

FINAL DRAFT

DRAFT FOR CONSULTATION
20 June – 19 August 2005

Resolving Clinical Conflicts Between Forensic Mental Health Services in Scotland

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1. Introduction

This report outlines the proposal of the Conflict Resolution Working Group commissioned by the Forensic Mental Health Services Managed Care Network Advisory Board. As part of a series of reports it is intended to inform Scottish Executive policy and guidance in terms of the planning and provision of Forensic Mental Health Services in Scotland.

There are a number of national drivers to the need for guidance on conflict resolution:

- a) The Mental Health (Care and Treatment) (Scotland) Act 2003 (Scottish Executive, 2003) will introduce in May 2006 a new power allowing a patient to apply to a Tribunal against detention in excessive security.
- b) The review of the governance and accountability of The State Hospitals Board for Scotland included in the consultation paper “The Right Place, The Right Time” (Scottish Executive, 2002) highlighted the need to improve the patient journey. This formed one of the key aims for the Forensic Network Advisory Board.
- c) A recent review of delayed discharges at The State Hospital highlighted several “national systems issues” which appeared to contribute to delays in patient transfer from the State Hospital, including differences of clinical opinion.
- d) NHS HDL (2004) 15: Guidance on establishing the Responsible Commissioner (Scottish Executive, 2004) places a duty on Directors of Public Health to proactively engage with The State Hospital to identify those patients for whom they were Responsible Commissioner

As the Forensic Services in Scotland expand with the completion of the proposed Medium Secure Units it is likely that similar issues could arise in terms of patients transfer from medium to low secure services and on to services in the community.

Whilst there are likely to be several explanations for delay in patients transfer this report is limited to clinical differences of opinion. It is understood that the Forensic Network Board will keep under review the need for further work to help resolve financial disputes.

2. Membership of the group

Chair: Dr John Crichton, Consultant Forensic Psychiatrist, The Orchard Clinic, Edinburgh.
Interim Lead Clinician, Forensic Mental Health Services Managed Care Network

Dr Margaret Bremner, Consultant Psychiatrist, Blair Unit, Aberdeen
Dr Mark Davidson, Consultant Psychiatrist, Douglas Inch Centre, Glasgow
Ms Suzanne Dennison, Social Worker, The State Hospital
Dr Paul Myatt, Consultant Psychiatrist, Hartwoodhill Hospital, Shotts
Dr Debbie Nelson, Consultant Psychiatrist, FCMHT, Grangemouth

Facilitator:

Miss Vivienne Gration, Forensic Network Project Manager

3. Acknowledgements

The group would like to acknowledge the invaluable work of Dr Isobel Campbell whose letter of 23 November following discussions of the Royal College of Psychiatrists (Scottish Division) Forensic Executive Committee formed the basis for the proposals in this report. Dr Tom White is also thanked as the first chair of the group and for providing members with substantial background papers and initial briefing.

Mr Peter Clarke attended the group's final meeting and his input was most welcome, particularly in terms of providing information about similar processes within Social Work Services.

The group would also like to acknowledge the assistance provided by Mr Ranald MacDonald of the Central Legal Office who confirmed that the Caveats at paragraph 6 are unexceptionable.

4. Terms of Reference

The remit of the group was:

- To examine the alternative mediation/conflict resolutions to ensure that any clinical difference of opinion regarding a patient's transfer between levels of security can be resolved.
- To devise an algorithm to assist practitioners in undertaking an Out of Area Transfer to ensure that clinical, managerial and financial agreements can be sequenced appropriately.
- To focus on mechanisms for the transfer for patients out of their Health Board area, where victim issues are important.

5. Working Arrangements

The group was originally chaired by Dr Tom White and had an initial meeting in October 2004. The group agreed at this first meeting to limit the remit to clinical disputes only, to exclude general adult psychiatry and to include SPS referrals.

Dr John Crichton took over as chair of the working group in December 2004 and invited members to consider the suggestion from the Forensic Executive, Scottish Division, Royal College of Psychiatrists as outlined by Dr Isobel Campbell. The Group had another meeting on 1 March 2005 and reviewed the suggestion.

The report was endorsed by members via email on 20 May 2005 and presented to the Forensic Network Advisory Board on 10 June 2005.

6. Proposed Arbitration/Mediation Model

6.1 Caveats

This conflict resolution model takes into account that Responsible Medical Officers (RMO) cannot be obliged to accept a patient whom, in their professional judgement:

- a) does not meet the criteria for compulsory detention under current mental health legislation
- b) would be inappropriately managed at their level of security - either that the level of security is excessive for the risks posed or insufficient to ensure safe care and treatment
- c) would be inappropriate in terms of the treatment available in their facility.

In the case of an upheld tribunal as a result of the Mental Health (Care and Treatment) (Scotland) Act 2003 the responsibility to find a suitable location for a patient's treatment lies with the Health Board and not any particular RMO.

6.2 Conflict Resolution Group

A new Conflict Resolution Group should be established to manage the process. The group will be chaired by the Lead Clinician of the Forensic Network and will consist of experts such as Consultant Forensic Psychiatrist and other appropriate independent multi-disciplinary practitioners. The Conflict Resolution Group should decide its own constitution; however a list of proposed membership and working of the group is at appendix one.

A list of experts should be established for each of the Forensic Network Regions, and could include recently retired consultants and practitioners. The First Minister's Psychiatric Advisor and the Chair of the Forensic Executive will also be in attendance. It is expected that the Conflict Resolution Group will meet regularly, but that the Lead Clinician will take on the operational management of the process whilst keeping the rest of the group informed of ongoing work.

6.3 Scope

The Group estimates that there would be no more than 10 – 15 cases per year that require to be referred to the Conflict Resolution Group, although it is noted that there could be an increase when appeals against detention in excessive security become effective in May 2006.

6.4 Stage One – Initial Resolution

Where there is a dispute about the placement of a patient there should be first attempted an initial resolution which would involve a meeting between the two areas (referring Board and receiving Board); the referring Board should initiate the meeting. The meeting should involve the clinicians concerned and relevant managers. The meeting will either result in an agreement as to the appropriate clinical course of action (in which case there is no need for Conflict Resolution Group involvement) or an Agreed Joint Statement (AJS) of points of agreement and disagreement about the particular case. This process is similar to the determination of disputes "statement of fact" outlined in Social Work Circular "Ordinary Residence." (Scottish Office, 1996)

Only if initial resolution fails to produce an agreed way forward, there should then be a mechanism for independent review of the case. An important document to be considered in the review of the case will be the AJS.

6.5 Stage Two – Referral to Conflict Resolution Group

In the event of a failed initial resolution the case should be referred to the Conflict Resolution Group via the Forensic Network Lead Clinician. If there is a conflict of interest involving the Lead Clinician and any workings of the Group another member will take his/her role. Any member of the Group with a conflict of interest will not participate in any decisions relating to such a case.

The review of the case will be carried out by two or three experts, commissioned by the Conflict Resolution Group, independent to the case at hand. This expert group will carry out their review as they see fit and produce a report to be considered by the Conflict Resolution Group. It would be expected that the experts preparing the report would review case records, examine the patient and discuss clinical issues with relevant staff. At least one of those experts will be a Consultant Forensic Psychiatrist. The other one or two experts preparing a report on the case will be appropriate independent multi-disciplinary practitioners.

Within the experts report there should be included a risk management plan.

It is expected that, except in exceptional circumstances, experts will provide a joint report. Commissioners of the report should set out timescales at the time and will pay particular regard to Mental Health Tribunal timescales. Commissioners of the report should also consider geographical practicality when selecting experts as well as ensuring there is no conflict of interests. The timescale should not be inhibitive to the patients care. Given the range of expertise now available in Scotland the use of experts from England or elsewhere would be exceptional and only in the circumstance of no available Scottish expert.

The experts will provide an independent report to the Conflict Resolution Group via the Forensic Network Lead Clinician.

The cost of preparing the report could be borne in a number of different ways;

- a) the referring agency to meet the fees of the expert report writing (if the experts write reports in their own time they retain the fee but if in NHS time the fee reverts to the Board, or a combination of the two)
- b) no fee is charged if the experts are part of the Forensic Network and cost of writing reports should form part of their Health Board contributions

It must be agreed prior to referral to the Conflict Resolution Group who will pay for reports and consideration should be given to the costs involved for multi-disciplinary practitioners as well as consultant psychiatrists.

6.6 Stage Three - Judgement

The Conflict Resolution Group will consider the independent reports, in most cases this could be done without the need for a meeting. The group will then make recommendations to the clinicians and Health Boards involved.

This conflict resolution model is illustrated in a flow diagram at appendix two.

7 Conclusions

It is therefore proposed that this mechanism will provide an authoritative independent judgement about the appropriate clinical course of patient with risk management plans. It is hoped that the report would be able to identify deficiencies in service or necessary developments in service provision; that information can also be fed into the planning remit of the Forensic Network. It is anticipated that the views of the Conflict Resolution Group will be influential and would be of assistance to clinicians who might otherwise feel isolated in making difficult decisions or who may be exposed to adverse criticism after an incident involving a patient that they have agreed to accept.

It is anticipated that recommendations and the independent reports would form part of the clinical record and so may also be considered by Mental Health Tribunals and the Mental Welfare Commission. This mechanism may also be adapted and utilised by Scottish Ministers who may wish to seek second opinions regarding clinical decisions relating to restricted patients.

8 Bibliography

Lothian Health Board (2004) *Referral Guidelines for Patients within State Hospital*

Scottish Executive Health Department (2001) *'The Right Place – The Right Time': improving the patient journey for those who need secure mental health care*

Scottish Executive Health Department (2002) NHS HDL (2002) 85: *Early discharge protocol for patients in secure hospital settings*

Scottish Executive Health Department (2003) *The Mental Health (Care and Treatment) (Scotland) Act 2003*

Scottish Executive Health Department (2004) NHS HDL (2004) 15: *Guidance on Establishing the Responsible Commissioner*

Scottish Office (1996) Community Care Circular 1/96 *"Ordinary Residence"*

The State Hospital (2004) *Referrals Policy and Procedure*

Proposed Conflict Resolution Group

Membership:

Network Lead Clinician (Chair)
Regional Clinical Leads
Senior Social Worker
Psychologist
Nurse
Occupational Therapist
First Minister's Psychiatric Advisor (In attendance)
Chair of Forensic Executive Group (In attendance)
Forensic Network Project Manager (Secretariat)

Constitution:

Meet quarterly, but in close contact between meetings – identify executive officers that meet more regularly and managed operationally by Clinical Lead and Project Manager. The group should decide its own constitution at its first meeting.

Role in Conflict Resolution Process:

Allocate Experts to cases
Instruct experts
Decide who convenes experts
Receive report from experts
Question experts or agree report

Appendix Two

CONFLICT RESOLUTION MODEL

This conflict resolution model takes into account that Responsible Medical Officers (RMO) cannot be obliged to accept a patient whom, in their professional judgement:

- a) does not meet the criteria for compulsory detention under current mental health legislation
- b) would be inappropriately managed at their level of security - either that the level of security is excessive for the risks posed or insufficient to ensure safe care and treatment
- c) would be inappropriate in terms of the treatment available in their facility.

