



Terms of Reference in relation to external review of information governance and confidentiality practices at the KEMH

Background

In 2019 and then again in 2022 it was discovered, following enquiries from patients about access to their confidential medical records, that members of staff at the King Edward VII Memorial Hospital (KEMH), with no connection to those specific episodes of care, and without any justifiable reason to view those episodes of care had been doing so. In some cases, this related to the records of deceased patients, well after their death. In both cases internal investigations, disciplinary and criminal prosecutions followed. Despite similarities, there were also a number of differences in how the two cases were handled, including differences in the scope of the investigations, how affected patients were notified and the route by which matters were reported to the Police.

Since these matters were raised concerns in relation to information governance and confidentiality have continued to be raised by a group of affected individuals known as *Justice4Patients*. This culminated in January 2025 with the group seeking redress via means of a constitutional claim at the Supreme Court of the Falkland Islands.

Introduction

In order to provide an objective assessment of the handling of previous data breaches and current information governance and confidentiality practices at the KEMH, it has been agreed to commission an independent, external review. It is intended that the review will provide the basis for future improvements and developments in these areas, as well as provide transparency to the public in relation to these matters, through a publicly available report being published. Whilst the focus of the review is on the KEMH and its response, consideration will be given as to how the breaches were handled across the wider administration of the Falkland Islands Government (FIG).

Independent nature

Although being sponsored and paid for by FIG, it is the express objective of this review to be both external and independent of the FIG. No employee of the FIG, current or otherwise should seek to influence the review's findings and written report other than to comment on matters of factual accuracy before its publication. The final report will be published without redactions as far as possible. Any redactions required under FIG's Data Protection Policy will be notified to *Justice4Patients*. As laid out below it is an obligation of the review team to be both impartial and neutral.

Qualifications and experience of review team

It is anticipated that the independent review will be carried out by a team of two experienced individuals with suitable background and experience in the UK. Agreement on the appointment of the reviewers will be reached between the Director of Health and Social Services and *Justice4Patients*. If agreement cannot be reached within three months of the date of agreement of these terms of

reference, FIG reserves the right to request its Health and Medical Services Committee (HMSC) to agree the appointment.

Ideally, the reviewers are required to possess the following attributes:

- At least one reviewer to have substantive experience as a Chief Information Officer (CIO) or Caldicott Guardian (5 years' plus) ideally within the healthcare sector.
- At least one reviewer to have demonstrable experience of conducting investigative reviews (ideally within the healthcare sector)
- Experience of auditing, reviewing compliance and report writing.
- An understanding of best practise in information governance and data protection within the NHS
- Clear understanding of best practice in the NHS in relation to patient access to audit trails of user access to patient records
- Clear understanding of regulatory and professional standards in healthcare.

Main aims

The main aims of this external, independent review are to;

1. Assess the response by KEMH/FIG to the previous data breaches, discovered in 2019 and 2022, including lessons learned from these events.
2. Provide an overview and assessment of the current arrangements at the KEMH in relation to information governance and patient confidentiality.

Additional aims

- To provide a balanced overview to the public of the current arrangements in relation to information governance and confidentiality at the KEMH via the means of a public report.
- To provide the basis for an achievable local action plan to drive further improvements in relation to information governance and confidentiality in KEMH and more broadly across FIG.
- To promote openness and transparency in relation to information governance and confidentiality at the KEMH in order to promote public reassurance in these matters.

Sponsor

The sponsor of this review with oversight of the review is Andrea Clausen the Chief Executive. Detailed matters relating to the review will be dealt with by the Director of Health and Social Services, who is commissioning the review on behalf of the KEMH, and the FIG.

Scope of review

- Critically review the approach to detecting, assessing, managing and reporting data breaches in relation to previous data breaches, and in addition to review;
 1. The circumstances in which previous data breaches occurred and identify contributing or causative factors to these breaches.
 2. The decision-making in relation to the handling of previous data breaches, and requests for audit trails within the KEMH and in the FIG corporate decision-making structure (including decision making about referral to the Police).
 3. The processes followed in respect of each previous data breach, and whether these complied

with policies which were extant at the time or relevant deemed best practice in the NHS, including the duty of candour.

4. Identifying any missed opportunities which would have improved the quality of the response in each instance and aligned the response with recognised best practice
5. Understand improvements made after the 2019 data breach and identify further learning opportunities with respect to previous data breaches, including those already acted upon by the KEMH, and those which would further strengthen information governance for the future.
6. Review the approach taken by the KEMH and FIG in relation to engagement with those affected by the data breaches to identify any lessons learned or missed opportunities, particularly in relation to whether NHS best practice was followed for appropriate apologies, keeping those affected victims updated and offering support.

➤ Critically review the current status of information governance at the KEMH, including;

1. Assessing current practices against NHS information governance compliance review framework (where relevant and applicable to the Falkland Islands)
2. Existing policies, procedures and guidance in respect of information governance and confidentiality and how these align with best practice in the NHS.
3. To assess the current arrangements for duty of candour and openness.
4. The governance structure/ framework for information governance, and where relevant to the KEMH, within FIG more generally. This may include the placement of the Caldicott Guardian role, and possible future policy development.
5. The current arrangements in relation to data storage and access controls, for both paper-based and electronic records.
6. The current arrangements for training in relation to information governance and confidentiality.
7. Changes that have been implemented in respect of previous data breaches and assess what further measures may be recommended to strengthen these.
8. Scrutinise and assess the current programme of information governance audits

➤ To ensure that any significant new concerns in relation to information governance and confidentiality are appropriately raised, including externally to the KEMH, if required.

➤ To provide specific, achievable recommendations for improvement that are implementable within the context of the Falkland Islands and to advise how these can be independently audited.

➤ To meet with relevant members of the senior management team and individual members of staff, both in a planned and opportunistic manner to provide an overview of the understanding and practical approach to information governance and confidentiality in the organisation generally.

➤ To provide the opportunity for interested members of the public including those affected by the data breaches to meet the review team to discuss their concerns, and where appropriate (ensuring anonymity), include a summary of these findings in the report.

➤ Assess what changes in relation to records management, information governance and confidentiality would be recommended to be considered by the organisation.

➤ To provide a publicly available report of the review's findings and recommendations.

Obligations

The KEMH will:

- Provide an initial information pack of all relevant documents and material to the reviewers

before arriving in the Falkland Islands to ensure they have the necessary background information to be able to maximise the time in the Falklands.

- Provide all additional documentation and materials requested and required by the review team in a timely manner.
- Ensure, as far as reasonably practicable, that any relevant data that might have been deleted from the Government records system is recovered by the IT Dept.
- Discuss and agree with the review team how they will engage with *Justice4Patients* before their arrival in the Falkland Islands.
- Take all reasonable steps to seek the participation of relevant current and former KEMH/FIG staff in relation to any questions asked by the reviewers and will ensure key members of current staff are available to meet with the reviewers (by remote access if necessary)
- Act upon any significant concerns which are raised, and in relation to new information about data breaches, follow the process defined in an annex to the Code of Confidentiality.
- Ensure an action plan is drawn up on receipt of the external report, which will then be approved and reported on in the open section of the HMSC in timely manner.

The review team will:

- Remain impartial and neutral throughout.
- Provide a factual and balanced report, using professional judgement to recognise elements of best practice that should be promoted and preserved in addition to making recommendations for improvement.
- Raise any significant concerns that emerge, and ensure they are satisfied that they are being appropriately acted upon.
- Conduct further investigations in relation to any matter within the included terms of reference they deem appropriate.
- Provide the KEMH and *Justice4Patients* group equal opportunity to review the draft report prior to publication to allow an opportunity to comment on any material factual inaccuracies accepting neither party has the right to change the report after it is presented

Resources

The KEMH will provide the necessary budget to cover the cost of the review.

Logistics

The KEMH will arrange and pay for the flights, transfers and accommodation of the reviewers. The KEMH will provide any necessary administrative support.

It is anticipated that the review team should carry out an initial review of the documents followed by a minimum of one week on location in the Falkland Islands in order to follow up with investigations and meet with all relevant individuals.

Timelines

To be agreed with review team once appointed

Outcomes

The following outcomes are expected;

- Written, unredacted (any redactions required under FIG's Data Protection Policy will be notified to *Justice4Patients*), publicly available report. This will be available on the FIG

website, included in the open section of the Health and Medical Services Committee (HMSC), and publicised via a press release.

- Published action plan, developed by KEMH and discussed with external parties within six months from receipt of the report. This will be included in the open section of the HMSC.
- Ongoing work in relation to and monitoring of the action plan in the open section of HMSC meetings.
- Recommendation as to future review/ governance arrangements.