

# **Memorandum of Understanding Between the Scottish Ministers and The Mental Welfare Commission for Scotland Concerning The National Confidential Forum**

# MEMORANDUM OF UNDERSTANDING BETWEEN THE SCOTTISH MINISTERS AND THE MENTAL WELFARE COMMISSION FOR SCOTLAND CONCERNING THE NATIONAL CONFIDENTIAL FORUM

## **Purpose of this Memorandum**

1. This document has been drawn up by the Scottish Ministers (“the SMs”) in consultation with the Mental Welfare Commission for Scotland (“the Commission”) in order to set out the broad framework for the operation of the National Confidential Forum (“the NCF”). The NCF is part of the Scottish Government’s SurvivorScotland Strategy, which is designed to ensure support for adult survivors of childhood abuse, reduce stigma and improve services. This document defines key roles and responsibilities which will underpin the relationship between the NCF, the Commission and the SMs.
2. Legislative provisions, in particular part 2 of and schedule 1A to the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) as amended by the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”), take precedence over any part of this document. This Memorandum does not replace but is in addition to the Management Statement and Financial Memorandum (the MS and FM”) agreed between the Scottish Government Health Directorate and the Mental Welfare Commission for Scotland in April 2011. This Memorandum does not convey any legal powers or responsibilities.
3. Copies of this document will be placed in the Scottish Parliament Reference Centre. It will also be published on the SG and Commission website.

## **Constitution of the National Confidential Forum**

4. The NCF is a committee of the Commission. It consists of:
  - The NCF Head; and
  - at least 2 other members (paragraph 1 of schedule 1A to the 2003 Act)

## **Aims of the National Confidential Forum**

5. The NCF’s main aim is to provide a means for former residents of institutional care to describe their experiences in confidence, and in so doing to improve health and wellbeing. The NCF will build on the successful Pilot Forum, Time to be Heard, in which the large majority of participants ‘confirmed, in terms of release or partial release from the burden of the past, its encouragement of self-worth and self-confidence, and its contribution to moving on and getting closure’.<sup>1</sup> Arrangements for the NCF will be modelled on that very positive pilot.

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<sup>1</sup> [Time the be Heard Pilot Forum Report](#) at page 104.

## **Functions of the Mental Welfare Commission**

6. The principal aim of the Commission is to ensure that the rights and welfare of individuals are protected, mainly through implementation of its statutory duties under the 2003 Act and the Adults with Incapacity (Scotland) Act 2000.

7. More details about the Commission and its work can be found at [www.mwscot.org.uk](http://www.mwscot.org.uk) and at paragraph 1.2 of the MS and FM.

8. The functions of the NCF (see below) form part of the Commission's responsibilities.

## **Functions of the National Confidential Forum**

9. The functions of the NCF are new and distinct from the Commission's current functions, and are contained at section 4ZB of the 2003 Act:

“(a) to provide means for persons who were placed in institutional care as children to describe in confidence (such descriptions being referred to in this Act as “testimony”) —

(i) experiences of that care,

(ii) any abuse experienced during the period spent in that care,

(b) to acknowledge testimony by enabling it to be given at hearings established by NCF or by written or other means,

(c) based on testimony received —

(i) to identify any patterns and trends in the experiences of persons placed in institutional care as children (including the causes, nature, scale and circumstances of any abuse experienced), and

(ii) to make recommendations about policy and practice which NCF considers will improve institutional care (including by protecting children from, and preventing or reducing the incidence of, abuse),

(d) while preserving the anonymity of participants, establishments providing institutional care and other persons, to prepare reports of the testimony it receives and its recommendations in relation to them,

(e) to provide information about advice and assistance available to persons giving, or proposing to give, testimony.”

10. The key principles underpinning the work of the NCF will include:

- Recognising the participants' right to autonomy in giving their testimony
- Respecting the privacy of participants wherever possible
- Maintaining confidentiality in relation to information provided by the participants except where disclosure is required or authorised by law
- Operating independently from government
- Taking account of the support needs of participants in giving their testimony
- Conducting hearings in a flexible, non-judgemental way
- Giving participants access to information about services that may be useful to them
- Undertaking all its operations and managing available resources efficiently.

### **Confidential Nature of the NCF**

11. In delivering all of its functions the NCF must use and store information in ways that comply with paragraph 13 of schedule 1A to the 2003 Act.

### **Roles and Responsibilities of the Scottish Government and the Mental Welfare Commission concerning the National Confidential Forum**

12. A clear understanding of the Commission's responsibilities for the NCF and the role of the SMs in relation to the NCF is essential in order to enable the NCF to work as effectively as possible. Both the SMs and the Commission are to seek to ensure that the NCF is focussed firmly on improving the health and wellbeing of adults who were in institutional care as children and on learning lessons from the past for looked after children today and in the future.

#### The Commission's role and responsibilities

13. The Commission's principal role, exercised through the Board, will be to provide strategic oversight and direction for the NCF. An additional Board member, designated 'the Board Member (NCF)', will be appointed to the Board because of their particular expertise in issues of relevance to the NCF (see paragraph 23 below). Strategic direction and oversight will be the responsibility of the Board of the Commission, principally through the Chair with advice from the Board Member (NCF). Commission staff will assist the NCF by sharing services where this can be achieved without breaching confidentiality and by making arrangements for the appointment of NCF staff.

14 The Chair of the Commission is:

- accountable to the Scottish Ministers for the performance of the NCF
- responsible for ensuring that the NCF is operationally independent from the work of the Commission as far as reasonably practicable
- responsible for continually assessing the performance of the NCF Head including formally on an annual basis and providing an assessment of performance when the NCF Head is being considered for reappointment

15. The Commission will therefore be responsible for:

- taking forward the strategic aims and objectives of the NCF;
- maintaining the functions of the NCF as separate and distinct from the other functions of the Commission;
- providing an appropriate corporate governance structure with appropriate delegation of functions and subject to any statutory requirements regarding the NCF contained in the 2003 Act;
- providing and maintaining shared services (finance, payroll, IT, HR and office administration) to the NCF, subject to the confidentiality requirements in paragraph 13 of schedule 1A of the 2003 Act;
- complying with relevant guidance issued by the Scottish Ministers;
- ensuring that the Board regularly receives and reviews financial information about the NCF;
- providing selection panel representation in the appointment of the NCF Members through the Public Appointments system;
- appointing staff of the NCF subject to the NCF Head's approval;
- ensuring that links are maintained with the sponsor team in the Care, Support and Rights Division and with the Scottish Ministers on strategic and corporate governance matters concerning the NCF so that any issues can be raised with them promptly, risks managed effectively and solutions agreed; and
- demonstrating high standards of corporate governance at all times, including openness and transparency, in its dealings with the functions of the NCF.

The “Accountable Officer” for the NCF

16. The Chief Executive of the Commission (“the CE”) is designated the Accountable Officer (in accordance with sections 14 and 15 of the Public Finance and Accountability (Scotland) Act 2000) for the use of public funds in relation to all the activities of the Commission, including the NCF. As the Accountable Officer for these specific functions, the CE must be in a position to provide the necessary assurances to the Scottish Ministers about the work of the MWC. The NCF Head will therefore be required to make available to the CE any information required by the CE to fulfil this function. The NCF Head will also ensure follow-through in relation to any measures that the CE considers must be taken to meet corporate governance requirements.

The SMs’ role and responsibilities

17. The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities of the Commission and its use of resources and this will include the NCF’s activities and use of resources. These responsibilities are discharged by officials of the SG. The SMs are not, however, responsible for the current day to day operational matters undertaken by the Commission. The intention of the provisions of the 2003 Act which establish the NCF is that the NCF will operate independently from the SMs. Therefore the role of officials in the SG is to assist the NCF to meet its objectives while maintaining the independence of its operations. The SG has appointed a Portfolio Accountable Officer to oversee the propriety and efficient and effective management of the Commission’s finances. It has nominated a sponsor

team to work with the NCF specifically under the supervision of a named Director and Deputy Director (see paragraphs 25-26 below).

18 The specific responsibilities of the SMs in relation to the NCF are:

- approving strategic aims and objectives and key targets for the NCF;
- agreeing any other key strategy statements in relation to the NCF's work;
- approving the budget for the work undertaken by the NCF;
- carrying out responsibilities in relation to the NCF appointments, that is the appointment of the NCF Head, other Members and the additional Board Member(NCF), and approving the terms and conditions of such appointments
- laying before Parliament the Annual Report of the NCF and any other reports prepared by the NCF;
- advising the NCF about any policy developments relevant to its work;
- dealing with any other matters contained in the 2003 Act and subordinate legislation, such as advising in general terms on the kind of institutions covered by the legislation;
- dissolving the NCF if the function of the Commission to establish and maintain the NCF is removed or altered so that the NCF ceases to exist.

The NCF Head's role and responsibilities

19. The NCF Head is the Commission's principal adviser on the discharge of the NCF's functions and is accountable to the Commission (through the Commission's Board) for the delivery of his or her work<sup>2</sup>. His/her role is to provide operational leadership to the NCF and ensure that the NCF's operations are delivered through effective and properly controlled executive action. The NCF Head determines the NCF's procedures, having regard to the views of the other NCF Members<sup>3</sup>.

20. The specific responsibilities of the NCF Head are:

- accounting to the Commission for the work of the NCF;
- implementing the decisions of the Commission in relation to the NCF's strategic oversight and direction;
- ensuring that the NCF's operations are conducted in line with 'best practice' management arrangements, including the management of risk;
- producing a corporate governance statement for the CE and producing any information required, and taking any measures requested by the CE, to allow the CE to fulfil his/her Accountable Officer role
- having day to day responsibility for the financial management of the NCF;
- having regard to the need to avoid unnecessary costs;<sup>4</sup>
- overseeing the work of the other members and staff of the NCF, including training, performance monitoring and appraisal;
- applying Commission business and financial management processes;

<sup>2</sup> See section 4ZC(2) of the 2003 Act.

<sup>3</sup> See paragraph 4(2) of schedule 1A to the 2003 Act.

<sup>4</sup> Paragraph 4(3) of schedule 1A to the 2003 Act.

- attending all Commission Board and Audit Committee meetings
- preparing an annual report and consulting the Commission before publication;
- preparing other reports as appropriate and consulting the Commission before publication;
- ensuring effective relationships with the SG on operational matters;
- seeking the advice of the Commission as and when appropriate (through the Chair and the Board Member(NCF)).

#### Other NCF Members' Responsibilities

21. Other NCF members must act in accordance with the responsibilities of the NCF as a whole and will be required to comply at all times with the business rules adopted by the NCF, with any other relevant guidance provided by the Commission and with the rules relating to the use of public funds and to conflicts of interest.

#### Responsibilities of the Commission Staff assigned to the NCF

22. The Commission staff assigned to the NCF will be required to abide by the NCF's business rules and other relevant staff and business guidance provided by the Commission.

#### Responsibilities of the Board Member (NCF)

23. The 2003 Act provides for the appointment of a Board Member (NCF) of the Commission who will have relevant skills, knowledge and experience in relation to the NCF functions. That person will be a full member of the MWC Board sharing corporate responsibility for all functions of the MWC. Drawing on their skills, knowledge and experience of NCF functions, the Board Member (NCF) will play a key role in advising the Chair of the Commission and the Commission Board on matters pertaining to the NCF.

#### Responsibilities of the Scottish Government Portfolio Accountable Officer

24. The Principal Accountable Officer for the Scottish Administration has designated the Director-General Health and Social Care and Chief Executive of NHS Scotland as the Portfolio Accountable Officer for the Commission. The responsibilities of a Portfolio Accountable Officer ("PAO") are set out in detail in the [Memorandum to Accountable Officers for Parts of the Scottish Administration](#).

#### Responsibilities of the Scottish Government Director and Deputy Director

25. The Chief Nursing Officer, the Director-General Health and Social Care and the Deputy Director for Care, Support and Rights have responsibility for overseeing and ensuring effective relationships between the SMs and the NCF. They will work closely with the NCF Head and be answerable to the PAO for maintaining and developing positive relationships with the NCF characterised by openness, trust, respect and mutual support. They will be supported by a sponsor unit in discharging these functions (see paragraph 26 below).

## Responsibilities of the Scottish Government Sponsor Unit

26. The SG sponsor unit for the NCF is the SurvivorScotland Team of the Care, Support and Rights Division. The sponsor unit, under the direction of the Chief Nursing Officer/Deputy Director, is the primary source of advice to the SMs on the discharge of their responsibilities in respect of the NCF and undertakes the responsibilities of the PAO on his/her behalf. The unit will aim to act flexibly, proportionately, promptly and responsively in relation to NCF issues.

27. Specific responsibilities will include:

- approving the strategic aims, objectives and key targets and any other key strategy statements of the NCF;
- dealing with any matters relevant to the 2003 Act and subordinate legislation that fall to the SG or the SMs;
- working to ensure that appointments to the NCF are made as soon as practicable;
- keeping informed about the NCF's activities through an adequate and timely flow of appropriate information on performance, budgeting, control and risk management;
- addressing any significant problems arising in the NCF that come to their attention, alerting the PAO and the responsible Minister(s) as appropriate;
- ensuring that the objectives of the NCF and the risks to the SMs are properly and appropriately taken into account in the SG's risk assessment and management systems; and
- informing the NCF of relevant SG policy.

## **Interaction between the Commission, the NCF and the Scottish Ministers**

### Business Management

28. The NCF will liaise with Corporate Services within the Commission in connection with business processes, business risk management, information management, staffing issues and financial accounting. This is to ensure the most efficient and effective management of the NCF's business by sharing business services with the Commission.

29. The NCF will liaise with the SurvivorScotland Team (the sponsor unit) directly in relation to routine or non-contentious issues, so that the SMs can be fully briefed about developments (for example, the number of participants).

### Strategic Issues

30. The NCF will consult the Commission about key strategic issues. No approach will be made to the sponsor unit in relation to key strategic issues until after the Commission has been consulted.



## Operational Issues

31. The NCF will be solely responsible for the management of the hearings and other aspects of the NCF's work involving the collection of confidential information. Confidential information will not be shared with the Commission except where this is necessary for the purpose of enabling or assisting the carrying out by NCF or the Commission of any of its functions.

## Indemnities and Guarantees

32. Any legal action relating to the activities of the NCF will be the subject of the protection given to Non Departmental Public Bodies by the terms of the Scottish Public Finance Manual.

## Management of Risks

33. The risks associated with the work of the NCF are of three kinds:

- general 'business' risks associated with the NCF undertaking any business functions
- specific risks for the NCF arising from the day-to-day operation of the NCF's business, structural risks concerning the issues included in this Memorandum
- other risks to the Commission (which other risks are dealt with through Commission's risk management arrangements)

34. General business risks include such matters as IT failures and business continuity arrangements. The Commission has already taken steps to consider, anticipate and seek to prevent or mitigate these risks in its current arrangements for risk management. The NCF will apply these arrangements wherever possible. If the NCF Head considers that significant divergence from the Commission's usual practices in dealing with risks is required he or she should discuss this with relevant staff in the Commission.

The NCF risks will form part of the risk register of the Commission to ensure best corporate governance, use of resources and sharing, appropriately, the management of risk, subject to the confidentiality requirements concerning the NCF.

35. This Memorandum will be 'proofed' in relation to the Risk Register of the NCF and the risks will be reconsidered at each review of the Memorandum.

## Confidentiality

36. The confidentiality of information obtained from participants in the NCF will be maintained in accordance with the duties set out in paragraph 13 of schedule 1A to the 2003 Act. This sets out the general requirement not to disclose information provided in connection with the carrying out of NCF functions except in limited specified circumstances.

Other non-statutory practices designed to maintain confidentiality in relation to the work of the NCF are described in the NCF Privacy and Confidentiality Policy which is available at [www.nationalconfidentialforum.org.uk](http://www.nationalconfidentialforum.org.uk)

### **Review of this Memorandum**

37. This Memorandum will be reviewed and if necessary amended within the first 6/12 months after the appointment of the NCF Head and thereafter at least every 2 years.



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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78544-043-4 (web only)

Published by The Scottish Government, December 2014

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS42208 (12/14)

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