

Liaison Agreement
between
the Mental Welfare Commission for
Scotland and the Health and Safety
Executive

Liaison agreement between the Mental Welfare Commission for Scotland (MWC) and the Health and Safety Executive (HSE) in relation to the sharing of information

1 Purpose of this agreement

1.1 This agreement is intended to promote an effective working relationship and information sharing protocol between the Mental Welfare Commission for Scotland (MWC) and the Health and Safety Executive (HSE) in Scotland on areas of mutual interest.

2 Responsibilities

2.1 MWC has duties set out under the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity Act (Scotland) 2000. It acts to promote the welfare of individuals with mental illness, learning disability or related conditions. It investigates cases where it appears that there may be ill treatment, deficiency in care and treatment or improper detention of any such person. Following investigations, MWC can make and follow up on recommendations made and this can include recommendations for statutory authorities.

2.2 HSE and local authorities are responsible for enforcing the Health and Safety at Work etc Act 1974 (HSWA) and associated legislation throughout Great Britain. As a GB-wide regulator, HSE aims to reduce death, injury and ill-health by securing the health, safety and welfare of workers and protecting others, such as patients or service users, who may be affected by work activities. Whilst HSE leads on the health and safety of employees, it may also consider investigation of patient or service user deaths or serious injuries, where there is an indication that a breach of health and safety law was a probable cause or a significant contributory factor. However, other regulators,¹ often have more specific legislation, and may be better placed to secure justice or necessary improvements in standards.

2.3 Where appropriate, HSE reports the outcomes of its investigations to the Crown Office and Procurator Fiscal Service (COPFS), who decide whether or not to initiate criminal proceedings and who to prosecute. When HSE investigates work-related deaths, it works closely with the police, in accordance with the Scottish Work-related Deaths Protocol, as agreed by COPFS, who investigate all deaths in Scotland.

3 Co-operation to support statutory investigations

3.1 HSE agrees to consult MWC to obtain advice and guidance in areas of MWC's expertise on such matters that may support its investigations under HSWA, for example, of deaths by suicide.

3.2 MWC agrees to provide HSE with specialist advice on mental health and incapacity legislation and standards for the care and treatment of people with mental illness, learning disability and related conditions that may be relevant to HSE's investigations under HSWA.

3.3 MWC advice will be provided on the basis of specialist evidence (eg a statement or report) intended to assist HSE to carry out its functions. MWC will not provide legal advice or replace HSE seeking independent expert advice where that may be necessary. Where there is the potential for a conflict of interest to arise eg where MWC has prior involvement in a case, HSE may seek advice from COPFS.

3.4 For more serious or complex investigations, consideration should be given to holding an early meeting involving all interested parties (eg the police, COPFS, HSE, MWC).

¹ Eg the Care Inspectorate, the General Medical Council, the Nursing and Midwifery Council, etc.

4 Information Sharing

(i) Additional Information

4.1 HSE may seek information held by MWC on individual cases brought to its attention². The majority of cases will be in connection with deceased individuals (deaths mainly due to suicide). However, on rare occasions, the information requested may relate to a living individual. Such requests should normally³ be submitted to MWC in writing on the data request form at Appendix A and will be considered by MWC under the Data Protection Act, on a case by case basis.

4.2 MWC may seek information on the outcomes of HSE investigations once legal proceedings have been concluded. HSE will provide this information under the terms of the Freedom of Information Act and the Data Protection Act⁴. HSE would prefer these requests in writing, where possible. From time to time, HSE will provide MWC with anonymised information on cases that fall within MWC's areas of interest.

4.3 Disclosure of information by MWC to HSE or vice versa must always follow the established laws and procedures.

(ii) Matters of Concern

4.4 MWC may, on occasion, identify concerns about health and safety standards for patients, service users and/or employees within the services it visits. Where these might indicate systemic health and safety management failings, MWC should report the matter to the nominated HSE contact for HSE to consider appropriate action.

5 Communication

5.1 There will be nominated points of contact in each organisation as follows:

HSE

June Cairns
Scotland Team
Field Operations Directorate
Scotland and Northern England
Belford House
59, Belford Road
Edinburgh, EH4 3UE

MWC

Gary Morrison
Executive Director (Medical)
Thistle House
91, Haymarket Terrace
Edinburgh
EH12 5HE

6 Dispute Resolution

6.1 Where a dispute occurs, the staff from the respective organisations who have been involved should attempt to resolve the matter, involving line management as necessary. For ongoing disputes the 'nominated contacts' will work together to effect a resolution.

7 Review


² HSE is often informed of patient/service user deaths, potentially caused by work, by COPFS. It receives information on work related injuries to patients/service users from RIDDOR, from complaints received or from other agencies, etc.

³ In exceptional circumstances, HSE may require a more rapid response - see footnote Appendix A.

⁴ As MWC is not an enforcing authority under HSWA s28, in most cases the legal gateway for HSE sharing information with MWC will be FoIA and subject to the provisions of DPA.

7.1 MWC and HSE will endeavour to ensure that the relevant staff in each organisation are made aware of this agreement and the working arrangements. The agreement will be reviewed after one year and thereafter at regular intervals, to be determined, to ensure it remains relevant.

7.2 In addition MWC and HSE will discuss annually matters of mutual interest arising from their respective responsibilities and arrange face to face meetings if deemed appropriate.

Signed for MWC 
Colin McKay, Chief Executive, Mental Welfare Commission

Date: 20 MARCH 2015

Signed for HSE 
Mike Cross, HSE Director, Scotland and Northern England

Date: 25 MARCH 2015

APPENDIX A

HSE request for data from MWC [Paragraph 4.1 refers]

In order for us to consider your request to the MWC (the data controller) to share personal, sensitive data with your organisation, we need you to complete this form.⁵

<p>Details about the person who is requesting the data</p>	<p>Contact person for this request: name, address and title</p> <p>Senior person within your organisation who has specific responsibility for information governance: name, address and title</p>
<p>Description of the data requested</p>	
<p>Outline of the purpose for which the data will be used. (e.g. a specific suicide case - give details)</p>	

⁵ HSE will endeavour to complete the form but may, on occasion, require the information more quickly in the course of a criminal investigation, in which case HSE may have to supply it retrospectively. The entries for some sections will be standard.

<p>A rationale for why anonymised data would not be sufficient to fulfil the purpose stipulated above</p>	
<p>Please provide a statement to confirm that the data supplied by us to you will not be further shared with anyone outwith your organisation or used for any purpose beyond that stipulated on this form.</p>	
<p>How would you envisage data being transferred between MWC and your organisation (this could be via encrypted e-mail, nhs.net or.gsi accounts, if this were a viable option)</p>	
<p>Please give a statement of how data will be stored following disclosure. (e.g. provide assurances that data will be stored on a suitably encrypted device with adequate password protection and not on an unencrypted device and will not be transferred/stored in an unprotected format)</p>	
<p>Please provide details of staff within your organisation who will have access to this data and indicate how your organisation ensures that staff accessing personal/sensitive data understand their responsibilities in relation to this data (this could include details of staff training/induction as well as internal policies and/or published procedures)</p>	

Subject Access Rights under Data Protection. Please describe how you would deal with enquiries from Data Subjects about accessing data we had supplied to you.	
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Personal data held by The Mental Welfare Commission for Scotland have been notified to the UK Information Commissioner as required under the Data Protection Act 1998. Our registration number is: **Z9097121**

Please supply your ICO registration number:

Print name of responsible senior officer (*as specified under section A above*):

Signature:

Date: