

Response ID ANON-PHFK-8869-8

Submitted to **Review of homicides by people with recent contact with NHSScotland mental health and learning disability services**
Submitted on **2017-11-15 12:07:30**

Questions on the Proposal for a Revised Process

1 The proposal defines recent contact as those who have had contact with mental health or learning disability services within the last 12 months. Do you think that this definition of recent contact is satisfactory for the purposes of this process?

Not Answered

Do you foresee any difficulties with using this definition? :

Yes and no. Twelve months is an arbitrary, but established period for review. Twelve months is also the established period of review for suicide and would allow comparisons. Although this is an established period for a review, there are issues regarding the definition of contact and a need to be clear about what type of contact. For example, does a one-off contact count? There is also an issue when the 'contact' with services is obviously unrelated to the homicide, such as with an integrated service within a Health and Social Care Partnership for a non-health issue.

How could such difficulties be addressed?:

There could be an option not to proceed to a full review where the contact was of minimal clinical relevance, such as one-offs, peripheral or non-health related contact. The Mental Welfare Commission (MWC) could make this judgement and conclude whether a serious adverse event review (SAER) is appropriate. This could be used in situations such as where the patient was not suffering from a mental disorder at the time of the offence and the homicide was unrelated to the patient's previous contact with health services.

2 Do you think that the proposed process adequately involves the family of the victim?

No

If not, how could it be improved?:

It is important to ensure the proposed process adequately involves the family of the victim. However, we expect there to be issues with Health Boards knowing who the victim's family is and how to contact them. This may be straightforward if a member of the patient's family or the victim's family have contacted the Health Board but more difficult if the homicide was in a different part of Scotland and the service was unaware of the homicide until notified. The families might also live in geographically distant settings from the board doing the investigation, in different legal jurisdictions and have very different expectations on how much involvement they will have in the process.

It would be helpful if the MWC could provide contact information for the family of the victim or if there was an agreed process of how to access it, e.g., an agreement that this would be available from Police Scotland (or that the Police liaison would clarify with the family if they wished to be involved in the review).

The other issue for non-family homicides is patient confidentiality. Normally clinicians would share the findings of the SAER with the family but are only able to do so with the consent of the patient. Clinicians can involve the family of the victim but then be limited in what feedback they can provide due to data protection issues. It may be helpful to have legal guidance for clinicians on this matter. Families are often looking for full disclosure of the report and might be concerned if they are not allowed full access to the report.

3 Do you think that the proposal will help to provide families with meaningful information on the case?

Not Answered

What sort of information should be provided to families?:

Yes and no. It is difficult to respond with a yes or no for this question. If the patient consents to their clinical information being shared with the family and clinicians can provide the full SAER and feedback then this proposal will help to provide families with meaningful information on the case. However, if the patient refuses to consent or is incapable of consenting then the full SAER cannot be disclosed. Arguably, just providing a copy of a summary or action plan is not adequate for families. We would suggest the European Court of Human Rights judgment in the Case of Paul and Audrey Edwards v. the United Kingdom [2002] 46477/99 ECHR 303 provides relevant precedents for information sharing.

In answer to question 3, families should not be entitled to information that would be considered private healthcare information directly related to the perpetrator. However, there is support for them having information about services and changes following the review.

4 Does the proposal go far enough in ensuring that the rights of the family of the victim to information are balanced with the right to privacy of the perpetrator?

No

What safeguards will there need to be to ensure that confidential health information is protected?:

For most SAERs the patient or family have a right to the health information but this would not be the case for homicides. The families main concern is unlikely to be the best interests of the patient during this process. Personal healthcare information should not be disclosed without the consent of the perpetrator. Guidance (including legal guidance) is required on what should be shared with families if consent is not available.

5 Do you think that the proposal adequately provides for independent investigation to be carried out where necessary?

Yes

If not, how could this be improved?:

Yes. The option of the MWC investigating if they think the SAER is inadequate remains.

6 The scope of the proposal is confined to looking at the care provided to the accused person by relevant NHS boards. Do you think this is the right focus?

Not Answered

If not, which other services should be covered by these reviews?:

As we are now operating in a Health and Social Care Landscape it is not appropriate to simply focus on NHS Boards. Integrated joint boards need to be included, as well as others involved in service provision, such as the third sector. There might be a role for the MWC to specify particular areas that they would wish investigated in some cases.

Other Matters for Consideration

7 Do you have any views on the proposal's potential impact on those persons with protected characteristics?

Yes

Please include in your response what you think could be done to minimise any negative impacts.:

The Mental Welfare Commission has a duty of care for everyone involved in what can be a stressful process. We should be satisfied all parties can be signposted to adequate legal advice and pastoral support and ensure relevant information is communicated in a timely and sensitive fashion.

8 In addition to any issues you may have highlighted in response to question 4, do you think there are any impacts on personal privacy as a result of information being shared during the proposed homicide review process?

Yes

Again, please include your views on how these impacts could be minimised.:

There is a case for non-consensual disclosure if it is in the public interest, as per the Stone inquiry. However, no personal health care information about treatment can be disclosed without the consent of the perpetrator. Normally clinicians would share the findings of the SAER with the family but can only do this with the consent of the patient. Guidance (including legal guidance) is required on what information can be shared where consent is not provided by the patient.

9 Do you have any concerns about any financial or administrative burden as a result of this process? For example, costs that may be incurred by NHS boards or justice organisations.

Yes

Please explain your answer. :

The risk of a wider net is a lack of focus and additional complexity. Significant case reviews can take a long time to complete (sometimes years) and can require additional resources. SAERs can also be delayed but usually have timescales for completion of around three months.

A key aspect of the proposed process must be proportionality in investigation. Judgment should be made at an early stage regarding the likelihood of whether there are to be local, regional or national lessons to be learned. Resources should be proportionate to the projected impact of the review.

10 Do you have any comments on the impact of the process on children and young people?

Yes

Please include in your response what you think could be done to minimise any negative impacts.:

The welfare of children must always be of paramount concern. It is even more important when they may be secondary victims of a violent act and the perpetrator is a close family member. There is developing guidance from the mentally disordered offenders Victim Notification Scheme regarding how child victims should be engaged. We recommend no contact with children is made directly and there is close liaison with parent and/or guardian.

11 Do you have any comments on how the proposed process will impact on the human rights of the family of the victim and of the perpetrator, particularly with regard to Articles 8 of the ECHR?

Please explain your answer.:

There needs to be a balancing of the rights and freedoms of both the perpetrator, their family and the victim's family. The families, victim and perpetrator may need specialist emotional support from Victim Support Scotland. They may also express a need to understand what has happened and the lessons learned. Each family requires individual engagement to sensitively meet needs. All reports made public should be anonymised, but changing demographic details of the perpetrator to disguise a case should be avoided as this may skew public understanding of an incident and lead to false conclusions contrary to the purpose of the enquiry.

About You

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Royal College of Psychiatrists in Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

Please enter comments here.: