

Policy Title: Policy on reporting and escalating matters of concern	Policy Number: 53
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Policy on reporting and escalating matters of concern.

This policy should be read in conjunction with policies on key functions of the Commission, notably policies on visiting, investigations and inquiries and on monitoring the use of legislation. It covers how the Commission reports on matters of concern arising from all our work. It covers issues of who we report our concerns to, and what we do if we do not feel that sufficient action has been taken as a result of our concerns.

In this policy, the term “individual” means a person with mental illness, learning disability or related condition.

The Commission’s reporting function.

The Commission is primarily a reporting organisation. There are few situations where the Commission has the authority to take direct action. Therefore, the ways that we report matters of concern are highly important and critical to the aims of the Commission.

What does the law say we report?

This is covered in the Mental Health (Care and Treatment) (Scotland) Act 2003 (“The Act”). Sections 7 and 8 set out our reporting duties. Generally, we have a wide remit under section 7 to bring matters generally to the attention of a variety of individuals and groups. Section 8 refers to a duty to bring specific matters relating to an individual’s care to the attention of anyone that may be able to remedy the situation. In addition to this general duty, there are specific duties to bring specific matters relating to social or health services to the attention of the Care Inspectorate and Healthcare Improvement Scotland respectively.

General matters under section 7 are not defined. The following examples of matters we may report are not exhaustive and serve as an illustration:

- A. Matters arising from visiting work
 - The physical environment of care facilities

- Amenities and activities available for individuals' within a particular facility or service
- Whether or not individuals' care and treatment is in accordance with relevant legislation (notably mental health, incapacity, human rights and equality law).
- Adherence to requirements of national policy
- Availability, or otherwise, of appropriate care and treatment within a particular facility or service
- Issues relating to safety and security of individuals and others
- Appropriate staffing levels and skills, especially where there may be deficiencies that affect the care of individuals.
- Any practices in the provision of care and treatment that appear to us to deviate significantly from acceptable standards

B. Matters arising from monitoring work

- Significant deviation from expected figures in the numbers, types and duration of statutory orders by a particular service
- Significant deviation from expected figures on the characteristics of individuals subject to statutory order in a particular service
- The use of specific powers under legislation by a particular service that deviate significantly from acceptable practice
- The numbers of errors in relation to the operation of legislation by a particular service or organisation

Section 8 lists specific matter in relation to an individual which the Commission may report to a relevant person. Most of these matters are contained in our duty to investigate under section 11. We do not need to have carried out an investigation in order to report our concerns and make recommendations under section 8. We may draw attention to:

- Individuals who may be unlawfully detained
- Individuals who may, or may have been, subject to ill-treatment, neglect or some other deficiency in care or treatment. This includes apparent neglect of principles of legislation
- Individuals whose property may suffer, or be at risk of suffering, loss or damage
- Individuals living alone or without care and are unable to look after themselves, their property or financial affairs
- Individuals detained in hospital where there may be some impropriety in relation to that detention. (This duty does not extend to individuals subject to community orders)

To whom does the Commission address its concerns?

Sections 7 and 8 provide lists of individuals and organisations to whose attention we can bring matters.

We may bring specific matters about individuals to the attention of responsible medical officers, mental health officers, managers of care services, prisons and

young offenders' institutions, the Public Guardian and to the police. We may bring specific and general matters to the attention of Scottish Ministers, Health Boards, local authorities and, specifically, the Care Inspectorate and Healthcare Improvement Scotland.

In both cases, the Act also allows us to bring matters to the attention of "such other persons or groups of persons that the Commission considers appropriate". This appears to allow the Commission the freedom to report general and specific matters to whoever we think appropriate. This part of the Act only applies to reporting to groups and individuals. Reporting to the public is dealt with by section 10 on publishing information.

Under section 10, the Commission may publish information relevant to any of its functions. Such information must be consistent with data protection legislation and must not breach confidentiality.

Protection from actions of defamation

All the above functions of the Commission are granted qualified immunity from actions of defamation. Any action of defamation must show that a statement was made with malicious intent. Statements can be words, pictures, visual images, gestures and any other method of signifying meaning (Defamation Act 1996). Provided that we are careful that no statement is made with malice, we can be confident that we have the authority to report and publish our concerns freely and responsibly.

Reporting concerns in practice

1. General principles

We will make recommendations in relation to concerns about specific or general matters in a way that follows the following principles:

- Recommendations will be specific and will clearly identify the outcome that we expect
- Recommendations will include a date by which we expect a response or a report on progress
- We will direct recommendations to the most appropriate level within the organisation
- We may decide to escalate our concerns to a higher level if we are not satisfied with a response.

2. Reporting concerns about individuals

Where we have concerns about an individual's care, we will make recommendations to the person or persons best placed to take action to remedy the situation. When we do this, we will take all appropriate steps to ensure that the individual knows our concerns and the action we are taking. If, following discussion and correspondence with the appropriate persons, we are not satisfied with the response, we will bring the matter to the attention of others within the organisation. Where we have concerns

about the behaviour or conduct of an individual member of staff, we will raise these with the person's line manager.

We will report matters to:

Level 1: individual practitioners (e.g. responsible medical officer, mental health officer, charge nurse). If not satisfied with response:

Level 2: service or line manager (e.g. clinical director/associate medical director, mental health service manager, social work manager). If not satisfied:

Level 3: Head of service (e.g. NHS Board Chief Executive, Medical Director or Director of Nursing, Director of Social Work)

3. Reporting concerns about services

We aggregate concerns from individuals about the services they receive and we make our own observations on the facilities available for their care. We may also identify issues about the service from monitoring the use of legislation. These activities are likely to result in recommendations about service provision. These recommendations will usually be made in the form of a tabulated series of actions that we will agree with the service. If not implemented, we may escalate matters to higher levels within the organisation and also to external organisations. We may also decide to inform other regulatory organisations of initial recommendations if appropriate.

We will report matters to:

Level 1: service manager (e.g. clinical director/associate medical director, mental health service manager, social work manager). If not satisfied:

Level 2: Head of service (e.g. Health Board Chief Executive, Medical Director or Director of Nursing, Director of Social Work)

4. Reporting matters of major concern

In the course of our work, we may discover issues that appear to indicate a significant deficiency in care or where there may be abuse or neglect. While such matters may form the basis of a Commission investigation, we may also make recommendations without this. While such recommendations will be directed towards the persons best placed to take action, we will also inform those identified in the above escalation strategy about our concerns at an early stage.

In addition to written reports, we will usually take further action to highlight major concerns. This may involve:

- Unannounced visits to services that have been identified as a cause for concern
- Urgent meetings with managers to explain our concerns and press for action
- On-site meetings to demonstrate to senior managers the issues about which we have greatest concern.

5. Reporting matters to Scottish Ministers.

This is the highest level of reporting and is reserved for general matters of greatest concern to the Commission. While the Act refers to “Scottish Ministers”, we would usually report matters to Scottish Government Officers in our sponsor division in the first instance. We may also bring matters to the attention of the Chief Executive of NHS Scotland. Examples of the matters we may report are:

- An overall failure to provide services to specific care groups across Scotland
- Significant problems arising from the use of legislation, especially where there may be a requirement to amend primary or secondary legislation
- Serious concerns that have not been rectified by escalating matters, where we consider that action by the Scottish Government could remedy the situation.

6. Reporting matters through publication

We may publish information on any of our functions under section 10 of the 2003 Act. Through this route, we may publish

- An overview of concerns we have raised and the responses made by provider organisations
- Examples of concerns where we have escalated actions and achieved improvements
- Matters raised with Scottish Ministers and the responses we have had
- Any outstanding issues of concern that, despite all the actions outlined in this strategy, have not been resolved.

Responsibility for making and escalating recommendations

Action	Person/group responsible
Reporting concerns about individuals to RMO etc	Individual practitioner or Commission visitor
Reporting concerns about services	Visit/area co-ordinator
Escalation of concerns about individuals or services	Team leader
Reporting matters of major concern	Team leader/Chief Executive
Reporting matters to Scottish Ministers	Chair, usually following Board discussion