



## **Memorandum of Understanding between Social Care Wales 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 Social Care Wales (SCW) and the Nursing and Midwifery Council (NMC), collectively referred to as “the parties” throughout this document.
2. SCW was established under the Regulation and Inspection of Social Care (Wales) Act 2016. It came into existence on 3 April 2017, replacing the Care Council for Wales. SCW is a social care regulator with responsibility for social workers, social care workers, social work students and early years workforce in Wales. SCW maintains a register of professionals eligible to practise and investigates concerns about its registrants. SCW sets standards for the care and support workforce, develops the workforce and supports those who need help and works with others to improve services, shares good practice, sets research priorities and provides information for the public and other organisations. The detailed responsibilities and the functions of SCW are set out on the SCW website: [About us | Social Care Wales](#).
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 SCW and the NMC and is not enforceable in law. However, SCW 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 enhances their ability to exercise 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 General Data Protection Regulations (GDPR) and the Data Protection Act (DPA) 2018. The MoU sets out the potential 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. SCW 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 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 the regulatory process.
  - 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.

## **Potential areas of communication**

9. Subject to any legal restrictions 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. Communicate the details of relevant evidence of the Welsh or UK governments in relation to the operation of their regulatory regimes or the exercise of their functions.
  - d. Notify one another of the outcome of a case before it is made public in those cases in which the other body has an interest.
  - e. Share in confidence internal guidance and draft external guidance relevant to the functions of both bodies.
  - f. The NMC and SCW will cooperate closely with each other regarding the investigations and hearing processes where investigations into a registered individual of the NMC and SCW coincide. They will ensure that activities are planned so that they are complementary, they will keep each other informed about developments, share information (within statutory limitations) in order to

minimise the burden and to ensure efficiency and effectiveness. The parties will take care not to contaminate evidence or breach any duties of confidentiality. Investigations will remain separate and within clearly defined boundaries of responsibility.

- g. Convey concerns and relevant information to a named individual at the other organisation as per 10 – 12 below.
- h. 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**

10. 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. The information and documentation to be conveyed may include those detailed in Annexe 1.

11. In particular, SCW will refer to the NMC:

- 11.1 Concerns and relevant information about an NMC registered professional which may call into question their fitness to practise.
- 11.2 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.
- 11.3 Any concerns and relevant information relating to the general delivery of care by NMC registrants at a social care organisation which may call into question issues of nursing midwifery or nursing associate leadership.
- 11.4 Any investigations into, or follow ups of, identified risks in which concerns about individual NMC registrants have been identified.

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

- 12.1 Any concerns and relevant information about a SCW registered individual's suitability to remain on Social Care Wales's Register;
- 12.2 Any information about an individual purporting to be a registered SCW professional where the NMC has reason to believe that that person is not on the SCW register; and
- 12.3 Any other concerns and relevant information that may affect the delivery of social work regulation in Wales.

## **Legal basis for sharing information**

### *Information shared by SCW with the NMC*

13. To the extent that any shared information is to comprise personal data, as defined under the GDPR and DPA 2018, SCW 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.
14. SCW's legal basis for sharing data with the NMC under the UK GDPR is:
  - Legal obligation (Article 6(1)(c))
  - Public task (Article 6(1)(e))
15. Section 159 of the Regulation and Inspection of Social Care (Wales) Act 2016 authorises SCW to publish or disclose to any person information relating to a registered person's fitness to practise if it thinks it to be in the public interest to do so.
16. Where this includes special category data, SCW's legal basis under Article 9 of the UK GDPR is Article 9(2)(g).
17. SCW will provide information to the NMC upon the NMC's request to enable the NMC to assess its registrants' fitness to practise, as per the NMC's statutory duty under the Nursing and Midwifery Order 2001 (the Order). In order to properly assess whether registrants pose a risk to the public the NMC needs access to certain information and Article 25(1) of the Order 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 is relevant to assist us in the discharge of its fitness to practise function.
18. 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, SCW will treat the external firm as they would the NMC in line with the terms of this Memorandum of Understanding.

### *Information shared by the NMC with SCW*

19. 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.
20. Where the NMC identifies that personal data it holds must be shared with SCW in order to fulfil its obligations, the NMC's legal basis for sharing data with SCW under UK GDPR is
  - Legal obligation (Article 6(1)(c))

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

This is set out in Article 3(5) of the Order, which requires the NMC to co-operate with bodies like SCW in the exercise of its functions in pursuance of public protection (the overarching objective under Article 3(4) of the Order).

21. 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.
22. In order for SCW to properly carry out its functions and assess whether registrants pose a risk to the public, SCW requires access to certain information. Section 160 of the Regulation and Inspection of Social Care (Wales) Act 2016 gives SCW the power to require information, from any person (other than a Minister of the Crown) where SCW thinks that person is able to supply that information or produce a document, which appears relevant to assist in the discharge of its fitness to practise function.
23. The NMC has a statutory duty under 22(9) of the Order, 1 to publish orders and decisions made by its FtP Practice 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 (Article 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 (Article 22(10)), this includes SCW.

### **Access requests for data**

24. 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 section 45 Code of Practice of FOIA, 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.
25. 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 2018.

### **Confidentiality and data breach reporting**

26. Data will be handled in line with the NMC's information handling guidance (Professional practice information handling guidance [Policy \(nmc.org.uk\)](https://www.nmc.org.uk/policy) or the FTP information handling guidance [ftp-information-handling-guidance.pdf \(nmc.org.uk\)](https://www.nmc.org.uk/ftp-information-handling-guidance.pdf)). Social Care Wales will handle data in accordance with its Information Classification scheme. SCW also has a policy which relates to the publication and sharing of

information about registered persons and others involved in Social Care Wales proceedings [Regulation Publication Policy July 2022 \(socialcare.wales\)](#)

27. 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.
28. Where confidential material is shared between the parties it will be marked with the appropriate security classification.
29. 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.
30. 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 GDPR and/or DPA where personal data is contained in the information disclosed.
31. 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**

32. SCW 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.
33. Subject to their respective obligations under the Freedom of Information Act 2000, SCW 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**

34. Any disagreement between SCW 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

35. 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 SCW 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.
36. 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.
37. Both organisations have identified a person responsible for the management of this MoU (contact details are provided at Annexe 2). 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

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| <br><b>Sue Evans</b><br>Chief Executive<br><b>Social Care Wales</b> | <br><b>Andrea Sutcliffe</b><br>Chief Executive and Registrar<br><b>Nursing and Midwifery Council</b> |
| <b>Date: 8<sup>th</sup> August 2023</b>  | <b>Date: 4 August 2023</b>   |

## Annexe 1:

### Examples of relevant documents that may be shared between the NMC and SCW

| <b>From NMC to Social Care Wales</b>   | <b>From Social Care Wales to NMC</b>   |
|--|--|
| <ul style="list-style-type: none"><li>• Notification of referral to SCW where Registrant has dual registration</li><li>• Regular progress / status updates from NMC case officers while investigations are ongoing</li><li>• Notification that NMC are applying for an interim order</li><li>• Notification that NMC are forwarding case to a substantive hearing</li><li>• Case examiner's report including appendices</li><li>• Outcome letter to Registrant with Case Examiner's reasons for their decision.</li><li>• NMC evidence bundle once a hearing has been held</li><li>• NMC witness statements once a hearing has been held</li></ul> | <ul style="list-style-type: none"><li>• Notification of referral to NMC where Registered Person has dual registration</li><li>• Regular progress / status updates from SCW case officers while investigations are ongoing</li><li>• Notification that SCW is applying for an interim order</li><li>• Notification that SCW is forwarding case to a substantive hearing</li><li>• Outcome from interim order hearings (held in private)</li><li>• Notification of Officer disposals</li><li>• SCW evidence bundle once a hearing has been held</li><li>• SCW Witness statements once a hearing has been held</li><li>• Outcome and panel reasons from final panel hearings (only the outcome is displayed on the website)</li></ul> |

**Annexe 2 (redacted)**

**Contact details (internal only – not for publication)**