

A Memorandum of Understanding

The Health and Safety Executive The General Medical Council

January 2004



Preamble

1. The purpose of this Memorandum of Understanding is to set out a framework between HSE and GMC to facilitate liaison between the two organisations on areas of mutual interest.
2. This Memorandum relates to the areas of interface between HSE and the GMC, clarifies respective roles and responsibilities and outlines mechanisms in place to promote effective liaison relationships. This agreement does not affect existing statutory functions or amend any other policies or agreements relating to the activities of the HSE and GMC.

Functions of the HSE and the GMC

The Health and Safety Executive

3. The Health and Safety Executive is responsible for the enforcement of the Health and Safety at Work Act etc (HSWA) 1974 throughout Great Britain. Its mission is to

'protect people's health and safety by ensuring risks in the changing workplace are properly controlled'.

4. The HSWA sets out general duties which employers, the self-employed, and people in control of premises have towards their employees, and others who could be affected by the work activities. HSE does not, however, in general, seek to apply HSWA to matters of clinical judgement or to the level of provision of care.
5. Employers' and employees' duties under HSWA include:
 - **Section 2**
Employers must ensure, so far as is reasonably practicable, the health, safety and welfare of their employees while at work
 - **Section 3**
Employers and the self-employed must conduct their undertakings in a way that ensures, so far as is reasonably practicable, that people other than their employees (for example, service users) are not exposed to risks to their health or safety
 - **Section 7**
Employees must take reasonable care for the health and safety of themselves and other persons who may be affected by their acts or omissions at work and must cooperate with the employer in respect of his health and safety duties and requirements.
6. Further detail on the remit of HSE can be found at Annex A.

The General Medical Council

7. The GMC is a statutory body responsible for regulating the medical profession in the United Kingdom. Its purpose is to

'protect, promote and maintain the health and safety of the community by ensuring proper standards in the practice of medicine.'

The GMC has statutory powers under the Medical Act 1983 as amended to take action when concerns are raised about the performance, conduct or health of individual doctors of a level of seriousness which calls into question the doctor's fitness to remain on the medical register without restriction.

8. The GMC is not a general complaints body and can act only where there is evidence that a doctor may not be fit to practise. Lesser problems can usually be resolved locally, for example through the NHS procedures. Specific agreements are in place between the GMC and the [Commission for Health Improvement, National Care Standards Commission](#) and the [National Clinical Assessment Authority](#) to make sure organisations work together effectively to protect patients.

9. Further details on the GMC's remit can be found at Annex B.

Collaborative working arrangements

10. Collaborative working between the organisations falls into two strands:

- i. referral of matters of concern and
- ii. communication and liaison mechanisms.

Referral of matters of concern

11. HSE and the GMC both have the policy intent to raise appropriate matters with or pass information to the other in appropriate circumstances. This might include:

- The GMC informing HSE of investigations that have HSWA implications for either the individual practitioner, service users or employer.
- HSE informing the GMC of any issues emerging from an investigation or inspection which raise significant concerns or questions about the fitness to practise of an individual registered medical practitioner.

a GMC informing HSE of concerns

12. There are cases where, as a result of the exercise of its statutory functions, the GMC has information that raises issues of health and safety at work in respect of the registered medical practitioner or service users. This might take the form, for example, of issues relating to maintenance of medical equipment, systems of work, manual handling of loads, or risks specific to service users, such as legionella, or risks from hot water.

13. The GMC's policy intent is to disclose such information to HSE when the GMC considers that to be in the public interest. The GMC may write formally to the HSE

local contact point to disclose information and/or invite the HSE to consider appropriate action. For matters deemed to be urgent, a telephone notification will be followed by written confirmation.

14. The GMC may consider it appropriate to inform HSE of their findings to allow a considered response in respect of HSWA. HSE will then have responsibility to take any necessary action.

b HSE informing GMC of concerns about individual doctors

15. An inspection or investigation conducted by HSE, or information received by HSE, may raise concern about an individual doctor's fitness to practise. The information could relate to, but is not restricted to, complaints, deaths, injuries and alleged misconduct resulting in harm, or clinical and performance indicators. For matters deemed to be urgent, a telephone notification will be followed by written confirmation.

16. In such cases, the first course of action for HSE staff will be to discuss their concerns with HSE's Main Focal Point contact for guidance, and/or if considered necessary, the management of the healthcare provider (para 8 refers).

17. HSE will inform the GMC Focal Contact Point of all successful legal proceedings against individual doctors.

Communication and liaison arrangements

18. In keeping with the character of their working relations, HSE and GMC will discuss matters as openly and as regularly as possible by both formal and informal contact. This will include for example:

- Sharing information about concerns, approaches and initiatives, which are relevant to the shared aim of protecting the health and safety of the community
- Inviting contributions to policy and operational guidance, reports and other mechanisms, as appropriate, in order to ensure factual accuracy, to benefit from each other's knowledge and expertise, and to promote consistency of advice
- Assisting the other, as appropriate, in providing information for investigations and initiatives to promote the objectives of the two organisations.

Investigations and inquiries relevant to both bodies' functions

19. It is possible that an investigation by HSE could coincide with the GMC investigating the fitness to practise of an individual at either an NHS Trust or independent healthcare provider. In that event, both organisations will be guided by the following principles:

- HSE and the GMC will co-operate with each other. This might include planning activities so that they are complementary, keeping each other informed of developments, and sharing information (within statutory limitations) in order to minimise burdens and enable greater efficiency and effectiveness. Care must be taken at all times not to contaminate a trail of evidence which is the subject of either

party's enquiries. The Principal Inspector for the investigating HSE team will act as the main point of contact.

- HSE and the GMC will clarify boundaries of responsibilities and remits for the two investigations. While those conducting investigations will work closely together, the investigations will remain separate and the limitations of each investigation will be clearly defined.

Data protection provisions

20. It is agreed that Statutory and other constraints on the exchange of information will be fully respected, including the requirements of the Data Protection Act 1998, Freedom of Information Act 2000 and the Human Rights Act 1998.

Reconciliation of disagreement

21. Any disagreements will normally be resolved amicably at working level. If this is not possible, the focal contact points will seek to settle the issue and ensure a mutually satisfactory resolution. Senior management of both parties will be involved as necessary.

Review of Memorandum of Understanding

22. This Memorandum will be reviewed annually and if necessary following any pertinent changes to policies, procedures and structures of the parties concerned.

Signed:

Date:

Finlay Scott
Chief Executive GMC

Signed:

Date:

Timothy Walker
Director General HSE

HSE'S Remit

1. HSE enforces in over 740,000 establishments such as hospitals, care homes, factories, farms, mines, nuclear and offshore installations. Health and safety inspections and investigations of accidents or complaints may cover all occupational health, safety and welfare risks to employees, as well as health and safety risks to members of the public and service users.

2. HSE inspectors use a variety of enforcement tools in order to secure immediate and sustained compliance with the law and, where appropriate, to hold duty holders to account for breaches of the law. These enforcement tools range from the provision of advice, to the service of enforcement notices and the taking of prosecutions as necessary. [HSC's Enforcement Policy Statement](#) gives overall direction to HSE and Local Authorities in investigation and enforcement decisions.

3. HSE is subdivided into Directorates and Divisions which have enforcement responsibilities within defined industry Sectors. Inspectors are warrant holders, which affords them legal rights of access to premises and relevant staff during inspections or investigations. Inspections may follow an audit type methodology to examine all elements of the risk management systems described in HSE guidance HSG 65 Successful health and safety management ISBN 0 7176 1276.

4. HSE's Public Services Sector is part of the Field Operations Directorate (FOD) and has responsibility for national policy relating to health and social care and development of Memoranda of Understanding between various regulatory bodies, whose interests and functions overlap with HSE's remit on these issues.

Employment status of doctors

5. The status of doctors under HSWA may be any of the following:

- Doctors may be employers as defined in Section 53 HSWA, and therefore have duties towards their employees (Section 2 HSWA) and to others (Section 3 HSWA). In partnerships, for example GP practices, all partners will usually be dutyholders.
- Doctors may be self employed persons with duties under Section 3 HSWA.
- Doctors may be employees and have duties under Section 7 HSWA towards themselves or others.

HSC/E Policy on Patient Safety - and application of HSWA Section 3

6. The very wide scope of the Act means that it inevitably overlaps with other legislation that is the responsibility of other authorities. There will be many situations where work activities are covered both by the general provisions of HSWA and also by more specific legislation enforced by other authorities (overlapping legislation), for example the Medical Devices Regulations and the Medicines Act, enforced by the Medicines and Healthcare Products Regulatory Agency. As a general principle, it is HSE policy not to duplicate work which is the responsibility of other authorities.

7. HSWA Section 3 requires NHS Trusts to conduct their undertaking in such a way as to ensure, as far as is reasonably practicable, that their patients are not exposed to risks to their health and safety. However, in agreement with the Health Departments, it has been a long standing policy for HSE not to become involved in issues of patient care where the principal matters of concern relate to the level of care provided, or to clinical judgements, eg diagnosis and choice of treatment. The former is the responsibility of the Departments of Health, and the latter is dealt with by the relevant professional regulatory bodies such as the General Medical Council, General Dental Council, and the Nursing and Midwifery Council.

8. However, HSE may investigate incidents or accidents to patients that appear to result from inadequate plant or systems of work. For example:

a. On 14 February 2000, Nottingham City Hospital NHS Trust was fined £15,000 for a breach of Section 3 HSWA following an incident in which three patients contracted malaria. The case followed an HSE investigation into inadequate procedures for preventing the transmission of blood borne infections.

b. In 1998 the Norfolk and Norwich Healthcare NHS Trust was fined £38,000 for a breach of Section 3 HSWA following the death of a patient from an air embolism during cardiac angiography. HSE's investigation identified the lack of a safe system of work for operating the automated syringe used to inject the contrast medium.

9. In such cases, HSE works closely with other enforcement agencies such as the Medicines and Healthcare Products Regulatory Agency (MHRA).

10. Section 3 HSWA sets out the general duties of employers and self-employed to persons other than their employees. In particular:

- under section 3(1) 'It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.' and
- under section 3(2) 'It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.'

11. For Section 3 to apply, the following criteria must be met:

- there must be a dutyholder, ie an employer or a self-employed person. For the purposes of HSWA, an organisation or person is an employer if they have at least one employee;
- there must be a risk to the health or safety of a person who is not the employee of the dutyholder or to the self-employed dutyholder themselves. 'Risk' includes the possibility of danger, not just actual danger; and that risk must arise from the conduct of the dutyholder's undertaking. An 'undertaking' means 'enterprise' or 'business'.

GMC'S Remit

Purpose and constitution

1. The GMC is the regulator of the medical profession. It is a charity (registration number 1089278), and its purpose is to protect, promote and maintain the health and safety of the community by ensuring proper standards in the practice of medicine. It is also a statutory body and its core functions are defined by statute (the Medical Act 1983, as amended).
2. The governing body, the Council, has 35 members:
 - 19 doctors elected by the doctors on the register
 - 14 members of the public appointed by the Privy Council
 - two academics appointed by educational bodies - the universities and medical royal colleges.
3. The Privy Council nominees are not medically qualified. Their task is to speak for the public, act as a focus for debate between doctors and patients and play a vital part in all areas of our work.

Functions

4. The GMC is required by law to:
 - keep up to date registers of qualified doctors
 - foster good medical practice
 - promote high standards of medical education
 - deal firmly and fairly with doctors whose fitness to practise is in doubt.

Registration

5. Maintaining the medical register is at the heart of the GMC's work. The register shows who is properly qualified to practise medicine and lists about 200,000 doctors. It is held on computer and updated every day as doctors move, gain new qualifications, change jobs, retire or are registered by the GMC for the first time. No doctor can practise medicine in the UK if he or she is not registered; and to be registered they must have a recognised medical qualification.
6. The GMC publishes a specialist register, showing the doctors who have completed specialist training. Doctors must be included in this to be eligible for most substantive or honorary consultant posts in the NHS.

Good Medical Practice

7. Registration carries both privileges and responsibilities. The GMC summarise these responsibilities in key principles, which it calls the duties of a doctor - the contract between doctor and patient which is at the heart of medicine.

8. The GMC builds on these principles in guidance covering both general aspects of good medical practice and more specific areas, such as confidentiality and consent. This guidance describes the principles of good medical practice and standards of competence, care and conduct expected of doctors in all aspects of their professional work. Serious or persistent failures to meet these standards may put a doctor's registration at risk.

Medical education

9. Registration requires high standards of medical education; and the GMC has general responsibilities to promote high standards in and to co-ordinate all stages of medical education. It has varying specific responsibilities for education and training throughout a doctor's career. For example, it ensures that doctors who become registered have the knowledge, skills and attitudes that they will need to maintain a good standard of practice and care.

Fitness to practise

10. The GMC has strong and effective legal powers to maintain the standards the public have a right to expect of doctors. It is not a general complaints body and can act only where there is evidence that a doctor may not be fit to practise. It can take action:

- when a doctor has been convicted of a criminal offence
- when there is an allegation of serious professional misconduct
- when a doctor's professional performance may be seriously deficient
- when a doctor has health problems which affect their practice.

11. Action can range from issuing a warning to - in the most serious cases - erasing the doctor from the register, with a range of options in between.

Contacts

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Operational

[HSE has several regional and local offices throughout England, Scotland and Wales.](#) Please ask to speak to the Principal Inspector with responsibility for Health Services.