



A memorandum of understanding between NHS Practitioner Health/Scottish Workforce Specialist Service and the Nursing and Midwifery Council

March 2021

Purpose

The purpose of this memorandum of understanding is to set out a framework between the Nursing and Midwifery Council (NMC), and NHS Practitioner Health (NHSPH)/Scottish Workforce Specialist Service (SWSS) to ensure that effective channels of communication are maintained between the NMC and NHSPH/SWSS.

1. This memorandum relates to the areas of interface between the NMC and NHSPH/SWSS, clarifies respective roles and responsibilities and outlines mechanisms in place to promote effective liaison.
2. The agreement does not affect existing statutory functions or amend any other policies or agreements relating to the activities of the NMC and NHSPH/SWSS.

Functions of the NMC and NHSPH/SWSS

The Nursing and Midwifery Council

3. The NMC is a statutory body responsible for regulating nurses and midwives in the United Kingdom and nursing associates in England. Its purpose is as follows:
 - Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing. As the professional regulator of almost 725,000 nursing and midwifery professionals, we have an important role to play in making this a reality.
 - Our core role is to **regulate**. First, we promote high professional standards for nurses and midwives across the UK, and nursing associates in England. Second, we maintain the register of professionals eligible to practise. Third, we investigate concerns about nurses, midwives and nursing associates – something that affects less than one percent of professionals each year. We believe in giving professionals the chance to address concerns, but we'll always take action when needed.
 - To regulate well, we **support** our professions and the public. We create resources and guidance that are useful throughout people's careers, helping them to deliver our standards in practice and address new challenges. We also support people involved in our investigations, and we're increasing our visibility so people feel engaged and empowered to shape our work.
 - Regulating and supporting our professions allows us to **influence** health and social care. We share intelligence from our regulatory activities and work with our partners to support workforce planning and sector-wide decision making. We use our voice to speak up for a healthy and inclusive working environment for our professions.

NHS Practitioner Health

4. NHS Practitioner Health (NHSPH) is a free, confidential NHS service based in England. Acting on behalf of Scottish government NHS Practitioner Health will also be providing a treatment service for regulated staff working in NHS Scotland and social care in Scotland known as Scottish Workforce Specialist Service (SWSS). Where necessary, they will arrange onward referral to specialist services. Nursing and Midwifery professionals accessing NHSPH will have health concerns that relate to:
 - a mental health or addiction problem (at any level of severity).
5. 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

6. The NMC's publication policy is located on the NMC's website:
https://www.nmc.org.uk/globalassets/sitedocuments/ftp_information/publication-guidance.pdf.
7. The fitness to practise information handling guidance can be accessed using the following link:
https://www.nmc.org.uk/globalassets/sitedocuments/ftp_information/ftp-information-handling-guidance.pdf
8. Nursing and Midwifery professionals approaching NHSPH/SWSS for help need to be assured that they have the same rights to confidentiality as any other patient. To this end, NHSPH/SWSS has devised a confidentiality policy for regulated professionals which will be found on the NHSPH/SWSS website.

Potential areas of communication

9. Communication between the NMC and NHSPH/SWSS is based on an overriding duty to protect the public while, being fair to Nursing and Midwifery professionals and protecting confidential health information about individual Nursing and Midwifery professionals. Areas of potential communication between the NMC and NHSPH/SWSS include the following (the list is not intended to be exhaustive):
 - a. Discussion with the Employer Link Service about Nursing and Midwifery professionals:
 - i. A discussion 'in principle' about how best to manage concerns about a Nursing and Midwifery professional and whether or not the NMC would need to be informed on a pseudonymised 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 Nursing and Midwifery professional, on a named basis.

b. Post-referral discussion – to coordinate activity where appropriate.

10. Each of these areas is further explored in the following paragraphs.

Discussions 'in principle' or about named Nursing and Midwifery professionals.

- i. Both NHSPH/SWSS and the NMC are approached for advice by organisations which have concerns about the health of particular Nursing and Midwifery professionals; the purpose of these discussions is to determine whether the organisation should take further steps locally, refer to the NMC, or refer to NHSPH/SWSS.
- ii. 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 NMC and NHSPH/SWSS to liaise in order to clarify the issues raised.

11. In these cases the NMC or NHSPH/SWSS will discuss the matters raised by the enquiring organisation. The Nursing or Midwifery professional will be informed that the information may be shared for the specific purpose which the sharing is for in line with the NMC's data sharing policy. 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 NHSPH/SWSS need to provide contact details for the NMC, they should give the enquiring organisation the details for the operational contact identified at Annex A.

Post-referral discussions about individual Nursing and Midwifery professionals

12. The NMC and NHSPH/SWSS recognise that there will be times where they both have a case open about a named Nursing and Midwifery professional. They will work together to ensure that appropriate channels of communication exist.

Disclosure of concerns

13. Disclosure should be made to the NMC where the Nursing and Midwifery professional's health raises concerns regarding the possibility of impaired fitness to practise. This will normally be limited to those cases where the Nursing and Midwifery professional's condition may affect patient safety and/or the Nursing and Midwifery professional is not complying with assessment, treatment or monitoring, or heeding advice to remain on sick leave.

14. Disclosure should also be made to the NMC where there are allegations (at initial assessment or emerging during assessment or treatment) about a Nursing and Midwifery professional's performance or conduct which may call into question their fitness to practise.

Cases under investigation/monitoring by the NMC

15. Whenever the NMC receives a concern about a Nursing and Midwifery professional an initial assessment is conducted. The concerns may include information which indicates the Nursing and Midwifery professional may be unwell.
16. Where the complaint raises issues which call the professional's fitness to practise into question, the NMC's fitness to practise procedures are engaged and an investigation will follow. In these cases, for nurses or midwives who appear to have a mental or physical health concern, the NMC may receive information from the professional that they are currently undergoing assessment or treatment by NHSPH/SWSS, or may ask the professional if they are currently undergoing assessment or treatment by NHSPH/SWSS. Where it receives information that the professional is currently undergoing assessment or treatment, the NMC may seek relevant information from NHSPH/SWSS.
17. Any information provided by NHSPH/SWSS (subject to the rules on admissibility of evidence) will be considered by NMC decision makers and, if needed, the Fitness to Practise Committee in relation to the Nursing and Midwifery professional's fitness to practise if the case reaches this stage.
18. Where a Nursing and Midwifery professional is under investigation by the NMC and is also under the care of NHSPH/SWSS, NHSPH/SWSS will inform the NMC whether they are acting in a treating capacity or as a support role. If the NHSPH/SWSS is acting in a treating capacity they will provide a named person with whom the NMC can liaise.
19. NHSPH/SWSS will ensure that any information arising from the monitoring of the health of a Nursing and Midwifery professional being investigated by the NMC 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 NMC as soon as possible.

Nursing and Midwifery professionals being treated/monitored by NHSPH/SWSS

20. When NHSPH/SWSS receives a referral (self-referrals or referrals from an employer/contracting organisation) they will ask the Nursing and Midwifery professional /referring organisation if the Nursing and Midwifery professional is currently under investigation by the NMC and perform a registration check to ascertain if restrictions are in place.
21. If the Nursing and Midwifery professional or referring organisation indicates that the NMC is currently investigating, NHSPH/SWSS will seek the Nursing and Midwifery professional's consent to contact the NMC to explain that the Nursing and Midwifery professional has NHSPH/SWSS's intervention. If consent is not forthcoming, NHSPH/SWSS will inform the Nursing and Midwifery professionals when information is going to be shared and the specific purpose for that sharing.

Thresholds for referral

22. The NMC Employer Link Service comprises locally based senior staff whose role is to support the employers of nurses and midwives on thresholds for referral to the NMC and the sharing of fitness to practise case related information. NHSPH/SWSS should access the operational contact for the NMC identified at Annex A in order to seek advice on thresholds for referral on an 'in principle' or a named Nursing and Midwifery professional basis. Further information about the Employer Link Service can be found here: <https://www.nmc.org.uk/employer-resource/managing-concerns/working-with-us/>

Lawful exchange

23. The NMC and NHSPH/SWSS are subject to a range of legislative duties in relation to information governance, including the UK General Data Protection Regulations. (GDPR), Data Protection Act 2018, Human Rights Act 1998, the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. This document sets out the approach to the routine exchange of information between the two organisations within this legal framework.

- Both organisations hold and use information about organisations and individuals to perform their core functions. The NMC and NHSPH/SWSS will share information where it is necessary in order to perform these functions effectively and where it is in the public interest.
- The organisations recognise that this exchange of information needs to be carried out responsibly and within the guidelines set out in this MoU.
- It is understood by both organisations that statutory and other constraints on the exchange of information will be fully respected, including the requirements of data protection legislation (including the Data Protection Act 2018 and the General Data Protection Regulation ((EU 2016/679) as applied in the UK), the Human Rights Act 1998 and the common law duty of confidentiality.
- Where information shared under this MoU falls within the scope of a request for information under either the Freedom of Information Act 2000 (FOIA), the Freedom of Information (Scotland) Act 2002 or data protection legislation, the organisation receiving the request will consult the other party before any disclosure is made. This is so that they are aware of the potential impact of any disclosure on the work of the other party. Both organisations recognise that the final decision on disclosure will rest with the organisation that receives the request.

Data protection

- Both organisations recognise their respective responsibilities as data controllers under data protection legislation (including the Data Protection Act 2018 and the General Data Protection Regulation ((EU 2016/679) as applied in the UK). Both will comply with any data sharing code published by the Information Commissioner under that legislation and will adhere to the data protection principles.

Resolution of disagreement

24. Where any issues arise which cannot be resolved at an operational level, the matter will be referred to the contacts 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 NMC and the Medical Director of NHSPH (also acting as provider of SWSS in Scotland).

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 NMC

Name: Andrea Sutcliffe

Signature 

Chief Executive and Registrar, NMC

Date: 20 May 2021

On behalf of NHSPH

Name: Dame Clare Gerada

Signature 

NHSPH Medical Director

Date: 16th March 2021

Annex A (redacted)

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