

Memorandum of Understanding between the Jersey Care Commission 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 the Jersey Care Commission (the Commission) and the Nursing and Midwifery Council (NMC), collectively referred to as “the parties” throughout this document.
2. The Jersey Care Commission (the Commission) regulates and inspects services for both adults and children, provided by the Government of Jersey, private providers and the voluntary sector to ensure that people receive high quality and safe care. Nurses and midwives practicing in Jersey are regulated by both the Commission and the NMC. The detailed responsibilities and the functions of the Commission are set out on the Commission’s website: <https://carecommission.je>.
3. The NMC is the regulator of nurses, midwives in the UK and nursing associates in England; it 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 Commission and the NMC and is not enforceable in law. However, the Commission and the NMC are committed to working in ways that are consistent with the content of this MoU. 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

5. The broad purpose of the MoU is to enable the Parties to share relevant information which enhances their ability to exercise their respective functions.
6. 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 Regulation (UK GDPR) and the Data Protection Act 2018 (DPA) as well as the Data Protection (Jersey) Law 2018 (DPJL). 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

7. The Commission and the NMC intend that their working relationship will be characterised by the following principles:
 - a. The need to make decisions which promotes public safety and high-quality health and social care provision.
 - b. Respect for each organisation's independent status.
 - c. The need to maintain public and professional 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

8. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion both Parties will:
 - 8.1. Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues).
 - 8.2. Consult one another on any issues which might have significant implications for the other organisation.
 - 8.3. Notify one another of the outcome of a case before it is made public in those cases in which the other party has an interest.
 - 8.4. Share in confidence internal guidance and draft external guidance relevant to the functions of both Parties.
 - 8.5. Undertake joint regulatory work where this is agreed to be appropriate.
 - 8.6. 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 patient safety, the referring organisation will not wait to share concerns until its own investigation into registrant-related complaints has concluded. In particular:
 - a. The Commission will refer to the NMC concerns and relevant information about an NMC registered professional which may call into question their fitness to practise.
 - b. The NMC will send the Commission Alerts when a Fitness to Practise case concludes and a registrant is suspended, has their practise curtailed

or is stricken off. This will be sent within two working days of the case concluding where possible.

- c. The NMC will send the Commission Alerts if a registrant has interim orders (IO) imposed. This will be sent within two working days of the IO being imposed where possible.
 - d. The NMC will send the Commission an Alert when an IO is revoked or lifted. This will be sent within two working days of the revocation where possible.
 - e. Where the NMC is informed that a registrant is registered with the Commission (the NMC must under Article 25(2) of The Nursing and Midwifery Order 2001 (the Order) request the details of any body by which they are authorised to practise, in the UK or elsewhere, a health or social care profession which is regulated under any enactment), they will disclose any information relating to that person's fitness to practise which it considers to be in the public interest to disclose (as per Article 22(10) of the Order).
 - f. The NMC will notify the Commission about any concerns and relevant information about a health care organisation in which nurses and midwives practise, which may call into question the quality and safety of the services it provides.
 - g. The NMC will notify the Commission of any concerns and relevant information about a health care organisation which makes it call into question the quality of supervision or suitability as a learning environment for pre-registration nursing or midwifery students.
- 8.7. 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.

Legal basis for sharing personal information

Information shared by the Commission with the NMC

- 9. The Commission is able to share personal data with the NMC, based in the UK, as under the Jersey EU (UK Exit Miscellaneous Amendments) (Jersey) Regulations 2019, 3A is inserted into the Data Protection (Jersey) Law 2018 (DPJL) stating that the UK is to be treated as not being a third country for the purpose of this law.
- 10. To the extent that any shared information is to comprise personal data, as defined under the UK GDPR and DPA 2018 and DPJL the Commission is a Data Controller so must ensure that it has a legal basis for sharing it and that doing so would be compliant with the data protection principles.

11. The DPJL sets out the rights of individuals in respect of their personal data as well as the obligations and conditions organisations must follow to process it. The Commission's lawful basis for sharing data with the NMC under DPJL is
- Other Legal Obligations (Schedule 2 Part 2 (7)) DPJL
 - Public Functions Schedule 2 Part 1 (4) (b) (c) DPJL
12. Where this includes special category data the Commission's lawful basis will be under one of the conditions set out in Schedule 2 part 2 DPJL namely
- Other Legal Obligations (Schedule 2 Part 2 (7))
 - Public Interest (Schedule 2 Part 2 (14)) or
 - Protection against malpractice and mismanagement (Schedule 2 Part 2 (20))
13. The Commission also has to provide information to the NMC upon the NMC's request so that the NMC can assess registrants' fitness to practise, as per the NMC's statutory duty under the Order. To properly assess whether a registrant poses a risk to the public the NMC needs access to certain information and Article 25(1) of 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 us in the discharge of its fitness to practise function.
14. 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, the Commission 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 Commission

15. The NMC can transfer data to the Commission in Jersey without the need for additional safeguards as the UK accepts the European Commission's full adequacy decision (in force on 31 December 2020) in relation to Jersey. This means that the UK accepts that the legal framework in Jersey provides 'adequate protection' for individuals' rights and freedoms for their personal data. This means that personal data can be transferred outside the UK to the Commission so long as the transfer is considered necessary to meet the regulatory purposes of the Parties as set out in this MOU.
16. 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.
17. Where the NMC identifies that personal data it holds ought to be shared with the Commission in order to fulfil its obligations the NMC's legal basis for sharing data with the Commission under the UK GDPR is:
- Legal obligation (Article 6(1)(c))
 - Public task (Article 6(1)(e))

18. Furthermore, Article 3(5) of the Order, requires the NMC to co-operate with bodies like the Commission in the exercise of its functions in pursuance of public protection (the overarching objective (Article 3(4)). Under Article 15 (1) Health Care (Registration) (Jersey) Law 1995 the Commission may require the production of such documents as the Commission thinks necessary in order to ensure that the provisions of this Law are being complied with.
19. 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.
20. The NMC has a statutory duty under Article 22(9) of the Order 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) of the Order). 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) of the Order), this includes the Commission.

Access requests for data

21. 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 and Article 44, Code of Practice, Freedom of Information (Jersey) Law 2011, 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.
22. 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

23. Data will be handled in line with the NMC's information handling guidance: <ftp://information-handling-guidance.pdf> (nmc.org.uk).
24. 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.
25. Where confidential material is shared between the Parties it will be marked with the appropriate security classification.
26. 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.

27. 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.
28. 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

29. The Commission 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.
30. Subject to their respective obligations under the Freedom of Information Act 2000 and the Freedom of Information (Jersey) Law 2011, the Commission 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

31. Any disagreement between the Commission 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

32. 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 Commission 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.
33. 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.
34. 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

 Becky Sherrington Chief Inspector Jersey Care Commission	 Andrea Sutcliffe Chief Executive and Registrar Nursing and Midwifery Council
Date: 8 December 2023	Date: 24 November 2023

Annexe 1

Contact details (internal only – not for publication)

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