

## Mental Welfare Commission for Scotland Consultation

### Investigating deaths occurring during compulsory care and treatment under mental health legislation in Scotland

#### GMC Response

**14 February 2022**

- 1** We welcome the opportunity to respond to the Mental Welfare Commission (MWC) for Scotland's consultation on *Investigating deaths occurring during compulsory care and treatment under mental health legislation in Scotland*.
- 2** In principle we support the proposal to establish a national unified system for investigating these deaths in this way. We believe that doing so will have a positive impact on patient safety.
- 3** We understand that Healthcare Improvement Scotland are also undertaking work to update and standardise the SAER notification system. Having standardised national systems for both processes will ensure that they are fit for purpose and key mechanisms within the patient safety infrastructure in Scotland.
- 4** Some of the questions in the consultation fall outside our regulatory remit or areas of expertise. We have therefore restricted our comments to one area - *Description of the revised process*, should the proposal be accepted.

#### The GMC's role and remit

- 5** The General Medical Council (GMC) is an independent regulator that helps to protect patients and improve medical education and practice across the UK.
  - We decide which doctors are qualified to work here and we oversee UK medical education and training.

- We set the professional standards that doctors need to follow and work to make sure that they continue to meet these standards throughout their careers.
  - We take action to prevent a doctor from putting the safety of patients, or the public's confidence in doctors, at risk.
- 6** The GMC is not responsible for planning or, delivering health or adult social care services, but our regulatory functions and the professional standards that we set for doctors are expected to shape the way they practise within their working environment.

## Answers

### *Description of the revised process*

Question 4: Do you have any comments on the revised process as set out above?

### **Fitness to Practise Concerns**

- 7** We note that through the course of their investigations, the Investigation Team may receive evidence which highlights a particular concern with the delivery of care that may suggest impaired fitness to practise on the part of a health and social care professional.
- 8** In such cases, and for the purpose of public protection, it will be essential to ensure that such information is disclosed in a timely manner to the relevant regulatory body to enable it to investigate these concerns further, where appropriate to do so.
- 9** It may be helpful to refer to our [threshold guidance](#) which clarifies those matters where we can, and cannot, take action. Guidance on our thresholds can also be sought from our Scotland Employer Liaison Adviser, Willie Paxton.
- 10** If a concern is raised with us and we open an investigation, we have specific [guidance](#) in place on communicating with patients who experience barriers to engaging with us, lack capacity to engage with us or who are deceased. The guidance provides advice on communicating with the person close to the care of a deceased patient to let them know that we are investigating and to give them an opportunity to provide input if they have relevant information. The aim of this work is to increase transparency around our processes and outcomes and to improve customer service and engagement with patients and their families.
- 11** We also have a [charter](#) for patients, relatives and carers which sets out what they can expect from us, when they raise a concern about a doctor.

## **GMC Standards**

- 12** Investigation Teams should also be mindful of our guidance on the professional standards expected of all doctors registered in the UK. Our standards define what makes a good doctor by setting out the professional values, knowledge, skills and behaviours required of all doctors working in the UK.
- 13** As set out in our core guidance [\*Good Medical Practice\*](#), all doctors have a duty to keep up to date with and follow the law, our guidance and other relevant regulations (paragraph 12). We have power to take regulatory action where there is a risk to patients or public confidence in medical professionals, or where it is necessary to maintain professional standards.
- 14** *Good Medical Practice*, covers fundamental aspects of a doctor's role, including working in partnership with patients and treating them with respect. We provide detailed guidance on ethical principles that most doctors will use every day, such as consent and confidentiality, and specific guidance on a range of areas such as raising concerns about patient safety, doctors' child protection responsibilities, and providing care for people who are dying. We also develop case scenarios and tools that help doctors apply the principles in their practice.
- 15** Our guidance applies to all registered doctors, whether or not they hold a licence to practise and regardless of their specialty, grade or area of work (for example, NHS or independent practice).

## **Investigation Team Remit**

- 16** Our final comment is around ensuring that the Investigation Team, assembled by the Commission, has sufficient capacity and reach for considering the patient's physical condition as well.
- 17** This is of particular importance given that people with mental health problems, particularly those with severe and enduring conditions and in-patients, have poorer health outcomes than others and experience more severe health inequalities.
- 18** Consideration of mental health patients' physical health issues can be downgraded or even overlooked in acute mental health settings, with the focus tending to be on psychiatric treatment delivered by specialists (i.e, psychiatrists and other mental health professionals) who are not necessarily qualified to assess/diagnose other medical issues. Access to more mainstream medical services can be limited.
- 19** Although suicide will feature as one of the main causes of death amongst this patient group, physical health causes are common. This can be due to a greater prevalence of debilitating and potentially life-threatening conditions arising from factors that may

be connected to symptoms of mental illness e.g., smoking, drug & alcohol misuse, obesity, dental problems.

## **Conclusion**

- 20** Please note that we are preparing to regulate Physician Associates and Physicians' Assistants (Anaesthesia), subject to the UK Government passing legislation. Our comments above will apply to those professions as well, once regulation starts.
- 21** Finally, we welcome the opportunity to respond to this consultation. Given our expertise, our response has only focused on answering question 4 as we believe other organisations are best placed to inform other aspects of the proposed process set out in this consultation.