



A memorandum of understanding between the NHS  
Practitioner Health and the Health and Care Professions  
Council

November 2020

## 1. Purpose

1.1 The purpose of this memorandum of understanding is to set out a framework between:

- (A) The Health and Care Professions Council (HCPC) and
- (B) the NHS Practitioner Health (NHSPH)

to ensure that effective channels of communication are maintained between the HCPC and NHSPH.

1.2 This memorandum relates to the areas of interface between the HCPC and NHSPH, clarifies respective roles and responsibilities and outlines mechanisms in place to promote effective liaison.

1.3 The agreement does not affect existing statutory functions or amend any other policies or agreements relating to the activities of the HCPC and NHSPH.

## 2 Functions of the HCPC and NHSPH

### 2.1 The Health and Care Professions Council

The HCPC is a statutory body responsible for regulating the health and care profession in the United Kingdom. Its purpose is to:

Establish standards of education, training, conduct and performance for members of the 15 regulated health and care professions and to ensure the maintenance of those standards.

The HCPC has statutory powers under the Health Professions Order 2001, to take action when concerns are raised about the performance, conduct, or health of an individual practitioner which call into question the practitioner's fitness to practise.

### 2.2 The NHS Practitioner Health

The NHS Practitioner Health is a free, confidential NHS service based in England. Acting on behalf of Scottish government NHS Practitioner Health will be providing a treatment service for regulated staff working in NHS Scotland and social care in Scotland. The NHS Practitioner Health will provide advice, assessment, treatment and case management services. Where necessary, they will arrange onward referral to specialist services. Practitioners accessing the NHS Practitioner Health will have health concerns that relate to:

- a mental health or addiction problem (at any level of severity).

The NHS Practitioner Health is a national NHS service, commissioned by NHS England and by the Scottish Government and is a self-referral service. Health care organisations may seek advice or make referrals.

### Confidentiality

3. The HCPC has a statutory duty under article 22(9) of the Health Professions Order 2001 to publish, in such a manner as it sees fit, a range of decisions by fitness to practise panels, interim orders panels, the Investigation Committee, and undertakings agreed with practitioners. 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.
4. The HCPC does not publish confidential information relating solely to the details of a practitioner's health. It treats this information as confidential. This means it does not publish the details of conditions or undertakings that directly relate to a practitioner's health. Where details regarding a practitioner's health are disclosed during any part of a hearing which is held in public, by any party, this information is redacted from the published decisions.
5. Practitioners approaching the NHS Practitioner Health for help need to be assured that they have the same rights to confidentiality as any other patient. To this end, the NHS Practitioner Health has devised a confidentiality policy for practitioners which will be found on the Wellbeing website via the NHS Practitioner Health page.

### Potential areas of communication

6. Communication between the HCPC and the NHS Practitioner Health is based on an overriding duty to protect patients while, as far as possible, being fair to practitioners and protecting confidential health information about individual practitioners. Areas of potential communication between the HCPC and the NHS Practitioner Health include the following (the list is not intended to be exhaustive):
  - a. Pre-referral discussion:
    - i. 'in principle' about how best to manage concerns about a practitioner and whether or not the HCPC would need to be informed on an anonymised basis, or

- ii. discussions about individuals who have been referred to either organisation, where there are concerns about public protection or the safety of patients under the care of the practitioner, on a named practitioner basis.
  - b. Post-referral discussion – to coordinate activity where appropriate.
7. Each of these areas is further explored in the following paragraphs.

#### Pre-referral discussions 'in principle' or about named practitioners

- 8. Both the NHS Practitioner Health and the HCPC are approached for advice by organisations which have concerns about the health of particular practitioners; the purpose of these discussions is to determine whether the organisation should take further steps locally, refer to the HCPC, or refer to the NHS Practitioner Health.
- 9. Although in most cases it will be clear what advice should be given to the enquiring organisation at this stage, it may sometimes be appropriate for the HCPC and NHS Practitioner Health to liaise in order to clarify the issues raised.
- 10. In these cases the HCPC or NHS Practitioner Health will discuss the matters raised by the enquiring organisation. Consent should be sought before doing so and if not provided there should be an assessment of whether the risk is such that the information should be disclosed without consent. If the nature of the risk is not such that it would be appropriate to disclose the information without consent, the enquiring organisation should be offered appropriate contact details for both bodies so they may conduct their own discussions. Should NHS Practitioner Health need to provide contact details for the HCPC, they should give the enquiring organisation the details for the operational contact identified at Annex A.

#### Post-referral discussions about individual practitioners

- 11. The HCPC and NHS Practitioner Health recognise that there will be times where they both have a case open about a named practitioner. They will work together to ensure that appropriate channels of communication exist.

#### Disclosure of concerns

- 12. Disclosure should be made to the HCPC where the practitioner's health raises concern regarding the possibility of impaired fitness to practise. This will normally be limited to those cases where the practitioner's condition may affect

patient safety and/or the practitioner is not complying with assessment, treatment or monitoring, or heeding advice to remain on sick leave.

13. Disclosure should also be made to the HCPC where there are allegations (at initial assessment or emerging during assessment or treatment) about a practitioner's performance or conduct which may call into question their fitness to practise.

#### Cases under investigation/monitoring by the HCPC

14. Whenever the HCPC receives a complaint about a practitioner an initial assessment is conducted. The complaint may include information which indicates the practitioner may be unwell.
15. Where the complaint raises issues which call the practitioner's fitness to practise into question, the HCPC's fitness to practise procedures are engaged and an investigation will follow. In these cases, for practitioners who appear to have a mental or physical health concern, and the HCPC has reason to believe the practitioner is employed by NHS Scotland, the HCPC will ask the practitioner if they are currently undergoing assessment or treatment by NHS Practitioner Health. If so, it will, with the practitioner's consent, seek relevant information from NHS Practitioner Health.
16. Any information provided by NHS Practitioner Health will be considered by HCPC decision makers and the Panel of the Conduct and Competence Committee in relation to the practitioner's fitness to practise.
17. Where a practitioner is under investigation/being monitored by the HCPC and is also under the care of NHS Practitioner Health, the NHS Practitioner Health will inform the HCPC whether they are acting in a treating capacity or as a support group. If the NHS Practitioner Health is acting in a treating capacity they will provide a named person with whom the HCPC can liaise.
18. The NHS Practitioner Health will ensure that any information arising from the monitoring of the health of a practitioner being investigated or monitored by the HCPC that indicates they have breached restriction(s) imposed on their registration and/or are not complying with advice on managing their health problem, and/or their condition appears to pose a risk to their patients, will be shared with the HCPC as soon as possible.

#### Practitioners being treated/monitored by NHS Practitioner Health

19. When the NHS Practitioner Health receives a referral (self-referrals or referrals from an employer/contracting organisation) they will ask the practitioner /referring organisation if the practitioner is currently under investigation/being monitored by the HCPC and perform a registration check to ascertain if restrictions are in place.
20. If the practitioner or referring organisation indicates that the HCPC is currently investigating / monitoring, the NHS Practitioner Health will seek the practitioner's consent to contact the HCPC to explain that the practitioner has sought the NHS Practitioner Health's intervention. If consent is not forthcoming, the NHS Practitioner Health will consider whether or not disclosure to the HCPC is required, without consent, using the criteria set out in paragraphs 13 and 14.

#### Thresholds for referral

21. The HCPC Employer Liaison Service comprises locally based senior staff whose role is to support the employers of practitioners with regard to thresholds for referral to the HCPC, the sharing of fitness to practise case related information and the making of revalidation recommendations. The NHS Practitioner Health should access the contact for the Employer Liaison Service identified at Annex A in order to seek advice on thresholds for referral on an 'in principle' or a named practitioner basis.

#### Lawful exchange

22. The HCPC and NHS Practitioner Health are subject to a range of legislative duties in relation to information governance, including the Data Protection Act 2018, Human Rights Act 1998, and the Freedom of Information Act 2000. This document sets out the approach to the routine exchange of information between the two organisations within this legal framework.
23. Nothing in this agreement shall take precedence over HCPC or NHSPH's obligations under the Data Protection Act 2018, Human Rights Act 1998, and the Freedom of Information Act 2000 or any other law from time to time in force.

#### Resolution of disagreement

24. Where any issues arise which cannot be resolved at an operational level, the matter will be referred to the policy leads identified at Annex A to ensure a satisfactory resolution.

## Review and Governance arrangements

25. This MoU will have effect for a period of 36 months commencing on the date which it is signed by the Chief Executive of the HCPC and the Medical Director of the NHS Practitioner Health.
26. Both bodies have identified a MoU manager at Annex A and these will liaise as required to ensure this MoU is kept up to date and to identify any emerging issues in the working relationship between the two bodies.
27. The MoU managers may coordinate a formal review of this MoU at any time for the duration of this MoU. The purpose of such a review will be to consider the operational effectiveness of this agreement in enabling both bodies to fulfil their functions.

On behalf of HCPC

Name: John Barwick

Signature 

Chief Executive, HCPC

Date: 4 November 2020

On behalf of NHS Practitioner Health

Name: Dame Clare Gerada

Signature



NHS Practitioner Health Medical Director

Date: 6<sup>th</sup> November 2020

## Annex A

The memorandum of Understanding will be managed on behalf of the two bodies by the following contacts:

### Managers for the MOU

1. The Health and Care Professions Council

Laura Coffey  
Head of Fitness to Practise  
The Health and Care Professions Council  
Email: [laura.coffey@hcpc-uk.org](mailto:laura.coffey@hcpc-uk.org)

2. The NHS Practitioner Health

Lucy Warner  
Chief Executive Officer  
NHS Practitioner Health  
Email: [lucy.warner@nhs.net](mailto:lucy.warner@nhs.net)

### Operational contacts

1. The Health and Care Professions Council

Sabrina Adams  
Operational Manager Case Reception and Triage, Fitness to Practise The  
Health and Care Professions Council  
Email: [Sabrina.adams@hcpc-uk.org](mailto:Sabrina.adams@hcpc-uk.org)

2. The NHS Practitioner Health

Misha Patel  
Operational Manager  
NHS Practitioner Health  
Email: [misha.patel9@nhs.net](mailto:misha.patel9@nhs.net)