

Social Work Scotland feedback on Draft Guidance on Recorded Matters for Forensic Orders and Directions

October 2026

Introduction

Members of Social Work Scotland welcome the opportunity to comment on the draft guidance. Overall, the guidance is viewed positively and considered to be a helpful attempt to extend recorded matters to forensic orders in a way that promotes greater parity with Compulsory Treatment Orders (CTOs) and strengthens compliance with human rights and reciprocity principles. Members broadly agreed with the intention of the Remedial Order and supported the principle that individuals subject to forensic orders should have access to equivalent safeguards and mechanisms available to those subject to CTOs.

However, while the overarching approach was supported, members identified several areas where additional clarification, practical guidance and revision would strengthen the document and improve implementation.

General Clarity and Understanding

The guidance is generally clear and accessible, particularly where it seeks to mirror existing approaches to recorded matters within the CTO framework. Members welcomed the emphasis on consistency with Volume 2 of the Code of Practice and the attempt to avoid creating an entirely new process.

A recurring theme, however, was the need for more practical examples throughout the guidance. While paragraph 24 provides broad examples of recorded matters, members felt that the guidance would benefit from case studies or worked examples demonstrating how recorded matters may operate in forensic settings, particularly for:

- Compulsion Orders with Restriction Orders (COROs);

- Hospital Directions (HDs);
- Transfer for Treatment Directions (TTDs); and
- situations involving delayed discharge and transitions through different levels of security.

Members highlighted some uncertainty about the practical application of recorded matters for individuals who remain subject to criminal justice restrictions, particularly those on TTDs where opportunities for community-based interventions may be limited. There was a view that clearer examples would help practitioners understand the intended scope and function of recorded matters within these more complex legal frameworks.

Members also considered that additional explanation of the legal context behind the guidance would be beneficial. Specifically, understanding the circumstances leading to the court judgment which prompted the legislative changes may assist practitioners in understanding the intended outcomes and human rights rationale underpinning the reforms.

Clarification of Cross-Legislative and Cross-Border Issues

Members highlighted the need for greater clarity regarding interactions between the Mental Health (Care and Treatment) (Scotland) Act 2003 and other legal frameworks, particularly where forensic patients are also subject to provisions under criminal justice legislation.

Members noted that the guidance would benefit from further discussion of:

- the interaction between recorded matters and prisoner status;
- relationships between the 2003 Act and the Criminal Procedure (Scotland) Act 1995;
- circumstances where criminal justice restrictions may limit the delivery of recorded matters;
- cross-border issues where responsibility for future care, supervision or placement rests with authorities outside Scotland; and
- the relationship between recorded matters and appeals relating to excessive security.

There was a view that these complex scenarios are likely to arise in practice and would benefit from explicit consideration within the guidance.

Members also suggested that reference should be made to the duty to co-operate provisions within the Act, particularly where effective implementation of recorded

matters depends upon collaboration between agencies and services. The absence of any discussion of these duties was viewed as a significant omission.

The Role of the Mental Health Officer

While members welcomed the recognition of the MHO's independent, rights-based perspective described within the guidance (paragraphs 70-73), there was uncertainty about whether the guidance introduces new expectations or duties for MHOs beyond those that currently exist within CTO practice.

Members were particularly concerned about paragraph 71, which states that the MHO should ensure the patient receives clear information about recommendations, reports, references and applications. While members recognised the human rights rationale underpinning this requirement, it was unclear whether this represents a new responsibility for MHOs and how this expectation aligns with current practice. Clarification is therefore sought regarding whether any additional duties are being created and, if so, the legislative basis for those duties.

Questions were also raised regarding paragraph 37 and the proposed MHO role in non-provision cases. Members expressed concern that the guidance may inadvertently place MHOs in a position where they are expected to explain or account for failures in service delivery, including matters wholly outside their authority or control. Examples discussed included delays in accessing specialist NHS services, housing shortages or resource limitations affecting discharge planning.

There was concern that MHOs could become regarded as the coordinating or reporting body for failures occurring elsewhere in the system. Members considered that this would be inconsistent with the MHO's independent role and could create confusion regarding accountability.

The guidance would therefore benefit from:

- clarification about why particular responsibilities sit with the MHO rather than the RMO or other responsible agencies;
- clearer distinctions between social work, care management and clinical responsibilities;
- clarification that MHOs should not be held accountable for non-delivery of services beyond their statutory remit; and
- explicit recognition of the limits of MHO responsibility in relation to healthcare provision and wider organisational constraints.

Members also queried whether the guidance is conflating MHO duties associated with extensions and variations of orders with duties relating specifically to recorded

matters. Clarification is sought regarding the extent to which existing CTO expectations are being replicated, modified or expanded.

Consultation Requirements

Members welcomed the emphasis on consultation contained within paragraph 22 but considered that greater clarity is required regarding when consultation should occur and with whom.

The statement that consultation may not always be necessary but should be meaningful when undertaken was viewed as sensible in principle. However, members felt practitioners would benefit from examples illustrating circumstances where consultation with named persons, guardians, welfare attorneys, carers or others might appropriately occur, and where it may not be necessary.

Without further guidance, practitioners may struggle to determine how extensive consultation should be and what level of justification is required where consultation is not undertaken.

Timeframes and Operational Expectations

Members identified concerns regarding the practical operation of sections dealing with modifications to recorded matters, particularly in relation to paragraphs 41 and 59 concerning notifications to MHOs.

There was concern that the guidance does not specify what constitutes a reasonable notification period when MHOs are required to fulfil statutory responsibilities following an RMO recommendation. Participants reported that existing review and renewal processes often allow limited time for MHOs to discharge statutory duties. There was concern that similar issues may arise in relation to recorded matters unless expectations regarding timescales are clarified.

Members recommend that the guidance provide clearer expectations regarding notification periods and reasonable opportunities for MHOs to undertake consultation, patient interviews and reporting responsibilities.

Workforce, Capacity and Resource Implications

Although members supported the principles underpinning recorded matters, concerns were raised regarding workforce implications.

Members anticipated that the extension of recorded matters to forensic orders may lead to:

- increased Tribunal activity;

- greater scrutiny of delays in discharge and community service provision;
- additional demands on MHOs;
- increased attendance by social work managers and senior organisational representatives at Tribunal hearings; and
- greater pressure on already stretched community resources.

Several members reflected on existing recorded matter processes, particularly in delayed discharge cases, and questioned whether the proposed changes would materially improve access to services where the underlying challenge is resource availability rather than a lack of oversight.

A related concern was that the guidance does not adequately address escalation routes when barriers to implementation arise at organisational or strategic levels. It was noted that some issues involve commissioning decisions, housing provision, or service development responsibilities that are beyond the authority of individual practitioners. There is a need for guidance on escalation pathways and organisational accountability where recorded matters cannot be implemented.

Role of Chief Social Work Officers and Partnerships

Members noted that paragraphs 75-78 set out expectations for hospital managers, Health Boards and service providers. However, there is no equivalent discussion of the responsibilities of local authorities, Health and Social Care Partnerships or Chief Social Work Officers.

Members considered this a notable omission given the significant role these organisations may play in implementing recorded matters, particularly where discharge planning, community support arrangements or social care resources are involved.

Consideration should therefore be given to including a corresponding section outlining expectations for local authorities, partnerships and Chief Social Work Officers in relation to governance, oversight and implementation.

Non-Provision of Recorded Matters (Paragraphs 81-85)

While members welcomed recognition that non-provision may arise in a range of circumstances, they felt that paragraphs 81-85 require further development and clarification. The section was viewed as describing the issue rather than providing a sufficiently clear framework for decision making.

In particular, members felt the guidance should provide greater clarity regarding:

- what constitutes non-provision;

- the distinction between delay, partial implementation and non-provision;
- decision-making responsibilities;
- escalation routes; and
- the actions expected of different professionals and agencies once non-provision has been identified.

Members recognised that a statutory definition may not be possible. However, given the potentially significant consequences arising from findings of non-provision, additional guidance is required to support consistency and defensible decision-making.

Members also suggested that flowcharts or decision-making pathways would be particularly valuable within this section.

Training and Implementation

There was strong consensus that implementation will require national training and guidance.

Members recommended joint training involving MHOs, RMOs and other relevant professionals to ensure a shared understanding of responsibilities and expectations. It was felt that training should specifically address:

- the practical operation of recorded matters;
- professional roles and responsibilities;
- non-provision processes;
- Tribunal procedures; and
- human rights and advocacy considerations.

Members also highlighted the importance of engaging Chief Social Work Officers and senior managers in implementation activity to ensure organisational awareness of the potential implications arising from the reforms.

Relationship with the Code of Practice

Members noted the need to ensure alignment between this guidance and Volumes 2 and 3 of the Code of Practice. There was concern that some descriptions of MHO responsibilities appear broader than those currently reflected in the Code.

Members therefore recommend a review of the relevant Code of Practice provisions to ensure consistency, clarity and avoidance of conflicting expectations regarding the

respective roles of MHOs, RMOs and Scottish Ministers once the guidance is incorporated into future revisions.

Conclusion

Social Work Scotland members support the intention behind the guidance and its aim of extending recorded matters to forensic orders in a manner that strengthens human rights protections and parity of treatment. The overall framework is welcomed and is considered broadly understandable and workable.

However, members believe that the guidance would be significantly strengthened through greater role clarity, particularly in relation to MHOs; the inclusion of practical examples, case studies and flowcharts; clearer guidance on consultation requirements and non-provision; greater recognition of organisational and partnership responsibilities; and explicit consideration of the workforce, training and resource implications associated with implementation.

Clarification is sought regarding whether the guidance introduces any new duties or expectations for MHOs, how these relate to existing statutory responsibilities, and where accountability lies when recorded matters cannot be delivered for reasons beyond the control of individual practitioners. These issues were viewed as requiring resolution before implementation.

Neil Gibson
Adult Social Work Policy and Practice Lead
Social Work Scotland