

Council Meeting 1 & 2 August 2006

PUBLIC BUSINESS

Information Sharing Protocol between Healthcare Regulators and the Association of Chief Police Officers

Purpose

To note work being undertaken by the CHRE and other Health Care Bodies to improve disclosure of relevant fitness to practise information held by the police, and to recommend that the Society becomes a party to the Information Sharing Protocol included at Appendix 1.

Strategic objective domain

An organisation that consistently performs as a regulator, professional representative leader and publisher

Recommendation

On the recommendation of the Law and Ethics Committee, the Council is asked to agree that the Society become a party to the Information Sharing Protocol with the Police included at Appendix 1.

1. Background

Where the Society is notified that a member has received a criminal conviction, or may have committed a criminal offence, it is often necessary to obtain further details and information from the police before the matter can be considered by the Infringements Committee.

On occasion, the Society has encountered difficulties in obtaining relevant information and documents held by the Police in a timely manner. Indeed, Sandy Forrest, Chief Executive of CHRE and himself a former policeman, has had occasion to intervene on behalf of the Society. The Society is not alone in encountering such difficulties, and Sandy Forrest has had a number of meetings with the Association of Chief Police Officers (ACPO) to try and reach consensus on issues of disclosure.

In addition to the work being undertaken by the CHRE, the General Medical Council and the Nursing & Midwifery Council have been undertaking work to agree an Information Sharing Protocol with ACPO. This work is intended to implement recommendations arising out of the Ayling Inquiry. At a meeting of the CHRE Fitness to Practise Forum on 16 June 2006, it was agreed that other healthcare bodies should be invited to join the Protocol, in order to create a "level playing field" amongst the health care bodies.

A copy of the draft Protocol is included at Appendix 1 to this paper. It should be noted that the Society already has in place similar arrangements and memoranda of understanding with bodies such as the MHRA. The draft Protocol takes account of the requirement on all parties to comply fully with the Data Protection Act.

2. Risk Implications

Not being a party to the protocol may result in delays to the Society being notified of any police investigations, and receiving subsequent information about a case. This in turn may cause delay within the Society's fitness to practise proceedings.

3. Resources Implications

Any notification requirements under the protocol can be met from existing resources.

4. Recommendation

On the recommendation of the Law & Ethics Committee, the Council is asked to agree that the Society become a party to the Information Sharing Protocol with the Police included at Appendix 1.

David Gomez
Secretary to the Statutory Committee

Lynsey Balmer
Head of Professional Ethics

Appendix 1**Information Sharing Protocol between the General Medical Council, the Nursing and Midwifery Council, the Association of Chief Police Officers and the Crown Prosecution Service****Introduction**

1. This Information Sharing Protocol (ISP) deals with the interface between the Police, the Crown Prosecution Service (CPS), the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC).
2. As part of their public service functions each of the signatory organisations have clear responsibilities to secure the highest possible level of public safety. In the past the signatory organisations have co-operated in a number of ways, such as the duty of police authorities to report to the GMC (and other regulatory bodies in respect of other professionals) when a doctor has been convicted of a criminal offence. This ISP confirms existing practice, builds on the existing arrangements and is the first written agreement between the organisations. The effect of this ISP is to put in place an increased level of communication and to further improve public and patient safety.
3. The ISP responds to the recommendation in the Ayling Inquiry that there should be:
‘...set out in a memorandum of Understanding (such as that exists between the GMC and the NCA) between the NHS, professional regulatory bodies such as the GMC and the CPS a clear agreement as to the responsibilities of each organisation in the investigation of potential criminal activity by health care professionals.’
4. This ISP has been produced as a result of the Statement of Intent (SOI) issued by Finlay Scott, Chief Executive, GMC, John Broughton, Assistant Chief Constable, Association of Chief Police Officers, Philip Geering, Director of Policy, CPS.
5. The Statement of Intent identifies the key reason for the production of this ISP:
‘Each of the signatory organisations recognise the importance of working together to share information, promote regular dialogue and best practice in the interests of public safety. This will allow for greater consistency of decision-making and information exchange between those involved in the investigation and prosecution of doctors.’

Whilst the Statement of Intent related to co-operation between the GMC, CPS and the police service this Information Sharing Protocol also includes the NMC.

Purpose of the Information Sharing Protocol

6. The purpose of this ISP is to enhance public and patient safety. This document sets out the legal powers and principles for sharing of information between the signatory bodies. The detailed processes for sharing information are contained in Annex A.

Roles and responsibilities of each organisation

The General Medical Council

7. The GMC is a statutory body responsible under *The Medical Act 1983* for regulating the medical profession in the United Kingdom. Its function is to 'protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine'. Amongst its other functions, the GMC deals with complaints against medical practitioners registered in the UK that raise serious doubts about their fitness to practise; in such cases the GMC has statutory powers to impose conditions upon, suspend, or remove doctors' registration. It does not handle all complaints about doctors, many of which are less serious cases which will be resolved at local level.

The Nursing and Midwifery Council

8. The NMC is the statutory regulator for over 670,000 nurses, midwives and specialist community public health nurses working in the UK. Its function is to protect the public by setting fitness to practise standards for its registrants and by ensuring that these standards are maintained. The NMC considers seriously all complaints made about its registrants that call into question their fitness to practise. The NMC, like the GMC, has statutory powers to enable it to remove, suspend or impose conditions on the practice of one of its registrants.

The Police Service

9. The primary functions of the police service are:

- a. Protecting life and property
- b. Preserving order
- c. Preventing the commission of offences: and
- d. Bringing offenders to justice.
- e. Any duty or responsibility of the police arising from common or statute law.

Public (and patient) safety is the primary concern of the police even if action to secure that safety may be detrimental to an investigation or subsequent prosecution.

The Crown Prosecution Service

10. The CPS is the principal prosecuting authority in England and Wales. The CPS is responsible for:

- a. Advising the police on cases for possible prosecution;
- b. Reviewing cases submitted by the police;
- c. Advising the police on the charges in most prosecutions;

- d. Preparing cases for court and
- e. The presentation of cases at court.

Sharing of information

Sharing information between the police and the regulatory bodies

11. This ISP sets out the arrangements necessary for public safety reasons for the police to share information with the signatory regulatory bodies **at the earliest possible stage** where practitioners are the subject of criminal investigations, which may include those leading to police caution rather than prosecution. Some minor offences are the exception to this, and they are laid out in paragraphs 5 and 6, Annex A.

12. This exchange will enable the regulatory body to exercise their particular statutory powers. The powers of each of these bodies are subject to statutory regulation and provide the opportunity for a practitioner to defend any action proposed. Therefore the principles of fairness and justice are fully protected.

13. The GMC/NMC needs to be kept informed of the development of an investigation as further information may be of significance in exercising their powers. The officer in charge of an investigation (except in covert surveillance and sensitive investigations, where it may be that a more senior officer is required) will be responsible for the exchange of information to the regulatory body. This officer will ensure that sufficient information is exchanged to allow the GMC and NMC to fulfil their statutory functions.

14. The GMC and NMC need sufficiently detailed information to enable them to decide whether it is necessary to make a decision to suspend a practitioner from the register, or to impose conditions on their registration. More detail on the level of information required can be found in Annex A.

15. At the conclusion of a criminal investigation, the GMC/NMC will be informed of the outcome, i.e. charge, caution or no further action (NFA). Full consideration will be given at this point to disclosure of all relevant material.

Sharing Information between the GMC, NMC and the Police

16. The ISP also provides reciprocal arrangements for the police to be informed where a health practitioner is the subject of investigations by one of the signatory regulatory bodies. If information obtained identifies that a health professional may have committed a serious criminal offence (as defined in Annex A) then the GMC or NMC will notify the relevant police force. To avoid unnecessary referrals to the police these referrals would only be authorised by a designated senior officer. The post holder who can make a referral will be set out in Annex A.

17. The GMC/NMC will inform the relevant police service of practitioners who it believes may have committed a serious criminal offence (guidance on this is included in Annex A).

Before a referral is made a senior officer within the regulatory body will discuss the appropriateness of a referral with a senior police officer (identified in the operational guidance) within the relevant force, except in self-evidently serious cases.

18. Whilst it is not anticipated that there will be a frequent need for exchange of information between the GMC/NMC and the CPS, both the GMC and NMC are willing to consider doing so on an ad hoc basis, in compliance with data protection requirements.

19. All exchanges of information must be undertaken by secure means, and the operational guidance in Annex A provides guidance on this. When press enquiries are made to the regulatory bodies as a result of the transfer of information from the police, then the regulatory body will consult with the press office of the police force concerned so that an agreement can be made as to what information can be shared and by whom.

Operational Principles

20. The Statement of Intent committed the signatory bodies to produce a detailed set of operational procedures and that:

‘These will provide operational staff – including GMC caseworkers, police officers and lawyers - with a detailed understanding of each organisation’s role and responsibilities and also lay down clear working practices.’

21. The principles for information sharing are supported by operational guidelines in Annex A, which will ensure that the ISP is rooted in the day-to-day working practice of staff in each of the organisations.

Lawful exchange

22. The exchange of information needs to be conducted in such a way that it does not impede the statutory responsibilities and duties of the signatory organisations, or unknowingly put in jeopardy any criminal proceedings by one of the signatory bodies. All signatory organisations carry out their proceedings in accordance with the Data Protection Act, and all exchanges of information covered by this ISP will be consistent with the DPA.

23. It is crucially important that the accuracy of information is maintained, as new information could have a bearing on the action being taken by any of the parties involved in the exchange of information. Therefore following an initial exchange each of the organisations must put in place a process for regular updating and identify who will be responsible for maintaining the accuracy of information received and exchanged.

Public Safety

24. The police have a duty to uphold public safety. They investigate criminal offences and in doing so will seek to balance matters of public safety against the need to prosecute.

25. Where a practitioner is the subject of a covert or sensitive police investigation then the sharing of that information will be undertaken by a police officer of at least the rank of Inspector, and this information will be referred to a senior officer (defined in the operational guidelines) within the GMC or NMC.

Adjudication

26. Any disagreements will normally be resolved amicably at working level. If this is not possible then a designated individual or posts in each organisation will be agreed in the detailed operational guidance and these individuals or post holders will seek to settle the issue and ensure a satisfactory resolution. The post within the police service will be at least at the level of Chief Inspector.

Review and Governance arrangements

27. This ISP will be reviewed by the signatory organisations. The first review will be six months after the launch and then annually. A report to each organisation will be produced after each review outlining its operational effectiveness and making recommendation for changes and improvements in its operation.

28. To facilitate the review an officer from within each organisation will be identified to constitute a review panel. The GMC, NMC and CPS will each nominate an officer and ACPO will be asked to nominate someone from the police service.

29. The GMC will take responsibility for maintenance of the ISP, including co-ordinating reviews as necessary.

ANNEX A: Operational Guidance for Implementation of ISP between GMC, NMC, ACPO and CPS

Introduction

30. This operational guidance has been produced in support of the Information Sharing Protocol (ISP) between the signatory organisations. The ISP sets out the legal powers and principles for sharing of information between the signatory bodies. This set of operational guidelines supports the ISP by identifying the detailed processes necessary for the sharing of information.

31. The guidelines not only put in place detailed procedures to ensure the sharing of information is undertaken efficiently and effectively, they also provide processes to resolve the inevitable questions and possible conflicts that will arise as the various parties seek to implement the ISP.

32. It is important to reiterate that the purpose of the ISP is to enhance public and patient safety and that the effective operation of these guidelines is essential in achieving this objective.

33. The guidelines are divided into sections setting out the processes that each organisation is required to follow to comply with the ISP. The guidelines are also supported by a number of appendices.

Exchange Process

34. The GMC and the NMC do not need to be informed about certain offences. They all relate to traffic/motoring offences, but there are some traffic/motoring offences which the GMC and NMC do need to be informed about. The list below is offences which the GMC and NMC do **not** need to be informed of:

- i. Careless and inconsiderate driving
- ii. Exceeding the speed limit
- iii. Seatbelts (persons 14 years or over)
- iv. Seatbelts (persons 14 years or under)
- v. The use of handheld mobile phones in motor vehicles
- vi. Brakes, steering equipment and tyres
- vii. Mirrors
- viii. Noise and motor vehicles
- ix. Other construction and use breaches
- x. Unnecessary reversing
- xi. Dangerous use or condition of motor vehicle
- xii. Failing to comply with a traffic sign

- xiii. Failing to comply with directions of a police officer
- xiv. Failing to stop when required
- xv. Pedestrian failing to comply with directions of a police officer
- xvi. Fail to provide name and address
- xvii. Driving other than in accordance with a license (also driving while disqualified by age)
- xviii. Supervisor of a learner driver fails to give details
- xix. Using or keeping and unlicensed vehicle on a road
- xx. Fail to display vehicle excise licence
- xxi. Fail to display/obscure registration mark
- xxii. Fail to pay higher rate of duty
- xxiii. Fail to have NI License
- xxiv. Fail to give information
- xxv. Fail to produce registration document
- xxvi. Improper use of trade licence
- xxvii. Keeping an unlicensed vehicle

35. The police do not need to be informed of minor matters which can be dealt with competently by the GMC/NMC's internal procedures, in discussion with the practitioner's employer, and where criminal prosecution will not be in the public interest. Offences of fraud within the NHS will generally be referred to NHS Counter Fraud and Security Management Service in the first instance, although such cases could be referred to the police at a later date if necessary,

Information Required by the Regulators

36. At the start of an investigation the GMC/NMC would need to give consideration to making an interim order to suspend or place restrictions on the practitioner's registration. The powers to do this are set out by Section 41a of the Medical Act 1983 (as amended) and Article 31 of the Nursing and Midwifery Order 2001, and stipulate that these powers can be exercised in order to protect the public.

Information required at beginning of case

37. At the beginning of a case the GMC/NMC would need to know:

- f. The nature of the allegation
- g. A description, at least in outline, of the evidence
- h. The range of possible charges being considered

- i. Whether the registrant has been arrested, is on bail or in custody
- j. The sensitivity of the material to be disclosed.

Information as case progresses

38. As the case progresses the officer in charge of the investigation is then responsible for providing regular updates to the named officer working on the case within the GMC/NMC (this individual will be identified to the officer at the beginning of the investigation). This will need to include updates when significant developments occur, such as a change in the nature or seriousness of the allegations, a decision to charge or not, court dates, a change to the bail or custody position, and indication of plea or admissions.

Information required at end of case

39. If a case ends in a conviction or caution the GMC/NMC need to be informed, and may well require access to information such as witness statements or transcripts of interviews to inform their own fitness to practise proceedings.

40. Even in cases where the CPS decide on a course of NFA the GMC/NMC need to be informed, and may still require access to evidence obtained in the course of the investigation. This will be the case when there may be no clear criminal case, but there is evidence of professional misconduct such as an inappropriate relationship with a patient.

The Referral Process

41. It is the responsibility of the officer in charge of the investigation to inform the relevant regulatory body when they begin an investigation on a medical practitioner, nurse or midwife.

42. Within the GMC they should inform the manager of the GMC London investigation team. Within the NMC they should inform the Departmental Head of Investigations within Fitness to Practise.

43. In serious or urgent cases the initial contact should be made by telephone and then followed up in writing. In less serious cases contact by letter in the first instance would be sufficient.

44. The GMC or NMC will inform the relevant police service of practitioners who it believes may have committed a serious criminal offence. Before a referral is made, a senior officer within the regulatory body will discuss the appropriateness of a referral with a senior officer of at least Inspector rank.

45. The senior officer within the NMC would be the Departmental Head of Investigations within Fitness to Practise, and within the GMC would be the manager of the GMC London investigation team. Offences which the GMC/NMC have, in the past referred, or considered referring, to the police are:

- i. Indecent assault and rape
- ii. Incidents of violence

- iii. Theft, particularly cases involving a serious abuse of trust
- iv. Theft of drugs
- v. Other non-minor offences of dishonesty, including fraud and false certification.
- vi. False declarations of professional qualifications to obtain employment
- vii. Racist behaviour towards GMC/ NMC staff
- viii. Pornographic material apparently involving children

Confidentiality

46. The information exchanged must only be used for the purposes for which it was exchanged and all parties will observe the common law duty of confidentiality. The information must only be viewed by staff/members of the organisation in the exercise of their roles within the organisation related to the purpose for which the information was exchanged. There must be robust procedures in place to prevent leakage of information to parts of the organisation that are not involved in dealing with investigations.

Retention of Information

47. All information exchanged must only be kept for as long as it is necessary for the purpose for which it was exchanged.

48. The GMC or NMC may wish to retain information even when an investigation by the police has not led to a prosecution, as a pattern of complaints about a practitioner may be an indication that the practitioner's ability to practise safely is compromised.

Maintaining the accuracy of information

49. Within the NMC the Departmental Head of Investigations within Fitness to Practise will be responsible for this. Within the GMC the manager of the GMC London investigation team will be responsible for this.

50. The officer in charge of the investigation (except in covert surveillance and sensitive investigations where it may be a more senior officer) will be responsible for the exchange of information to the regulatory body. The officer will ensure that sufficient information is exchanged to allow the GMC and NMC to fulfil their statutory functions. The responsibilities of this officer will include informing the regulatory body at the start of an investigation, providing regular updates throughout the investigation, particularly as new information comes to light, and informing the regulatory body of the outcome of the investigation.

51. In cases of covert surveillance the following senior staff are authorised to discuss cases with police:

- a. GMC – The Director of Fitness to Practise, the Head of Investigations, and the senior Principal Legal Advisor in the GMC London investigation team.
- b. NMC – the Director of Fitness to Practise, the Head of Legal Services and the Departmental Head of Investigations.

Legal basis for exchange

General Medical Council

52. Sections 35A (1) of the Medical Act 1983 as amended, gives power to the GMC to request information from other bodies. Section 35B (2) of the Act gives the GMC the power to disclose information. These sections state:

35A

‘For the purpose of assisting the General Medical Council or any of their committees in carrying out functions in respect of a practitioner’s fitness to practise, a person authorised by the Council may require

- a. A practitioner (except the practitioner in respect of whom the information or document is sought); or
- b. Any other person

who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.’

35B

‘The general Council may disclose to any person any information relating to a practitioner’s fitness to practise which they consider it to be in the public interest to disclose.’

Nursing and Midwifery Council

53. Paragraph 25.1 of the Nursing and Midwifery Order 2001 has similar powers to those of the GMC to require information to be supplied to it in the exercise of its functions.

54. In respect of disclosure, Article 22 (10) of the Nursing and Midwifery Order 2001 states:

‘The Council may disclose to any person any information relating to a person’s fitness to practise which it considers to be in the public interest to disclose.’

The Police

55. Section 4.8 of the statutory *Code of Practice on the Management of Police Information* sets out the circumstances and conditions by which the police will share information outside the UK police service. This ISP has therefore been written to comply with guidance under the

code which was produced on behalf of ACPO by the National Centre for Policing Excellence. The guidance will apply from 31 March 2006.

56. Section 6.3 paragraph 1 of the guidance states that before information can be shared it is important that the exchange enables the police to fulfil one of its policing purposes (set out in paragraph 9 of the ISP). The Code also requires officers to share information:

- a. 'So as to protect the public, especially children and vulnerable persons; and;
- b. So as to manage the risks posed by potentially dangerous persons.'

Doctors, nurses and midwives are in a position of trust, and their actions or inactions can have potentially life threatening or serious impact on patients and clients, and therefore the need for information to be shared that might bring into question their ability to discharge their responsibilities safely is essential.

57. This ISP is produced on the basis that an exchange of information between the police and the signatory regulatory bodies is lawful as it is covered by the policing purpose 'to protect life' and the requirement to protect children and vulnerable people and to manage the risks posed by potentially dangerous persons.

Data Protection

58. All exchanges of information must comply with the eight data protection principles contained in the Data Protection Act 1998. These principles state:

'Anyone processing personal information must comply with eight enforceable principles of good information handling practice. These say that data must be:

- i. Fairly and lawfully processed
- ii. Processed for limited purposes
- iii. Adequate, relevant and not excessive
- iv. Accurate and up to date
- v. Not kept longer than necessary
- vi. Processed in accordance with the individual's rights
- vii. Secure
- viii. Not transferred to countries outside European Economic area unless country has adequate protection for the individual.'

59. The Freedom of Information Act 2005 applies to all signatories to this ISP, but the provisions of the Act mean that information on any individual cases is exempt from disclosure.

60. When press enquiries are made to the regulatory body as a result of the transfer of information from the police, then the regulatory body will consult with the press office of the police force concerned so that an agreement can be made as to what information can be shared and with whom.

Adjudication

61. Any disagreements will normally be resolved amicably at working level in the organisation. If this is not possible then the Head of Investigation/Director of Fitness to Practise at the GMC, or the Departmental Head of Investigations within Fitness to Practise/ Head of Legal Services at the NMC will liaise with a senior police officer of at least the level of Chief Inspector and seek to settle the issue and ensure a satisfactory resolution.

Audit and Review

The ISP will be reviewed after 6 months, and at least annually thereafter. The review will involve input from staff of all organisations concerned at front line and senior level, and will determine if the ISP is proving a useful tool in enabling all organisations concerned to fulfil their functions as outlined in paragraphs 7-10 of the ISP.