

# **A Memorandum of Understanding The Health and Safety Executive The General Medical Council December 2012**



## **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. 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 enforcing the Health and Safety at Work Act etc (HSWA) 1974 throughout Great Britain. Its job is to 'prevent people being killed, injured or made ill by work'

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. HSE provides guidance on its approach to investigating health and social care incidents on its **website**. This also refers to agreements with other regulators, including the Care Quality Commission (CQC) and the Medicines and Healthcare Products Regulatory Agency (MHRA).

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, patients or service users) are not exposed to risks to their health or safety. See <http://www.hse.gov.uk/enforce/hswact/index.htm>

#### **• 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 their health and safety duties.

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 Care Quality Commission to make sure these 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 includes:

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

### **Referral of matters of concern**

11. HSE and the GMC will raise appropriate matters with or pass information to the other in appropriate circumstances. This includes:

- The GMC informing HSE of investigations that meet its incident selection criteria for the individual practitioner, patients / service users or employer.
- HSE informing the GMC of any issues emerging from an investigation or inspection which raises significant concerns or questions about the fitness to practise of an individual registered medical practitioner.

### **GMC informing HSE of concerns**

12. There are cases where, as a result of the exercise of its statutory functions, the GMC has concerns about health and safety standards. Examples might include poor maintenance of medical equipment, inadequate systems of work, poor manual handling of loads, or risks to employees, patients / service users, from legionella, or scalding.

13. The GMC will disclose such information to HSE when the GMC considers it to be in the public interest. The GMC may write formally to the HSE contact (see Annex C) 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 take any necessary action in line with its priorities, policies and procedures.

### **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; such concerns will be conveyed to GMC. For matters deemed to be urgent, a telephone notification will be followed by written confirmation.

16. However, in such cases, the first course of action for HSE staff will be to discuss their concerns with a member of the Health and Social Care Services team for guidance, and/or if considered necessary, the management of the healthcare provider.

17. In addition, HSE will inform the GMC contact of enforcement action taken against individual doctors as appropriate.

### **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 necessary by both formal and informal contact. This will include, for example:

- Raising awareness of this agreement with their respective staff
- Sharing information about concerns, approaches and initiatives, which are relevant to protecting the health and safety of the community
- Inviting contributions to policy and operational guidance, reports and consultations, as appropriate, in order to ensure factual accuracy, to benefit from each other's knowledge and expertise, and to promote consistency of advice
- Assisting each 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 or compromise a trail of evidence which is the subject of 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 at the earliest opportunity. While those conducting investigations will work closely together, the investigations will remain separate.

### **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 2000.

### **Reconciliation of disagreement**

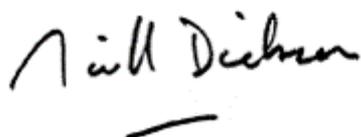
21. Any disagreements will normally be resolved amicably at working level. If this is not possible, the relevant contact points will seek to settle the issue and ensure a mutually satisfactory resolution. Senior management of both parties will be involved as necessary.

### **Review of Memorandum of Understanding**

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

Signed:  
Niall Dickson  
Chief Executive GMC

Date: 11<sup>th</sup> December 2012

Handwritten signature of Niall Dickson in black ink, with a horizontal line underneath.

Signed:  
Geoffrey Podger  
Chief Executive HSE

Date: 11<sup>th</sup> December 2012

Handwritten signature of Geoffrey Podger in black ink.

### **HSE'S Remit**

1. HSE is the national, independent regulator for work related health, safety and illness and enforces workplaces, including 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, including patients and service users.

2. HSE inspectors are warrant holders, which affords them the right to enter any workplace without giving notice, though notice may be given where the inspector thinks it appropriate. On a normal inspection visit an inspector would expect to look at the workplace, the work activities, how health and safety is being managed and to assess compliance with the health and safety law. 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. Decisions on whether to prosecute are informed by the principles in HSE's Enforcement Policy Statement. Health and safety law gives the courts considerable scope for punishing offenders and deterring others.

### **Employment status of doctors**

3. 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.

### **HSE Policy on Patient Safety - and application of HSWA Section 3**

4. The very wide scope of HSWA 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 by more specific legislation enforced by other authorities (overlapping legislation), for example the Medical Devices Regulations and the Medicines Act, enforced by the MHRA. As a general principle, it is HSE policy not to duplicate work which is the responsibility of other authorities.

5. HSWA Section 3 requires health and social care providers to conduct their undertaking in such a way as to ensure, as far as is reasonably practicable, that their patients / service users are not exposed to risks to their health and safety. HSE does not, in general, investigate matters of clinical judgement or matters related to quality of care. Matters of clinical judgement are for the relevant professional regulatory bodies such as the General Medical Council, General Dental Council, and the Nursing and Midwifery Council. For more information about HSE's priorities in relation to health and social care, please see <http://www.hse.gov.uk/healthservices/arrangements.htm>

## **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 24 members:

- 12 lay members
- 12 registrant (medical) members

3. The members of the General Council are appointed by the Privy Council. At least one member of the General Council lives or works wholly or mainly in each of England, Scotland, Wales and Northern Ireland.

### **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 a doctor is the subject of a determination by another regulatory body.
- when there is an allegation of misconduct
- when a doctor's professional performance is deficient
- when a doctor has health problems which they are not managing adequately to ensure patient safety

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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For any queries related to this Memorandum, liaison with other organisations on health and social care issues, initial contact for referrals of concern, please email [publicservicesector@hse.gsi.gov.uk](mailto:publicservicesector@hse.gsi.gov.uk)