

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CARE INSPECTORATE

AND

THE MENTAL WELFARE COMMISSION

June 2012



MEMORANDUM OF UNDERSTANDING

between

THE CARE INSPECTORATE

and

THE MENTAL WELFARE COMMISSION

1. PURPOSE OF THE MEMORANDUM OF UNDERSTANDING

The purpose of this understanding is to clarify the responsibilities of Social Care and Social Work Improvement Scotland (to be known as the "Care Inspectorate") and the Mental Welfare Commission for Scotland (to be known as "The Commission" in relation to *their functions (as detailed at 3) and relating to the care and treatment of persons with mental disorder.*

2. SCOPE OF THIS MEMORANDUM

This Memorandum sets out an agreed framework for co-operation between the Care Inspectorate and the Commission 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 the Care Inspectorate and the Mental Welfare Commission for Scotland in respect of joint working, co-operation and collaboration.

This Memorandum is not a contract, is not legally enforceable and it does not provide a definitive guide to the relevant legislation. In cases of doubt reference should be made to the appropriate statutes.

3. FUNCTIONS, DUTIES AND POWERS OF THE CARE INSPECTORATE

- A. The role and functions of the Care Inspectorate are set out in the Public Service Reform (Scotland) Act 2010, [PSR(S)Act], the Adults with Incapacity (Scotland) Act 2000 (Part 4 only) and the Mental Health (Care and Treatment) (Scotland) Act 2003.
- B. The Care Inspectorate is the independent regulator of social care and social work services across Scotland, as set out in the PSR(S) Act. It regulates, inspects and supports improvement of care, social work and child protection services for the benefit of the people who use them.
- C. The system of regulation adopted by the Care Inspectorate takes account of the National Care Standards and the Codes of Practice for Employers and Employees as developed by the Scottish Social

Services Council. Care service providers should comply with all relevant legislation, whether regulated or enforced by the Care Inspectorate or elsewhere.

- D. The Care Inspectorate has the statutory responsibility for ensuring that providers of care services are fit to provide that service and that they continue to comply with the statutory regulations taking into account the National Care Standards and the Codes of Practice for Employers and Employees. The Care Inspectorate has a range of powers to carry out these regulatory responsibilities.
- E. The Care Inspectorate has a statutory responsibility to investigate complaints about registered services. Under the Care Inspectorate's complaints procedure, complainants do not have to pursue a complaint through the local service provider's own Complaints Procedure before lodging a complaint with the Care Inspectorate. However, the Care Inspectorate will encourage individuals, in the first instance, to pursue a complaint through the local service provider's complaints procedure wherever possible.

4. FUNCTIONS, DUTIES AND POWER OF THE COMMISSION

The Commission is established as an independent body corporate under Part 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (referred to as the 2003 Act). The constitution of the Commission is set in schedule 1 of the 2003 Act (as amended by the Public Services Reform (Scotland) Act 2010). The principal functions, duties and powers of the Commission are set out in Sections 4-20 of the 2003 Act (as amended by the Public Services Reform (Scotland) Act 2010) and in the Adults with Incapacity (Scotland) Act 2000 (referred to as AWI Act). They include:

- A. Acting to protect the welfare of individuals with mental illness, learning disability or personality disorder.
- B. Monitoring the practical application of the observance of Part 1 of the Act and promoting best practice in relation to the practical application of the observance of Part 1 of this Act.
- C. Provide statistical reports on the operation of the Act and bring matters in relation to its operation to the attention of Scottish Ministers.
- D. Investigation of any case where it appears to the Commission there may be ill-treatment, deficiency in care or treatment, or improper detention of any person who may be suffering from a mental disorder.
- E. Carrying out visits to people with mental disorder as often as the Commission considers appropriate.

- F. Giving advice in connection with any aspects of the Commission's functions.
- G. Bringing general and specific matters, in relation to the care and treatment of people with mental disorders, to the attention of various parties.
- H. Raising concerns about any social services or health care services with the Care Inspectorate, HIS or other relevant persons in terms of section 8A of the 2003 Act.
- I. Ensuring that the safeguards in place for patients receiving compulsory care and treatment are adhered to.
- J. Publishing information or guidance about any matter relevant to its functions and its conclusions in relation to an investigation, inquiry or visit carried out under the 2003 Act.
- K. Publishing an annual report and submitting it as soon as practicable after the end of each financial year to Scottish Ministers, who will lay copies before Parliament.
- L. Under Section 9 of the Adults with Incapacity Act 2000, the Commission continues to have general functions in relation to adults to whom the Act applies by reason of mental disorder. The functions under that Act include: to consult with the Public Guardian and any local authority on any case of common interest; to receive and investigate complaints relating to the exercise of functions relating to the personal welfare of the adult in relation to welfare attorneys and guardians or persons authorised under intervention orders (where they are not satisfied by an investigation made by a local authority or where the local authority has failed to investigate); and to provide a guardian, welfare attorney or person authorised under an intervention order with information and advice in connection with the performance of his or her functions under the 2000 Act.
- M. In discharging its statutory functions the Commission is accountable to Scottish Ministers but at the same time it carries out its work and produces reports independently.
- N. The Commission's goals are to:
- Help individuals using mental health or learning disability services to get the best possible care and treatment;
 - Help people working in mental health and learning disability services to provide the best possible care and treatment for each person using those services;
 - To be independent experts in promoting best practice as to applying best ethical and legal practice in care and treatment of individuals with mental disorder.

6. DUTY TO COOPERATE, CONSULT AND INFORM

The Care Inspectorate and the Mental Welfare Commission for Scotland will generally cooperate with a view to achieving the purpose of protecting the welfare of persons who have a mental disorder and the scrutiny and improvement of services for their care and treatment. Both organisations are required to observe statutory provisions, including:

- Under section 96 of the Public Services Reform (Scotland) Act 2010 (the 2010 Act), the Care Inspectorate must, in the exercise of its functions relating to the provision of guidance, advice or information, consult the Mental Welfare Commission for Scotland in every case in which it appears to the Care Inspectorate appropriate having regard to the Commission's functions.
- Under section 8a of the Mental Health (Care and Treatment) (Scotland) Act 2003 as amended by the 2010 Act, the Mental Welfare Commission shall as it considers appropriate, raise any concerns (of a general or specific nature) with the Care Inspectorate about the provision of any social service as respects a person who has a mental disorder.

Under Section 114 of the Public Services Reform (Scotland) Act 2010, both organisations have a statutory duty to cooperate and coordinate activity with a view to improving the exercise of the scrutiny function of the scheduled scrutiny authorities in relation to:

- (a) local authorities
- (b) social services
- (c) health services

having regard to efficiency, effectiveness and economy.

The Commission's role in respect of independent social care services is that it may visit any individual with a mental disorder in a variety of care settings, including care homes. It may also visit people subject to welfare guardianship wherever the person lives. It also has the authority to investigate or give advice regarding the care and treatment of people in any of these settings and to bring specific and general matters to the attention of independent care providers.

To achieve these statutory provisions:

- The Care Inspectorate and Mental Welfare Commission agree to exchange such information, routinely or by exception, as is necessary to fulfil their respective statutory duties, in particular:

The MWC will send the following information:

- Focussed visit reports on visits to individuals in receipt of registered care services
- National themed visit reports
- Investigation reports
- Advice notes and good practice guidance

The Care Inspectorate will send the following information:

- Thematic reports
- Individual service reports where the MWC may have a specific interest or locus

- The Care Inspectorate will inform The Mental Welfare Commission immediately of any welfare issues which give rise to any concern, from whatever source. A procedure for notifying the Commission has been developed to fulfil this obligation.

- The Mental Welfare Commission will inform the Care Inspectorate of any matter of specific or general interest brought to its attention in relation to areas of the Care Inspectorate's responsibility.

- More generally, both parties will provide feedback from its activities on issues of mutual interest. The Mental Welfare Commission will send copies of all relevant reports to The Care Inspectorate and vice versa.

- The exchange of information will take place within the earliest timescale deemed appropriate by the body holding the information.

- 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.

- Both parties will take necessary steps to protect the confidential nature of documents and information that the other may provide.

- Contact between the Care Inspectorate and The Mental Welfare Commission will be at an appropriate level within each organisation depending on the matter under discussion. The principal named officer for contact for the Care Inspectorate will be the Director of Strategic Development and for Mental Welfare Commission will be the Chief Executive or named Chief Officer.

- The Care Inspectorate and Mental Welfare Commission may from time to time cooperate on joint projects with each body working to and within its respective remit. This includes joint inspections carried out at the request of Scottish Ministers. The organisations may also work together on production of advice and investigation of cases where both bodies have an interest.

- The Care Inspectorate and Mental Welfare Commission will share business plans and, where necessary, plans to visit establishments where both organisations have an interest.

7. DISPUTE RESOLUTION

- Wherever possible any disputes should be resolved locally on a case by case basis, between officials, if necessary by reference to each organisation's line management.
- If officials are unable to reach agreement, disputes should be referred to the nominated representatives of each body, namely Joyce O'Hare, Senior Professional Advisor - Health, Care Inspectorate and Lucy Finn, HR Manager, MWC. For ongoing issues, the Chief Executive of the Commission and the Chief Executive of the Care Inspectorate will work together to agree the appropriate route for resolving the dispute.

8. MEETINGS BETWEEN THE CARE INSPECTORATE AND THE COMMISSION

The Commission and the Care Inspectorate will meet on a six monthly basis to consider matters of mutual interest arising from their respective responsibilities. The Chief Executives of the two bodies will meet annually.

9. REVIEW OF THIS MEMORANDUM

This memorandum will be reviewed every 5 years by the Commission and the Care Inspectorate or more frequently if developments require this.

(Signed)

.....*Annette Bruton*.....

Annette Bruton
Chief Executive
Care Inspectorate

(Date) ..30/7/12.....

(Signed)

.....*Dr Donald Lyons*.....

Dr Donald Lyons
Chief Executive
Mental Welfare Commission

(Date) ..18/7/12.....

Lead Contacts

There will be specific points of contact between the Care Inspectorate and the MWC as follows:

Care Inspectorate

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MENTAL WELFARE COMMISSON

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Lead Officer:

Joyce O'Hare

Senior Professional Adviser - Health

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Chief Executive: (internal escalating policy should be followed before referral to Chief Executives)

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Lead Officer:

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