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Date: 27 February 2008



Scottish
Social Services
Council

Mr George Kappler
Mental Welfare Commissioner
Mental Welfare Commission for Scotland
K Floor
Argyle House
3 Lady Lawson Street
Edinburgh
EH3 9SH

Convener
Garry Coutts

Chief Executive
Carole Wilkinson

Dear Mr Kappler

Please find enclosed two copies of the Memorandum of Understanding in respect of the exchange of information between The Mental Welfare Commission and the Scottish Social Services Council.

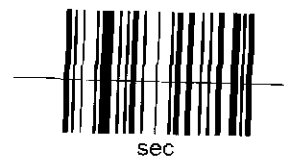
I would be obliged if you could arrange for the signing of both copies at the designated space and return to me one of those signed copies using the enclosed pre-addressed envelope.

Thank you for your assistance.

Yours faithfully

Catherine A Sclater
Senior Solicitor

*Copy returned
31/3/08*



Memorandum of Understanding
in respect of the exchange of information
between
The Mental Welfare Commission
and
The Scottish Social Services Council

February 2008

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Introduction

- 1.1 The objective of this Memorandum is to set out an agreed framework for co-operation and collaboration between the Mental Welfare Commission (the MWC) and the Scottish Social Services Council (the SSSC). The purpose of the relationship is to ensure that the two organisations complement and facilitate the achievement of each other's respective roles and functions.

This Memorandum aims to support and facilitate the exchange of information to:

- ensure that both bodies meet their respective responsibilities and,
 - to maximise the efficiency and effectiveness of both organisations.
- 1.2 This Memorandum is not a contract, is not legally enforceable and does not seek to transfer functions or responsibilities. However, the MWC and the SSSC recognise the complementary nature of their functions and seek to avoid jeopardising these.

1 Purpose and Scope of this Memorandum

- 2.1 This Memorandum sets out the working arrangements between the MWC and the SSSC in respect of the exchange of information.
- 2.2 It details how each body should bring specific concerns to the attention of the other.
- 2.3 It has responsibility for ensuring that each organisation understands that each other's respective functions rests with the Director of the MWC and the Chief Executive of the SSSC.

2 Functions and Responsibilities

3.1 The Mental Welfare Commission for Scotland (the MWC)

The MWC is constituted under The Mental Health (Care and Treatment) (Scotland) Act 2003 s.4. It has additional functions as outlined in the Adults with Incapacity (Scotland) Act 2000 s.11.

- 3.2 The MWC works to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder in Scotland. It also has a wider role in promoting best practice in the use of mental health law; ensuring that the care and treatment of a person with mental disorder and/or impaired capacity as a result of mental disorder is in line with the

principles of mental health and incapacity law and in investigating situations in respect of an individual's care and/or treatment.

3.3 The MWC has a number of functions and duties specified under mental health legislation including:

- Bringing to the attention of Scottish Ministers such matters concerning the operation of the Act as the MWC considers ought to be brought to their attention;
- Duty to bring any matter of general interest or concern as respects the welfare of any person with a mental disorder to the attention of Scottish Ministers, a local authority, a Health Board, a Special Health Board, the Scottish Commission for the Regulation of Care or any other persons or groups of persons as it considers appropriate;
- Carrying out such investigations as it considers appropriate into the patient's case and make such recommendations as it considers appropriate as respects the case if it appears to the MWC that a person with mental disorder may be or may have been subject to or exposed to: unlawful detention; ill-treatment; neglect, including self-neglect; deficiency in care or treatment; and loss or damage to property;
- Visiting persons with mental disorder whether in hospital (NHS or private), the community, resident in care home or secure accommodation services, prisons, and young offenders institutions to inspect the services and to provide an opportunity for any person with mental disorder to discuss any concerns they may have;
- Giving advice on any matters arising out of the Act to Scottish Ministers, a local authority, a Health Board, a Special Health Board, the Scottish Commission for the Regulation of Care or the Scottish Public Services Ombudsman;
- Inspecting records of individuals with mental disorder held by any service as required;
- Publishing information and advice about any matters relevant to its functions;
- If it appears to the MWC that a relevant person has, or may have, powers or duties the exercise or performing of which might prevent or remedy or assist in preventing or remedying unlawful detention, ill-treatment, neglect (including self-neglect), deficiency in care or treatment and/or loss or damage to property in respect of a person with mental disorder, bringing these matters to the attention of these relevant persons.

3.4 MWC duties under the Adults with Incapacity (Scotland) Act 2000 include:

- Exercising protective functions in respect of adults subject to welfare intervention or guardianship orders;

- Visiting the above adults as often an MWC feels is appropriate;
- Consulting with the Office of the Public Guardian and any local authority on cases or matters relating to the exercise of functions under Act;
- Receiving and investigating complaints relating to the exercise of functions of welfare attorneys, guardians or persons authorised under the Act when not satisfied with the response of local authorities to such complaints;
- Investigating any circumstances made known to the MWC in which the welfare of the adult with incapacity seems to the MWC to be at risk;
- Investigating any circumstances made known to the MWC in which the property of the adult may, by reason of the mental disorder of the adult, be exposed to a risk of loss or damage;
- Providing a guardian, welfare attorney or person authorised under an intervention order, when requested to do so, with information and advice in connection with the performance of his/her functions in relation to personal welfare under the Act.

3.5 The Scottish Social Services Council (the SSSC)

The SSSC was established under the Regulation of Care (Scotland) Act 2001 (the 2001 Act) and has a duty to promote high standards in the conduct and practice of social service workers and in their education and training. The SSSC's principal functions are to regulate the social service workforce through registration and codes of practice and also to promote the education and training of social service workers. In exercising these functions the SSSC is required to operate under the general principle that it shall, among other things, protect and enhance the safety and welfare of all persons who use care services. The SSSC's vision is of a competent, confident and valued workforce, capable of delivering high quality services and that has the confidence of the public, those who use the services and their carers.

3.6 The 2001 Act, its associated secondary legislation and the SSSC's Registration Rules, Conduct Rules, Rules for Social Work Training and Rules and Requirements for Specialist Training for Social Service Workers in Scotland as published from time to time, make provision for the manner in which the SSSC will carry out its regulatory, education and training functions.

3.7 The 2001 Act also specifies a set of principles which must inform the manner in which the SSSC carries out its duties and functions:

- The safety and welfare of all persons who use, or are eligible to use, care services are to be protected and enhanced;
- The independence of those persons is to be promoted;

- Diversity in the provision of care services is to be promoted with a view to those persons being afforded choice;
- 3.8 The 2001 Act introduced a Register of social workers and other social service workers which is to be maintained by the SSSC. The aim of registering the social service workforce is to ensure that those who use services and their carers can rely on a workforce that is properly trained, appropriately qualified and effectively regulated.
- 3.9 The SSSC has the statutory responsibility for ensuring that social service workers registered with it are (i) of good character and (ii) satisfy such requirements as to competence or conduct as it may by rules impose. The SSSC may:
- Grant an application for registration unconditionally;
 - Impose, remove or vary conditions on registration;
 - Remove an entry from the register;
 - Grant or refuse requests for variations of conditions;
 - Approve courses;

The SSSC publishes Codes of Practice from time to time laying down the standards of conduct and practice expected (i) of social service workers and (ii) of employers of social service workers. The SSSC has a duty to investigate allegations of misconduct against a registered social worker or registered social service worker or concerns about their fitness to practise, and if necessary remove them from the register.

4. Information Exchange

- 4.1 The MWC and the SSSC agree to exchange such information, routinely or by exception, as is necessary to fulfil their respective statutory functions and to ensure the safety and well-being of people who use social work and other care services.
- 4.2 In particular, where the MWC become aware, in the course of any of its activities, of social service workers whose practice, conduct or character falls short in their opinion of the standard expected of a person registered with the SSSC, having particular regard to the Codes of Practice for Social Service Workers and for Employers of Social Service Workers published by the SSSC under section 53 of the 2001 Act, and which may call into question that person's registration status, they shall notify the relevant employer in writing of their responsibility to refer the worker's conduct to the Registrar of the SSSC. Any such formal referral shall be made at senior officer level, namely by the Director of the MWC, and shall be copied to the Registrar of the SSSC.
- 4.3 Contact will also take place between officers of both organisations in respect of individual cases as permitted in terms of the Data

Protection Act 1998.

- 4.4 The exchange of information will take place within a timescale deemed appropriate by the body holding the information having regard to the need to safeguard the public and vulnerable people in particular.
- 4.5 The SSSC and MWC will take necessary steps to protect the confidential nature of documents and information that the other may provide, in line with Data Protection Act 1998 principles and the common law duty of confidentiality. Where a request for information under the Freedom of Information (Scotland) Act is received by the MWC or SSSC in respect of information originally received from the other the disclosure of which without prior consent would constitute an actionable breach of confidence, the MWC or SSSC where appropriate shall within five working days of receipt of such a request notify the other in writing of receipt and use all reasonable endeavours to consult with them in determining the following: whether the information requested is still to be regarded as confidential; whether an exemption in FOISA applies to the information requested; and where the public interest lies in relation to disclosure. Such consultation shall be concluded no later than five working days after the MWC or SSSC first contacts the other about the request. Following consultation, any decision to disclose or withhold information in response to such a request shall be in the sole discretion of the body who receives the request. The body receiving the request shall take into account the views of the other as regards questions of disclosure of its information, including any views expressed on any lists or schedules provided with the information but shall not be obliged to comply with such views. Any refusal by the other to consent to disclosure shall not, in itself, oblige the MWC or SSSC to withhold from the person making the request the whole or any part of the information requested.
- 4.6 The MWC and the SSSC will co-operate where appropriate over how any media interest is to be handled.
- 4.7 Contact between the MWC and the SSSC will be at an appropriate level within each organisation depending on the matter under discussion. The principal named officer for general contact for the MWC will be the Commissioner for Social Services and for the SSSC will be the Registrar.

5. Resolution of Disagreements

Any disagreements will normally be resolved amicably at the working level. If this is not possible, senior managers in both organisations should seek to resolve any issue. Geraldine Doherty,

Registrar, SSSC and the Head of Corporate Services (MWC) will become personally involved where necessary and will be jointly responsible for ensuring a mutually satisfactory resolution.



Signature.....*[Handwritten Signature]*.....
(Director of the MWC)

Date.....*31/3/08*.....

Signature.....*[Handwritten Signature]*.....
(Chief Executive of the SSSC)

Date.....*27/2/08*.....