



INFORMATION SHARING AGREEMENT

**Healthcare Improvement Scotland
and
The Mental Welfare Commission**

April 2023

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I. Introduction

The purpose of this Information Sharing agreement (ISA) is to set out the information sharing arrangements between Healthcare Improvement Scotland (HIS) and the Mental Welfare Commission for Scotland (the Commission). Both Parties have functions prescribed by law and written in statute which provide a lawful basis for sharing personal, sensitive data where sharing is necessary for the exercise of those functions, proportionate, and carried out in accordance with the rights of the data subjects.

The working relationship between HIS and the Commission is part of the maintenance of an assurance system for healthcare in Scotland which promotes patient safety and high-quality care.

HIS is the national healthcare improvement organisation for Scotland. The Commission is an independent statutory body that protects the welfare of individuals with mental illness, learning disability, dementia or related conditions. The Commission has monitoring, visiting and investigation functions in relation to mental health and incapacity law. The Commission visits services across Scotland and investigates cases where it appears that there may be ill-treatment, deficiency in care or treatment, or improper detention of any such person.

HIS is also the secretariat for the Sharing Intelligence for Health and Care Group. This group supports improvement in the quality of care provided for the people of Scotland, using existing data and intelligence.

Implementing this ISA will require HIS and the Commission to exchange relevant information. All arrangements for the collaboration and exchange of relevant information set out in this ISA and any supplementary agreements will take account of and comply with all relevant legislation and any current and future HIS and the Commission codes of practice, frameworks or other policies relating to confidential personal information.

Both HIS and the Commission are subject to the Freedom of Information (Scotland) Act 2002 and data protection legislation, including GDPR. Both parties comply with the requirements of the Data Protection Act 2018, the UK GDPR and in particular the seven data protection principles

This ISA does not override the statutory responsibilities and functions of HIS and the Commission and is not enforceable in law. However, HIS and the

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Commission agree to adhere to the contents of this ISA and review its operation every two years or earlier if required.

II. Principles of cooperation

HIS and the Commission are committed to an inspection and regulation system for mental healthcare in Scotland which is transparent, accountable, proportionate, consistent, and targeted (the Better Regulation Task Force principles of good regulations for non-economic regulators).

The Scottish Regulators' Strategic Code of Practice applies to HIS. The Code of Practice does not apply to the Commission. The Commission agree with the underpinning principles of the Code of Practice.

HIS and the Commission 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 parties and the regulatory process.
- d) Openness and transparency between the two parties as to when cooperation is and is not considered necessary or appropriate.
- e) The need to use resources effectively and efficiently.

Both HIS 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.

A. Areas of cooperation

The working relationship between HIS and the Commission involves cooperation in the following areas:

- Routine information sharing
- Cross referral of concerns in relation to mental health and incapacity

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- Strategic collaboration in relation to mental health and incapacity
- Advice and guidance in relation to mutual areas of interest
- Information about any investigations it conducts that may be relevant to the remit of the Commission

A named contact with responsibility for each area is identified in Appendix 3: Key Contacts.

B. Routine sharing intelligence

The Commission and HIS will each make available routine information arising from their functions in relation to mental health that may assist the other in its remit.

C. Cross-referral of concerns

Where HIS and the Commission encounter concerns which either believe may fall within the remit of the other, they will at the earliest opportunity convey the concerns 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 the earliest stage, where it is in the public interest to do so.

If a concern relates to the other parties' 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 Appendix 3 – Key Contacts.

In particular, HIS will refer to the Commission information about mental health and incapacity services where it appears that patients are being:

- unlawfully or disproportionately deprived of their liberty, or
- given medication without proper consent or legal authorisation.

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- Any concerns and relevant information about a healthcare organisation which may call into question the quality of the care and treatment of the services it provides.
- Any issues arising from its work which may be useful intelligence to inform the Commission business delivery plan;

In particular, the Commission will refer to HIS:

- Any concerns and relevant information about a healthcare organisation which may call into question the quality and safety of the services it provides.
- Any issues arising from its scrutiny function which may be useful intelligence to inform the development of the HIS programme of scrutiny and improvement.
- Information about any investigations it conducts that may be relevant to the remit of HIS.

D. Strategic collaboration

HIS and the Commission will have regard to circumstances in which their respective organisational 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.

E. Advice and guidance

In recognition of the complex nature of mental health and incapacity legislation, HIS may share information with the Commission to seek advice and guidance relating to the legislation and the statutory duties of the Commission.

The Commission will also seek advice from HIS if required and relevant.

If the advice then highlights areas of concern, this would be shared under cross referral of concerns outlined at paragraph C above.

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The named contacts with responsibility for each area of cooperation identified in Appendix 3 – Key Contacts will liaise as required to carry out day-to-day business.

In signing up to this ISA the signatories agree and commit to the following key principles:

- This ISA aims to align with individual statutory and legal responsibilities
- HIS and the Commission support, endorse and promote the accurate, timely, secure and confidential sharing of information for the purposes stated in this ISA.
- HIS and the Commission agree to ensure that information sharing takes place in accordance with their legal and statutory responsibilities and that responsibility for ensuring that they have adequate notifications, privacy notices, policies, procedures and guidance to do so remains with them.
- All information will be supplied in line with the relevant standards for information quality and security.

1 Parties, Scope and Purpose

1.1 Name and details of the parties who agree to share information

Legal name of parties to ISA and Head Office address	Short name of the party	Role in this agreement : Data Controller or Data Processor (*)	ICO Registration
Healthcare Improvement Scotland Gyle Square, 1 South Gyle. Crescent, Edinburgh EH12 9EB	HIS	Data Controller	Z2608541
The Mental Welfare Commission of Scotland Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE	The Commission	Data Controller	Z9097121

(*) for Data Processor, please identify on behalf of what data controller(s)

1.2 Business and legislative drivers for sharing data.

HIS is a body established under section 10A of the National Health Service (Scotland) Act 1978. Its purpose is to protect and enhance the safety and wellbeing of everyone who uses healthcare services, promote good practice in healthcare services and encourage healthcare services to follow our guidance.

The Commission is an independent organisation set up by under the Mental Health (Care and Treatment) (Scotland) Act 2003, with specific statutory functions under the Adults with Incapacity (Scotland) Act 2000 (the AWI Act). The Commission is accountable to Scottish Ministers for its statutory duties. The Mental Welfare Commission acts to protect the welfare of individuals with mental illness, learning

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disability, dementia or related conditions. The Commission investigates cases where it appears that there may be ill-treatment, deficiency in care or treatment, or improper detention of any such person.

Both parties have functions prescribed by law and written in statute which provide a lawful basis for sharing personal, sensitive data where sharing is necessary for the exercise of those functions, proportionate, and carried out in accordance with the rights of the data subjects.

Relevant legislation and guidance have been added in Appendix 4. Specific obligations to share and collaborate set out in legislation are:

- Section 114 of the Public Service Reform (Scotland) Act 2010. Both parties have a duty to cooperate and to coordinate activity with a view to improving and exercise scrutiny function in relation to local authorities, social services and health services, having regard to efficiency, effectiveness and economy
- Section 10Z19 of the National Health Service (Scotland) Act 1978. This requires Healthcare Improvement Scotland to consult with the Mental Welfare Commission for Scotland in every case where it appears appropriate, having regard to the functions of the Commission, when exercising its functions relating to the provision of guidance, advice or information.
- Section 8A of the Mental Health (Care and Treatment) (Scotland) Act 2003. This requires the Mental Welfare Commission for Scotland to raise any concerns (of a general or specific nature) with the Healthcare Improvement Scotland about the provision of any healthcare service to a person who has a mental illness, learning disability or related condition.
- Section 16 and 17 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Section 16 of Act gives the Commission the power to require that any patient records are presented to it for inspection. The power in section 16 to require the production of records for examination is in connection with any of The Commission's functions in the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Adults with incapacity (Scotland) Act 2000.
- Relevant bodies listed in section 17 of the 2003 Act (including HIS) must do what is necessary to help the Commission carry out its duties.

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Personal and sensitive 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 or pseudonymised information should be shared.

1.2.1 Purpose(s) of the information sharing

Indicate how the data controllers will decide upon changes in the purposes of the sharing	Jointly or independently
	Jointly

Instructions for reaching agreement on any changes to purpose of the sharing are listed in the table in Appendix 1, called; List of Work instructions, policies and procedures.

1.2.2 Legal basis for the processing and constraints

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.	Healthcare Improvement Scotland
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.	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	The Mental Welfare Commission/HIS

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enactment or rule of law.	
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2 Description of the information to be shared

Data category	Data Controller(s)	PD*
Personal data and sensitive personal data Including: <ul style="list-style-type: none"> • name; • date of birth; • registered address; • contact details and/or email address; • details of complaints/concerns raised; • details of on-going investigations; • details of offences alleged to have been committed; • photographic identity/evidence documentation received; • details of any enforcement action; and • details of registered service. 	HIS / Commission	Y

() PD – refers to Personal Data in the sense given within the UK General Data Protection Regulation (GDPR) and the Data Protection (UK, 2018) Act.*

The parties agree this is the minimum amount of data needed to properly fulfil the purposes of this agreement.

Appendix 2 (Data items and adequacy), contains the list of all relevant data items/fields which it has been agreed can be shared under this ISA, indicating the source and the recipients, and any relevant supporting statement for information that may raise questions on data minimisation.

3 Description and manner of information sharing

3.1 Data flows

Data sharing may be initiated by either the HIS or the Commission. Each organisation will provide the other with, and keep up to date details of, the appropriate contacts. The method of contact should be secure and appropriate for sharing sensitive personal data.

- When making a request the parties should if possible, provide details of:
- The reason they are seeking data
- The statutory function it relates to
- Why they consider it possible the other party hold the data
- Any personal data required to ensure identification
- What type of data they are seeking.

The recipient of the request will consider which information that they hold will be relevant for the recipient and their conclusions will be share with the recipient.

Data sharing

- Data will be shared only in a secure manner appropriate to the category of data being shared.
- The parties will keep a record of
 - The purposes for which it is being shared
 - Whether and how any data subjects have been informed about the data sharing
 - Details of any special requirements or reasons to take extra care when handling the data
 - Contact details for any questions.

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The parties will agree the timescale for responding considering the particular circumstances of the case. The parties agree as a default timescale for responding 7 working days. When there is a risk for the health and safety of the individuals the Provider should respond without undue delay.

3.2 How data/information is to be accessed, processed and used

Processing (descriptor)	Associated work instructions, policy or procedure (listed in Appendix 1) If applicable
HIS and the COMMISSION will share information as detailed in section 2. Shared data will be reviewed by the relevant internal teams.	See appendix 1

3.3 Summary of how decisions are going to be made with regards to the manner of the processing.

Changes in the manner of the processing, apart from that involved in the transfer of personal data between HIS to the Commission, will be decided independently. For example, security measures - organisational or technical - or the means of investigation by. For example, local network settings will be decided independently. It is reasonable to expect that for practical reasons the Commission will not search for joint approval with HIS for changes in the security controls of their ICT infrastructure.

4 Impact assessments and preparatory work

As part of completing this document, the set of filter questions on the Scottish Information Sharing Toolkit – Data Impact Assessment (DPIA) was completed and no DPIA was required. DPIA reviews will be implemented by the responsible party. Deadlines and follow up to progress on those actions will be established as part of the DPIA review process.

5 Privacy information (transparency requirement)

Information is available in the privacy notice on HIS and the Commission websites. HIS and the Commission have considered the benefits and risks for data subject, and determined not sharing this information will be detrimental for the interest of data subject using independent healthcare services, and in some cases could have serious adverse consequences to their vital interests.

List of relevant Fair Processing Notice(s)

- [Healthcare Improvement Scotland Privacy Notice](#)
- [HIS Regulation of Independent Healthcare Privacy Notice](#)
- [The Mental Welfare Commission for Scotland Privacy Notice](#)

6 Accuracy of the information

All reasonable steps must be taken to ensure that any person who has received information under this agreement is notified of any relevant changes and if any inaccuracies are found the necessary amendments will be made.

Decisions about deceased or data subjects should never be made by referring to inaccurate, incomplete or out-of-date information.

The party sharing data will seek to ensure that it is up-to-date and accurate before it is shared. If either Party becomes aware of any concerns about the accuracy or quality of the data after it has been shared they should contact the other organisation as soon as possible.

Each party shall ensure that the Personal data is:

- i. Adequate, relevant and limited to what is necessary in relation to the purposes for which the personal data is processed under this DSA; and
- ii. Accurate and, where necessary, up to date; having taken every reasonable step to ensure that any inaccurate personal data (having regard to the purposes for which the personal data is processed under this DSA) has been erased or rectified.

7 Data retention and secure disposal

Personal data will be held, processed and then destroyed securely in accordance with the retention schedule of each party or as required in line with HIS Enforcement Policy for cases which may result in prosecution action against an IHC service, where a longer retention period may be required.

8 The rights of individuals

8.1 Subject access request, FOI and data portability.

Requests for personal information will be processed and responded to using the standard SAR procedure within each party.

Freedom of information requests will be processed and responded to using the standard FOI procedure within each party. If one party receives a request for information (FOI) that originated from the other, the receiving party will inform the other party as a matter of courtesy.

8.2 Objection or restriction to processing, rectification and erasure.

Objections to processing and requests for rectification and erasure could be presented to either of the data controllers following their own process. The first recipient of such a request should contact the relevant Data Protection Officer in HIS or the Commission.

Objection or restriction to processing, rectification and erasure is not applicable for investigations for law enforcement purposes.

8.3 *Rights related to automated decision making, including profiling.*

[N/A] Automated decisions are involved in this agreement – in the context of this agreement, “Automated decisions” refer to decisions made using shared information with no human intervention.

[N/A] Profiling (automated processing of personal data to evaluate certain things about an individual) is involved in this agreement.

8.4 Direct Marketing

[N/A] Direct marketing is involved in this agreement

9 Security, risk and impact of the processing

All relevant Security Policies applicable to the parties and systems used in this proposal are available and listed in Appendix 1.

A qualified Information Security Officer has reviewed the adequacy of the attached Security Policies and has advised on the technical and organisational security risk level.

A suitable process to document and monitor the security risk described in the Information Security and Governance Policies listed in Appendix 1.

A competent, independent and free of conflicts of interests Data Protection Officer has been designated to inform the Data Controllers on the adequacy of this agreement and the corresponding compliance and any residual risks documented in the Data Protection Impact Assessment.

The security measures put in place across the parties ensure that:

- Wherever special categories of data are processed, the data will be encrypted at rest and in transit.
- Wherever special categories of data are transmitted over network, Transport Layer Security (TLS) protocols will be applied. Exceptions will be documented in the DPIA and any residual risk will require approval by the SIRO of each organisation prior to processing such data.
- Only authorised individuals can access, alter, disclose or destroy data. This is achieved through the following work instructions, policies and procedures (also listed in Appendix 1):
 - Data Protection Policy
 - Email Management Policy
 - Information Governance Policy
 - Information Security Policy
 - Records Management Policy
 - Records Retention and Disposal Policy
- Authorised individuals act only within the scope of their authority. This is achieved through the following work instructions, policies and procedures (also listed in Appendix 1):

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- See above list.
- If personal data is accidentally lost, altered or destroyed, it can be recovered to prevent any damage or distress to the individuals concerned. This is achieved through the following work instructions, policies and procedures (also listed in Appendix 1):
 - See above list.

The security controls applicable by each organisation will be:		Jointly agreed between the parties
	✓	Independently decided by each party

9.1 Agreed standards, codes of conduct and certifications

HIS relies on data and information systems to fulfil its responsibilities to patients, staff, NHS Scotland and the government. The HIS Information Security Policy establishes controls on these systems in line with ISO/IEC27001:2013 standard for Information Security and is Cyber Essentials compliant.

HIS also works using The Scottish Information Sharing Toolkit.

Sensitive personal data shared with the Commission is stored on a secure server and is password protected. All Commission IT equipment, including laptops, is compliant to at least the minimum requirements contained within NHS Scotland's IT Security Standards. Double encryption of devices, including laptops, is standard. The Commission has the Cyber Essential accreditations and it is working towards obtaining the Cyber essential plus.

10 International transfers of personal data

Personal data shared in line with this agreement will be transferred to:

N/A	EEA countries only
N/A	Outwith EEA
✓	Will not be transferred outside the UK

10.1 List of countries where the data will be transferred to (if applicable).

- N/A

10.2 Reasons for transferring personal data outside the UK.

- N/A

11 Implementation of the information sharing agreement

11.1 Dates when information sharing commences/ends

Commences April 2023. To be reviewed every 2 years.

11.2 Training and communications

HIS staff all receive training in information governance and safe information handling, and in how to use our IT systems to process data. Our IT systems log any communication in written format to data subjects and if required telephone calls can also be logged. We have a HIS and a HIS IHC Privacy Notice, which are on our website and have been shared with services which we regulate.

As part of the Commission's induction programme, all staff are made aware by the Information Manager of Data Protection principles and the importance of managing information risk. The Commission has IT and information policies, which are available on our intranet. Key policies, including our Information Risk Management Policy, form part of the employment contract and staff must indicate that they have understood and agree to abide by each of the policies. Our privacy notice is publicly available on our website.

11.3 Information sharing instructions and security controls

All relevant information sharing instructions, including but not exclusively any work instructions, policies or procedures, are listed in Appendix 1 and accepted by all parties.

The applicable security classification for the data in this agreement is as follows:

- Official - Sensitive

Information shared via email will be transferred through the two organisations' email domains (nhs.scot) that meet the government security standards.

11.4 Non-routine information sharing and exceptional circumstances

Parties will never share any information which is out-with the agreed scope of this Agreement or statutory remit.

11.5 Monitoring, review and continuous improvement

The parties have identified a person responsible for the management of this ISA, contact details are provided in Appendix 3 – Key Contacts. They will liaise as required to ensure this ISA is kept up to date, identify any emerging issues and resolve any questions that arise as to the interpretation of this ISA.

The parties will monitor progress and performance of this Agreement at the (new) development meetings to be held between the Commission and HIS periodically (every 6 weeks). Key contacts will ensure that the progress of the agreement is part of the agenda.

A review of this document or any of the underpinning work instructions, can take place at any time provided both parties are in agreement. The parties agree to review the agreement at least every 2 years.

11.6 Resolution of disagreement

Any disagreement between HIS and the Commission will normally be resolved at working level. The staff from the respective organisations who have been involved should attempt to resolve the matter. If this is not possible, it may be referred through those responsible for the management of this ISA, up to and including the Chief Executive of HIS and the Chief Executive of the Commission who will then be jointly responsible for seeking a mutually satisfactory resolution.

12 Sign-off

We the undersigned agree to the details recorded in this Information Sharing Agreement; are satisfied that our representatives have carried out the preparatory work set out in the Information Sharing Tool-kit for Scotland and are committed to the ongoing monitoring and review of the scope, purpose and manner of the information sharing.

Name of the Party		Healthcare Improvement Scotland
Authorised signatory	Title and name	Lynsey Cleland
	Role	Director of Quality Assurance Directorate
Signature and date		4.4.2023
Data Protection Officer		Alison Winning, Information Governance Lead
Senior Information Risk Owner		Safia Qureshi, Director of Evidence

Name of the Party		The Mental Welfare Commission for Scotland
Authorised signatory	Title and name	Julie Paterson
	Role	Chief Executive
Signature and date		24.04.23
Data Protection Officer		Paloma Alvarez, Information Governance Manager.
Senior Information Risk Owner		Julie Paterson

Parties are required to sign off individually using the Multi Party Sign Off Form included in the toolkit.

13 Appendix 1: List of Work instructions, policies and procedures

Work instructions title	Organisation	Where to find this document (e.g. hyperlink)
HIS Data Protection Policy	HIS	http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Data-Protection-Policy.aspx
HIS Email Management Policy	HIS	http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Email-Management-Policy.aspx
HIS Information Governance Policy	HIS	http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Information-Governance-Policy.aspx
HIS Information Security Policy	HIS	http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Information-Security.aspx
HIS Records Management Policy	HIS	http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Records-Management-Policy.aspx
HIS Records Retention and Disposal Policy	HIS	http://thesource.nhsqis.scot.nhs.uk/my-workplace/policies-procedures/Pages/Records-Retention-and-Disposal-Policy.aspx
IHC Enforcement Policy	HIS	http://www.healthcareimprovementscotland.org/our_work/inspecting_and_regulating_care/ihc_inspection_guidance/enforcement_policy.aspx
MWC Data Protection Policy	MWC	http://commissionintranet/Interact/Pages/Content/Document.aspx?id=1602
MWC Information Risk Management Policy	MWC	http://commissionintranet/Interact/Pages/Content/Document.aspx?id=2428
MWC Records Management Policy	MWC	http://commissionintranet/Interact/Pages/Content/Document.aspx?id=2443

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IT Code of Conduct	MWC	http://commissionintranet/Interact/Pages/Content/Document.aspx?id=1868
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The above table should list all:

- Instructions for reaching agreement on any changes to the purpose of the sharing.
- All applicable and relevant Information Security and Governance Policies
- All Data Protection Impact assessments

14 Appendix 2: Data items and adequacy

Data Item	Source	Recipients	Data minimisation justification	For data linkage only
Inspection reports (published and unpublished)	HIS	MWC	Information required to allow Commission to determine importance of the intelligence being shared.	
Correspondence relating to services/providers	HIS & COMMISSION	MWC & HIS	Information required to allow Commission to determine importance of the intelligence being shared.	
Service provider information	HIS	MWC	Information required to allow Commission to determine importance of the intelligence being shared.	
Complainant details	COMMISSION & HIS	MWC & HIS	Information required to allow Commission / HIS to determine importance of the intelligence being shared.	

15 Appendix 3: Key Contacts

Function	COMMISSION	HIS
Officer with operational responsibility for this ISA, including reviews	Suzanne McGuinness Executive Director (Social Work)	Donna Maclean, Chief Inspector
Information Manager	Paloma Alvarez Information Governance Manager	Alison Winning Information Governance Lead
Contact email address for the Information Sharing	Suzanne McGuinness Executive Director (Social Work)	Donna Maclean, Chief Inspector

16 Appendix 6. Document Control

Document Control Sheet	
Key information:	
Title	ISA - HIS and MWC
Document type	Information Sharing Agreement
Document status	Final
Author:	HIS (QAD) & MWC

Version	Date	Summary of Changes
1.0	April 2023	<i>Production of ISA</i>