



Investigating deaths occurring during compulsory care and treatment under mental health legislation in Scotland – List of consultation questions

Question 1: Do you agree that the Commission should be responsible for initiating, directing and quality assuring the process of investigating deaths during compulsory treatment in all cases?

Yes No Not sure

Question 1a: Do you foresee any difficulties with this arrangement?

Depends on interpretation - the Commission is strategically well placed and has relevant powers to initiate, direct and quality assure such investigations. Issues may arise in terms of how it exercises these functions: decisions as to who will be directed by the Commission to undertake the investigation and within what parameters could be more complex. As the Report notes, many public bodies have mechanisms in place, with varying levels of inquiry, would a Commission directed investigation be an additional requirement upon the investigating body and duplicate their existing efforts?

The Commission should note our significant concern about the statements where the Commission are using the words “Investigate” and “review” interchangeably. There is a significant differential meaning between “Investigate” and “Review” so the ambiguity is confusing, unhelpful and potentially open to misinterpretation. It will impact on how workforce view the process e.g. a learning review is very different from being investigated. The Commission may therefore wish to give cognisance to the concept of Reviewer particularly given many public bodies already have inquiry mechanisms in place.

Question 1b: How could such difficulties be addressed?

The Commission could act as the lead investigator thus ensuring independence and avoiding additional resource implications for other agencies.

Question 2: Do you agree that the Commission should be responsible for producing and disseminating an annual report on the results of the investigations as described in paragraph 30 above?

Yes No Not sure

Question 2a: Do you foresee any difficulties with this arrangement?

No

Question 2b: How could such difficulties be addressed?

N/A

Question 3: Do you agree that the Commission should develop guidance and standards for use by local services when undertaking investigations into deaths during compulsory treatment?

Yes No Not sure

Question 3a: Do you foresee any difficulties with this arrangement?

Standards would require to take cognisance of local arrangements, policies and procedures. Guidance should promote consistency of investigations and reporting.

Question 3b: How could such difficulties be addressed?

Proposed standards would require to be reviewed locally with support from legal services to ensure concordance with current requirements.

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

The revised process ensures an independent, multidisciplinary approach to consideration of circumstances from the outset. The power to set Terms of Reference may be of assistance and the opportunity to indicate a proportionate level of investigation according to the circumstances would promote a more targeted approach.

Question 4a: Do you foresee any difficulties with this process?

Investigating bodies may find themselves facing challenges in terms of resources in attempting to comply with the requirements set by the Commission. The nature of the investigations outlined and the positive step to actively involve families and carers will be resource intensive at a time when public services are under considerable strain.

Furthermore, there would need to be clarity as to the circumstances in which it would be inappropriate for the local service to conduct the investigation.

Question 4b: How could such difficulties be addressed?

In developing the guidance and processes, the Commission could assess the resource impacts for public bodies. This would allow the relevant body to consider the potential financial and workforce impacts and to plan accordingly. If the impacts are felt to be significant, the Commission could engage with the Scottish Government to promote adequate resourcing which relevant bodies could access to ensure their ability to meet their obligations.

Examples and clear guidance about what would constitute inappropriate circumstances would be necessary. Were a dispute to arise around this issue, there would require to be a clear path for resolution in a timeous manner.

Question 5: Do you think that the role of Commission Liaison Officer, as set out above, will help to improve the involvement of, and communication with, families and carers during investigations of deaths?

Yes No Not sure

Question 5a: Do you have any concerns about this type of arrangement?

Families may prefer the option to choose to receive support from an independent body as opposed to the Commission which has oversight of the investigation process. Where there is dissatisfaction, possibly as a result of perceptions around independence or for any other reason with the CLO, families and carers may require alternative options.

Question 5b: How could your concerns be addressed?

Families and carers could be given choice at the outset of any investigation as to how best they would like to be kept involved. Where the Commission CLO was not felt by families or carers to meet their needs there ought to be alternative mechanisms for ensuring that their voices are heard and that they remain meaningfully involved in the process.

Question 6: Do you agree that the revised process, as described in Section 2, will meet the values and principles set out in paragraph 50 above?

Yes No Not sure

Question 6a: Please explain your answer.

A structured model for investigations should improve consistency and provide a clear pathway for organisations, families and carers. The values and principles are appropriate and should support a more meaningful system for investigating, reporting and improving services.

There could remain doubts as to the independence of the process given that, in most cases, unless felt to be inappropriate, the relevant local body will be conducting the inquiry themselves. Family and carer perspectives on this would be important.

Question 7: Do you have any comments on the potential impacts of the revised process on those with protected characteristics?

As long as the proposed processes are developed and can be adapted to consider and respond to the needs of those with protected characteristics then there should be a positive impact.

Question 7a: Please explain what you think could be done to minimise any negative impacts on people with protected characteristics.

Staff involved in investigations will require to be skilled in working with people within these groups. Positive communication strategies, cultural sensitivity training and resources should be made available and tailored to the protected characteristics. Consideration as

to the most appropriate CLO would be required in each case - taking account of characteristics and ensuring that the needs of the individual are appropriately considered.

Question 8: Do you have any comments on the potential impacts of the revised process on children and young people?

As with other groups, the proposed process ought to take account of the specific needs of children and young people. The clarity of the approach should be easier for them to follow and understand. The success of the approach will be very much reliant on the sensitivity and skillset of the CLO and investigations team in engaging with children and young people who have likely experienced a traumatic event. Great care will be required to avoid causing further trauma during investigative process.

Question 8a: Please explain what you think could be done to minimise any negative impacts on children and young people.

Careful consideration would require to be given to the identity and skills of the professionals involved. Additional training in relation to trauma and working with children and young people may be necessary. Investigating bodies should have access to trained individuals where this is not within their area of expertise.

Question 9: Do you agree that the revised process for investigating deaths during compulsory treatment is human rights compliant?

Yes No Not sure

Question 9a: Please explain what you think could be done to ensure that the new process fully complies with human rights standards.

The principles and standards require to be fully implemented and understood in practice. The processes require to be guided from this perspective and not through a service needs lens.

Question 10: Do you have concerns in relation to any financial or administrative impacts the revised process may have, especially for local services?

Yes – any new functions and responsibilities will require to be fully resourced by trained staff. All staff will require to be made aware of the new roles and responsibilities. This will have resource and financial implications. There needs to be assurance that local policies and procedures are fully aligned with the new processes and procedures and that services are resourced to review their current policies and ensure that they are able to meet the requirements of the new processes. This will require additional recurring funding to resource this additional key responsibility.

Question 10a: Please explain what you think could be done to minimise any negative financial or administrative impacts.

A service or implementation lead may be required at local level to ensure policies and procedures are compliant with new guidance and responsibilities and have oversight of the processes involved. Additional training will be required for a number of staff to ensure adequate provision of those required to undertake investigations and reporting functions. This will require additional funding to be provided based on local requirements – area, population, demographics, statistical trends and models.

Question 11: Do you have any other comments or concerns in relation to the revised process?

The revised process ought to support a clear and proportionate model for conducting investigations with meaningful involvement for those affected and with clear routes for learning and service development based on identified outcomes. This ought to improve standards across the country as a whole.

If you are unable to respond online, please complete and return a Word version of the Respondent Information Form ([download the form here](#)). The form should be sent to [Dawn Griesbach](#), Griesbach & Associates together with a copy of your response in Word or PDF format. If you ask for your response not to be published, it will still be included in the analysis, but will not be available to be viewed publicly. Please be aware that the Mental Welfare Commission is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.