



# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**SOCIAL CARE AND SOCIAL WORK  
IMPROVEMENT SCOTLAND (“THE  
CARE INSPECTORATE”)**

**AND**

**THE REGISTRAR OF INDEPENDENT  
SCHOOLS**

## **MEMORANDUM OF UNDERSTANDING BETWEEN SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND (“THE CARE INSPECTORATE”) AND THE REGISTRAR OF INDEPENDENT SCHOOLS.**

### **1 Preamble**

- 1.1** The objective of this Memorandum is to set out the framework by which the Care Inspectorate and the Registrar of Independent Schools will work in partnership when applicable.
- 1.2** This Memorandum does not affect existing statutory functions or amend any other policies or agreements relating to the activities of the Care Inspectorate and the Registrar of Independent Schools.
- 1.2.1** Nothing in this Memorandum restricts the exercise of each body’s respective statutory responsibilities. This Memorandum aims to support partnership working where appropriate which satisfy each body’s respective statutory responsibilities.
- 1.3** This Memorandum is not a contract and is not legally enforceable. However, the Care Inspectorate and the Registrar of Independent Schools agree to adhere to its principles and to show proper regard for each other’s activities, all so far as is consistent with ensuring compliance with their respective statutory responsibilities.

### **2 Purpose and Scope of this Memorandum**

- 2.1** This Memorandum sets out the working arrangements between the Care Inspectorate and the Registrar of Independent Schools by:
- 2.1.1** Establishing the collaborative basis for the working relationship between the Care Inspectorate and the Registrar of Independent Schools based on their respective legislative duties; and
- 2.1.2** Explaining how the Care Inspectorate and the Registrar of Independent Schools will carry out those responsibilities.
- 2.2** Interface will arise between the Care Inspectorate and the Registrar of Independent Schools through the regulation of relevant care services through registration, inspection, complaint and enforcement activity.

### **3 Roles and Responsibilities – Care Inspectorate**

- 3.1** The Care Inspectorate was established under the Public Services Reform (Scotland) Act 2010 (“the 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 whether alone or jointly with others and has specific joint responsibilities to inspect and support improvement of strategic commissioning of integrated health and social care within integrated arrangements. The aim of the Care Inspectorate is to improve the quality of care provision within social services in Scotland.

- 3.2** The Care Inspectorate has a number of duties which are specified within the Act. These include functions conferred on it by the Act or any other enactment, such as:
- 3.2.1** Furthering improvement in the quality of social services in Scotland.
  - 3.2.2** The Care Inspectorate will undertake the regulation of social work and care services in Scotland as specified in the Act.
  - 3.2.3** The Care Inspectorate will provide information to the public and to the Minister about the availability and quality of social services.
  - 3.2.4** The Care Inspectorate will take into account the Codes of Practice for employees and employers issued by the Scottish Social Services Council.
  - 3.2.5** The Care Inspectorate must consult with the Scottish Social Services Council when carrying out its tasks.
  - 3.2.6** The Care Inspectorate will also take account of the Scottish Regulators' Strategic Code of Practice when carrying out its statutory functions.
- 3.3** The Act and associated secondary legislation makes provision for the manner in which the Care Inspectorate will carry out regulation of social services.
- 3.4** The Act also specifies a set of principles which must inform the manner in which the Care Inspectorate carries out its duties and functions:
- 3.4.1** The safety and welfare of all persons who use, or are eligible to use, any social service are to be protected and enhanced;
  - 3.4.2** The independence of those persons is to be promoted; and
  - 3.4.3** Diversity in the provision of social services is to be encouraged to promote choice.
  - 3.4.4** In terms of section 50 of the Act, Scottish Ministers must prepare and publish standards and outcomes applicable to both care and social work services which the Care Inspectorate must take into account when exercising its statutory functions. In June 2017, the Health and Social Care Standards were published. The Standards set out the standard of care a person can expect from health and care services. The objective of the Standards is to drive

improvement promote flexibility and encourage innovation in how people are cared for and supported.

**3.4.5** The Care Inspectorate will take into account the Health and Social Care Standards for all social services.

**3.5** The Care Inspectorate has the statutory responsibility for ensuring that providers of social services are fit to provide that service and that they continue to comply with the statutory regulations taking into account the Health and Social Care Standards. The Care Inspectorate has a range of powers to carry out these regulatory responsibilities. The Care Inspectorate may:

**3.5.1** Grant registration, subject to conditions or unconditionally, and refuse registration.

**3.5.2** Impose, remove or vary conditions of registration, grant or refuse requests for variation of conditions, or cancel registrations; and

**3.5.3** Report care service providers, who have committed specific offences under the Act, to the Procurator Fiscal for prosecution.

### **3.6 Roles and Responsibilities – the Registrar of Independent Schools**

**3.6.1** The legislative framework in respect of the registration of independent schools is contained in part V of the Education (Scotland) Act 1980 ('the 1980 Act'), as amended by the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004.

**3.6.2** The Registrar of Independent Schools is a position held by a Scottish Government official, who is appointed by Scottish Ministers in accordance with section 98 of the 1980 Act.

**3.6.3** The Registrar is required to maintain a Register of independent schools, which is open to the public.

**3.6.4** The Register contains a selection of the information provided by a proprietor when an application for registration of an independent school under the 1980 Act is submitted and details of any conditions imposed, varied or revoked by Scottish Ministers, or orders made by Scottish Ministers imposing or removing any disqualification.

**3.6.5** The Scottish Ministers may grant an application for registration if they are satisfied on the grounds set out in section 98A(3) of the 1980 Act.

- 3.6.6** The Scottish Ministers may, on granting an application for registration, impose such conditions on the carrying on of the registered school as they think fit.
- 3.6.7** The Scottish Ministers, on refusing an application for registration, may make a disqualification order in terms of section 98B of the 1980 Act.
- 3.6.8** A proprietor may appeal to the Sheriff Principal, in terms of section 98C of the 1980 Act, if registration is refused or conditions are placed on the operation of the school
- 3.6.9** If at any time the Scottish Ministers are satisfied that any registered school is objectionable upon all or any of the following grounds a notice of complaint shall be served on the school. These grounds are listed in section 99(1A) of the 1980 Act. Additionally, where the Scottish Ministers are satisfied a school is at risk of becoming objectionable on any of the grounds set out in section 99(1A) of the 1980 Act, and that it is necessary to do so, the Scottish Ministers may impose a condition on the running of the school in accordance with section 98E of the 1980 Act.
- 3.6.10** The Scottish Ministers need not serve a notice of complaint when they are satisfied that they urgently require to make an order under section 100(2) of the 1980 Act.
- 3.6.11** The school may then seek recourse to the Sheriff Principal, by way of an appeal under section 103 of the 1980 Act. A notice of complaint may lead to a school being removed from the Register. The Scottish Ministers may also make a disqualification order under s. 100 of the 1980 Act in respect of premises or accommodation, or in respect of a proprietor or a teacher.

#### **4 Exchange of Information and Co-ordination (See APPENDIX 1)**

- 4.1** The Care Inspectorate and the Registrar of Independent Schools will exchange such information as is necessary to fulfil their respective statutory functions and to ensure the safety and well-being of people who use school care accommodation, but subject always to such constraints as may exist restricting or preventing such exchange of information. The detail of all such exchanges, including specific contact information, is provided in APPENDIX 1.
- 4.1.1** The Care Inspectorate and the Registrar of Independent Schools comply with the requirements under the General Data Protection Regulation<sup>1</sup> and the Data Protection Act 2018. Both parties regard the lawful and correct treatment of personal information as very important to fulfilling their functions, and to maintaining the confidence of all individuals who come into contact with them. Both parties agree to share information only where this is in accordance

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<sup>1</sup> [Regulation \(Eu\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and repealing Directive 95/46/EC \(General Data Protection Regulation\)](#)

with the Data Protection Act 2018, and where they are not subject to any other constraints restricting or preventing them from sharing information. Both parties are aware that the processing of personal data must be carried out in accordance with the GDPR.

- 4.2** The Care Inspectorate and the Registrar of Independent Schools are obliged to act in a way that is compatible with the Human Rights Act 1998. Any information sharing between the parties must be compatible with Human Rights.
- 4.2.1** The working relationship between the Care Inspectorate and the Registrar of Independent Schools will be characterised by regular on-going contact and co-operation where it is appropriate. This will be kept under review by the named contacts at the Care Inspectorate and the Registrar of Independent Schools.

## **5 Communication Issues**

- 5.1** The Care Inspectorate and the Registrar of Independent Schools will collaborate on external communications, subject always to such constraints as may exist restricting or preventing such collaboration.
- 5.1.1** Both parties will respect and, as appropriate, take such steps as may be necessary to protect the confidential nature of documents and information that the other may provide. However, both parties are aware of the application of the Freedom of Information (Scotland) Act 2002 and will inform the other promptly of any request under that Act which may affect information supplied by the other party.
- 5.2** As resources allow, and subject always to such constraints as may exist restricting or preventing collaboration, the Care Inspectorate and the Registrar of Independent Schools will collaborate in activities where their collaboration would contribute to quality improvement in the relevant sectors. These might include reports on aspects of provision within sectors; the dissemination of good practice; mutual access to training; access to specific expertise; advice.
- 5.3** Both parties may collaborate over how any media interest is to be handled where appropriate, subject always to such constraints as may exist restricting or preventing such collaboration.
- 5.4** Both parties will endeavour to ensure their staff, or as appropriate relevant officials, are aware of the content of this Memorandum of Understanding and the responsibilities it places on each individual member of staff or as appropriate, relevant official.

## **6 Working arrangements**

**6.1** The Care Inspectorate and the Registrar of Independent Schools will identify named officers and contact points where requests for information can be sent. These contact points are detailed in APPENDIX 2.

**6.2** Details of practical working arrangements are listed in APPENDIX 1.

**6.2.1** Any disagreements about the operation of the Memorandum of Understanding should so far as possible be resolved at a local level. Where this is not possible, the matter should be escalated to Helen Happer, Chief Inspector for the Care Inspectorate, and Alan Armstrong, Education Scotland, for the Registrar.

## **7 Review of Memorandum of Understanding**

**7.1** This Memorandum of Understanding will be reviewed every two years to ensure it remains relevant and up to date. It will also be reviewed in the following circumstances: -

**7.1.1** Staff/contact point changes

**7.1.2** New legislation

**7.1.3** Policy changes (National or Local)/ Organisational changes/developments

## **8 Contact Details**

**8.1**

[REDACTED]

**8.2**

[REDACTED]

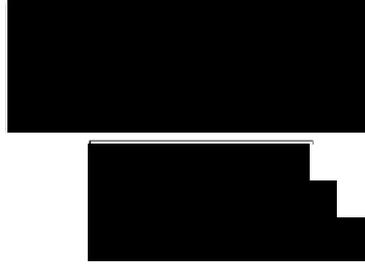
**9 Signatories**

**(Signed)**



**(Date) ...28 January 2021**

**(Signed)**



**(Date) 27 January 2021**