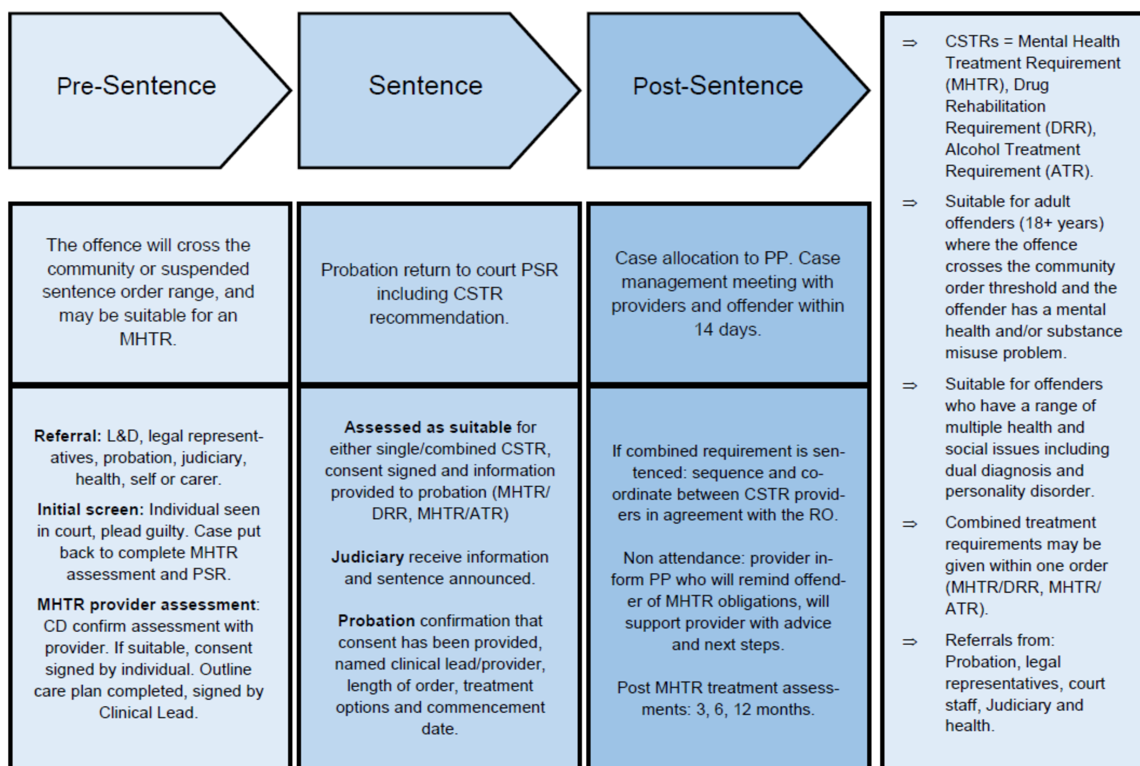
place of the first appointment (this will be pre agreed by the secondary care provider and provided to the court by Liaison and Diversion or probation).

- This information must be made accessible so that the individual fully understands the requirement, based on an understanding of the likely literacy needs of the cohort and any neurodivergence.
- The individual's secondary care Responsible Practitioner (RP) will oversee and supervise the MHTR and, if not available, the MHTR will not be agreed by the court.
- The courts and staff will be made aware of the availability of the MHTR via awareness sessions and information made available to the court.

MHTR Pathway and Process

The entire pathway is managed by the probation service.

A single point of contact from probation will be made available for all pre-and post-sentence queries along with a telephone number, email address and contact for all relevant services. All parts of the pathway outlined below will be pre-agreed with the Probation Practitioner



Offence Types which may fall into a Community or Suspended Sentence Order

A community order may be made if the individual has pleaded guilty or been found guilty of an offence, but the court considers that the necessary work can be carried out safely in the community even though in some instances the offence may cross the custody threshold.
This will be determined following risk assessments by the Court Probation Team who will provide recommendations to the court prior to sentencing. The court will also consider

previous offending history and patterns of behaviour, lifestyle and character, risk to others and themselves and history of mental health/substance misuse conditions.

A community order may include requirements which directly address the offending behaviours, along with punitive requirements such as unpaid work, also called [2]Community Payback. Community sentences may be given for a wide range of offences as outlined in the [3]sentencing guidelines.

Secondary Care MHTR eligibility includes (but not limited to):

- 18 years old or above
- Individual understands the requirement and consents to treatment
- Offence crosses the community order sentencing range
- Meets the local criteria for being in the Care Programme Approach (CPA) (refer to CPA policy)
- Severe and enduring mental health conditions or a high degree of clinical complexity
- Significant history of severe distress/instability
- Longer term mental health problems characterised by unstable treatment adherence and requiring proactive follow up
- Requires multiple service provisions from different agencies
- Risk of harm to self or others which exceeds what can be managed in primary care
- Requires active treatment
- Degree of mental health difficulties significantly impacts on daily functioning
- Individuals with low levels of symptoms (see HONOS clusters 1, 2 or 3) are, if a community health treatment requirement is thought necessary, probably more likely to benefit from a primary care MHTR. If this proves insufficient a secondary care MHTR may be considered

Processes, Clinical Guidance, Consent

Details of the MHTR Clinical Leads guidance can be found in *Appendix 1.*

A suggested form of words for consent to an MHTR to accompany the recommendation to the sentencing court can be found in *Appendix 2.*

Points of engagement: the initial screen may be done by the Liaison and Diversion team in police custody or on the day of the court hearing. Space must be made available for the Liaison and Diversion team to carry out the assessments in private in the court building.

Identification - referral may be made from by number of sources including:

- Police custody
- Probation
- Liaison and Diversion
- Court Staff
- Substance Misuse Services
- Community mental health services
- Self-referrals
- Carers and family members
- Appropriate adults

[2] https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/

[3] Magistrates' Court Sentencing Guidelines – Sentencing (sentencingcouncil.org.uk)

Process

Liaison and Diversion assessment (or locally agreed practitioner) will assess the individual for secondary care MHTR eligibility. The practitioner will also assess for: signs of substance misuse, social problems (housing, finance, relationship issues, work/education) and GP registration.

If initial assessment indicates potential suitability the Probation Court Team and a prospective RC will be informed both before and after a plea has been taken.

If the assessment does not indicate suitability for a secondary care MHTR but the individual requires support in other areas such as those outlined above, the Liaison and Diversion team will advise and support diversion to appropriate local services.

The assessment will be supported by use of a standard assessment tool to determine suitability and record the findings. This may include a Community Mental Health Assessment and a Risk Assessment.

A semi-structured interview will be completed which focuses on engagement, motivation, fact-finding and captures a range of data including mental health and forensic history, current involvement in treatment, use of medication, and life issues.

Information from assessments will capture the following information:

- Speech, Language and communication needs
- Any known neurodivergence- for example, Learning Disability, Autism, ADHD, Brain Injury, Tic Disorders, Specific Learning Differences (Dyslexia, Dyspraxia, Dyscalculia), Developmental Language Disorder
- Key Vulnerabilities
- Drug and alcohol problems
- Identification of cultural and gender-based needs
- Social circumstances (including, safeguarding, relationships, leisure requirements, daily living, educational and occupational needs, employment/vocational needs, housing, finance)
- Physical health needs – with note of any named specialists involved as well as the GP
- Medication – accurate account of current medication and of any important medication history
- Previous clinical risk management

If the Liaison and Diversion practitioner deems the individual suitable for an MHTR, a full explanation of the requirement will be provided to him/her. If the individual consents, the practitioner will contact the potential RP to discuss the case. If the prospective RP is in agreement with the practitioner's findings, the prospective RP will either agree to oversee the requirement or request a brief adjournment for further assessments. If the prospective RP does not agree, she/he should write a brief note of explanation.

Clinicians who are unfamiliar with working with the Probation Service may find the following summary helpful:

Clinical work within this guidance is generally very straightforward, but if a service has a number of secondary care MHTR referrals, it may be helpful to designate a clinical supervisor for this work as management of the requirements will become simpler. In this event, the clinician may want to consider whether the appropriate provision of MHTR should be part of the clinical team's job planning process.

RCs considering supervising an individual sentenced to an MHTR are unlikely to be required in court in person and may not need to see the individual before the court hearing. This is likely to be the case if the RC already knows the individual and/or are familiar with personnel in the Liaison and Diversion team and trust has been established between clinicians. The prospective RC would have to sign a form to the effect that she/he would be willing to supervise the case and liaise with the Probation Practitioner supervising the community sentence/court order.

Clinical case management should be no different than for any other individual with similar mental conditions, although there may be advantages through extra support for the individual to ensure compliance with the court order.

If the problems can be dealt with by additional social support to understand the issues regarding the disengagement from treatment, the Probation Practitioner should be able to help with that.

Sentencing

The outcome of the assessment, consent and RP approval will be discussed with Court Probation Team who will include in a pre-sentence report, along with any other treatment or community requirements and will recommend the MHTR to the Court. If the sentence includes an MHTR, an appointment will be made with the allocated RP team, who will work with the Probation Practitioner to sequence treatments to maximise the benefit of the requirement along with the other providers (i.e., substance misuse).

It is important to ensure that consent is fully understood by the individual and information will be made available in the appropriate language/easy read format or interpretation available if necessary.

Joint Case Management

The MHTR will be overseen by the RP but may allocate aspects of the care and treatment to others in the clinical team, in line with usual good practice.

The Probation Practitioner and the RC must each conduct a risk assessment before discussing the case and agreeing a joint risk management plan. Everyone involved, including the individual under the order, must be fully appraised of what is expected of him/her. One of the ultimate goals is that the individual will be able to manage his/her own risk(s) without outside input.

The Probation Practitioner, RP and individual will meet to agree the sentence plan and MHTR specifications, including attendance and consequences of any non-attendance; one of the responsible parties may join the meeting by audio or tele-conferencing facilities if a requirement for a face-to-face meeting would cause undue delay.

Pre-agreed feedback mechanisms will be put in place between probation, the health provider, the supervised individual, and the courts where relevant, on the progress of the order. Service-user feedback is vitally important in order to support the increased use of secondary care MHTRs, along with advice and feedback on improvements to the court or treatment delivery processes.

In many cases the individual will have more than one diagnosis, particularly substance related diagnoses as well as mental illness. This could require engagement with substance misuse providers. It is important therefore that all service providers hold joint regular case management meetings.

Where there are additional needs related to the pattern of offending, such as housing or employment needs, RAR days can be used to address additional criminogenic needs, thus supporting the individual to engage with the MHTR.

The Probation Practitioner has ultimate responsibility for the case, so, if any details of the specified contract need to be amended during the running of the order (e.g., change of clinician, venue etc.), the Probation Practitioner must be informed. It is recommended, however, that detail of treatments be kept to a minimum.

Non-compliance with the requirement: the RCs part of the agreement in the sentence plan will be to agree a process in the event of non-compliance with the requirement. The individual will understand what the RC must/will do in the event of noncompliance by failing to meet the agreed attendance and treatment criteria. The RC must know exactly how to contact the Probation Practitioner and the form of evidence needed. The Probation Practitioner and RC must agree if the case needs to be returned to court for the purposes of revoking the order and/or resentencing, or whether other actions are preferable. There may, for example, be realistic practical reasons which constitute a barrier to compliance, and therefore the imposition of a new plan of management may remedy the position. Ultimately the Probation Practitioner holds the decision as to whether the case is taken back to court, however this must be discussed in consultation with the clinician.

On completion of the MHTR, an agreed care plan will be put in place to ensure that treatment may continue, with the same RC in the absence of constraints, or a new one as best fits the needs of the individual.

MHTR Treatment Plan

The treatment plan is provided in line with the community order and can last for a period of up to 3 years, depending on the length of sentence. At each treatment session, the clinical practitioner will assess risk and the mental health status of the individual, as in any clinical session.

It is recommended that at least six weeks before the order is completed, appropriate ongoing treatment is discussed between the clinician, individual and a plan agreed. The plan might include discontinuing treatment, although this is unlikely to be appropriate in most cases; it may require a transfer to another service. The individual needs time to think this through and adjust to new circumstances. The fact that the treatment *requirement* comes to an end should not necessarily mean that treatment within the service also ends.

If the individual is not engaging with treatment and there is a sufficient concern that the individual appeared to be suffering from a mental health disorder, to a nature of degree which the RP considers warrants assessment and/or treatment for the individual's health and safety and/or for the protection of consideration should be given to the powers contained within the Mental Health Act 1983. It is unlawful to deliver compulsory treatment under the Mental Health Act 1983 to an individual under an MHTR.

Times of Operation

The Liaison and Diversion team will be available during court operating hours (9am to 5pm, Monday to Friday) and therefore MHTR sentencing support may be required between these hours.

Cases that appear on Saturday morning will be identified by the Liaison and Diversion or the Court and if appropriate a recommendation to adjourn for assessment and sentencing the following week will be made.

Interdependence with other Services/Providers

In line with good practice, services must work in partnership to ensure safe, planned and joined up care. There must be smooth transitions between integrated services to avoid people slipping through the net. Information must be shared with the relevant professionals to ensure the care plan is agreed and any areas of risk monitored. If data sharing agreements need to be in place following local governance policies and procedures,

The key potentially interdependent agencies are:

- Police
- General Practice
- Primary and Community Care
- Specialist mental health crisis resolution and home treatment services
- Specialist mental health accommodation and support providers
- Third sector information, advice, support, and advocacy providers
- Housing services
- Substance misuse services
- Learning disability services
- Employment services
- Health and social care locality teams
- Tertiary health providers – forensic and independent
- Out of Hours urgent care and assessment team

Diversity Monitoring

The promotion of equality and health inequalities are at the heart of all services:

- Give due regard to eliminate all forms of discrimination, harassment, and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and
- Give regard to reducing inequalities between individuals with access to, and outcomes from services and to ensure the providers are integrated with other services to reduce health inequalities.

All individuals who engage with the treatment process will be asked to provide equal opportunities/diversity information. This will be monitored to ensure that no groups are disadvantaged. The Provider will record diversity information.

Safeguarding Issues

If safeguarding issues are identified, the concerns may relate directly to the individual or the welfare and safety of other adults or children. These other adults or children may reside at the individual's place of residence or may have regular contact with him/her.

There is a duty to follow the Adult & Child Safeguarding polices involving Multi-Agency Safeguarding Hubs (MASH) or Multi-Agency Public Protection Arrangement (MAPPA), as necessary, and ensure they are appropriately trained and updated in line with these policies. Information sharing agreements and confidentiality policies must be in place with the appropriate statutory authorities before the service goes live. All staff employed or engaged in working with individuals in prospect of or under a MHTR must have the appropriate level of Disclosure and Barring Service (DBS) check that is updated annually.

The service must, on request, provide evidence to demonstrate compliance with all statutory requirements.

Particularly relevant to the service include:

- NHS Constitution
- NHS Act 2006
- Mental Health Act 1983 as amended in 2007, Health and Social Care Acts 2008 and 2012 and Care Act 2014
- NHS Community Care Act 1990 and associated guidance
- Health and safety requirements
- Healthy Children Safer Communities (DHSC, 2009)
- Children Act 1989
- Children Act 2004
- Human Rights Act 1998
- Care Programme Approach
- Care Quality Commission Standards
- NHS complaints procedure
- Data protection legislation

Next Steps:

Planned regular reviews of the impact on the local services will be monitored so that the local teams can feel reassured that if greater access to secondary care MHTRs involves an increased use of local resources there will be a chance to raise and address this issue

Appendix 1: RP MHTR Guidance

Guidance specification for a Registered Medical Practitioner or Registered Psychologist (RP) **for MHTRs based in Secondary Care**
Pre-sentence:
1. The RP will be familiar with the locally agreed pre-sentence screening and assessment measures (clinical criteria as defined by the local service) which will define the MHTR threshold criteria, and generally with key members of the Liaison and Diversion team. 2. The RP/Liaison and Diversion will agree the consent process with the court (NPS). 3. The RP will agree the additional information required within the assessment that probation (NPS) will require for the PSR. 4. The RP will sign off the clinical care plan including the desired outcomes from the treatment to be provided. 5. NPS/RP/Liaison and Diversion will agree a sign off process if the RP isn't taking consent from the prospective MHTR user in person. 6. The RP will be the named clinician for the purpose of sentencing.
Post sentence: treatment delivery:
7. The RP delivering treatment, whether in person or not, will be mindful of NICE recommendations with respect to specific treatments and timescales. 8. Where appropriate the RP will advise/support the effective sequencing of the requirements (if other treatment requirements have been ordered) to ensure maximum engagement and effectiveness. 9. The RP must be aware of any non-compliance with the MHTR and, where not directly delivering treatment, ensure that colleagues know about the necessity to inform the RP in the event of relevant difficulties. 10. The RP must ensure clear, prompt communication with the probation officer in the event of non-compliance.
Sentence completion:
11. On completion, the RP will sign the order off and advise if further treatment is required. 12. The RP (and treatment provider) will review clinical outcome, as specified pre-sentence to ensure assessments and treatments are effective and monitored as locally agreed. 13. The RP will send an MHTR completion letter to the individual and Probation Practitioner

Appendix 2: Example Consent Form

Mental Health Treatment Requirement
Client Confidentiality Statement and Consent to Treatment and Assessment.

Information you tell anyone in the MHTR service may be shared with people from other services ONLY if they 'need to know' the information.

These other services include: xxxxxx

Personal information /data

Your personal information will be shared to gain:

- Information to help with your treatment
- Information to understand your health needs
- Information about safeguarding and child protection (where needed)
- Information around assessing risk
- Data to help us understand how the service is doing and help fund it
- Information from the other services we work with
- Information that we must get because of our contracts.

What is meant by data sharing?

There are laws around sharing personal information and any staff getting information must keep all information confidential.

There may be times where staff must share personal information without your consent. This will only happen if there are any worries around threats being made to self or others, safeguarding issues around adults or children or any serious crimes you tell us you are going to do.

How we keep your information

We keep your information on our active case management system from assessment to when you finish treatment. Your information will then be encrypted. This means only some people will be able to see it. It will then be stored electronically and securely indefinitely.

Consent

Your consent or agreement with this is needed.

We will make sure that discussions, conversations, and telephone calls about confidential information cannot be overheard. We will not share information that tells people who you are unless this is needed.

Information about hurting yourself or another person, or to the safety and well-being of children must be reported to external agencies.

You have been given information about the assessment and treatment requirements. You understand and consent to the assessment and treatment if you are given a Mental Health Treatment Requirement (MHTR)

If you are sentenced to a Mental Health Treatment Requirement you must go to all the treatment sessions and do what is agreed in your treatment plan

Agreement to receive treatment/interventions for (MHTR)

I have read or had read to me the confidentiality statement and agree to assessment and treatment. I understand that information about me may be shared as written above. I understand that information will be shared if there is a risk of harm to myself or others.

GP surgery………………………………………………………………………………

Signed: ………………………….. Print name: …………………….. Dated: ………………………….. (Individual)	I confirm that I have explained the MHTR Signed: ……………………… Print name: …………………….. Dated: ……………………………… (Probation)	I confirm that I have explained the MHTR Signed: ……………………… Print name: …………………….. Dated: ……………………………… (Clinician)

Appendix 3: Acronyms

- NHSE/I: NHS England and NHS Improvement
- MoJ: Ministry of Justice
- DHSC: Department of Health and Social Care
- OHID: Office of Health and Disparities
- NPS: National Probation Service
- L&D: NHSE/I Liaison and Diversion Service
- HMCTS: Her Majesty's Courts and Tribunals Service
- PP: Probation Practitioner
- RP: Responsible Practitioner
- CSTR: Community Sentence Treatment Requirement
- MHTR: Mental Health Treatment Requirement
- ATR: Alcohol Treatment Requirement
- DRR: Drug Rehabilitation Requirement
- RAR: Rehabilitation Activity Requirement
- CO: Community Order
- SSO: Suspended Sentence Order
- PSR: Pre-Sentence Report
- Registered Medical Practitioner or Registered Psychologist: to be registered with the relevant professional bodies
- PCART: Planned Care and Recovery Team

January 2022: MHTR Programme and RCPsych will review and update this guidance on a regular basis to reflect current practice.

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