

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

December 2019

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, where other regulators¹ have more specific legislation they will consider when they are better placed to secure justice or necessary improvements in standards.

2.3 Where appropriate, HSE may issue a notification of contravention of the law, a notice of improvement or prohibition, and report 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 (e.g. 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

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

there is the potential for a conflict of interest to arise e.g. 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 (e.g. the police, COPFS, HSE, MWC.)

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 HSE will need to submit its request for information in writing by completing the data sharing form [Addendum] and will be considered by MWC under the General Data Protection Regulations 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 Data Protection Act and the General Data Protection Regulations. 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.

4.4 The following links provide the relevant privacy statement for each organisation:

MWC - [About your personal information | Mental Welfare Commission for Scotland](https://www.mwscot.org.uk/sites/default/files/2019-06/privacy_statement_may2018.pdf) & https://www.mwscot.org.uk/sites/default/files/2019-06/privacy_statement_may2018.pdf

HSE – Information Sharing Privacy Statement - <http://www.hse.gov.uk/privacy.htm> & <https://www.hsl.gov.uk/privacy-notice>

(ii) Matters of Concern

4.5 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:

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.*

Redacted from published version under the following exemptions:
FOI Act Section 40 / FOI (Scotland) Act Section 28 (personal information)

HSE	MWC
Health and Safety Executive 59 Belford Rd Edinburgh EH4 3UE	Mental Welfare Commission for Scotland 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 affect a resolution.

7 Review

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: 16/12/2019

Signed for HSE



Iain Brodie, HSE Director for Scotland / Deputy Director, Field Operations Division

Date: 23/12/2019

Addendum

Data sharing and the Mental Welfare Commission for Scotland (MWC)

Form to request data from MWC

In order for us to consider your request for the Commission (the data controller) to share personal, sensitive data with your organisation, we need you to complete this form. No data will be released until the completed form has been returned. Thank you.

<p>A. Details about your organisation and the person who is requesting the data.</p> <p>(Principle 4)</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>B. Description of the data requested</p> <p>(Principles 2 and 3)</p>	<p>Which identifiable data items are required? Please detail why these are required.</p> <table border="1"><thead><tr><th data-bbox="692 1115 951 1151">PID Required</th><th data-bbox="951 1115 1011 1151"></th><th data-bbox="1011 1115 1382 1151">Justification</th></tr></thead><tbody><tr><td data-bbox="692 1151 951 1234">CHI Number</td><td data-bbox="951 1151 1011 1234">✓</td><td data-bbox="1011 1151 1382 1234"></td></tr><tr><td data-bbox="692 1234 951 1332">Forename</td><td data-bbox="951 1234 1011 1332"></td><td data-bbox="1011 1234 1382 1332"></td></tr><tr><td data-bbox="692 1332 951 1431">Surname</td><td data-bbox="951 1332 1011 1431"></td><td data-bbox="1011 1332 1382 1431"></td></tr><tr><td data-bbox="692 1431 951 1529">DOB</td><td data-bbox="951 1431 1011 1529"></td><td data-bbox="1011 1431 1382 1529"></td></tr><tr><td data-bbox="692 1529 951 1628">Age</td><td data-bbox="951 1529 1011 1628"></td><td data-bbox="1011 1529 1382 1628"></td></tr><tr><td data-bbox="692 1628 951 1727">Gender</td><td data-bbox="951 1628 1011 1727"></td><td data-bbox="1011 1628 1382 1727"></td></tr><tr><td data-bbox="692 1727 951 1852">Address</td><td data-bbox="951 1727 1011 1852"></td><td data-bbox="1011 1727 1382 1852"></td></tr><tr><td data-bbox="692 1852 951 1951">Post code (full)</td><td data-bbox="951 1852 1011 1951"></td><td data-bbox="1011 1852 1382 1951"></td></tr><tr><td data-bbox="692 1951 951 2011">Post code (partial)</td><td data-bbox="951 1951 1011 2011"></td><td data-bbox="1011 1951 1382 2011"></td></tr></tbody></table>	PID Required		Justification	CHI Number	✓		Forename			Surname			DOB			Age			Gender			Address			Post code (full)			Post code (partial)		
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	Clinical data - please specify		
	Mental Health Act (MHA) data- please specify		
	Criminal Procedures Act (CPA) data- please specify		
	Adults With Incapacity Act (AWI) data- please specify		
	Other - please specify		
<p>C. Outline of the purpose for which the data will be used. (e.g. a specific project, monitoring - give details)</p> <p>(Principle 1)</p>	<input type="checkbox"/> Audit <input type="checkbox"/> Research <input type="checkbox"/> Service Improvement <input type="checkbox"/> Other If other, please provide further details:		
<p>D. A rationale for why anonymised data would not be sufficient to fulfil the purpose stipulated above.</p> <p>(Principle 2)</p>			
<p>E. Please provide a statement to confirm that the data supplied by us to you will not be further shared with anyone out with your organisation or used for any purpose beyond that stipulated on this form.</p> <p>(Principle 6)</p>			

<p>F. 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>(Principle 5)</p>	
<p>G. 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>(Principle 5)</p>	
<p>H. 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> <p>(Principle 4)</p>	
<p>I. 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.</p> <p>(Principle 6)</p>	

RULES ON CONFIDENTIALITY, SECURITY AND RELEASE OF INFORMATION FOR USERS OF PERSONAL DATA FROM THE COMMISSION

1. 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**
2. If the data received from the Commission are to be held on computer, the person who signs this form should have an appropriate notification with the Office of the Information Commissioner. Your data protection registration number should be entered below prior to the signature section. Whether stored on computer or otherwise, the signatory should be aware that the Data Protection Act 1998 requires that all personal data is processed fairly and lawfully and in accordance with the Data Protection Principles.
3. Data received from the Commission should not be divulged to any person whose name is not specified as a user of data as stipulated on this form. All users and co-users must understand their responsibilities in protecting data provided.
4. Proper safeguards should be applied in keeping the data secure and destroying it on completion of the work/project. Any misuse, loss or theft of the data should be notified immediately to the Commission. It should be marked for the attention of the Information Manager and sent to enquiries@mwscot.org.uk. Confidential data should not be sent via this e-mail account as the Commission does not have an encrypted e-mail system so security of data transferred this way cannot be guaranteed.
5. Statistics or results of research based on data received from the Commission should not be made available in a form which directly identifies individual data subjects or creates a risk of indirect identification. If you feel such a risk exists, you should contact the Information Manager at the Commission to discuss the risks prior to publication.
6. The information provided to you is derived from systems used by the Commission in carrying out its functions. Although there are robust quality assurance processes in place, the data may contain undetected inaccuracies.

**Data Protection Public Register – The UK Information Commissioner’s Office
Please give your registration number:**

I/we the undersigned have read and understood the rules on confidentiality, security and release of information for users of personal data from the Commission.

Contact person for this request:

PRINT NAME

Signature:

Date:

Senior person within your organisation who has specific responsibility for information governance:

PRINT NAME

Signature:

Date:

All applications in the first instance should be made to:

Information Governance Manager Tel:

or e-mail:

Caldicott Guardian for Mental Welfare Commission is:

Medical Director, MWC, Thistle House, Edinburgh EH....

The release of data as described above is: **approved/not approved**

Caldicott Guardian: Date:

Caldicott Principles

Principle 1 – Justify the purpose(s)

Every proposed use or transfer of patient-identifiable information within or from an organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed, by an appropriate guardian.

Principle 2 – Don't use patient-identifiable information unless it is absolutely necessary

Patient-identifiable information items should not be used unless there is no alternative.

Principle 3 – Use the minimum necessary patient-identifiable information

Where use of patient-identifiable information is considered to be essential, each individual item of information should be justified with the aim of reducing identifiability.

Principle 4 – Access to patient-identifiable information should be on a strict need-to-know basis

Only those individuals who need access to patient-identifiable information should have access to it and they should only have access to the information items that they need to see.

Principle 5 – Everyone should be aware of their responsibilities

Action should be taken to ensure that those handling patient-identifiable information – both clinical and non-clinical staff – are made fully aware of their responsibilities and obligations to respect patient confidentiality.

Principle 6 – Understand and comply with the law

Every use of patient-identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

Principle 7 – The duty to share information can be as important as the duty to protect patient confidentiality

Health and social care professionals should have the confidence to share information in the best interests of their patients within the framework set out by these principles.