Memorandum of Understanding (MoU) between Healthcare Inspectorate Wales (HIW) and the Nursing and Midwifery Council

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Approval:

Date created	November 2024
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Date agreed	March 2025
Formally agreed by	HIW: Alun Jones NMC: Paul Rees
Date for review	March 2028

1. Introduction

1.1 This is a memorandum of understanding (MoU) between Healthcare Inspectorate Wales (HIW) and the Nursing Midwifery Council (NMC).

1.2 The aim of the MoU is to support the working relationship between HIW and the NMC and to facilitate the efficient, appropriate, and secure sharing of information and intelligence about the safety and quality of healthcare services in Wales.

1.3 The working relationship between HIW and the NMC is an arrangement whereby partners provide oversight and assurance for healthcare services.

1.4 The agreement is based on a mutual understanding that communicating effectively, in a timely manner, and the sharing of information can benefit people who are in receipt of health care services.

1.5 This MoU 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.

1.6 This MoU is not legally binding. However, HIW and the NMC 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.

1.7 This agreement begins on 31 March and will be subject to review every three years or sooner if partners require.

2. Roles and responsibilities

2.1 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 inspects NHS services, and regulates independent healthcare providers against a range of standards, policies, guidance and regulations to highlight areas requiring improvement.
Further details of what HIW do can be accessed on it's website www.hiw.org.uk or here.

HIW's current strategy outlines it's current aims and objectives and can be accessed at www.hiw.org.uk or here.

HIW's main functions and responsibilities are drawn from the following legislation:

- Health and Social Care (Community Health and Standards) Act 2003 (legislation.gov.uk)
- Care Standards Act 2000 (legislation.gov.uk)
- Mental Health Act 1983 (legislation.gov.uk)
- Mental Health (Wales) Measure 2010 (legislation.gov.uk)
- The Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008 (legislation.gov.uk)

For NHS healthcare services the following must be considered:

- The Health and Care Quality Standards (2023).
- The NHS Duty of Candour (2023)[1].
- Quality Statements (where available).
- Where ionising radiation is used, the Ionising Radiation (Medical Exposure) Regulations 2017(Legislation.gov.uk).

For independent healthcare services the following must be considered:

- The National Minimum Standards for Independent Health Care Services in Wales (2011)[2].
- Applicable regulations such as the Independent Health Care (Wales) Regulations 2011 (Legislation.gov.uk) and the Private Dentistry (Wales) Regulations 2017 (Legislation.gov.uk).

[1] The Health and Care Quality Standards and the NHS Duty of Candour were introduced under the Health and Social Care (Quality and Engagement) (Wales) Act 2020 (Legislation.gov.uk).
[2] the-national-minimum-standards-for-independent-health-care-services-in-wales-2011-no-16.pdf (gov.wales).

- Where ionising radiation is used, the Ionising Radiation (Medical Exposure) Regulations 2017 (Legislation.gov.uk).

For relevant services where applicable the following should be considered:

- Relevant guidance and standards produced by regulators of healthcare professionals, such as, the General Medical Council (GMC), General Dental Council (GDC), the Nursing and Midwifery Council (NMC) and other recognised organisations.

2.2 The NMC is the regulator of nurses, midwives in the UK and nursing associates in England and is established under the Nursing and Midwifery Order 2001. The NMC maintains a register of professionals eligible to practise and investigates concerns about its registrants. The NMC also promotes high education and professional standards for registrants. The aim being to promote and uphold the highest professional standards in nursing and midwifery to protect the public and inspire confidence in the professions. The detailed responsibilities and the functions of the NMC are set out on the NMC website: https://www.nmc.org.uk/about-us/our-role/.

3. Joint priorities and areas of work

3.1 Where concerns are identified (as outlined in Annex B) and there is scope for joint and collaborative work, a lead organisation will be identified. Joint and collaborative working may include taking assurance from each other's actions.

4. Sharing of information

4.1 As stated in the introduction, this agreement covers the sharing of information and intelligence. Please refer to Annex B which provides guidance on the sharing of personal information. The purpose of this is to promote the sharing of knowledge on the risks, concerns and good practice that exist within healthcare services.

4.2 The working relationship between HIW and the NMC will be characterised by regular contact, and appropriate open sharing of information within the parameters of their respective legal frameworks.

4.3 Key contacts will be available to facilitate the sharing of intelligence and information when required.

4.4 All arrangements for collaboration and sharing of information set out in this MoU and any supplementary agreements will comply with the

relevant legislation and codes of practice. This includes frameworks or other policies relating to confidential information. Please refer to Annex

4.5 HIW and the NMC are subject to the Freedom of Information Act 2000 (FOIA). 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 as described in the FOIA section 45 Code of Practice.

4.6 The arrangements for exchange of information set out in this MoU will take account of and comply with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA 2018). Please refer to Annex B.

4.7 However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request as Data Controller in respect of the data.

4.8 Where information is to be disclosed by either party for law enforcement purposes under section 35(4) and (5) of the DPA 2018 then they will only do so in accordance with an appropriate policy document as outlined by section 42 of the DPA 2018.

5. Media and Publications

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

5.2 HIW and the NMC commit to work together, where appropriate, to produce joint statements or communications highlighting collaboration or activities relevant to both organisations and will take account of and comply with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018.

5.3 HIW and the NMC 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.

6. Governance

6.1 The effectiveness of the working relationship between HIW and the NMC will be supported by regular contact, either formally or informally.

6.2 Any disagreement between HIW and the NMC 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 A, who may then escalate it as appropriate within the two organisations to reach a mutually satisfactory resolution.

7. Duration and review of this MoU

7.1 Both organisations have identified a person responsible for the management of this MoU in Annex A. 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.

7.2 This MoU will be reviewed every three years by the MoU managers identified in Annex A. It may also be reviewed more frequently at any time should it need to be altered or cease to be relevant at the request of either organisation.

8. Annex A – Contact Details and Approval (internal only not for publication)

This annex can be found in the original document.
Redacted version for publication.

9. Annex B – General Data Protection Regulations and Information Sharing of concerns

All information shared between partners must be in accordance with the MoU and if partners intend to share any personal information it must comply with both the UK General Data Protection Regulations (UK GDPR) and Data Protection Act (2018).

If partners intend to share any personal information it must comply with UK GDPR.

Cross Referral of Concerns

Both organisations will convey concerns and relevant information to a named individual at the other organisation when these are believed to fall within the remit of that organisation. In the interests of patient safety, the referring organisation will not wait to share concerns until its own investigation into registrant-related complaints has concluded.

HIW will refer to the NMC:

- Concerns and relevant information about an NMC registered professional which may call into question their fitness to practise.

- Concerns and relevant information about a healthcare organisation which may call into question its suitability as a learning environment for nursing and midwifery students.

- Any concerns and relevant information relating to the general delivery of care by NMC registrants at a healthcare organisation which may call into question issues of nursing and midwifery leadership.

- Any investigations into, or follow ups of, identified risks in which concerns about individual NMC registrants have been identified will be in line with appropriate legislation and section 7 of this memorandum of understanding.

In particular, the NMC will refer to HIW:

- Any concerns and relevant information about a healthcare organisation in which nurses or midwives practice, which may call into question the quality and safety of the services it provides.

- Any concerns and relevant information about a healthcare organisation which may call into question its suitability as a learning environment for pre-registration nursing or midwifery students.

- Any issues arising from its regulatory work which may be useful intelligence to HIW in reviewing and developing its approach to regulation.

- Information about any investigations it conducts that may be relevant to HIW's remit.

- Intelligence it holds about a healthcare organisation for an upcoming inspection, on request by HIW.

Legal basis for sharing information

HIW and NMC are data controllers acting alone for the purposes of the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act (DPA) 2018.

Information shared by HIW with the NMC

The lawful basis for HIW sharing personal data with the NMC is set out under the UK GDPR DPA 2018 and an appropriate information sharing agreement.

Where HIW identifies that personal data it holds, ought to be shared with the NMC in order to fulfil its obligations, it will ensure there is a legal basis under the UK GDPR and the DPA before doing so. HIW's legal basis for sharing data with the NMC will normally be:

- Article 6(1)(c) of the UKGDPR: Permission to share information when it is necessary for compliance with a legal obligation
- Article 6(1)(e) UKGDPR: Permission to share information to undertake a task carried out in the public interest or in the exercise of official authority
- Schedule 8 DPA: Processing data is permitted for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.
- Special Category data sharing:
  Article 9(2)(g) UKGDPR: Processing is necessary for reasons of substantial public interest; Schedule 1, Part 2 of the DPA Processing is permitted for the purposes of substantial public interest; Paragraph 6 when it is necessary to exercise a function conferred by an enactment of rule of law;
- Paragraph 10 when it is necessary for the purposes of discharging certain protective functions which are designed to protect members of the public from certain conduct which may not constitute an unlawful act, such as dishonesty, incompetence or mismanagement.

Information shared by the NMC with HIW

Where the NMC identifies that personal data, it holds must be shared with HIW to fulfil its obligations, it shall ensure that there is a legal basis for sharing data with HIW under UK GDPR before doing so. The legal basis for sharing will normally be:

- Legal obligation (Article 6(1)(c))

- Public task (Article 6(1)(e))

This is likely to be in accordance with Article 3(5) of the Nursing and Midwifery Order 2001, which requires the NMC to co-operate with bodies like HIW in the exercise of its functions in pursuance of public protection (the overarching objective Article 3(4).

Where this includes special category data, the NMC's legal basis under Article 9 of the UK GDPR is Article 9(2)(g) – reasons of substantial public interest with a clear basis in law. The substantial public interest condition is condition 6: for statutory and government purposes under Schedule 1 of the DPA 2018.

The NMC has a statutory duty under Article 22(9) of the Nursing and Midwifery Order, 2001 to publish orders and decisions made by its FTP Practise Committees. It also has the power to share these decisions. However, it has a discretionary power to withhold any information concerning the physical or mental health of a person which it considers to be confidential (22(12). The NMC may disclose to any person any information relating to a person's fitness to practise which it considers it to be in the public interest to disclose (22(10)), this includes HIW.

In order to properly assess whether an individual poses a risk to the public, the NMC may need access to certain information and Article 25(1) of the Nursing and Midwifery Order 2001 gives the NMC the power to require any person, who in the NMC's opinion, is able to supply information or produce any document which appears to be relevant to assist in the discharge of its fitness to practise function. Article 6(1)(c) of the UK GDPR provides a lawful basis for processing where *"processing is necessary for compliance with a legal obligation to which the controller is subject"*.

The NMC may, on occasion, instruct external firms of solicitors to act on their behalf in fitness to practise matters. Where the external firm confirms in writing that they are acting on behalf of the NMC under a legally binding contract, and also the legal basis on which they are requesting that certain information may or must be shared, HIW will treat the external firm as they would the NMC in line with the terms of this MoU.

Data Sharing Impact Assessments

The Welsh Government Information Rights Department require HIW to complete and submit a Data Protection Impact Screening Tool prior to the sharing of any personal information.

The NMC also agrees that they shall prepare their own Data Processing Impact Assessment (DPIA) to document the proposed sharing of the types of Personal Data

and Special Category Personal Data to be processed and the arrangements around sharing this data in detail.

The Welsh Government Information Rights Department will advise HIW if an information sharing agreement is required and will require HIW to complete and submit a Data Protection Impact Assessment and draft an information sharing agreement to support the sharing of any personal information.

The information sharing agreement should be reviewed and approved by the Welsh Government Legal Department prior to approval by partners.

Confidentiality and data breach reporting

Data will be handled in line with the NMC's data protection policies as amended from time to time.

Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender.

Where confidential material is shared between the Parties it will be marked with the appropriate security classification.

Where one party has received information from the other, it will consult with the other party before passing the information to a third party or using the information in proceedings.

Where confidential material obtained from, or shared by, the originating party is wrongfully disclosed by the party holding the information, this party will bring this to the attention of the originating party without delay. This is in addition to obligations to report a personal data breach under the UK GDPR and/or DPA where personal data is contained in the information disclosed.

The Parties will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other party and maintain effective controls designed to minimise the risk of inappropriate disclosures.