



Memorandum of Understanding between the Care Inspectorate 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 and Social Work Improvement Scotland (the Care Inspectorate) and the Nursing and Midwifery Council (NMC), collectively referred to as “the parties” throughout this document.
2. The Care Inspectorate was established under the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) and has a number of regulatory functions under that Act. The Care Inspectorate is responsible for furthering improvement in the quality of care, and in so doing, undertakes the registration and inspection of care services, the investigation of complaints about care services and the taking of enforcement action where necessary. The Care Inspectorate is also responsible for carrying out inspections of social work services, alone or jointly with others, and has specific joint responsibilities to inspect and support improvement of strategic commissioning of health and social care within integrated arrangements. The overall aim of the Care Inspectorate is to improve the quality of care provision within social services in Scotland. The detailed responsibilities and the functions of the Care Inspectorate are set out on the Care Inspectorate website: <https://www.careinspectorate.com>
3. The NMC is the regulator of nurses and 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 the Care Inspectorate and the NMC and is not enforceable in law. However, the Care Inspectorate 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 UK 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. The Care Inspectorate 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 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 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:
 - 9.1. Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues).
 - 9.2. Consult one another on any issues which might have significant implications for the other organisation.
 - 9.3. 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.
 - 9.4. Share in confidence internal guidance and draft external guidance relevant to the functions of both bodies.
 - 9.5. Undertake regulatory and investigative work in a coordinated and collaborative manner where this is agreed to be appropriate. This might be appropriate

where an NMC fitness to practise investigation coincides with a Care Inspectorate investigation or inspection of a registered care service. Alternatively, it might be appropriate in a child or adult protection situation or where there is a criminal investigation where other agencies are involved. Where this situation arises, both parties will be guided by the following principles:

- a. The Care Inspectorate and the NMC will cooperate with each other as far as possible. This may require coordination, planning and regular communication to ensure their activities are complementary in order to ensure the greatest efficiency and effectiveness.
 - b. Whilst those conducting investigations may work closely together, the investigations will remain separate, and the limitations of each investigation will be clearly defined.
 - c. The NMC may require Care Inspectorate staff to provide statements or give evidence in fitness to practise proceedings. The Care Inspectorate will endeavour to support staff to ensure that they have sufficient opportunity to fulfil these obligations.
- 9.6. 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.
- 9.7. The parties will 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 public protection and safety, the referring organisation will not wait to share concerns until its own investigation or work has concluded, except where the circumstances warrant this.

9.7.1. In particular, the Care Inspectorate:

- a. may identify issues with NMC registrants during their inspection, investigation or regulatory work. These issues could relate to NMC registrants including nurses and midwives working in frontline care roles or working in managerial or leadership positions.
- b. Where issues are identified relating to their fitness to practise, the Care Inspectorate staff will discuss the matter with their line manager and/or the Chief Nurse. A decision will then be made about whether the matter falls within the NMC's remit and should therefore be referred. Prior to a referral, the Care Inspectorate may discuss their concerns with the nurse's employer with a view to resolving the issue. If appropriate, the Care Inspectorate will request advice on making a referral from the NMC's Employer Link Service.

- c. Where the Care Inspectorate considers that the provider of a registered care service is obliged to report the issue to the NMC and they fail to do so, the Care Inspectorate will report the matter to the NMC. The Care Inspectorate may also consider taking regulatory action against the registered provider under the 2010 Act. Where the registered provider is also a registered nurse, or is an organisation which has as one of its officers a registered nurse, and the Care Inspectorate considers that the issue constitutes a concern which should have been reported to the NMC, the Care Inspectorate may refer them to the NMC.

9.7.2. The NMC will in particular:

- a. Inform the Care Inspectorate of any issue or concerns it identifies while conducting a fitness to practise investigation, where such issues or concerns relate to a registered care service, and they consider it to be in the public interest to disclose.
- b. Share fitness to practise information relating to a registrant with the Care Inspectorate and invite them to take action where this falls within the Care Inspectorate's remit.

- 9.7.3. Where concerns reported to either organisation appear to fall within the remit of the other organisation, the party in receipt of that information may either refer the person raising the concern to the other organisation or may notify the other organisation of the concerns. This might include anonymous or unsubstantiated reports made regarding the fitness to practise of NMC registrants and concerns about the safety and quality of registered care services or reports of unregistered services operating illegally.

Legal basis for sharing information

Information shared by the Care Inspectorate with the NMC

- 10. To the extent that any shared information is to comprise personal data, as defined under the GDPR and DPA 2018, the Care Inspectorate will ensure that it has a legal basis to share it and that doing so would otherwise be compliant with the data protection principles.
- 11. The Care Inspectorate's legal basis for sharing data with the NMC under the UK GDPR will normally be public task.
- 12. The Care Inspectorate may be required to provide information to the NMC upon the NMC's request so that they can properly assess a registrant's fitness to practise, as per the NMC's statutory duty under the Nursing and Midwifery Order 2001. In order to properly assess whether an individual registrant 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 is 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*".

13. 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, the Care Inspectorate 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 the Care Inspectorate

14. 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 GDPR, the DPA 2018 and all other applicable legislation.
15. Where the NMC identifies that personal data it holds must be shared with the Care Inspectorate it shall ensure there is a legal basis for sharing before doing so. Normally, the legal basis for sharing under UK GDPR will be legal obligation or public task.
16. 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 the Care Inspectorate in the exercise of its functions in pursuance of public protection (the overarching objective (Article 3(4))).
17. 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 Fitness to 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 (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 the Care Inspectorate.

Access requests for data

18. Where a request for information is received by either party under data protection laws or the Freedom of Information laws, the recipient of the request will seek the views of the other party as described in the Freedom of Information Act (FOIA) section 45 Code of Practice and section 60 of the Freedom of Information (Scotland) Act 2002 (FOISA), 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.

19. 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

20. Data will be handled by the NMC in line with its information handling guidance: [ftp://information-handling-guidance.pdf \(nmc.org.uk\)](ftp://information-handling-guidance.pdf) and by the Care Inspectorate in accordance with its own policies and procedures.

21. 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.

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

23. 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.

24. 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.

25. 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

26. The Care Inspectorate and the NMC will, where possible, seek to give each other adequate warning and sufficient information about any planned press releases, announcements to the public and disclosure of information in response to any FOI or FOISA request that is relevant to or likely to affect the work of the other organisation.

27. Subject to their respective obligations under FOIA or FOISA, the Care Inspectorate 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.

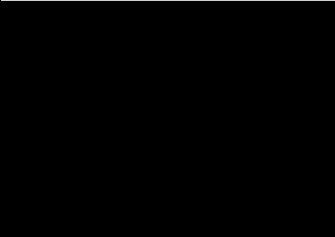
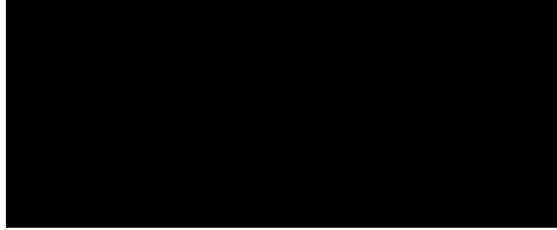
Resolution of disagreement

28. Any disagreement between the Care Inspectorate 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

29. 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 the Care Inspectorate 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.
30. 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.
31. 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

 <p>Jackie Irvine Chief Executive The Care Inspectorate</p>	 <p>Andrea Sutcliffe Chief Executive and Registrar Nursing and Midwifery Council</p>
<p>Date: 24 November 2023</p>	<p>Date: 20 November 2023</p>

Annexe 1 (internal only – not for publication)

Contact details

There will be specific points of contact between the Care Inspectorate and the NMC as follows: