



General
Medical
Council

Memorandum of Understanding
between
Mental Welfare Commission for Scotland
and the
General Medical Council

April 2023

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Memorandum of Understanding between the Mental Welfare Commission for Scotland and the General Medical Council

Introduction

1. The purpose of this Memorandum of Understanding (MoU) is to set out a framework to support the working relationship between the Mental Welfare Commission for Scotland (the Commission) and the General Medical Council (GMC).
2. The working relationship between the Commission and the GMC is part of the maintenance of an assurance system for healthcare in Scotland which promotes patient safety and high-quality care.
3. The Commission is an independent statutory body that protects the welfare of individuals with mental illness, learning disability, dementia and related conditions. The GMC is the independent regulator of doctors in the UK.
4. The responsibilities and functions of the Commission and the GMC are set out in Annex A: Responsibilities and Functions.
5. The GMC's responsibilities relate to the regulation of doctors currently, however future changes to legislation will extend the GMC responsibilities to physician associates (PAs) and anaesthesia associates (AAs). When the new legislation is active the principles of this MoU will also apply to these practitioners.
6. This MoU does not override the statutory responsibilities and functions of the Commission and the GMC, and it is not enforceable in law. However, the MWC and the GMC agree to adhere to the contents of this MoU and to review its operation on a regular basis.

Principles of cooperation

7. The Commission and the GMC intend that their working relationship will be characterised by the following principles:
 - a) The need to make decisions which promote patient safety and high-quality healthcare.
 - b) Respect for each organisation's independent status.
 - c) The need to maintain public confidence in the two organisations and the regulatory process.
 - d) Openness and transparency between the two organisations as to when cooperation is and is not considered necessary or appropriate.
 - e) The need to use resources effectively and efficiently.

Both GMC and the Commission are committed to exploring ways to develop more effective and efficient partnership working to promote quality and safety within their respective regulatory remits.

Areas of cooperation

8. The working relationship between the Commission and the GMC involves cooperation in the following areas:
 - Routine information sharing
 - Cross referral of concerns
 - Strategic collaboration
9. A named contact with responsibility for each area is identified in Annex B: Lead Contacts.

Routine information sharing

10. The Commission and the GMC will each make available routine information arising from their processes that may assist the other in its remit.

Cross-referral of concerns

11. Where the Commission or the GMC encounter a concern that either believe may fall within the remit of the other, they will at the earliest opportunity convey the concern and supporting information to a named individual with relevant responsibility at the other organisation. In the interests of patient safety, the referring organisation will not wait until its own review or investigation has concluded and will share information at this stage, where it is in the public interest to do so.
12. For the GMC concerns may include relevant information about individual doctors responsible for patient care as well as healthcare organisations which may call into question the robustness of systems for postgraduate training, medical appraisal and clinical governance or compliance with the Medical Profession (Responsible Officer) Regulations 2010. This would include concerns about leadership, delivery and quality of clinical governance for doctors, medical revalidation, and identifying and responding to concerns about doctors.

13. For the Commission this may include relevant information about healthcare organisations which may call into question the robustness of systems, governance, or compliance with the
 - a. Mental Health (Care and Treatment) (Scotland) Act 2003
 - b. Adults with Incapacity (Scotland) Act 2000
 - c. Mental Health (Scotland) Act 2015

This would include concerns about leadership, delivery and quality of governance, and identifying and responding to concerns.

14. If a concern relates to the other organisation's remit, but there is uncertainty whether the concern is sufficiently serious to engage their processes, this should be discussed with one of the key escalation contacts identified in Annex B: Lead Contacts.
15. In particular, if the Commission considers appropriate to do so, it will refer GMC information about:
 - a) Any concerns and relevant information about a registered doctor which may call into question their fitness to practise when their employer has not informed GMC within a reasonable timeframe since the concerns were raised or when there is an imminent risk for the individuals.
 - b) Any concerns and relevant information about a healthcare organisation which may call into question the robustness of systems for postgraduate training, medical appraisal and relevant clinical governance or compliance with the Medical Profession (Responsible Officer) Regulations 2010.
 - c) Any significant concerns and relevant information relating to the general delivery of care which may call into question issues of medical leadership.
 - d) Any investigations into or follow ups of identified risks, in which concerns about individual doctors' practice have been identified when their employer has not informed GMC within a reasonable timeframe since the concerns were raised or when there is an imminent risk for the individuals.
 - e) Any thematic issues about doctors that could be addressed through setting professional standards.
 - f) Where independent healthcare services are provided and/or operated by sole practitioners, concerns raised about an individual's fitness to practise cannot be escalated within clinical governance structures. In such cases, The Commission may will refer to the GMC.
16. In particular, if the GMC considers appropriate to do so, it will refer the Commission information about:
 - a) Any concerns and relevant information about mental healthcare providers which may call into question their suitability for providing care for people with mental illness, learning disabilities, dementia and related conditions.

- b) Any concerns and relevant information about a healthcare provider which may call into question the robustness of systems for complying with relevant the Mental Health (Care & Treatment) (Scotland) Act 2003 and the welfare parts of the Adults with Incapacity (Scotland) Act 2000.
- c) Any investigations into or follow ups of identified risks, in which concerns about a mental healthcare provider have been identified and there is an imminent risk for individuals.

Strategic collaboration

- 17. The Commission and the GMC will have regard to circumstances in which their objectives may be best served by collaboration. Each party will seek to give consideration to the other when planning their work programmes and identify any possibilities for joint working. Opportunities for collaboration may include - considering how the GMC can contribute to the Commission developing their approach to their new duties, e.g. in relation to reviewing deaths in detention and how the Commission can input to the GMC's future consultation on Regulatory Reform and their work relating to consideration of the patient safety infrastructure in Scotland.

Media/publications relations to Scottish medical education or healthcare providers and evidence to committees and interactions with the Scottish Government or Parliament

- 18. The Commission and the GMC will seek to give each other adequate warning (at least 48 hours) and sufficient information about any planned press releases and announcements that may concern the other organisation.
- 19. The Commission and the GMC will, when appropriate, share with each other awareness of relevant evidence to committees or interactions with the Scottish Government or Parliament.
- 20. The Commission and the GMC will respect the confidentiality of any documents shared in advance of publication and will not act in any way that would cause the content of those documents to be made public ahead of the planned publication date.
- 21. The Commission and the GMC will work to ensure that the recommendations arising from investigations and reviews are communicated widely and are understood.

Information sharing

- 22. The Commission and GMC shall exchange personal data only in accordance with the UK General Data Protection Regulation (UKGDPR) and Data Protection Act 2018 and as outlined in the **Annex C**.

All arrangements for collaboration and exchange of information set out in this MoU, will take account of and comply with all relevant legislation and any Commission and GMC codes of practice, frameworks or other policies relating to confidential personal information.

23. Both the Commission and the GMC are subject to the Freedom of Information Act 2000/Freedom of Information (Scotland) Act 2002 and data protection legislation, including UK GDPR. If one organisation receives a request for information that originated from the other, the receiving organisation will discuss the request with the other before responding.
24. The *Sharing Intelligence for Health and Care Group*, of which the Commission is a member, was established to bring together the key audit, inspection, training and regulatory bodies of the health and social care system in Scotland to review our combined intelligence on the quality and safety of health and care, and to identify potential problems or concerns that may require further investigation. The group has processes in place to allow GMC and other regulatory bodies to attend bi-annual meetings with the Sharing Intelligence for Health and Care Group and report emerging concerns. These processes are currently under revision.
25. As a designated body, the Commission will agree to exchange such information as is necessary to fulfil their statutory functions and to ensure the safety and well-being of people who use health services.

Resolution of disagreement

26. Any disagreement between the Commission and the GMC will normally be resolved at working level. If this is not possible, it may be referred through those responsible for the management of this MoU, up to and including the Chief Executive of the Commission and the Chief Executive of the GMC who will then be jointly responsible for ensuring a mutually satisfactory resolution.

Working arrangements

Regular contact

27. Separate to the biannual meetings of the *Sharing Intelligence for Health and Care Group* there will be meetings, at least annually, between the Commission and the GMC. However, if and when circumstances dictate that more frequent contact is needed then this will be arranged.
28. The annual meetings will be the forum for consideration of:
 - The Memorandum of Understanding
 - Fitness to Practise
 - Quality Assurance of Revalidation
 - Media and Publications
 - Strategic Collaboration

- Any updates to information sharing activities
29. The GMC Employer Liaison Advisor and the Commission Medical director will meet every six months to support the exchange of information in relation to revalidation and fitness to practise and will consider the items mentioned in point 28 on an annual basis.
30. The GMC Employer Liaison Adviser will also be available to provide the Commissions Medical director and the Chief Executive with ad hoc advice and guidance as and when required.

Duration and review of this MoU

31. This MoU will be reviewed periodically but at a minimum every three years.
32. Both organisations have identified a person responsible for the management of this MoU, contact details are provided in Annex B: Lead Contacts. They will liaise as required to ensure this MoU is kept up to date, identify any emerging issues and resolve any questions that arise as to the interpretation of this MoU.
33. The named contacts with responsibility for each area of cooperation identified in Annex B: Lead contacts will liaise as required to carry out day-to-day business.
34. Both the Commission and the GMC are committed to exploring ways to develop more effective and efficient partnership working to promote quality and safety within their respective regulatory remits.

Signatures

<p>Julie Paterson Chief Executive Mental Welfare Commission for Scotland</p> <p>Date: 27 April 2023</p>	<p>Charlie Massey Chief Executive General Medical Council</p> <p>Date: 21 April 2023</p>
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Annex A: Responsibilities and functions

Mental Welfare Commission for Scotland (the Commission) and the General Medical Council (GMC) acknowledge the responsibilities and functions of each other and will take account of these when working together.

The General Medical Council

The General Medical Council (GMC) is an independent organisation that helps to protect patients and improve medical education and practice across the UK.

- We decide which doctors are qualified to work here and we oversee UK medical education and training.
- We set the standards that doctors need to follow, and make sure that they continue to meet these standards throughout their careers.
- We take action when we believe a doctor may be putting the safety of patients, or the public's confidence in doctors, at risk.

Every patient should receive a high standard of care. Our role is to help achieve that by working closely with doctors, their employers and patients, to make sure that the trust patients have in their doctors is fully justified.

Mental Welfare Commission for Scotland

The Mental Welfare Commission for Scotland (the Commission) is an independent organisation set up by Parliament with a range of duties prescribed under mental health and incapacity law, namely the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Scotland) Act 2015. It acts to promote the welfare of individuals with mental illness, learning disability or related conditions. Its functions include:

- to monitor the operation of the Act and promote best practice.
- to report on the operation of the Act.
- to bring general matters to the attention of Scottish Ministers and others.
- to give advice
- to raise service concerns with certain bodies.

Annex B: Lead contacts

There will be specific points of contact between MWC and the GMC as follows:

Mental Welfare Commission for Scotland	General Medical Council
Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE Tel. 0131 313 8777 email, to mwc.enquiries@nhs.scot	The Tun 4 Jacksons Entry Holyrood Road Edinburgh EH8 8AE Tel: 0131 525 8700
Chief Executives (internal escalating policies should be followed before referral to CEs)	
Julie Paterson Chief Executive	Charlie Massey Chief Executive
Escalation Contacts	
n/a	Nicola Cotter Head of GMC Scotland Office
Operations Contacts	
Arun Chopra Medical Director	Willie Paxton GMC Employer Liaison Adviser
Data Protection and Confidentiality	
Paloma Alvarez Information Governance Manager	Andrew Ledgard Head of Information Policy

Annex C: Data Controller Declaration

Purpose

1. The purpose of this Annex C is to explain the respective roles that the Commission and GMC will play in managing the processing of personal data associated with the effective operation of this Memorandum of Understanding. The Commission and GMC are considered independent controllers of the data collected, as both parties separately determine the means and purpose of processing personal data as part of the functions defined in the broader Memorandum of Understanding.

Data Protection

2. Both parties have functions prescribed by law and written in statute which provide a lawful basis for sharing personal, special category data where sharing is necessary for the exercise of those functions, proportionate, and carried out in accordance with the rights of the data subjects.
3. The Commission and GMC will comply with all relevant provisions of the Data Protection Act 2018 (and the General Data Protection Regulation). The Commission and GMC will act as independent data controllers, in respect of any personal data pursuant to this memorandum of understanding; they will only process such personal data to the extent defined in the relevant regulatory framework.
4. All information will be supplied in line with the relevant standards for information quality and security.
5. Neither the Commission nor GMC will transfer any personal data it is processing outside of the European Economic Area, unless appropriate legal safeguards are in place, such as an adequacy decision or Model Contract Clauses.
6. The Commission and GMC will ensure that they have appropriate technical and organisational procedures in place to protect any personal data they are processing. This includes any unauthorised or unlawful processing, and against any accidental disclosure, loss, destruction, or damage. Both parties will also take reasonable steps to ensure the suitability of their staff having access to such personal data.

Individual Rights

7. UKGDPR specifies new rights for individuals over the processing of their data. These rights, and the process an individual should follow when making a request, are listed in both the Commission and GMC's privacy notice. Both parties should ensure they consult and comply fully with their respective privacy policies in the event of a Data Subject exercising any of their rights under data protection legislation.
8. In response to any subject access request, the Commission and GMC will undertake a proportionate and reasonable search and respond within one month of the original request.

Data breach

9. Both parties are responsible for reporting any breach occurring within their authority to their Data Protection Officer and ICO (where appropriate). They will also inform the other party of the breach if there is any direct impact on their staff or wider interest.
10. Any personal data breach as defined by UK GDPR Article 4(12) that meets the relevant threshold criteria will be reported to the relevant Information Commissioners' Office (ICO) within 72 hours of notification. This will include informing the affected data subject should the circumstances warrant it. The appropriate Data Protection Officer (see below) will be responsible for making the report, following consultation their Chief Executive Officer (CEO).

Data retention

11. The Commission and GMC will retain personal data associated with the effective operation of this memorandum of understanding in accordance with their respective organisational disposal policies. Each party is responsible for ensuring appropriate technical and procedural functions are in place to ensure the secure and timely destruction of personal data.

Legal basis for the processing

12. Without detriment of any other legal basis that may be applicable (e.g. criminal investigation, etc.) the following are the core legal basis for each of the parties to process the data in this agreement.

Legal basis	Party
UK GDPR 6.1(e) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. This is in respect to its statutory functions under the Medical Act 1983.	GMC
UK GDPR 6.1(e) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. This is to perform its statutory functions under the Mental Health (Care and Treatment) (Scotland) Act 2003 and Adults with Incapacity (Scotland) Act 2000.	MWC
UK GDPR Article 9.2 (g) Substantial public interest, on the basis of Domestic law. This requirement is met as outlined under The DPA 2018 Section 8 and Schedule 1, Part 2 Paragraph 6 for the purpose of exercising a function conferred on a person by enactment or rule of law.	The Mental Welfare Commission

UK GDPR Article 9.2 (g) Substantial public interest, on the basis of Domestic law. This requirement is met as outlined under The DPA 2018 Section 8 and Schedule 1, Part 2 Paragraph 6 for the purpose of exercising a function conferred on a person by enactment or rule of law.	GMC
	GMC

13. Personal and special category information will only be shared under this agreement where there is a statutory power to do so and the conditions for processing as determined in the Data Protection Act 2018 can be met. Wherever possible, anonymised information should be shared.
14. Where it is agreed that it is necessary to share personal information it will be shared only on a 'need to know' basis and this will be detailed in the individual information sharing agreements.

Data Protection Officers

The contact details of the Data Protection Officers are:

Mental Welfare Commission for Scotland	GMC
Data Protection Officer Mental Welfare Commission for Scotland Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE Email - mwc.enquiries@nhs.scot	Information Governance Manager General Medical Council 3 Hardman Street Manchester M3 3AW email - dpo@gmc-uk.org