

Memorandum of Understanding (MoU) between Healthcare Inspectorate Wales (HIW) and the Health and Care Professions Council (HCPC)

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Introduction

1. The purpose of this Memorandum of Understanding (MoU) is to set out a framework to support the working relationship between Healthcare Inspectorate Wales (HIW) and the Health and Care Professions Council (HCPC).
2. This working relationship is part of the maintenance of an effective regulatory system for health and adult social care in England and Wales which promotes patient safety and high quality care.
3. This MoU relates only to the regulation of healthcare in Wales. It does not override the statutory responsibilities and functions of HIW and HCPC and does not create legally binding rights or obligations; its purpose is to define the joint agreement between the two organisations and to indicate a common line of action.
4. As part of the activities undertaken as part of this MoU, other agreements (for example, information sharing agreements, or joint working protocols) may be established. Such agreements will exist separately to this MoU.
5. HIW and the HCPC are committed to observing the principles for an effective regulatory system for healthcare as identified by the Professional Standards Authority: <http://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015>).

Roles and responsibilities

Healthcare Inspectorate Wales

6. 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's main functions and responsibilities are drawn from the following legislation:
 - Health and Social Care (Community Health and Standards) Act 2003;
 - Care Standards Act 2000 (and associated regulations);
 - Mental Health Act 1983 and 2007, Mental Health (Wales) Measure 2010;
 - Independent Health Care (Wales) Regulations 2011;
 - Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008; and
 - Ionising Radiation (Medical Exposure) Regulations 2017 and Amendment Regulations 2018.

7. HIW's priorities are to:
 - provide assurance: provide an independent view on the quality of care;
 - promote improvement: encourage improvement through reporting and sharing of good practice; and
 - influence policy and standards: use what we find to influence policy, standards and practice.

8. HIW's core role is to review and inspect NHS and independent healthcare organisations in Wales to provide independent assurance for patients, the public, and others that services are safe and of good quality. Health services are reviewed against a range of published standards, policies, guidance and regulations. As part of this work HIW will seek to identify and support improvements in services and the actions required to achieve this. If necessary, HIW will undertake special reviews and investigations where there appears to be systematic failures in delivering healthcare services to ensure that rapid improvement and learning takes place.

9. HIW is also responsible for the registration and regulation of independent healthcare providers under the Care Standards Act 2000. The regulation of such establishments is governed by the Independent Health Care (Wales) Regulations 2011.

The Health and Care Professions Council

10. The Health and Care Professions Council (HCPC) is the regulator of 15 professions:

| | |
|------------------------------|------------------------------------|
| Arts therapists | Orthoptists |
| Biomedical scientists | Paramedics |
| Chiropodists / podiatrists | Physiotherapists |
| Clinical scientists | Prosthetists / Orthotists |
| Dietitians | Radiographers |
| Hearing aid dispensers | Practitioner psychologists |
| Occupational therapists | Operating department practitioners |
| Speech & language therapists | |

11. The responsibilities and functions of the HCPC are set out in the Health Professions Order 2001 (the Order). The Order protects one or more designated titles for each of the relevant professions and anyone using one of those titles must be registered with the HCPC. Misuse of a title is a criminal offence.

12. Under the Order the principal functions of the HCPC are to establish standards of education, training, conduct and performance for members of the relevant professions and to ensure the maintenance of those standards. It does this by:
 - setting standards, including Standards of Proficiency, Standards of Conduct, Performance and Ethics and Standards of Education and training;
 - approving education programmes and qualifications which meets its standards;
 - maintaining a register of appropriately qualified professionals; and
 - investigating and adjudicating complaints about their fitness to practise.
13. The main objective of the HCPC in exercising its functions shall be to safeguard the health and well-being of persons using or needing services of registrants.
14. The HCPC also has a duty to co-operate, with, inter alia, bodies concerned with the regulation, or the co-ordination of the regulation, of other health and social care professionals, the regulation of health services, and the provision, supervision or management of health or education service.

Principles of co-operation

15. HIW and HCPC acknowledge their respective statutory and non-statutory responsibilities and functions, and will take account of these when working together.
16. In implementing this agreement, HIW and HCPC intend that their working relationship will be characterised by the following principles:
 - the need to make decisions that promote high quality healthcare and which protect and promote patient health, safety and welfare;
 - full openness and transparency between the two organisations as to when cooperation is, and is not, considered necessary or appropriate;
 - respect of each other's independent status;
 - the need to use resources and intelligence effectively and efficiently through appropriate coordination and information sharing;
 - the need to maintain public confidence in the two organisations; and
 - a commitment to address any identified overlaps or gaps in the regulatory framework and responsibilities.
17. HIW and HCPC are also committed to transparent, accountable, proportionate, consistent, and targeted regulation (the principles of better regulation).

Joint Priorities and Areas of Work

Exchange of Information

18. Where HIW or the HCPC encounters a concern which it believes falls within the remit of the other, they will at the earliest opportunity convey the concern and

relevant information to the respective organisation by following the process outlined in the Information Sharing Agreement in Annex C. In the interests of patient safety or protection, the referring organisation will not wait until its own investigation has concluded.

19. In particular, HIW will share with or refer to the HCPC:

- Any concerns and relevant information known about any of its registrants which may call into question their fitness to practise, or about any individuals when it is suspected that they are using a protected title (or implying that they are a member of one of the professions regulated by HCPC) however they are not registered with the HCPC.
- Any concerns and relevant information known about a healthcare organisation which may call into question its suitability as a learning environment for students from any of the professions regulated by the HCPC.
- Any information about an individual purporting to be from any of the professions regulated by the HCPC where HIW has reason to believe that that person is not on the HCPC Register.
- Any concerns and relevant information, such as serious failings in professional leadership, supervision, case load management, training, safeguarding or other related factors that could affect the general delivery of care or services at a healthcare organisation in which any HCPC registrant practices.

20. In particular, the HCPC will refer to HIW:

- Any concerns and relevant information known about a healthcare organisation in which an HCPC registrant practises or registrants are trained that falls under the remit of HIW;
- Any concerns and relevant information known about a healthcare organisation falls under the remit of HIW regarding the suitability of its supervision practices and /or learning environments for students from any of the professions regulated by the HCPC;
- Information about any investigations it conducts which raise concerns about poor team working, leadership, systemic record keeping issues, appraisal systems and general organisational failures in a healthcare organisation that falls under the remit of HIW;
- Any concerns and relevant information known about a registrant of the HCPC working as a HIW Registered Manager in a healthcare organisation registered with HIW that may call into question their suitability to perform their functions in that setting.

21. In such cases, all exchanges of information will be lawful and proportionate and shared in confidence with the named contact in the other organisation at the earliest possible opportunity. The contact details in Annex B will be used for the raising and sharing of concerns.

22. All arrangements for co-operation and exchange of information set out in this MoU and any joint working protocol that may be developed will take account of

and comply with the General Data Protection Regulation (GDPR), Data Protection Act 2018, Freedom of Information Act 2000, Health and Social Care (Community Health and Standards) Act 2003, section 76 of the Health and Social Care Act 2008, Care Standards Act 2000 and all relevant HIW and HCPC legislation relating to these matters, and respective Codes of Practice, frameworks or other policies relating to confidential personal information and information issues.

23. Both HIW and HCPC are subject to the Freedom of Information Act 2000. 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.
24. This MoU is supplemented by an Information Sharing Agreement at Annex C which sets out the detailed arrangements for sharing information between the parties.

Media and Publications

25. HIW and HCPC will seek to give each other adequate warning of, and sufficient information about, any planned announcements to the public on issues relevant to both organisations, including the sharing of draft proposals and publications.
26. HIW and HCPC commit to work together, where appropriate, to produce joint statements or communications highlighting collaboration or activities relevant to both organisations.
27. HIW and HCPC respect 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.

Governance

28. The effectiveness of the working relationship between HIW and HCPC will be supported by regular contact, either formally or informally. This contact and any partnership working is described in Annex A.
29. Any disagreement between HIW and HCPC 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 B, who may then escalate it as appropriate within the two organisations to reach a mutually satisfactory resolution. Both organisations should aim to resolve disagreements in a reasonable time.

Duration and review of this MoU

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

31. 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. This MoU will be reviewed annually by the MoU managers identified at Annex B, but may also be reviewed more urgently at any time at the request of either organisation.

Signed



Alun Jones
Interim Chief Executive
Healthcare Inspectorate Wales

Date: 13/01/2021



John Barwick
Interim Chief Executive, Accounting
Officer and Registrar
Health and Care Professions Council

Date: 24/09/2020

Annex A – Partnership Working

HIW and the HCPC may, by agreement, undertake joint regulatory or strategic work, relevant to each body's statutory powers. If and when HIW and the HCPC decide to undertake joint work, a joint working statement will be developed setting out the specific detail and arrangements for that work. Throughout such work HIW and the HCPC will retain and exercise their own statutory powers. This work could include:

- joint reviews of information about a healthcare organisation;
- site visits to a healthcare organisation;
- the co-production of documents and reports and the coordination of any follow up action planning to address any recommendations;
- the joint production of research and analysis reports;
- joint public responses to external policy developments; and
- joint guidance or position statements.

While this MoU sets out the guiding principle of information and incident sharing, there are also some specific activities which will facilitate the partnership between HIW and HCPC:

Healthcare Summit

HIW host a Healthcare Summit every 6 months, which focuses on the sharing of intelligence about each Health Board. Attendees include professional regulators, performance bodies and the Community Health Councils. HCPC are active members of this Summit and can present their findings to HIW and the other attendees.

Wales Concordat

HIW and the HCPC are members of the Wales Concordat Cymru forum of bodies inspecting, regulating, and auditing health and social care in Wales. HIW and the HCPC have agreed to work together with the other bodies to improve services for patients, service users, and their carers whilst eliminating unnecessary burdens of external review on front line staff.

Annex B – Contact Details

| Healthcare Inspectorate Wales | Health and Care Professions Council |
|--------------------------------------|--|
| Welsh Government | Park House |
| Rhydycar Business Park | 184-186 Kennington Park Road |
| Merthyr Tydfil | London |
| CF48 1UZ | SE11 4BU |
| Tel: 0300 062 8163 | Tel: 0845 300 6184 |

There will be named contacts between HIW and HCPC as follows:

| Chief Executives | |
|---|--|
| Alun Jones <i>Interim Chief Executive</i> Alun.Jones39@gov.wales | John Barwick <i>Chief Executive and Registrar</i> john.barwick@hcpc-uk.org |
| MoU managers | |
| Joseph Wilton <i>Head of Partnerships, Intelligence and Methodology</i> joseph.wilton@gov.wales Tel: 0300 025 2663 | Eva Hales <i>Assurance and Development Manager</i> eva.hales@hcpc-uk.org Tel: 0207 840 9742 |
| Concerns Mailbox | |
| concerns.hiw@gov.wales Tel: 0300 062 8163 | |

Annex C – Joint Operating Protocol

This protocol sets out the details of how HIW and the HCPC work together to operationalise the Memorandum of Understanding (MoU) in the following areas:

1. Key communication routes between HIW and the HCPC;
2. When and how information is shared; and

This protocol is designed to work alongside, and not separately from, existing processes in each organisation and, where relevant, reflects these for the benefit of staff and management.

The persons in each organisation responsible for the MoU will oversee the application of the protocol. The protocol is not time limited and will continue to have effect unless any section needs to be altered or ceases to be relevant.

It is understood that the Parties may have differing security needs, however it is important that all reasonable steps are made to ensure information is kept and shared in a private and confidential manner at all times according to the legislation mentioned in paragraph 22 of the MOU. Each Party is expected to comply with their own Information Security Policy and operating procedures and to make staff aware of their obligations in this respect.

1. Key communication routes between HIW and HCPC

HIW and the HCPC have different structures. To make sure that there is always a clear point of contact and to record information sharing between the two organisations effectively, each organisation should use the following email address:

- The HCPC approaching HIW (Partnerships, Intelligence and Methodology team): HIW.PIM@gov.wales
- HIW approaching the HCPC (Assurance and Development Team): ad@hcpc-uk.org.

The email addresses should be used both to request information and to refer concerns. The email addresses are also an important component of how the exchange of information will be monitored and how the outcomes and effectiveness of the relationship will be evaluated. If a direct relationship already exists between HIW and the HCPC in relation to a matter, staff can email contacts directly, but should also copy in the relevant email address.

2. When and how information is shared

HIW and the HCPC will share information with each other through planned activities and when there is a need to respond to emerging, urgent concerns, as outlined below.

Emerging or urgent concerns

Emerging or urgent concerns that may present a danger to the safety of people using healthcare services and where those concerns are considered to be relevant to the other organisations' regulatory functions need to be shared promptly.

Information for HIW and HCPC staff on when and how to make a referral to the other organisation is detailed here.

Information for HIW staff on making referrals to the HCPC

The HCPC regulates the following health and social care professionals:

| | |
|------------------------------------|------------------------------|
| Arts therapists | Orthoptists |
| Biomedical scientists | Paramedics |
| Chiropodists / podiatrists | Physiotherapists |
| Clinical scientists | Prosthetists / Orthotists |
| Dietitians | Radiographers |
| Hearing aid dispensers | Practitioner psychologists |
| Occupational therapists | |
| Operating department practitioners | Speech & language therapists |

All of these professions have at least one professional title that is protected by law, including those shown above. This means that anyone using the titles must be registered with the HCPC. An individual's registration status can be checked by searching the Register on the HCPC's website: [HCPC - Health and Care Professions Council - The Register](#).

What concerns are appropriate?

Unregistered individuals – referring a concern to the HCPC is appropriate when you suspect that an individual is using a protected title (or implying that they are a member of one of the professions) however they are not registered with the HCPC. Further guidance on protection of title (misuse of title) can be found on the HCPC's website: [HCPC - Health and Care Professions Council - Protection of title](#).

Registered individuals (registrants) - referring a concern to the HCPC is appropriate when the conduct, performance or health of a registrant raises potential issues about their fitness to practise. A registrant is 'fit to practise' when they have the skills, knowledge and character to practise their profession safely and effectively. Further guidance about raising a concern about a registrant can be found on the HCPC's website: <https://www.hcpc-uk.org/concerns/raising-concerns/>.

Suitability of learning environments – referring a concern to the HCPC is appropriate when the quality of a healthcare organisation calls into question its suitability as a learning environment for students for any of the professions regulated by the HCPC. An environment is suitable for use by an approved programme when it meets the requirements of our standards of education and training. Further guidance about raising a concern about a learning environment can be found on the HCPC's website: [HCPC - Raising a concern about an approved programme](#).

Consider the reasons for referring your concerns and discuss them with your manager or Head of Branch first. It is important to establish whether:

- local action has been taken;
- the employing organisation or agency has already investigated the concern or is in the process of doing so; and
- the employing organisation or agency has already made a referral to the HCPC.

Local action or an existing referral should not preclude HIW referral to the HCPC. HCPC processes often take place alongside any local action. Where a referral has already taken place, additional information can usefully support any investigation.

You can also ask for advice from the MoU Lead Officer (see Annex B).

Once you have decided to refer a concern to the HCPC you should complete an HCPC ['reporting a fitness to practise concern'](#) form and forward it to the MoU Lead Officer (see Annex B). The HCPC should provide feedback by informing the MoU Lead Officer whether any activity will be undertaken. If the HCPC undertakes activity. The HCPC will provide the MoU Lead Officer with update/s on the activity and the final outcome.

Information for HCPC staff on making referrals to HIW

HIW's organisational purpose is to check that people in Wales are receiving good care; this is achieved through the regulation and inspection of NHS services and independent healthcare organisations in Wales against a range of standards, policies, guidance and regulations to highlight areas requiring improvement.

System concerns about patient safety, quality of care or education and training practices may emerge during a fitness to practise investigation or education inspections on registrants or healthcare organisations in Wales.

If you are not sure whether to refer a system concern to the Operations Team for consideration for referral to HIW, you should speak to your manager.

| Step | Activity |
|------|--|
| 1 | A HCPC function (for example, case management or a Panel) identifies an issue that may require referral to HIW. The issue is forwarded to the Assurance and Development Team's inbox: ad@hcpc-uk.org . |
| 2 | An Assurance and Development Analyst reviews the information as soon as possible and makes a recommendation to an Assurance and Development Manager as to whether a referral is required. |
| 3 | If the Assurance and Development Manager decides a referral should be made, an Assurance and Development Analyst should make a referral via email to the MoU Lead Officer (see Annex B). |
| 4 | HIW should provide feedback by informing the MoU Lead Officer whether any activity will be undertaken. If HIW undertakes activity, HIW will provide the MoU Lead Officer with update/s on the activity and the final outcome. |

All documents in relation to the HCPC's decision making on referrals to HIW are added to the case on the relevant system. Any feedback or updates received from HIW to HCPC on a particular referral should also be added to the case on the system.

The HCPC keeps a separate audit trail of the referrals it makes to HIW and the outcome of those referrals. It can therefore report on the referrals it makes. The reports will be discussed as appropriate at appropriate forums at the HCPC.

Sharing of fitness to practise information

The HCPC is committed to sharing the information it publishes about the fitness to practise of individual registrants with HIW. Information about a registrant's health is always kept confidential.

The HCPC publishes information on its external website about upcoming hearings including details of concerns (<https://www.hcpts-uk.org/hearings/upcoming>) and issues a media schedule of fitness to practise hearings (<https://www.hcpts-uk.org/hearings/mediareleases>).

In addition, the HCPC publishes information about the sanctions it has imposed when its registrants are not fit to practise (<https://www.hcpts-uk.org/hearings/recentdecisions>).

The HCPC agrees to share more detailed information where this is requested by HIW. Requests for information should be sent to the MoU Lead Officer at the HCPC.

HIW routinely publishes reports of its findings arising from inspection visits. HIW agrees to share more detailed information supporting those findings where this is requested by the HCPC. Requests for information should be sent to the MoU Lead Officer at HIW.

Evidence to parliamentary committees: central government

HIW and HCPC will, when appropriate (and subject to the standard rules on parliamentary hearings and engagements), share with each other details of evidence provided to any parliamentary committees in relation to the operation of the regulatory regime or the exercise of their functions.