



Memorandum of Understanding between Social Care Wales and the Nursing and Midwifery Council

Introduction

- 1 The purpose of this Memorandum of Understanding (MoU) is to set out the framework for the working relationship between Social Care Wales and the Nursing and Midwifery Council (NMC).
- 2 Social Care Wales is the regulator for social workers, social care workers and social work students in Wales. The NMC is the regulator for nurses and midwives in the UK and nursing associates in England. The detailed responsibilities and the functions of Social Care Wales and the NMC are set out in annexe 1.
- 3 This MoU does not affect existing statutory functions or amend any other policies or agreements relating to the activities of Social Care Wales and the NMC. It does not imply any transfer of responsibility from one to the other, nor does it imply the sharing of statutory responsibilities.
- 4 This MoU does not override the statutory responsibilities and functions of either Social Care Wales or the NMC and it is not enforceable in law. However Social Care Wales and the NMC are committed to working in ways that are consistent with the content of this MoU.

Principles of Co-operation

- 5 SCW and the NMC intend that their working relationship will be characterised by the following principles:
 - 5.1 The need to make decisions which promote high quality care.
 - 5.2 Respect for each organisation's independent status.
 - 5.3 The need to maintain public confidence in the two organisations.
 - 5.4 Openness and transparency between the two organisations as to when co-operation is and is not considered necessary or appropriate.
 - 5.5 The need to use resources effectively and efficiently.
- 6 Social Care Wales and the NMC are also committed to being transparent, accountable, proportionate, consistent and targeted.

Areas of Co-operation

- 7 The working relationship between Social Care Wales and the NMC involves co-operation in the following areas. A named contact with responsibility for each area is identified in annexe 2.

Cross-referral of concerns

- 8 Where either Social Care Wales or the NMC become aware of matters that appear to fall within the remit of the other organisation, it will, at the earliest opportunity convey the concerns and relevant supporting information to a named individual with relevant responsibility at the other organisation. In the interests of the safety of the public, the referring organisation will not wait until its own investigation has concluded before conveying the concerns.
- 9 In particular, Social Care Wales will refer to the NMC:
 - 9.1 Any concerns and relevant information about any registered social worker, social care manager, social care worker or social work student, who is also registered with the NMC, which may call into question their fitness to practise;
 - 9.2 Any concerns and relevant information about a social care organisation which may call into question its suitability as a learning environment for nursing, midwifery or nursing associate students;
 - 9.3 Any concerns and relevant information relating to the general delivery of nursing, midwifery or nursing associate care at a social care organisation which may call into question issues of nursing, midwifery or nursing associate leadership; and
 - 9.4 Any investigations into, or follow ups of, identified risks in which concerns about individual nurses/midwives/nursing associates or nursing/midwifery/nursing associate practice have been identified.
- 10 The NMC will refer to Social Care Wales any concerns and relevant information about any registered social worker, social care manager, social care worker or social work student in Wales, which may call into question their suitability to remain on Social Care Wales's Register.

Provision of information and documentation

- 11 If either Social Care Wales or the NMC makes a referral under the provisions of this MoU it will provide the other with the necessary information and documentation on which the referral is based. Both organisations will provide ongoing assistance by providing any additional relevant information and documentation that may reasonably be requested by the other organisation.
- 12 In responding to requests for information and documentation:

- 12.1 Social Care Wales will be guided by the NMC's assessment as to the information that it reasonably requires in order to investigate allegations of impairment of fitness to practise in accordance with the Nursing and Midwifery Order 2001 (as amended) and the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended).
- 12.2 The NMC will be guided by Social Care Wales's assessment as to the information that it reasonably requires in order to investigate allegations of misconduct in accordance with Regulation and Inspection of Social Care (Wales) Act 2016.

Investigations and inquiries relevant to both bodies' functions

- 13 It is possible that, where a registered social worker, social care manager, social care worker or social work student is also a registered nurse, midwife or nursing associate, investigations by the NMC and Social Care Wales about the individual could coincide.
- 14 Where this is the case Social Care Wales and the NMC will cooperate closely with each other regarding the investigations and hearing processes. This means that they will plan activities so that they are complementary, keep each other informed of developments, share information (within statutory limitations) in order to minimise burdens and enable greater effectiveness and efficiency. They will take care not to contaminate evidence or breach any common law or duty of confidentiality.
- 15 Whilst those conducting investigations will work closely together, investigations will remain separate and within clearly defined boundaries of responsibilities and remits.
- 16 When sharing information each organisation will retain distinct legal responsibility for the handling of information that it acquires for the purpose of its own functions.

Exchange of information and collaboration

- 17 Social Care Wales and the NMC agree to exchange such information as is necessary for the purpose of their respective statutory functions.
- 18 In sharing information under this MoU and Information Sharing Agreement (annexe 2), Social Care Wales and the NMC will at all times comply with their respective obligations under the GDPR and the Human Rights Act 1998. They will act in accordance with relevant statutory and non-statutory Codes of Practice as well as any Social Care Wales and NMC codes of practice or policies relating to the handling of confidential personal information.
- 19 Social Care Wales and the NMC will share information about trends, data and organisational initiatives where it is thought they will impact on, or complement, the work of the other organisation.

- 20 When sharing information under this MoU, Social Care Wales and the NMC will at all times act in accordance with the principles set out in the statutory Data Sharing Code of Practice published by the Information Commissioner's Office.

Freedom of Information requests

- 21 If the NMC receives a Freedom of Information (FOI) request for information that it believes Social Care Wales holds, the NMC will inform Social Care Wales of the request before making a response within the statutory 20 day response time limit. The same applies vice versa.

Media and evidence to the Welsh Government

- 22 Social Care Wales 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.
- 23 Social Care Wales and the NMC will, when appropriate, share with each other details of relevant evidence to the Welsh Government or UK Government in relation to the operation of their regulatory regime or the exercise of their functions.
- 24 Subject to their respective obligations under the Freedom of Information Act 2000, Social Care Wales 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



- 25 Any disagreement between Social Care Wales and the NMC will normally 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 Chief Executives of both organisations who will then jointly be responsible for ensuring a mutually satisfactory resolution.

Review of this MoU

- 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. The MoU will be reviewed every two years, and may be reviewed sooner at the request of either party.
- 27 Both organisations have identified a person responsible for the management of this MoU at annexe 2. 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.

28 The named contacts with responsibility for each area of cooperation will be identified in annexe 2 and will liaise as required to carry out day-to-day business.

Signatures

 Sue Evans Chief Executive Social Care Wales	 Matthew McClelland Director of Fitness to Practise Nursing and Midwifery Council
Date: 4 September 2018	Date: 16 August 2018

Annexe 1

Responsibilities and functions

- 1 Social Care Wales and the NMC acknowledge the responsibilities and functions of each other and will take account of these when working together.

Social Care Wales

- 2 Social Care Wales was established under the Regulation and Inspection of Social Care (Wales) Act and came into existence on 1 April 2017. It replaced the Care Council for Wales, which came into existence on 1 October 2001 under the Care Standards Act 2000.
- 3 Social Care Wales was established to promote high standards of conduct and practice among social care workers and high standards in their training.

The Nursing and Midwifery Council

- 4 We exist to protect the public by regulating nurses and midwives in the UK and nursing associates in England. We do this by setting standards of education, training, practice and behaviour so that nurses, midwives and nursing associates can deliver high quality healthcare throughout their careers.
- 5 We maintain a register of nurses, midwives and nursing associates who meet these standards, and we have clear and transparent processes to investigate nurses, midwives and nursing associates who fall short of our standards.

Annexe 2

Information Sharing Agreement

Introduction

This Supplementary Agreement has been developed in order to provide guidance on the exchange of information and the collaboration between Social Care Wales and the Nursing and Midwifery Council (NMC) in relation to investigations and hearings into the practice of people registered with both organisations

When collaborating, Social Care Wales and NMC will act in accordance with the agreed MoU and with the procedures set out in this Agreement.

Principles

1. Social Care Wales and the NMC will cooperate closely with each other regarding the investigations and hearings processes.
2. Investigations will remain separate.
3. Investigations will remain within clearly defined boundaries of responsibilities and remits.
4. When sharing information each organisation will at all times comply with their respective obligations under the Data Protection Act 2018, the Human Rights Act 1998, and will act in accordance with the relevant statutory and non-statutory codes of practice and their codes of practice or policies relating to the handling of confidential personal information.
5. When sharing information each organisation will retain distinct legal responsibility for handling information it acquires for the purpose of its own functions.
6. Organisations will keep each other informed of developments in investigations and hearings.

Processes

Referrals

7. The NMC will only accept referrals from Social Care Wales in writing via e-mail to: newreferrals@nmc-uk.org.
8. Social Care Wales will only accept referrals from the NMC in writing via e-mail (to ftp@socialcare.wales) or hard copy.

Information sharing – sensitive personal data

9. Social Care Wales and the NMC will share information with each other about an individual who is registered, with one or both of the organisations, and whose suitability to be on one or both of their registers has been called into question.
10. Information may also be shared about nursing, midwifery and nursing associate students, and social work students.
11. Where appropriate the individual will be informed prior to their information being shared.
12. Social Care Wales and the NMC will share only the information which is necessary for the required purpose.
13. When sharing confidential information or information relating to any identifiable individual in connection with their suitability to be registered, Social Care Wales and the NMC will do so in accordance with the procedures set out below.

Investigations

Individuals registered with both organisations

14. On receipt of an allegation or information about an individual registered with both organisations, the receiving organisation shall notify the named contact in the MoU. For each case, a named individual from each organisation will then be identified and will act as the main point of contact between the two organisations for that case.
15. Where it appears that the allegation primarily affects the individual's registration with the NMC, the NMC should investigate. Where it appears that the allegation primarily affects the registration of the individual with Social Care Wales, Social Care Wales should investigate. The investigating organisation should, however, keep the other organisation informed of the investigation and notify them of issues that will be of relevance to them.
16. Although each organisation will undertake separate investigations, they will liaise with each other throughout the process, keeping each other informed of information received and actions taken, including the outcomes of hearings. This will include an initial indication of the likely timescales to be involved in conducting the investigation and the hearings process, followed by regular updates on the progress and any amendments to these timescales.
17. Each organisation will be aware of the impact of separate investigations and hearings upon the registered individual, their employer, work colleagues and witnesses. They will work and liaise with each other to minimise this impact by planning activities relating to the investigation to ensure they are complementary to each other. To this end, where possible, they may:

- 17.1 liaise over the timing of interviews with witnesses;
 - 17.2 share any witness and expert witness statements where these are applicable to the investigations of both organisations;
 - 17.3 try to avoid duplication of requests by sharing documentation, such as special reports (for example, Local Authority commissioned reports) or case files relating to service users affected by the actions/inactions of the registrant.
18. Both organisations will be aware of the need for timeliness of the investigations and hearings processes, and of any deadlines to be met by either organisation during these processes.
 19. In cases where either or both organisations consider that an interim order is required, they will co-operate with each other to aid the attainment of the order(s) within the relevant timescales.
 20. In some cases, it may be appropriate for either Social Care Wales or the NMC to await the outcome of the other's investigation. In all cases, the advantages of awaiting the outcome will have to be balanced against the need for Social Care Wales or the NMC to advance its own investigation.
 21. Where Social Care Wales or the NMC receive information as part of the investigation process they will inform the provider of the information that it may be shared with the other regulator, and obtain consent for this.
 22. Each investigation will need to be taken on a case by case basis. Staff will be required to be flexible and responsive to the individual needs of each case. They will co-operate and collaborate with each other, whilst always bearing in mind the effect of the process on the registered individual and any associated parties.

Individuals registered with one organisation only

23. Where either organisation receives an allegation or information about an individual who is not registered with them but is registered with the other organisation, they will notify the named contact in the MoU.

Hearings

24. Each organisation will liaise with the other to co-ordinate dates of hearings in order to avoid hearings being scheduled on the same dates.

Findings of fact of the NMC

25. Any cases taken to a hearing under The Care Council for Wales (Fitness to Practise) Rules 2014 or Social Care Wales (Fitness to Practise) Rules 2017 will allow Social Care Wales to take findings of fact of the NMC as prima facie evidence of the facts so found.

Findings of fact of Social Care Wales

26. The NMC may determine that their registrant's fitness to practise is impaired by reason of a finding of impairment by another health or social care regulator. A finding of Social Care Wales may also be capable of being admitted in evidence in support of the NMC's case under Rule 31(4) of the Nursing and Midwifery Council (Fitness to Practise) Rules (2004).
27. It would be for the NMC to decide, in a given case, whether it would be appropriate to rely on a determination made by the Social Care Wales as the ground or sole ground or an allegation of impairment of fitness to practise under these Rules.

Sanctions

28. It is possible that different outcomes or different sanctions could be imposed in a case brought against an individual registered with both the Social Care Wales and the NMC, as each organisation will view misconduct in the context of its own code. This should not inhibit collaboration and cooperation between the two organisations in relation to the conduct of investigations.

Media

29. If a press release is to be issued following the outcome of the final hearing in relation to an individual registered with both organisations, the media contacts identified in the MoU will liaise with each other prior to the press release being issued.

Personnel

30. Information will only be provided by the Social Care Wales to the relevant contact listed in Annexe 3.
31. Information will be provided by the NMC to the named lead in Annexe 3.

Phone

32. No record will be made of non-case specific discussion or the provision of advice.
33. Electronic records will be made of discussions that relate to a specific applicant or registrant. The records will be retained on the individual's dossier or case file.

E-mail

34. Any confidential information must be sent through secure e-mail and retained on an individual's dossier or case file. Both the NMC and Social Care Wales will exchange confidential information via the EGRESS System. EGRESS system.
35. Emails requesting or providing non-confidential information relating to an applicant or registrant must be retained on an individual's dossier or case file.

Post

36. If any information pertaining to a registrant has to be sent through the post, it must be sent by a postal service in which delivery or receipt is recorded.
37. Information sent by post should be directed to the relevant contact listed in Annexe 3.

Storage of information

38. Social Care Wales will store information in electronic and paper files in a secure manner. Electronic information will be stored in Social Care Wales's Microsoft Dynamic CRM Database and Sharepoint file structure system.
39. The NMC will store information in secure electronic and paper case files. Once a case is closed the paper files will be archived and destroyed after 12 months in accordance with the NMC retention schedule. Archived papers will be scanned and stored in the NMC's electronic document management system.

Notification to individuals

40. Social Care Wales will inform an individual of information that it has received and is holding about him or her, and for what purpose, as soon as possible and within 28 days of the receipt of the information.
41. Exceptions to notifying the registrant of the information held would be made if, by making disclosure, there was:
 - 42.1 a risk of intimidation, recrimination or a risk to the safety of a complainant;
 - 42.2 a risk to the safety of a registrant;
 - 42.3 a risk to any other persons such as colleagues, service users, or family;
 - 42.4 a risk that disclosure would impair Social Care Wales's investigation;
 - 42.5 a risk that disclosure would impair a Police investigation.
42. On receipt of a referral the NMC will inform the registrant, at an appropriate stage, if the referrer has given their permission to do so.

Retention of information

43. Electronic information held by Social Care Wales pertaining to an individual for registration, investigation and committee management purposes will be held according to Social Care Wales's Workforce Regulation Retention Policy and Schedule for the retention of electronic files. Paper files will be destroyed in accordance with the policy on disposal of hard copy files.

44. Information held by the NMC pertaining to the use of this MoU will be retained by the NMC in accordance with its records retention schedule.

Annexe 3 [*redacted*]