

**Office of the Public Guardian (Scotland)
and the
Mental Welfare Commission for Scotland**

Memorandum of Understanding

1st production: 2009
2nd production: 2013
3rd production: 2016
Reviewed: 2017
4th production: 2019

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1. Introduction

- 1.1 The objective of this Memorandum is to set out an agreed framework for co operation and collaboration between the Office of the Public Guardian (Scotland) (OPG) and the Mental Welfare Commission for Scotland (MWC).
- 1.2 This Memorandum is not a contract, is not legally enforceable and does not seek to transfer functions or responsibilities. However, OPG and MWC recognise the complementary nature of their functions and seek to avoid jeopardising these.

2. Purpose and Scope of this Memorandum

- 2.1 The purpose of this Memorandum is to ensure that the two organisations complement and facilitate the achievement of each other's respective roles and functions. It sets out the working arrangements between OPG and MWC in respect of joint working, co-operation and collaboration.
- 2.2 This Memorandum aims to support and facilitate the exchange of information. It details how each body should exchange information and bring specific concerns to the attention of the other to ensure that both bodies meet their respective responsibilities; and maximise the efficiency and effectiveness of both organisations.
- 2.3 Responsibility for ensuring that each organisation understands each other's respective functions rests with the Public Guardian for the OPG and the Executive Director (Social Work) of MWC.

3. Functions and Responsibilities

- 3.1 The functions of the Public Guardian are as set out in section 6 of the Adults with Incapacity (Scotland) Act 2000 (AwI) – in short, to advise and supervise, in the fulfilment of their responsibilities, those appointed under the AwI with powers relating to the property or financial affairs of an incapable adult and to maintain a register of AwI matters and to receive and investigate complaints where these relate to the property or financial affairs of an incapable adult.

- 3.2 MWC works to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder. 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 a mental disorder is in line with the principles of mental health law; and fulfilling duties under the Adults with Incapacity (Scotland) Act 2000, especially when a person is subject to a welfare intervention or guardianship order.
- 3.3 The OPG and MWC have a mutual responsibility, under the AwI, to consult on cases or matters relating to the exercise of functions under the Act in which there is, or appears to be, a common interest.

4. Information Exchange

- 4.1 OPG and MWC agree to exchange such information, routinely or by exception, as is necessary to fulfil their respective statutory functions under the AwI.
- 4.2 In particular, OPG will inform MWC immediately of any welfare issues which give rise to any concern, from whatever source.
- 4.3 Similarly, MWC will inform OPG of any matter of specific or general interest brought to its attention in relation to areas of OPG responsibility.
- 4.4 More generally, both parties will provide feedback from its activities on issues of mutual interest.
- 4.5 OPG will share with MWC statistical data relating to applications under the Act.
- 4.6 The exchange of information will take place within a timescale deemed appropriate by the body holding the information
- 4.7 Contact, where necessary between officers of both organisations in respect of individual cases, will take place as permitted in terms of the Data Protection Act 1998 (the DPA) and the General Data Protection Regulation (EU) 2016/679 (the GDPR).
- 4.8 Both parties will take necessary steps to protect the confidential nature of documents and information that the other may provide.
- 4.9 Where information is required within a prescribed timeframe e.g. to respond to a Freedom of Information request, a Parliament Question, an MSP enquiry, or a media deadline the responding authority will reply within the requisite timeframe where at all possible and if not possible, will advise as soon as this becomes apparent.
- 4.10 OPG and MWC will co-operate where appropriate over how any media interest is to be handled.
- 4.11 Where a request for information is received by OPG or MWC (the receiving party) in respect of information passed from the other, the receiving party shall, within five working days of receipt of such a request, notify the other party in writing and use all reasonable endeavours to consult the other party in determining 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 receiving party first contacts the other about the request. A refusal by the other party to consent to disclosure shall not, in itself, oblige the receiving party to withhold from the person making the request the whole or any part of its information, where the receiving party consider this justified. Any decision to disclose or withhold information in response to such a request shall be in the sole discretion of the receiving party.

- 4.12 Contact between OPG and MWC will be at an appropriate level within each organisation depending on the matter under discussion. The principal named officer for general contact for OPG will be the Public Guardian and for MWC will be the Executive Director (Social Work) of MWC.
- 4.13 OPG and MWC will meet on a regular basis to discuss areas of common interest, taking action as may be required. Meetings will be minuted. The host, venue, Chair and secretarial support for such meetings will alternate.
- 4.14 OPG and MWC may from time to time cooperate on joint projects e.g. a response to a consultation document or research of mutual interest, with each body working to and within its respective remit.

5. Investigations

- 5.1 This section reflects and thus replaces the former OPG/MWC MoU which related solely to the parties investigatory function.
- 5.2 The OPG and MWC both have statutory investigatory functions.
- 5.3 These duties are overlapping where there is risk to the property or financial affairs of an adult incapable through mental disorder. The following agreement has been reached in order to clarify division of function.
- 5.4 There is a presumption that all investigations of risk to property or finances in relation to incapable adults, including those with mental disorder, will be carried out by the OPG.
- 5.5 If such concerns are reported initially to the MWC they will refer those reporting the concerns to the OPG. The OPG will report on the outcome to the MWC. There may be cases where the MWC decides to investigate in its own right following a review of the OPG's response.
- 5.6 Where there are significant and/or complex welfare issues intertwined with financial and /or property issues, responsibility for management of the investigation will be agreed between the OPG and MWC. Either may request the Local Authority to investigate the welfare elements, whilst the Public Guardian investigates the financial elements; or the MWC may take over the entire investigation and in which case, the MWC will report on the outcome of the financial elements to the OPG if this is considered necessary, or if required by the OPG.
- 5.7 Aside from the above overlapping cases, the MWC and OPG will be responsible for managing all other cases as per their respective statutory remits.

- 5.8 The OPGs remit extends only to incapable adults. Where there is risk to the property or finances of a vulnerable, but not incapable, adult with a mental disorder, or in the event of the individual being less than 16 years of age any investigation will be carried out by the MWC (or the relevant Local Authority).
- 5.9 There may be instances where the OPG or the MWC in carrying out their statutory investigative functions may find it helpful or necessary to investigate the actions of the other party as part of the investigation. In such cases, the terms of reference of the investigation as far as they relate to the party, as well as to who shall be interviewed, will be agreed in advance between the Public Guardian and the Executive Director (Social Work) of MWC.

6. Reconciliation of Disagreement

- 6.1 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 the issue.
- 6.2 The Public Guardian and Executive Director (Social Work) of MWC will jointly be responsible for ensuring a mutually satisfactory resolution.

7.0 Review

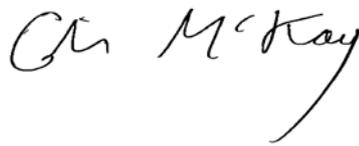
- 7.1 The MOU will be reviewed on an annual basis



Signature:

Date: 24 January 2019

(For the Office of the Public Guardian)



Signature:

Date: 25 January 2019

(For the Mental Welfare Commission)