

# **Memorandum of Understanding (MoU) between Healthcare Inspectorate Wales (HIW) and the Public Services Ombudsman for Wales (PSOW)**

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## Revision history and approval

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| <b>Authors</b>            | HIW: Joseph Wilton<br>PSOW: Geraint Jones   |
| <b>Date agreed</b>        | 12/12/2019                                  |
| <b>Formally agreed by</b> | HIW: Kate Chamberlain<br>PSOW: Nick Bennett |
| <b>Review date</b>        | 12/12/2020                                  |

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## Introduction

1. The aim of this Memorandum is to set out the agreement reached by the Healthcare Inspectorate Wales (HIW) and the Public Services Ombudsman for Wales (PSOW) in relation to co-operation and the exchange of information. This Memorandum does not affect the existing statutory functions of the respective organisations or the exercise of those functions; neither does it amend any other policies or agreements relating to their activities. It does not imply any transfer of responsibility from one to the other, nor does it imply any sharing of statutory responsibilities except where this is permitted by statute.
2. PSOW has statutory powers in relation to HIW in that the Welsh Government is a listed authority under the Public Services Ombudsman (Wales) Act 2019. The PSOW will respond to any complaint about HIW in accordance with the Act and its own policies and procedures. Complaints about, or involving the action or inaction of, HIW are therefore not affected by this Memorandum and such complaints will be investigated in the same way as complaints to the PSOW about other bodies.
3. The aims of this MoU are to:
  - Support the sharing of intelligence and information;
  - Define the circumstances in which the two organisations will collaborate;
  - Contribute to improving health and healthcare;
  - Maintain patient safety and professional standards.
4. It is not intended that this Memorandum should be legally binding. However, HIW and PSOW agree to adhere to its principles, have proper regard for each other's activities and work together to support and promote improvement in healthcare services in Wales.

## Roles and responsibilities

### Healthcare Inspectorate Wales

5. HIW is the independent inspectorate and regulator of healthcare in Wales. HIW carries out its functions on behalf of Welsh Ministers and, although part of the Welsh Government, protocols have been established to safeguard its operational autonomy. HIW's main functions and responsibilities are drawn from the following legislation:
  - Health and Social Care (Community Health and Standards) Act 2003;
  - Care Standards Act 2000 (and associated regulations);
  - Mental Health Act 1983 and 2007, Mental Health (Wales) Measure 2010;
  - Independent Health Care (Wales) Regulations 2011;

- Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008; and
- Ionising Radiation (Medical Exposure) Regulations 2017 and Amendment Regulations 2018.

6. HIW's priorities are to:

- provide assurance: provide an independent view on the quality of care;
- promote improvement: encourage improvement through reporting and sharing of good practice; and
- influence policy and standards: use what we find to influence policy, standards and practice.

7. HIW's core role is to review and inspect NHS and independent healthcare organisations in Wales to provide independent assurance for patients, the public, and others that services are safe and of good quality. Health services are reviewed against a range of published standards, policies, guidance and regulations. As part of this work HIW will seek to identify and support improvements in services and the actions required to achieve this. If necessary, HIW will undertake special reviews and investigations where there appears to be systematic failures in delivering healthcare services to ensure that rapid improvement and learning takes place.

8. HIW is also responsible for the registration and regulation of independent healthcare providers under the Care Standards Act 2000. The regulation of such establishments is governed by the Independent Health Care (Wales) Regulations 2011.

### **Public Services Ombudsman for Wales**

9. PSOW has a statutory role to look into complaints about public services and independent health and social care providers in Wales. He also investigates complaints that members of local government bodies have broken their authority's code of conduct. He is independent of all government bodies. PSOW's role is:

- To consider complaints about public bodies, including Family Health Service Providers and privately arranged or funded social or palliative care services. Privately funded health care may sometimes be considered as part of a wider complaint about NHS care
- To consider complaints that members of local authorities have breached the code of conduct.
- To put things right and put people back in the position they would have been in if they had not suffered an injustice and to work to secure the most appropriate outcome where injustice has occurred.

- To work with listed authorities so that lessons from investigations are learned.
- To promote continued improvement in the standards of public services in Wales by helping bodies to get it right first time – to work to reduce complaints by helping service providers to improve their decision making.
- To undertake investigations on his own initiative when serious concerns are identified, irrespective of whether a complaint has been received.
- To operate a Complaints Standards Authority that promotes high quality complaint handling by public bodies in Wales.

## **Principles of co-operation**

10. The overarching aim of both bodies is to contribute to continuous improvement in NHS healthcare services in Wales, which ensure relevant standards are met. Both bodies have an interest in the performance of Health Boards and Trusts in Wales and both bodies may be involved in considering the care provided by independent service providers.
11. Where the Ombudsman concludes that an aggrieved person has sustained injustice or hardship as a result of a complaint that he has considered, then he normally makes recommendations to address any concerns identified.
12. PSOW and HIW will work together to ensure that the best placed organisation leads any collaborative work. Where serious harm occurs, or a serious concern arises which may lead to significant harm in a healthcare setting, both organisations will liaise with each other at an early stage to ensure that there is one lead organisation. Both organisations will aim to co-ordinate any follow-up so that the right people and organisations are approached to support improvement.
13. Each organisation will ensure that members of staff are aware of the content of this Memorandum and the principles for joint working. It will be the responsibility of the Chief Executive and the Ombudsman to ensure that each organisation understands the other's role and the statutory framework within which it is required to operate.

## **Joint Priorities and Areas of Work**

### **Exchange of Information**

14. The working relationship between HIW and PSOW will be characterised by regular, on-going contact and appropriate open exchange of information between them, within the parameters of their respective legal frameworks.

- Formal meetings will be held between the Chief Executive of HIW and the Ombudsman as required but no less frequently than every 12 months. The Chief Executive or the Ombudsman may delegate this task to their Deputy or a Director respectively.
- Formal meetings to discuss matters of mutual interest will also be held between nominated representatives from each organisation on a six monthly basis. Other staff will also liaise on such matters as and when they arise.
- PSOW will also nominate representatives to formally participate in any relevant information sharing exercises hosted by HIW. This includes the biannual Healthcare Summits

15. Co-operation between the HIW and PSOW will often require the exchange of information. The Joint Working Protocol (JWP) in Annex A sets out the detailed arrangements for how we will work together. A separate Information Sharing Protocol will be considered if there is a need.

16. HIW and PSOW will direct concerns or cases from one co-signatory to the other co-signatory where it is appropriate to do so. For example, PSOW may refer a matter to HIW where it receives information which suggests that there might be a threat to the health and safety of one or more persons and it is considered in the public interest to disclose this information. HIW may refer to PSOW where a complaint is raised in relation to a service provided by a body which falls within its jurisdiction and the requirements set out in the Public Service Ombudsman (Wales) Act 2005 are met.

17. All arrangements for collaboration and exchange of information set out in this MoU and any supplementary agreements will take account of and comply with the EU General Data Protection Regulation, the Data Protection Act 2018, the Health and Social Care Act 2008, any other relevant legislation (including, where applicable, the Public Services Ombudsman (Wales) Act 2019) relating to these matters and any HIW and PSOW codes of practice, frameworks or other policies relating to confidential personal information and information issues, including the PSOW's information governance policy.

18. HIW and PSOW are subject to the Freedom of Information Act 2000. If one organisation receives a request for information that originated from the other, the receiving organisation will discuss the request with the other before responding.

## **Media and Publications**

19. HIW and PSOW will seek to give each other adequate warning of, and sufficient information about, any planned announcements to the public on issues relevant to both organisations, including the sharing of draft proposals and publications.

20. HIW and PSOW commit to work together, where appropriate, to produce joint statements or communications highlighting collaboration or activities relevant to both organisations.
21. HIW and PSOW respect the confidentiality of any documents shared in advance of publication and will not act in any way that would cause the content of those documents to be made public ahead of the planned publication date.

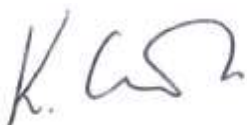
## Governance

22. The effectiveness of the working relationship between HIW and PSOW will be supported by regular contact, either formally or informally. This contact and any joint working is described in Annex A.
23. At a minimum, there will be an annual meeting between Chief Executives to discuss strategic concerns relevant to both organisations. Meetings to discuss intelligence, policy and operational issues of interest to both organisations should take place between relevant colleagues at both organisations when appropriate; at least twice a year. Contact details of relevant operational level contacts in each organisation are shown at Annex B.
24. Any disagreement between HIW and PSOW will normally be resolved at working level. If this is not possible, it must be brought to the attention of the MoU managers identified at Annex B, who may then escalate it as appropriate within the two organisations to reach a mutually satisfactory resolution. Both organisations should aim to resolve disagreements in a reasonable time.

## Duration and review of this MoU

25. Both organisations have identified a person responsible for the management of this MoU in Annex B. They will liaise as required to ensure this MoU is kept up to date, identify any emerging issues and resolve any questions that arise in the working relationship between the two organisations.
26. This MoU is not time-limited and will continue to have effect unless the principles described need to be altered or cease to be relevant. This MoU will be reviewed annually by the MoU managers identified at Annex B, but may also be reviewed more urgently at any time at the request of either organisation.

### Signed



**Dr Kate Chamberlain**  
Chief Executive  
Healthcare Inspectorate Wales

Date: 05/12/2019



**Nick Bennett**  
Public Services Ombudsman for  
Wales

Date: 12/12/2019



## **Annex A – Joint Working Protocol**

1. This joint working protocol outlines ways in which HIW and PSOW will work collaboratively in key operational areas, maximising intelligence and information sharing and assisting both organisations in meeting their shared objectives and to focus respective activities. It supports the creation of work programmes which are complementary and which avoid duplication of work, and to ensure that there are clear processes for sharing information and for the cross referral of risks and concerns.

### **Purpose and scope of the joint working protocol**

2. The protocol defines the circumstances and processes by which HIW and PSOW will co-operate when carrying out their respective functions.
3. This Protocol does not affect the separate statutory functions of either organisation, even where they have decided to work collaboratively. Nor does it place additional legal obligations on them or imply any transfer or sharing of statutory functions. In operating within its terms, each organisation will continue to work within respective statutory frameworks. Either organisation can decline a request to collaborate on specific work, particularly if it is considered not to be in the best interests of health service users or may conflict with respective statutory functions.

### **Specific objectives**

4. The following sections consider specific areas where the PSOW and HIW intend to work together operationally. For each section, key objectives are set out and specific actions are identified to help achieve those objectives.

### **Programmes of work**

5. Our objectives are to:
  - inform our respective work programmes with a collective view of the main risks and key issues facing the NHS in Wales;
  - maximise the impact we have by sharing programmes and strategic plans to use our resources effectively and collaboratively;
  - identify opportunities for joint and/or collaborative work at an early stage and build these into our respective programmes of work;
  - maintain a good awareness and understanding of each other's programme of work through informal liaison.
6. To achieve these objectives, HIW and PSOW will:
  - hold formal bilateral meetings to discuss current work programmes and to identify where joint/collaborative working is appropriate;
  - maintain regular informal liaison between the HIW and PSOW representatives as set

out in Annex B

- routinely share documents providing more information on the scope and focus of their individual activities;
- agree a process for sharing intelligence and reporting findings in areas where there are some overlapping areas of interest e.g.
  - HIW inspection reports
  - PSOW Investigation, Special and Own Initiative Reports
  - Other intelligence, as appropriate
- publicly and proactively communicate our different and complementary roles;
- promote internal awareness of the content of the other organisation's work programme through appropriate mechanisms such as management meetings, intranet and web-links.

### **Sharing findings**

7. Our objectives are to:

- ensure each organisation has a strong awareness and clear understanding of the outputs of each other's work and its influence and impact on respective work programmes;
- share information on a timely basis, and in a manner that respects the need for confidentiality where appropriate;
- use the outputs of our respective work to inform each other's assessment of specific NHS services or individual NHS organisations; and
- draw on each other's findings to ensure we collectively inform Welsh citizens about their health services.

8. To achieve these objectives, HIW and PSOW will:

- where appropriate, establish information sharing arrangements in respect of specific or ongoing programmes of work;
- where there is a shared interest, discuss emerging findings from our ongoing work at bilateral meetings;
- share early outline and final drafts where individual reports take account of or specifically refer to each other's work, or where report findings will be used to inform current or ongoing activity;
- where appropriate, give staff from both organisations access to information or evidence gathered in response to an area of specific interest or routinely obtained from NHS organisations on a regular basis; and
- make specific references to each other's work and published reports within each organisation's regular communications, e.g., newsletters and on our respective websites.

### **Sharing / cross referral of specific concerns and risks**

9. Our objectives are to:

- inform our collective view of the main risks and concerns facing NHS Wales, individual healthcare services or individual NHS organisations by appropriate and timely sharing of specific concerns and risks;
- respond responsibly and proportionately to specific concerns and risks through co-ordinated action, where this is appropriate;
- make the best use of 'soft' intelligence and 'hard' evidence to inform our overall assessment of health services planned and delivered by NHS Wales; and
- enhance our ability to provide strong, effective public assurance and drive improvement through our timely sharing and referral of concerns and risks.

10. To achieve the above objectives, HIW and PSOW will:

- where we have a common interest, share specific risks or areas of concern arising from our review/inspection work at the earliest opportunity;
- refer concerns or risks made known to us, but where we have no remit/authority to act, to the other organisation, so that they may consider what action, if any, they need to take; where appropriate, jointly consider concerns or risks identified, but not subject to detailed review or investigation to establish and agree appropriate follow up action, including escalation to others where this is appropriate; and
- actively contribute to, and participate in, collaborative activities and events designed to share intelligence, information and promote innovation and notable practice within the NHS in Wales

### **Information sharing and confidentiality**

11. HIW and PSOW acknowledge and agree that ultimately any decision to share information will be judged on a case-by-case basis and will be subject to compliance with the EU General Data Protection Regulations, the Data Protection Act 2018 and applicable codes of practice, guidance notes and information sharing and data sharing agreements. Where applicable it will also be subject to compliance with the Public Services Ombudsman (Wales) Act 2019.
12. The HIW and PSOW will share information and intelligence, and pool knowledge and expertise, as appropriate and necessary, and when it is fair and lawful to do so. A separate Information Sharing Protocol will be considered if there is a need.
13. The HIW and PSOW will consult with the other party when considering any disclosure of information received from that party, for example, in response to requests under the Freedom of Information Act 2000.

## Annex B – Contact Details

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### Healthcare Inspectorate Wales

Welsh Government  
Rhydycar Business Park  
Merthyr Tydfil  
CF48 1UZ

Tel: 0300 062 8163

[www.hiw.org.uk](http://www.hiw.org.uk)

### Public Services Ombudsman for Wales

1 Ffordd yr Hen Gae  
Pencoed  
Bridgend  
CF35 5LJ

Telephone: 0300 790 0203

[www.ombudsman.wales](http://www.ombudsman.wales)

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There will be named contacts between HIW and the Ombudsman as follows:

#### Chief Executives

##### Dr Kate Chamberlain

*Chief Executive*

[kate.chamberlain@gov.wales](mailto:kate.chamberlain@gov.wales)

##### Nick Bennett

Public Services Ombudsman for Wales

[nick.bennett@ombudsman.wales](mailto:nick.bennett@ombudsman.wales)

#### MoU managers

##### Joseph Wilton

*Head of Partnerships, Intelligence and Methodology*

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Tel: 0300 025 2663

##### Geraint Jones

*Assistant Investigation Manager*

[Geraint.Jones@ombudsman.wales](mailto:Geraint.Jones@ombudsman.wales)

Tel: 01656 641185

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