

**Protecting  
your NHS**



***Concordat between the  
Health and Safety Executive  
and the  
NHS Counter Fraud and Security  
Management Service  
March 2005***



**Security Management Service**

# **Contents**

	<b>Page</b>
<b>Introduction</b>	<b>1</b>
<b>Functions of the HSE and NHS SMS</b>	<b>1</b>
<b>Areas of Mutual Interest</b>	<b>2</b>
<b>Arrangements for Collaborative Working</b>	<b>3-5</b>
➤ Exchange of Information	
➤ SMS NHS Informing HSE of concerns	
➤ HSE Informing NHS SMS of concerns	
<b>Communication and Liaison Arrangements</b>	<b>4</b>
<b>Investigations and Inquiries to Both Organisations</b>	<b>4-5</b>
<b>Data Protection Provisions</b>	<b>5</b>
<b>Reconciliation of Disagreement</b>	<b>5</b>
<b>Review of Memorandum of Understanding</b>	<b>6</b>
<b>Annex A – HSE’s Remit</b>	<b>7</b>
<b>Annex B – NHS SMS Background and Remit</b>	<b>9</b>
<b>Annex C – Contact details</b>	<b>11</b>

## **1. Introduction**

- 1.1. The purpose of this document is to establish a framework between the Health and Safety Executive (HSE) and the NHS Counter Fraud and Security Management Service (NHS CFSMS, herby known as NHS SMS) to enable liaison and co-operation between the two organisations on areas of mutual interest.
- 1.2. It outlines areas of interaction between HSE and the NHS SMS, clarifies the respective roles and responsibilities and puts into place mechanisms to promote effective working relationships.
- 1.3. This agreement does not affect existing statutory functions or amend any other policies or agreements relating to the activities of the HSE and NHS SMS. Nor does it replace the requirement for NHS health bodies to report certain incidents to the HSE and/or the NHS SMS, as set out in existing legislation.<sup>1</sup>

## **2. Functions of the HSE and the NHS SMS**

### **2.1. The Health and Safety Executive**

- 2.1.1. The Health and Safety Executive is responsible for the enforcement of the Health and Safety at Work Act ('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*'.
- 2.1.2. 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.
- 2.1.3. 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.
- 2.1.4. The Health and Safety Commission's '*A strategy for workplace health and safety in Great Britain to 2010 and beyond*', sets out how HSE and other stakeholders will work together to improve health and safety performance. As part of the Strategy, HSE has a programme of work underway to improve health and safety performance across the healthcare sector. This work includes specific activities to address the serious issue of violence and aggression across the NHS. Further details on HSE's Inspection and Policy Development Programme can be found at <http://www.hse.gov.uk/healthservices/index.htm>.

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<sup>1</sup> Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), and Statutory Instrument 3039/2002.

## 2.2. **The NHS Counter Fraud and Security Management Service**

- 2.2.1. The NHS Security Management Service (NHS SMS) is part of the NHS CFSMS and has overall responsibility for all policy and operational matters related to the management of security within the NHS. This remit is defined in law through *Statutory Instrument 3039/2002*. The NHS SMS is committed to the delivery of an environment for all those who use or work in the NHS that is properly secure so that the highest possible standards of clinical care can be made available to patients. Further information about the work of the NHS SMS can be found at <http://www.cfsms.nhs.uk>. The work of the NHS SMS, at this time, is confined to the NHS within England.
- 2.2.2. The remit of the NHS SMS is broad, but can be divided into two main areas: protecting people and protecting property. In December 2003 the NHS published its strategy document *A Professional Approach to Managing Security in the NHS*. This document details how the NHS SMS is to achieve its overall objective, the business model it has adopted for this work and the frameworks and structures it has put into place within the NHS to enable the desired improvements that are needed around the management of security. The strategy document identified four main areas of work that require priority action. These are:
- Tackling violence against staff
  - Protection of property and assets
  - Security of drugs, prescription forms and hazardous materials
  - Security of maternity and paediatric units
- 2.2.3. Two national frameworks have now been established to ensure that NHS SMS work will be delivered locally to a professional and ethical standard with appropriate professional, specialist skills and expertise available to all NHS health bodies. These frameworks were created through the issue of Directions to all health bodies in England under the powers conferred on the Secretary of State for Health under the National Health Service Act 1977. As such they are secondary legislation and require all health bodies to comply with them.
- 2.2.4. The first framework deals with measures to tackle violence against staff and professionals who work in the NHS or deliver services to it, and the Directions to support this were issued on 20 November 2003. The second framework deals with general security management issues, particularly the requirement for all health bodies to nominate a suitable person for the new role of the Local Security Management Specialist (LSMS) and undergo professional accredited training provided by the NHS SMS, so that security management issues can be addressed locally to a new high and consistent standard. These Directions were issued on 25 March 2004. A summary of the requirements of these frameworks can be found at Annex B.

## 3. **Areas of Mutual Interest – HSE and NHS SMS**

- 3.1. There are clear areas of common interest between the two organisations within their statutory functions and day to day activity. Poor management of security within the NHS or the lack of measures to tackle specific problems, such as violence against staff, can have an adverse impact on the health and safety of NHS employees or visitors to the NHS.
- 3.1. It is important that the HSE and NHS SMS works closely at a national level to ensure that arrangements put in place to tackle these problems are workable, enforceable and in accordance with the strategic aims of both organisations. It is also of vital importance that the new role of the LSMS within each health body becomes firmly embedded within the risk management process and culture of those bodies, to ensure that all potential risks are considered from a security perspective.

## **4. Collaborative Working Arrangements**

4.1. Collaborative working between the organisations falls into three strands:

- Exchange of information;
- Referral of matters of concern; and
- Communications and liaison arrangements

### **4.2. Exchange of Information**

4.2.1. HSE and the NHS SMS will consult with, raise matters with, or pass information to the other in appropriate circumstances and as soon as is reasonably practicable. Examples of such exchanges might include:

- Consulting on any new or existing policy or procedure that may have an impact on each other's statutory responsibility or strategic aims;
- Sharing data collected centrally where appropriate, permissible and lawful on incidents of violence, to reduce unnecessary burdens on the NHS;
- NHS SMS informing HSE of investigations that have HSWA implications for staff or the health body;
- HSE informing the NHS SMS of any issues emerging from an investigation or inspection which raise significant concerns or questions about the management of violence, or other security-related issues within a health body, that have an impact on the health and safety of staff and visitors; or
- Collaborating on research into health and safety matters that may have a bearing on security-related issues in the NHS, such as managing and tackling workplace violence.

### **4.3. NHS SMS Informing HSE of Concerns**

4.3.1. The NHS SMS may receive information, as the result of its statutory functions that raise concerns about health and safety at work issues. Where it is considered that the health body is not adequately addressing these issues, the NHS SMS will disclose such information to HSE as soon as is reasonably practicable, to allow consideration of appropriate action.

4.3.2. Such instances may include:

- Where the health body has not undertaken relevant assessments of violence and aggression in areas of known risk;
- Where there is a lack of adequate arrangements for the planning, organisation, control or monitoring of management of violence and aggression, or
- Where the health body has not developed or implemented proposals to train staff in the management of violence and aggression.

4.3.3. The NHS SMS may also consider it appropriate to inform HSE, as soon as is reasonably practicable, of findings as a result of an investigation into a violence and aggression incident, to allow HSE to consider any contraventions in respect of HSWA and to take appropriate action.

4.3.4. The NHS SMS may write formally to the HSE Local Contact Point to disclose such information.

#### **4.4. *The HSE Informing NHS SMS of Concerns***

- 4.4.1. An inspection or investigation conducted by HSE may raise concerns about a health body's competence to manage workplace violence and aggression. Where such situations result in HSE issuing formal enforcement action (for example, an Improvement Notice, on matters identified in paragraph 4.3.2 above), the Area Security Manager Specialist (ASMS) will be provided with such information, subject to relevant restrictions.
- 4.4.2. Where HSE receives information, for example, a complaint and it is considered the LSMS or ASMS are in a more appropriate position to address the issues raised, HSE will forward the information to the appropriate contact for action.
- 4.4.3. HSE will also inform the ASMS of all successful legal proceedings against Trusts on workplace violence issues, including instances when Informations and Summon's have been laid.

### **5. *Communication and Liaison Arrangements***

- 5.1. In keeping with the character of their working relations, both parties will discuss matters as openly and as regularly as possible by both formal and informal contact. Formal contact between the HSE Focal Contact Point and NHS SMS Focal Contact Points will take place at least quarterly.
- 5.2. This will include for example:
  - 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; and
  - Collaborating to review best practice and learning outcomes, with a view to informing the policy decision making process and other future work activities

### **6. *Investigations and Inquiries Relevant to both Organisations' Functions***

- 6.1. It is possible that an investigation by the HSE could coincide with an investigation by a LSMS into a workplace violence incident. Should this arise, the HSE Local Contact Point (see Annex C) and the LSMS will jointly determine the following action:
  - Where an incident relates to a death, the forthcoming Memorandum of Understanding between HSE, Department of Health and Association of Chief Police Officers will be followed; and
  - Where an incident results in an investigation or inquiry, both organisations will be guided by the following principles:
    - the investigation of health and safety law takes precedence;
    - the sharing of HSE and NHS SMS information, evidence and witness statements, subject to statutory and other restrictions; and
    - the two organisations will co-operate with each other to share information from national and local recording systems where appropriate.
- 6.2. HSE may share information obtained as a result of the exercise of any power conferred by section 14(4)(a), or 20 HSWA as provided for in section 28(7) HSWA, and in accordance with

section 17 of the Anti-terrorism, Crime and Security Act 2001. HSE will not make disclosure under section 17 of the 2001 Act unless it is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

## **7. *Data Protection Provisions***

- 7.1. It is agreed that Statutory and other constraints on the exchange of information will be fully respected. This will include the requirements of Health and Safety at Work Act 1974 (Section 27 and 28), the Data Protection Act 1998, the Human Rights Act 1998 and the Freedom of Information Act 2000.

## **8. *Reconciliation of Disagreement***

- 8.1. Any disagreements will normally be resolved amicably at Local Contact Level. If this is not possible, the Focal Contact Points will seek to resolve the issue and ensure a mutually satisfactory outcome.
- 8.2. If the matter cannot be resolved, the issue will be referred to the HSE Head of Health Services Unit and the Director for Security Management (NHS SMS).
- 8.3. Ultimately the issue could be referred to the Director General of the HSE and the Chief Executive of the NHS CFSMS for arbitration.

## **9. *Review of Memorandum of Understanding***

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

**Concordat**  
**between the**  
**Health and Safety Executive**  
**and the**  
**NHS Counter Fraud and Security Management Service**

**Signatories**

**Signed:**

**Date: 17.03.05**

***Timothy Walker***

***Director General HSE***

**Signed:**

**Date: 17.03.05**

***Jim Gee***

***Chief Executive CFSMS***

### **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 dutyholders 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 a management inspection 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 has responsibility for national policy on managing violence and aggression<sup>2</sup> issues within the healthcare setting and development of Memoranda of Understanding between various regulatory bodies, whose interests and functions overlap with HSE's remit on these issues.

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

5. 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). As a general principle, it is HSE policy not to duplicate work which is the responsibility of other authorities.
6. 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, e.g. diagnosis and choice of treatment.
7. 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

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<sup>2</sup> As defined 'Any incident in which a person working the healthcare sector is verbally abused, threatened or assaulted by a patient or member of the public in circumstances relating to his or her employment' – Violence and Aggression to staff in health services: Guidance on assessment and Management (Health Services Advisory Committee 1997)

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.'

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

- there must be a dutyholder, i.e. 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'.

## **NHS SMS – Background and Remit**

1. The NHS SMS remit is defined in law through Statutory Instrument No.3039/2002, which states that, the NHS SMS *'shall have policy and operational responsibility...for the management of security in the NHS'*. The NHS SMS determines the policy, legal framework, operational guidance and minimum standards necessary to the provision of a secure environment within the NHS in England<sup>3</sup>.
2. The NHS SMS provides central and regional support to the LSMS in all health bodies, to ensure that required standards are met. The NHS SMS is charged with tackling security management issues throughout the entire environment in which NHS services are delivered and this includes the remit for all work on all NHS security risks and other issues.
3. The NHS SMS strategy, *'A Professional Approach to Managing Security in the NHS'*, puts into context the approach to the management of security in the NHS and outlines the legal requirements that now apply to all health bodies in England on both tackling violence against staff and security management.
4. The NHS SMS work is about delivering real, lasting improvements and building on good practice where it exists. The NHS is also responsible for developing and promoting a consistent approach to security management work. The principles at the heart of this are professionalism, objectivity, fairness, expertise, propriety and vision.
5. The structure that is in place - to implement the strategy - links and supports all who work in security management. At a national level there is the Central Unit that is charged with policy work and operational guidance. On a regional level there are Area Security Management Specialists charged with promoting high standards and providing support to the LSMS. At a local level, the LSMS undertakes work as defined within Secretary of State Directions on security management measures and tackling violence against NHS staff, the NHS Security Management Manual and other such guidance issued by the NHS SMS.

## **National Framework – Tackling Violence against Staff in the NHS**

6. Directions issued by the Secretary of State for Health under the NHS Act 1977 introduced a new framework for tackling violence against staff in the NHS. It established a number of key reactive measures and has enabled proactive programmes to take place to deal with the problem of violence against staff. The reactive measures are as follows:
  - Clear and concise definitions of physical assault and non-physical assault for use in the NHS, to enable appropriate action to be taken from reported incidents. This does not replace or supersede the HSE definition of violence as contained in RIDDOR, nor the statutory responsibility for NHS employers to report incidents of violence as required by the HSE.
  - The requirement for each health body to nominate an Executive Director to perform the role of Security Management Director (SMD) and, in particular, to lead on tackling violence.

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<sup>3</sup> As defined - Physical assault *'The intentional application of force to the person of another, without lawful justification, resulting in physical injury or personal discomfort'*; Non-Physical Assault *'The use of inappropriate words or behaviour causing distress and/or constituting harassment'*; Directions to NHS Bodies (November 2003)

- The introduction of a national reporting system for all cases of physical assault;
  - The use of experienced and expert investigative staff to work with the police and the CPS to ensure that all cases of physical assault are professionally investigated and, where appropriate to enable sanctions to be sought against those who assault NHS staff, pending the training of an LSMS in each NHS health body in England;
  - The creation of a Legal Protection Unit (LPU) to allow health bodies to have access to consistent and professional legal advice on all aspects of violence and to work with health bodies, the police and CPS to increase the numbers of sanctions taken against offenders.
7. As a key preventative measure, to tackle violence against NHS staff and professionals, the NHS SMS has developed a National Syllabus for conflict resolution training in the NHS, which is designed to meet the needs of all staff who have direct contact with patients and the public. The National Syllabus is supported by mandatory guidance issued to NHS bodies on 17 February 2004. The training focuses on non-physical techniques and includes customer service, recognition of warning signs, de-escalation models and cultural awareness.
  8. All health bodies in England are required to ensure that such training provided to staff meets the minimum requirements outlined in the National Syllabus, and should ensure the delivery of this training to all existing staff, by 31 March 2008. Health bodies are required to nominate a suitable person to oversee and have responsibility for the provision of conflict resolution training to its staff, and to maintain a record of staff who have received the training.
  9. The NHS SMS provides familiarisation courses for all trainers who deliver the National Syllabus on behalf of health bodies to ensure consistency of delivery across the NHS.
  10. The NHS is working with a range of stakeholders, such as the National Institute for Mental Health (England), to look at further national syllabi in all aspects of conflict management training in the NHS, including disengagement and physical intervention techniques. A specific course on non-physical intervention techniques is being developed for mental health and learning disability environments, and is titled "Promoting safer and therapeutic services". It is envisaged that this will be piloted in early 2005, with fully implementation to follow the successful conclusion of the pilots.

### ***National Framework – Security Management***

11. Directions issued by the Secretary of State for Health on 25 March 2004 to all health bodies introduced a new national framework for security management generally. As well as reinforcing the role of the Security Management Director in each health body it further required that each health body so directed should:
  - Nominate a non-Executive Director to promote security management at Board level and enable the Board to fulfil its strategic responsibility in this area of work; and
  - Nominate a suitable person to undergo professional and accredited training provided by the NHS CFSMS to enable them to perform the function of Local Security Management Specialist (LSMS).
12. These Directions also:
  - Defines the relationship between the NHS SMS, health bodies and the LSMS; and
  - Defines the responsibility of both the health body in relation to security management and the role of the LSMS, as well as the role of the LSMS itself.

<p><b>HSE Focal Point</b></p> <p><b>Ian Strudley</b>  Health and Safety Executive  Head of Health Services Unit  14 Cardiff Road  Luton  Bedfordshire  LU1 1PP</p> <p>Tel: 01582 444824</p> <p>E-mail: <i>Healthservices@hse.gsi.gov.uk</i></p>	<p><b>HSE Local Contact Points</b></p> <p>HSE has a number of <i>regional and local offices</i> throughout England. Please check the website for the nearest local office and ask to speak to the Principal Inspector with responsibility for Health Services.</p>
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<p><b>NHS SMS Focal Contact Point</b></p> <p><b>Alex Nagle</b>  Counter Fraud Security Management Service  Director of Security  Weston House  246 High Holborn  London  WC1V 7EX</p> <p><b>Tel: 020 7895 4500</b>  <b>Fax: 020 7895 4600</b></p>	<p><b>NHS SMS Local Contact Points</b></p> <p>Area Security Manager Specialists  Local Security Manager Specialists</p> <p>Details of the nominated Specialists can be obtained from:</p> <p>Counter Fraud Security Management Service – Central Unit  Weston House  246 High Holborn  London  WC1V 7EX</p> <p><b>Tel: 020 7895 4500</b>  <b>Fax: 020 7895 4600</b></p> <p><b>E-mail:</b>  <i>securitymanagement@cfsms.nhs.uk</i></p>
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