

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND  
("THE CARE INSPECTORATE")**

**AND**

**NHS EDUCATION FOR SCOTLAND  
("NES")**

## TABLE OF CONTENTS

1. Parties to the Memorandum of Understanding
  2. Statutory Functions of the Care Inspectorate and NES
  3. Purpose and Scope of the Memorandum
  4. Exchange of Information
  5. Points of Contact
  6. Principles of Collaboration
  7. Confidentiality
  8. Reconciliation of Disagreement(s) and Duration, Review and Termination
  9. Charges and Liabilities
  10. Governing Law and Jurisdiction
  11. Signatures
- Appendix 1 – Information to be shared
- Appendix 2 – NES Code of Conduct

## 1. Parties to the Memorandum of Understanding

1.1 **SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND** (“the **Care Inspectorate**”) is a non-departmental public body. It was established under section 44(1) of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) as an independent organisation responsible for the scrutiny and improvement of social care, social work and child protection services in Scotland. It is accountable to Scottish Government Ministers and both its Board and Senior Management Team.

**NHS EDUCATION FOR SCOTLAND** (“**NES**”) a Special Health Board constituted pursuant to the National Health Service (Scotland) Act 1978 (as amended) and whose principal place of business is at Westport, 102 Westport, Edinburgh, EH3 9DM.

## 2. Statutory Functions of the Care Inspectorate and NES

2.1 The Care Inspectorate has a number of duties and powers specified in the 2010 Act and regulations made thereunder. It has a general duty of furthering improvement in the quality of social services 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.

2.2 NES is a Special Health Board within NHS Scotland with functions in relation to the delivery of education, workforce development and training, workforce analysis and planning for the NHS and health sector in Scotland. NES developed and runs ‘Turas’, the digital platform which provides access to knowledge and training, allows staff to keep records of their learning and achievements and is the basis for workforce data analysis. In response to the pandemic the ‘Turas’ platform was extended for use by social care providers for specific purposes.

2.3 This memorandum of understanding (“**MoU**”) does not affect the existing statutory functions of either party and does not imply any transfer of functions, duties or responsibilities.

## 3. Purpose and Scope of the Memorandum

3.1 The purpose of this MoU is to facilitate NES carrying out analysis of data provided by the Care Inspectorate as part of the Care Inspectorate’s Safe Staffing Programme, which programme was commissioned by the Scottish Government. NES analysis of Care Inspectorate data will enable the Care Inspectorate to report to the Scottish Government in relation to a number of the objectives set out in the Safe Staffing Programme, in particular:

- 3.1.1 to enable the Care Inspectorate to report to the Scottish Government in relation to objective 4 of the Safe Staffing Programme: “Following consultation make recommendations on whether the Care Inspectorate needs to develop a staffing method (particularly but not exclusively for care homes for older people).”
  - 3.1.2 to enable the Care Inspectorate to report to the Scottish Government in relation to objective 5 of the Safe Staffing Programme: “Work with SSSC (Scottish Social Services Council) to make recommendations about education of care staff and clear timescales to complete this.”
  - 3.1.3 to facilitate the identification and definition of the roles of a variety of staff working in care services to whom the Health and Care (Staffing) (Scotland) Act 2019 applies, such as ancillary staff, the role of nurses as part of the workforce and the involvement of volunteers, students, apprentices and family members as part of supporting the person experiencing care).
- 3.2 The data to be shared by the Care Inspectorate and analysed by NES is set out in Appendix 1 to this MoU. The nature of the analysis to be carried out by NES will be:
- 3.2.1 analysing anonymised data concerning primarily qualitative responses provided by care homes and care home managers (n=30), by way of processing text and conducting sentiment analysis. This involves reading text responses into a statistical software package to identify the positive and negative sentiment of the responses from the qualitative data; and
  - 3.2.2 testing different elements of the common staffing method outlined within the Health and Care (Staffing) (Scotland) Act 2019 for the purpose of consulting the social care sector before refining the framework to make available in future
- 3.3 This MoU is a framework to formally agree a collaborative, working relationship between the two organisations pertaining to the Care Inspectorate’s Safe Staffing Programme; it is not intended to be a legally binding document except where specifically stated.
- 3.4 The parties to this MoU are committed to adhering to the principles contained within it and having regard for each other’s statutory functions.

#### **4. Exchange of Information**

- 4.1 This paragraph 4 is legally binding.
- 4.2 Information exchanged by both parties under the terms of this MoU is not a disclosure under the Freedom of Information (Scotland) Act 2002.
- 4.3. No term of this MoU, whether express or implied, shall, however, preclude either party from making public under the Freedom of Information (Scotland) Act 2002, the Freedom of Information Act 2000, the Environmental Information Regulations and/or any codes applicable from time to time relating to access to public authorities’ information, details of all matters relating to this MoU, unless: (i) such details constitute a trade secret; (ii) the disclosure of such details would or would

be likely to prejudice substantially the commercial interests of any person (including but not limited to either or both of the parties); or (iii) such details fall within any other available exemption, provided always that application of any such exemption referred to at (i), (ii) or (iii) above shall be at the sole discretion of the disclosing party. The disclosing party will take all reasonable steps to provide the other party with notice of such intended disclosures prior to making such information public and to take into account the reasonable representations of the other party. Both parties will facilitate each other's compliance with its obligations under these provisions.

- 4.4 Each party to this agreement will ensure that any disclosure of information under the terms of this MoU is carried out in a manner that is efficient, proportionate and fully compliant with the law, including, where applicable, the Freedom of Information (Scotland) Act 2002, the Human Rights Act 1998 and the common law duty of confidentiality. In particular, the Care Inspectorate confirms that it is entitled to share any information that it supplies to NES for the purposes of the data analysis under this MoU.
- 4.5 Each party will handle the information shared pursuant to the MoU in line with its own information handling policies and procedures. Data provided by the Care Inspectorate will be anonymised.
- 4.6 The raw data provided by the Care Inspectorate will be stored in a restricted access Microsoft SharePoint folder, within a tenancy owned/operated by the Care Inspectorate. Appropriate NES staff will be granted limited access to this SharePoint folder to enable the data to be accessed and analysed. The analysis of the data completed by NES will be uploaded to the same SharePoint folder to enable the Care Inspectorate to report to Scottish Government.
- 4.7 Any additional appropriate security measures shall be agreed between the parties to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender. Where confidential material is shared between the parties it will be marked as confidential or sensitive, and, where relevant, bear an appropriate security classification.

## **5. Points of Contact**

- 5.1 Information passed to the Care Inspectorate by NES under this MoU will be communicated by Head of Programme (Data Group). Information passed to NES by the Care Inspectorate under this MoU will be communicated by the Chief Nurse. Communications from NES will be made in writing to the Chief Nurse within the Care Inspectorate. Communication from the Care Inspectorate will be made in writing to Head of Programme (Data Group) or Chief Executive Officer within NES. Communications made in writing include any communications made by email.
- 5.2 In the absence of the principal points of contact named in the above paragraph, information will be communicated to deputies as nominated by each party and confirmed to the other party in writing from time to time, and/or escalated to the CEO office of the respective parties.

5.3 The contact details of the deputies referred to in the forgoing paragraph as at the date of this MoU are as follows:-

5.3.1 [REDACTED]@nhs.scot for NES; and

5.3.2 [REDACTED]@careinspectorate.gov.scot for the Care Inspectorate.

5.4 Where information requires to be exchanged under this MoU as a matter of urgency, that information shall be communicated by telephone in the first instance. All urgent information communicated by telephone will, thereafter, also be communicated in writing by the means described at paragraphs 5.1 and 5.2 above.

## 6. Principles of Collaboration

6.1 Both organisations agree to adopt the following principles for collaborative working:

- openness about policies and procedures which affect either the Care Inspectorate or NES respectively;
- reciprocal trust; and
- respect for each other's functions and responsibilities.

6.2 For the duration and in regards to the undertakings set out in this MoU, each party's employees will be subject to the rules set out in their own respective policies, procedures and codes of conduct, as applicable as the same may be updated from time to time. The NES code of conduct applicable to NES staff carrying out the analysis in force on the date of this MoU is set out in Appendix 2.

6.3 Each party will ensure that the other party is made aware of any potential conflicts of interest, conflicts of interest or any other issues which might have implications for the other party at the earliest opportunity.

## 7. Confidentiality

7.1 This paragraph 7 is legally binding.

7.2 The Care Inspectorate and NES will protect the confidentiality and sensitivity of all unpublished and other confidential information ("**Confidential Information**") received from the other party and maintain effective controls to minimise the risk of inappropriate disclosures.

7.3 The obligation to maintain the confidentiality of, and the prohibitions and restrictions on use of, Confidential Information shall not apply to any information:

- 7.3.1 which is in or comes into the public domain other than by breach of this MoU or other act or omissions of the recipient;

- 7.3.2 which is obtained by the recipient from a third party who lawfully acquired or developed the information and who is under no obligation of confidence in relation to its disclosure;
- 7.3.3 which the disclosing party confirms in writing is not required to be treated as Confidential Information; or
- 7.3.4 which is required to be disclosed by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

7.4 The Care Inspectorate confirms that no personal data (as defined in section 3(2) of the Data Protection Act 2018) shall be provided to NES for analysis pursuant to the MoU. In the event that the Care Inspectorate wishes to instruct NES to carry out processing (as defined in section 3(4) of the Data Protection Act 2018), the parties agree to enter into an appropriate written data processing agreement which complies in all respects with Article 28 of the UK GDPR.

7.5 Where Confidential Information or personal data is shared and wrongfully disclosed by the party holding the information, this party will bring this to the attention of the originating organisation immediately. This is in addition to any obligations arising under the Data Protection Act 2018 or the UK GDPR.

## **8. Reconciliation of Disagreement(s) and Duration, Review and Termination of this MoU.**

8.1 Any disagreement(s) will normally be resolved at working level. Head of Programme (Data Group) for NES and the Chief Nurse for the Care Inspectorate will jointly be responsible for ensuring a mutually satisfactory resolution at this level. If this is not possible, the Chief Executives of both organisations will seek to resolve outstanding issues.

8.2 This MoU commences on the date of signature and will terminate on 31 March 2023, unless extended by written agreement between the parties.

8.3 NES and the Care Inspectorate will monitor the operation of the agreement and review it if required, or at any time at the request of either party.

8.4 Both parties will identify a person responsible for the management of this MoU. They will liaise as required to ensure the agreement 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

## **9. Charges and Liabilities**

9.1 This paragraph 9 is legally binding.

9.2 Except as otherwise agreed in writing between the parties, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.

9.3 The parties shall use all reasonable endeavours to ensure the accuracy of the work performed and any advice or information given pursuant to this MoU but make no warranty, expressed or implied, as, to the accuracy and will not be held responsible for any consequences arising out of any inaccuracies or omissions.

9.4 The parties agree and declare that their obligations shall cease upon the termination of this MoU and that no liability, either direct or indirect, shall rest upon it for the effects of any product or process that may be produced by either of the parties, notwithstanding that the formulation of such product or process may be based on the results.

9.5 Both parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this MoU.

9.6 Nothing in this MoU limits any liability of either party which cannot legally be limited, including liability for:

9.6.1 death or personal injury caused by its negligence or breach of duty, or the negligence or breach of duty of its employees, agents or subcontractors (as applicable); or

9.6.2 fraud or fraudulent misrepresentation.

**10. Governing Law and Jurisdiction**

10.1 This paragraph 10 is legally binding.

10.2 This MoU shall be governed by and construed in accordance with Scots law and, each party agrees to submit to the exclusive jurisdiction of the Scottish courts.

**11. Signatures**

 <b>Jackie Irvine</b> Chief Executive Care Inspectorate	 <b>Karen Reid</b> Chief Executive NHS Education for Scotland
<b>Date:</b> 08.02.2023	<b>Date:</b> 07/02/2023



## **APPENDIX 1 INFORMATION TO BE SHARED**

Essential information that may be shared between the Care Inspectorate and NES.

1. Data from the Care Inspectorate which NES has agreed to analyse as part of the Care Inspectorate's Safe Staffing Programme commissioned by the Scottish Government. This includes but is not limited to:
  - a. Data primarily collected from 15 test sites and one collaborative event with 15 care home managers in relation to staffing methods and staffing in general.
  - b. Data in relation to stakeholder's opinions regarding the need for the Care Inspectorate to develop a staffing method collected from adult care homes using the Citizen Lab platform and/or other consultation methods, obtained between November 2022 and February 2023.
  - c. Data collected in collaboration with the SSSC relating to the learning needs of care staff.
  - d. Workload and workforce data collected by the Care Inspectorate (including notifications, annual returns, registration information, intelligence from inspection, complaints and improvement support), SSSC workforce data, NES TURAS care management platform (safety huddle tool), Department of Public Health data, Health and Safety Executive reports, Health and Social Care Partnership systems for reporting workload/workforce data and internal systems used by registered care services for years 2020/2021 and 2022/2023.

## APPENDIX 2 NES CODE OF CONDUCT



NES Code of  
Conduct.pdf