

Memorandum of Understanding between Healthcare Improvement Scotland and the Nursing and Midwifery Council

1. The purpose of this Memorandum of Understanding (MoU) is to set out the framework to support the working relationship between Healthcare Improvement Scotland (HIS) and the Nursing and Midwifery Council (NMC), collectively referred to as “the Parties” throughout this document.
2. HIS is the national healthcare improvement organisation for Scotland. The detailed responsibilities and the functions of HIS are set out on the HIS website: [Healthcare Improvement Scotland](#)
3. 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/>
4. This MoU does not override the responsibilities and functions of HIS and the NMC and is not enforceable in law. However, HIS and the NMC are committed to working in ways that are consistent with the content of this MoU.
5. The Parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

Purpose of information sharing

6. The broad purpose of the MoU is to enable the Parties to share relevant information which is required to enable the other to fulfil their respective functions.
7. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities. In particular, each party must ensure that any disclosure of personal data pursuant to these arrangements fully complies with both the UK General Data Protection Regulations (UK GDPR) and the Data Protection Act (DPA) 2018. The MoU refers to legal basis for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

Principles of cooperation

8. HIS and the NMC intend that their working relationship will be characterised by the following principles:
 - a. The need to make decisions which promote public safety and high quality education/health and social care provision.
 - b. Respect for each organisation's independent status.
 - c. The need to maintain public trust and confidence in the two organisations and their respective functions.
 - d. Openness and transparency between the two organisations as to when cooperation is and is not considered necessary or appropriate.
 - e. The need to use resources effectively and efficiently.
9. All arrangements for exchange of information set out in this MoU and any supplementary agreements will take account of and comply with: DPA; UK GDPR; Freedom of Information Act 2000; The Human Rights Act 1998; Common Law Duty of Confidentiality; The European Convention of Human Rights specifically Article 8; any HIS and NMC codes of practice, frameworks or other policies relating to personal information.

Areas of communication

10. Subject to any legal restrictions or requirements on the disclosure of information (whether imposed by statute or otherwise) and at their discretion both Parties will:
 - a. Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues).
 - b. Consult one another on any issues which might have significant implications for the other organisation.
 - c. Notify one another of the outcome of a case before it is made public in those cases in which the other Party has an interest.
 - d. Share in confidence internal guidance and draft external guidance relevant to the functions of both Parties.
 - e. Undertake joint regulatory work where this is agreed to be appropriate.
 - f. Convey concerns and relevant information to a named individual at the other organisation that 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.

- g. The Parties may request information from each other and will include the details of the information sought and why it would assist them to carry out their functions. Each may suggest a reasonable deadline for responding, including an explanation of any urgency.

Cross Referral of Concerns

11. Where HIS and the NMC encounter concerns which either believe may fall within the remit of the other, they will at the earliest opportunity convey the concerns and supporting information to a named individual with relevant responsibility at the other organisation. In the interests of patient safety, the referring organisation will not wait until its own review or investigation has concluded.

12. In particular, HIS will refer to the NMC:

- a. Any concerns and relevant information about a registered nurse or midwife which may call into question their fitness to practise.
- b. Any concerns and relevant information about a registered nursing associate (if and where found to be employed and practising in Scotland) which may call into question their fitness to practise.
- c. Any concerns and relevant information about a health care organisation which may call into question its suitability as a learning environment for nursing and midwifery students.
- d. Any concerns and relevant information, such as serious failings in professional leadership, supervision, workload and workforce management, training, safeguarding and other related factors that could affect the general delivery of nursing and midwifery care at a health care organisation in which any NMC registrant practises.
- e. Any investigations into or any arising supplementary information regarding identified risks in which concerns about individual nurses' or midwives' practise have been recognised.
- f. Any thematic issues about nurses and midwives that could be addressed through setting professional standards.
- g. Where independent healthcare services are provided and/or operated by sole practitioners, concerns raised about an individual's fitness to practise cannot be escalated within clinical governance structures. In such cases, HIS will refer to the NMC.

13. In particular, NMC will refer to HIS:

- a. Any concerns and relevant information about a health care organisation in which NMC registrants' practise, which may call into question the quality and safety of the services it provides.

- b. Any concerns and relevant information about a health care organisation which may call into question its suitability as a learning environment for pre-registration nursing or midwifery students or its capacity to support registrants to meet the requirements of registration and revalidation.
- c. Any issues arising from its regulatory work which may be useful intelligence to HIS in reviewing and developing its approach to regulation.
- d. Information about any investigations it conducts that may be relevant to HIS's remit.
- e. Information about any investigations it conducts which raise concerns about poor team working, leadership, systemic record keeping issues, appraisal systems and general organisational failures.

Legal basis for sharing information

Information shared by HIS with the NMC

- 14. To the extent that any shared information is to comprise personal data, as defined under the UK GDPR and DPA 2018, the HIS is a Data Controller so must ensure that it has a legal basis to share it and that doing so would otherwise be compliant with the data protection principles.
- 15. The lawful basis for HIS sharing personal data with the NMC under UK GDPR is
 - Legal obligation (Article 6(1)(c)) For example, under the Public Finance and Accountability (Scotland) Act 2000, they are required to provide Audit Scotland with specific data sets on a regular basis.
 - Public task (Article 6(1)(e))
- 16. When using more sensitive types of information, including confidential personal information. HIS's legal basis is usually that the use is necessary:
 - for the provision of health or social care or treatment or the management of health or social care systems and services; or
 - for reasons of public interest in the area of public health; or
 - for reasons of substantial public interest for aims that are proportionate and respect people's rights, for example research.
- 17. HIS also process data for 'law enforcement purposes' as prescribed by Part 3 of the Data Protection Act 2018 in order to deliver their regulation of independent healthcare duties.

18. Please read The HIS Appropriate Policy Document which details how HIS protect special category and criminal offence data.
19. 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*".
20. 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, HIS will treat the external firm as they would the NMC in line with the terms of this MoU.

Information shared by the NMC with HIS

21. The NMC, during the course of its activities, will receive personal data from a range of sources. It will process all such personal data in accordance with the principles of the UK GDPR, the DPA 2018 and all other applicable legislation.
22. Where the NMC identifies that personal data it holds must be shared with HIS in order to fulfil its obligations, it shall ensure that there is a legal basis for sharing data with HIS 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))
23. 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 HIS in the exercise of its functions in pursuance of public protection (the overarching objective Article 3(4)).
24. 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.
25. The NMC will comply with any requests for information where the HIS has legal powers to require information from the NMC (whether statutory or otherwise).
26. 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 HIS.

Access requests for data

27. Where a request for information is received by either party under data protection laws or FOIA, the recipient of the request will seek the views of the other party as described in the FOIA section 45 Code of Practice, where the information being sought under the request includes information obtained from, or shared by, the other party. 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.
28. Where information is to be disclosed by either party for law enforcement purposes under section 35(4) of s5(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.

Confidentiality and data breach reporting

29. Data will be handled in line with the NMC's data protection policies as amended from time to time.
30. 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.
31. Where confidential material is shared between the Parties it will be marked with the appropriate security classification.
32. 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.
33. 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.
34. 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.

Media

35. HIS and the NMC will, where possible, seek to give each other adequate warning (at least two working days) and sufficient information about any planned press releases, announcements to the public and disclosure of information in response to any FOI request that is relevant to or likely to affect the work of the other organisation.
36. Subject to their respective obligations under the Freedom of Information Act 2000, HIS and the NMC will respect the confidentiality of any documents disclosed by the other organisation 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.



Resolution of disagreement

37. Any disagreement between HIS and the NMC should be resolved at working level. If this is not possible, it may be referred through those responsible for the management of this MoU, up to and including the lead contacts for both organisations who will then jointly be responsible for ensuring a mutually satisfactory resolution.

Duration and review of this MoU

38. This MoU commences on the date of the signatures below. It is not time limited and will continue to have effect unless the principles described need to be altered or cease to be relevant. The NMC and HIS will monitor the operation of this MoU and will review it initially after one year from the date of this document and subsequently from time to time as necessary.
39. The MoU may be reviewed at any time at the request of either party. Changes to the MoU will, however, require both Parties to agree in writing.
40. Both organisations have identified a person responsible for the management of this MoU (contact details are provided at Annexe 1). They will liaise as required to ensure this MoU is kept up to date; identify any emerging issues in the working relationship between the two organisations; and resolve any questions that arise as to the interpretation of this MoU.

Signatures

 Robbie Pearson Chief Executive Healthcare Improvement Scotland	 Andrea Sutcliffe Chief Executive and Registrar Nursing and Midwifery Council
Date: 23 October 2023	Date: 16 November 2023

Annexe 1

Contact details (internal only – not for publication)