

## Memorandum of Understanding

Investigating specific incidents involving avoidable harm to users of health and social care services in England or where users of health and social care services have been exposed to a significant risk of exposure to avoidable harm: a protocol for liaison and effective communication between the Care Quality Commission (CQC) and National Police Chiefs' Council (NPCC)

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### Introduction

- 1.1. CQC is the independent regulator of health and social care in England. CQC regulates the provision of health and social care services by those registered with CQC and can prosecute unregistered providers. It is also the lead inspection and enforcement body under the Health and Social Care Act 2008 (HSCA 2008) for the safety and quality of health and social care services provided to patients and/or people using services ('service users') by providers registered with CQC.
- 1.2. CQC's regulatory remit includes:
  - Care and nursing homes;
  - Private and public hospitals;

- Health and social care in secure settings including prisons, youth offender institutions and secure hospitals;
  - Domiciliary care;
  - GP and dental practices; and,
  - Mental health services.
- 1.3 CQC's main objective is to protect and promote the health, safety and welfare of people who use health and social care services, as set out in the HSCA 2008, and its associated regulations, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ('RAR 2014') and the Care Quality Commission (Registration) Regulations 2009 (RR 2009). CQC is to perform its functions for the general purpose of encouraging (a)the improvement of health and social care services; (b)the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services; and (c) the efficient and effective use of resources in the provision of health and social care services.
- 1.4 Where appropriate CQC will pursue civil and/or criminal enforcement action against registered persons who provide health and social care services for breaches of health and social care law under HSCA 2008 and RAR 2014, in the way set out in the CQC’s enforcement policy.
- 1.5 Since 1 April 2015 Care Quality Commission (CQC) has assumed lead enforcement responsibility for health and safety incidents where service users have died or sustained avoidable harm or have been exposed to a significant risk of avoidable harm as a result of a failure by the Registered Person to meet a prosecutable regulatory standard, for instance to provide safe care and treatment. Prosecutions can arise from single specific incidents where the incident and resulting harm provides sufficient evidence of a serious breach of a prosecutable Regulation by the Registered Person. A Registered Person may be the Registered Provider and/or the Registered Manager.
- 1.6 This MoU has been agreed between the Care Quality Commission (CQC) and the National Police Chiefs’ Council (NPCC). It applies to both health and adult social care in England. The purpose of this MoU is to help ensure that there is effective communication and liaison in the regulation, investigation and enforcement of health and safety for users of health and social care services (service users) in cases where avoidable harm has been caused to service users, or where service users have been exposed to a significant risk of exposure to avoidable harm.
- 1.7 It is important that investigations into such incidents – whether conducted by the police or CQC - are carried out effectively and consistently. These investigations and any remedial actions need to ensure that:
- the safety of service users is assured
  - service users and where appropriate their relatives and others close to them are consulted and supported
  - risks to the health, welfare and safety of service users at the location of the provider of regulated activities are minimised
  - the services provided by the Registered Person are maintained as far as possible
  - the Registered Person can learn effectively from the incident to reduce future risks to service users
  - the actions of the staff and services employed by the Registered Provider relating to the incident are properly and promptly examined where appropriate
  - criminal investigations that may be necessary are conducted promptly and effectively helping to expedite decisions on any prosecutions

- links are made to other types of reviews or investigations as appropriate, for example, safeguarding investigations
- 1.8 To achieve these objectives it is important that the NPCC and CQC communicate and work with one another in a consistent and well-coordinated manner. This will include informed decision-making about those incidents that require investigation by the police and/or the CQC, appropriate discussion and continued attention to the matter of the safety of service users. Sharing information and timely discussion are essential ingredients for such outcomes. Both need to be conducted in such a way that they do not impede the statutory responsibilities and duties of both organisations; or jeopardise any legal proceedings.
- 1.9 This MoU is intended to help both agencies:
- meet their responsibilities for the safety of service users
  - make clear to one another from the outset their particular statutory responsibilities
  - set out their own operational needs
  - prompt early decisions about the actions and investigation(s) thought to be necessary and a dialogue about the implications of these
  - provide an efficient and effective approach to the management of the investigation(s)
  - develop and strengthen partnership working
  - prompt the identification of lead personnel to manage liaison between both agencies
  - save time and other resources of both agencies concerned
  - ensure that the requirements of current data protection legislation are met by both parties
- 1.10 Criminal investigations into deaths at work are covered by an existing agreement between agencies that include both CQC and NPCC as well as Health and Safety Executive (HSE), Crown Prosecution Service (CPS) and others known as the Work-Related Deaths Protocol (WRDP).
- 1.11 Specific incidents of avoidable harm to service users in England where the avoidable harm amounts to a work-related death for the purposes of the WRDP are not covered by this MoU. A work-related death incident under the WRDP is a fatality resulting from an incident arising out of or in connection with work; WRDP also applies to cases where the victim suffers injuries that are so serious that there is a clear indication, according to medical opinion, of a strong likelihood of death.<sup>1</sup>
- 1.12 This memorandum of understanding does not affect the operation of the WRDP but should be used in conjunction with it.
- 1.13 CQC has also agreed a memorandum of understanding with the Health and Safety Executive (HSE) with the support of the Local Government Association. The purpose of that MoU is to help ensure that there is effective, co-ordinated and comprehensive regulation of health and safety for service users, workers and members of the public by those agencies. That MoU outlines the respective responsibilities of CQC, HSE and local authorities (LAs) in England when dealing with health and safety incidents in the health and adult social care sectors, and the

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<sup>1</sup> The definition for determining whether an incident is a Work Related Death for the purposes of the WRDP is set out in more detail at page 6 of the WRDP:  
<http://intranetplus.cqc.local/Registration%20and%20Compliance/Compliance/Enforcement/Guidance%20and%20templates/Work%20Related%20Deaths%20Protocol%20Practical%20guide.pdf>

principles that will be applied where specific exceptions to these general arrangements may be justified. This memorandum of understanding does not affect the operation of the MoU between CQC and HSE but should be used in conjunction with it where relevant.<sup>2</sup>

## **2 Purpose**

- 2.1 The purpose of this MoU is to promote effective working relationships between NPCC and CQC. The MoU will take effect in circumstances where specific incidents of avoidable harm has occurred to service users of health and social care services or where service users have been exposed to a significant risk of avoidable harm requiring investigation by the police, or the CQC or the CQC and police jointly.
- 2.2 This MoU sets out the general principles for the CQC and police to observe when liaising with one another. It focuses on investigations in health and social care settings in England.

## **3 Roles and responsibilities of the organisations and other relevant bodies National Police Chiefs’ Council of England, Wales and Northern Ireland (NPCC)**

- 3.1 The NPCC works on behalf of the police service to develop policing policy and for the purposes of this Memorandum of Understanding is a signatory on behalf of all Police forces in England.
- 3.2 The police have various responsibilities in relation to investigating patient safety incidents involving avoidable harm to service users in health and social care settings in England. These include the investigation of wilful neglect and ill-treatment offences contrary to sections 20 and 21 of the Criminal Justice and Courts Act 2015.

### **Care Quality Commission (CQC)**

- 3.3 CQC is the independent regulator of health and social care in England. CQC regulates the provision of health and social care services by those registered with CQC and can prosecute unregistered providers. It is also the lead inspection and enforcement body under the Health and Social Care Act 2008 (HSCA 2008) for the safety and quality of health and social care services provided to service users by providers registered with CQC. Annex 3 set outs further details of CQC regulatory role, remit and powers, including CQC’s statutory duty to promote improvement.
- 3.4 CQC’s regulatory remit includes:
- Care and nursing homes;
  - Private and public hospitals;
  - Health and social care in secure settings including prisons, youth offender institutions and secure hospitals;
  - Domiciliary care;
  - GP and dental practices; and
  - Mental health services.
- 3.5 CQC’s main objectives are to protect and promote the health, safety and welfare of people who use health and social care services, and to promote improvement, as set out in the HSCA 2008,

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<sup>2</sup> The MoU between the CQC and HSE is set out below:

<http://www.hse.gov.uk/aboutus/howwework/framework/mou/mou-cqc-hse-la.pdf>

and its associated regulations, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (‘RAR 2014’) and the Care Quality Commission (Registration) Regulations 2009 (RR 2009).

- 3.6 Where appropriate CQC will pursue civil and/or criminal enforcement action against registered persons who provide health and social care services for breaches of health and social care law under HSCA 2008 and RAR 2014, using the approach set out in CQC’s Enforcement Policy.
- 3.7 From 1 April 2015 CQC has a power to prosecute for failures to provide safe care and treatment resulting in avoidable harm or a significant risk of exposure to avoidable harm (Regulation 12(1) RAR 2014). This power does not apply to failures before 1 April 2015. Prosecutions can be brought against registered providers, individual registered managers and directors of corporate providers. Prosecutions can arise from single specific incidents where the incident and resulting harm provides sufficient evidence of a serious breach of a prosecutable regulation by the Registered Person. Under Regulation 22(2) the relevant prosecutable regulations are:
- Regulation 12(1) RAR 2014 safe care and treatment
  - Regulation 13(1) to (4) RAR 2014 safeguarding from abuse and improper treatment
  - Regulation 14(1) RAR 2014 meeting nutritional and hydration needs
- 3.8 CQC cannot investigate or prosecute murder, manslaughter, health and safety at work act offences, wilful-neglect or ill-treatment. <sup>3</sup>
- 3.9 CQC also has a power to prosecute unregistered providers of health and social care services for an offence of carrying on a regulated activity when unregistered to do so.

#### **Other organisations**

- 3.10 Other organisations also have roles or responsibilities for investigation, prosecution and/or oversight in relation to offences in health and adult social care settings. These include Health and Safety Executive (HSE), Local Authorities, the coroner and Medicines and Healthcare Products Regulatory Agency (MHRA).
- 3.11 HSE is responsible for enforcing work-related health and safety legislation in hospitals (including nursing homes) subject to CQC’s lead for health and safety incidents where users of services have been harmed.
- 3.12 The memorandum of understanding agreed between the CQC and HSE with the support of the Local Government Association outlines the respective responsibilities of CQC, HSE and local authorities (LAs) in England when dealing with health and safety incidents in the health and adult social care sectors, and the principles that will be applied where specific exceptions to these general arrangements may be justified. <sup>4</sup>
- 3.13 Appropriate liaison with other prosecutors/regulators/oversight bodies, such as the Crown Prosecution Service (CPS) and Safeguarding Adults Boards is essential. Some of these may be signatories to the Work-related Deaths Protocol (WRDP). CQC, HSE and LAs will notify relevant

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<sup>3</sup> An offence of failing to comply with the RAR 2014 including a failure to provide safe care and treatment resulting in avoidable harm or a significant risk of exposure to avoidable harm can only be prosecuted by CQC unless the Attorney General provides written consent to another person (Section 90 Health and Social Care Act 2008).

<sup>4</sup> Annex 2: <http://www.hse.gov.uk/aboutus/howwework/framework/mou/mou-cqc-hse-la.pdf>

bodies of incidents and agree the coordination of activity or work with them as appropriate to protect service users, workers and the public from risk of harm in those cases covered by WRDP.

#### **4 Initial action following the reporting of an incident**

4.1 Key actions that should be undertaken by the first officer at the scene should include:

- secure the scene of the incident;
- perform an initial risk assessment to ensure those investigating the incident are not exposed to significant health and safety risks; and,
- contact the relevant enforcing authority.

4.2 On arrival at the scene, early questioning of potential witnesses, and even suspects, by the relevant enforcing authority may be necessary to establish whether there is a need to take immediate action to address any residual ongoing risks which may exist post-incident. Such questioning may continue into the early stages of a joint investigation to identify systemic underlying causes.

#### **5 Management of the investigation and framework for early engagement**

5.1 In those cases where CQC and the police both have an interest, the focus of management of the respective investigations should be on early engagement between the parties and management of joint working and information sharing to take account of the framework of factors set out below:

- consider best way of ensuring effective engagement, for example by meeting;
- who will assume/retain coordinating lead where there are parallel investigations;
- a strategy for the on-going management of the joint investigation. This should include regular joint reviews of the progress of the investigation;
- lines of enquiry, either joint where applicable, or those to be investigated separately by the parties to the joint investigation;
- appropriate timescales for the investigation. Where CQC are investigating criminal offences into specific incidents under Regulation 22(2) RAR 2014, the statutory time-limits require that CQC prosecutions must be commenced within twelve months of the date at which sufficient evidence, in the opinion of the prosecutor, to justify a prosecution exists.
- what resources are required and how they are to be used/shared. This should include the use of specific powers by an enforcement authority (e.g. CQC powers under sections 62 to 65 of the Health and Social Care Act 2008) to ensure their use is necessary, justified and legitimate i.e. powers are only used for the purposes for which they were provided under the Health and Social Care Act 2008;
- how relevant material gathered or generated during the investigation is to be recorded, stored, revealed and shared between the parties. Normally it would be appropriate for the parties to the investigation to share evidential material with each other, or permit access to it, as the investigation progresses;
- what specialist and expert advice is required; for what lines of enquiry; and how they are to be commissioned and funded. The aim is to ensure, where possible, that an expert addresses the issues in relation to all potential offences at the same time;
- how the forensic examination of relevant material is to be co-ordinated e.g. physical items, DNA evidence, digital material;
- an interview strategy which establishes the identification of witnesses and potential suspects, including how, when and where they are to be interviewed. Interviews of

witnesses and suspects should be jointly planned and conducted, covering all alleged offences whenever possible;

- how, and to what extent, corporate or organisational failures should be investigated, and how and when advice will be sought from CPS. Normally it will be appropriate for the investigation to consider individual and organisational failures in parallel;
- a strategy for keeping victims and witnesses informed of developments in the investigation. Initially it is likely that the police will provide the necessary liaison. In the event of primacy passing to another enforcing authority, there should be discussion and agreement as to the best way of maintaining communication with victims and witnesses;
- in cases of serious avoidable harm in particular a media strategy to take into account the sensitivities of the victim’s family, next of kin, other people important to them, others involved in the incident, the messages which all parties investigating the incident wish to convey, and to encourage consistent reporting. Normally it will be appropriate to consult with all parties in the investigation in relation to the timing and content of any media activity.
- In large-scale investigations it may be beneficial to form a strategic liaison group to ensure effective inter-organisational communications, and to share relevant information, good practice and experiences.

5.2 Annex 1 sets out details of the operational working arrangements under this MoU.

## 6 Sharing of information

6.1 The CQC and police have a duty to uphold the health and safety of service users and the public in addition to their responsibilities for investigation and enforcement. In discharging this duty, CQC and the police will share all appropriate information where necessary to ensure the safety of service users. Such sharing should take account of:

- the health and safety of service users and the public and the legal responsibilities and duties of both and other enforcement organisations, in particular the limits on what information the organisations may disclose during criminal investigations;
- conducting investigations in a way that helps maintain the safety of service users as a priority;
- to conduct investigations in a timely and effective manner. CQC prosecutions must be commenced within twelve months of the date at which sufficient evidence, in the opinion of the prosecutor, to warrant proceedings came to the prosecutor’s knowledge.

6.2 Normally there should be no legal barriers to sharing relevant information between CQC and the police. However, in some cases it may be appropriate for the requesting and/or sharing party to record in writing what information will be shared, when and how it will be shared and the legal basis for doing so.

6.3 CQC are permitted under section 79 of the Health and Social Care Act 2008 (HSCA 2008) to share information with the Police where:

- 6.3.1 Doing so is **necessary** in connection with the investigation of a criminal offence, or for the purpose of criminal proceedings.
- 6.3.2 The disclosure is required by law, or under a court order.
- 6.3.3 The disclosure is **necessary** for the purposes of protecting the welfare of any individual person.

- 6.3.4 The disclosure is **necessary** for the recipient to exercise statutory functions of the Police (where they are not relating to a criminal offence).
- 6.4 CQC must also act in accordance with section 76 of HSCA 2008 which makes it a criminal offence to disclose confidential personal information except where a defence applies under section 77 of HSCA 2008. Those defences are the same as for disclosures permitted under section 79.
- 6.5 The CQC Code of Practice on Confidential Personal Information provides guidance on necessity. The Police should avoid asking for information that may not be necessary for their own purposes, or make requests which are very broad. The more specific the request the more likely that a request will meet a lawful basis for disclosure.
- 6.6 CQC do not have specific powers to require the Police to supply information under the law. However, CQC when acting under its regulatory and prosecution powers, does so very much in the public interest and under the official authority given by HSCA 2008.
- 6.7 Any requests made by CQC are likely to comply with the conditions for processing under the General Data Protection Regulation on the basis that the disclosure:
- 6.7.1 Of personal data is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- 6.7.2 Of special category personal data is necessary for reasons of public interest in the area of public health, such as ensuring high standards of quality and safety of health care
- 6.8 CQC recognises that personal data processed by the Police for any law enforcement purposes are outside of the scope of GDPR. The processing of personal data conducted by the Police for any law enforcement purposes are covered by Part 3 of the Data Protection Act 2018.
- 6.9 Article 10 of GDPR and section 10 of the Data Protection Act 2018 allows for the processing of personal data relating to criminal convictions and offences when the processing is authorised by Union or Member State law and where it meets a condition under schedule 1.
- 6.10 Schedule 1, part 1, sections 2 and part 3 apply to the functions carried out by CQC under HSCA 2008 and would permit disclosure of information held by the Police for law enforcement purposes to the CQC, where necessary for CQC’s statutory functions.
- 6.11 Annex 2 sets out arrangements for sharing of intelligence and evidence to support this MoU and Annex 4 sets out the Data controller agreement under this MoU.

## **7 Disclosure of material**

- 7.1 To comply with the requirements of the Criminal Procedure Investigations Act 1996 (CPIA), Home Office Code of Practice (CoP) under Part II of the Criminal Procedure and Investigations Act 1996, and the Attorney General’s Guidelines on Disclosure, the police and CQC authorities should retain and record all relevant material gathered or generated during their respective and/or joint investigations undertaken.
- 7.2 Effective management and liaison should ensure that CQC and the police jointly investigating an incident have access to all relevant material as it is gathered during the investigation. However, even with effective material management and liaison systems, there may well be additional material, both used and unused, which has not been revealed and shared between



**Operational working arrangements**

CQC inspectors can be contacted via the National Customer Service Centre (03000 616161) asking for the relationship owner for the service. Issues not resolved through this liaison should be referred to the relevant sector specific enforcement leads.

Police investigators can be contacted via the local constabulary.

In the event of agreement not being reached, the matter should be escalated through the operational management chain.

**Arrangements for sharing intelligence and evidence to support the MoU**

The obtaining, handling, use and disclosure of such information is principally governed by the General Data Protection Regulation (GDPR) and the common law duty of confidence, respectively. In sharing information under the MoU CQC, NPCC and police services will at all times comply with respective obligations under the GDPR.

This annex sets out the mechanism for sharing information in accordance with section 6 of this MoU.

The following has been agreed as the operational means of information sharing described at this MoU:

- Police services will request intelligence from CQC the request is made from the CQC relationship holder (usually the responsible inspector)
- Police services will share concerns or intelligence with the CQC relationship holder via the National Customer Service Centre electronically via [CQC.safeguarding@cqc.cjsm.net](mailto:CQC.safeguarding@cqc.cjsm.net)
- CQC will share intelligence with the police and/or CPS by contacting the relevant local service.

### Role and remit of the Care Quality Commission

1. CQC is the independent regulator of health and social care in England and was established by the Health and Social Care Act 2008. CQC regulates the provision of health and social care services by those registered with CQC and can prosecute unregistered providers. It is also the lead inspection and enforcement body under the Health and Social Care Act 2008 (HSCA 2008) for the safety and quality of health and social care services provided to service users by providers registered with CQC.
2. CQC’s regulatory remit includes:
  - Care and nursing homes;
  - Private and public hospitals;
  - Health and social care in secure settings including prisons, youth offender institutions and secure hospitals;
  - Domiciliary care;
  - GP and dental practices; and,
  - Mental health services.
3. Under section 3 of the Health and Social Care Act 2008 CQC’s main objective in performing its functions is *“to protect and promote the health, safety and welfare of people who use health and social care services”*. The CQC’s functions are set out in the HSCA 2008, and its associated regulations, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (‘RAR 2014’) and the Care Quality Commission (Registration) Regulations 2009 (RR 2009).
4. Where appropriate CQC will pursue civil and/or criminal enforcement action against registered persons who provide health and social care services for breaches of health and social care law under HSCA 2008 and RAR 2014 in accordance with the CQC Enforcement Policy and Enforcement Policy Decision Tree.
5. CQC has the power to investigate and prosecute registered persons where it is appropriate for a number of offences. They include the power to prosecute persons that carry on regulated activities without being registered with the CQC to do so under section 10 HSCA 2008. They also include the powers set out under Regulations 22(2), 12(2), 13(1)-(4) and 14 RAR 2014 set out below at paragraph 7 of this Annex.
6. Sections 62, 63 and 64 HSCA 2008 sets out the CQC powers to gather information and evidence where it is necessary, justified and legitimate to do so. Those powers are only used by CQC for the purposes for which they were provided under the Health and Social Care Act 2008.

### **CQC prosecution powers under Regulations 22(2), 12(1), 13(1)-(4) and 14 RAR 2014**

7. From 1 April 2015 CQC has a power to prosecute registered persons for failures to provide safe care and treatment resulting in avoidable harm or a significant risk of exposure to avoidable harm to users of services regulated by CQC. This power does not apply to failures before 1 April 2015 which would fall under HSE and/or Local Authorities as lead enforcement body. Prosecutions can be brought against registered providers, individual registered managers and directors of corporate providers. Prosecutions can arise from single specific incidents where the incident and resulting harm provides sufficient evidence of a serious breach of a prosecutable regulation by the Registered Person. In order to bring a prosecution under Regulation 22(2) RAR 2014 CQC would need to prove beyond reasonable doubt the following elements:
  - 7.1 Incident(s) of avoidable harm to a service user/s(SU/s) or exposure of SU/s to a significant risk of avoidable harm. "Avoidable harm" may be physical or psychological and in the case of theft, misuse or misappropriation of money or property by a service user/s of the money or property concerned; and
  - 7.2 The avoidable harm (or significant risk etc) resulted from a serious breach of one of the triggering prosecutable fundamental standards, namely:
    - Regulation 12(1) (safe care and treatment); or
    - 13(1) to (4) (safeguarding from abuse and improper treatment); or
    - 14 (meeting nutritional and hydration needs); and
  - 7.3 The breach was the responsibility of a Registered Person, namely Registered Provider and/or Registered Manager. This is distinct from an individual failing that is not the responsibility of the Registered Person.
- 8 It is a statutory defence for the Registered Person to prove on the balance of probability that it took all reasonable steps and exercised all due diligence to ensure that the relevant prosecutable fundamental standard(/s) was met.
- 9 **Limitation:** Under section 90(2) HSCA 2008 where CQC are investigating criminal offences into specific incidents under Regulation 22(2), 12, 13 or 14 RAR 2014, the statutory time-limits require that CQC prosecutions must be commenced within twelve months of the date at which sufficient evidence in the opinion of the prosecutor to justify a prosecution came to the prosecutor’s knowledge. Additionally, no prosecution can be brought where information is laid more than 3 years after the commission of the offence.

## Joint Controller Agreement

Under the DPA 2018 a Controller determines the purpose and means for processing personal data. In a collaborative arrangement each Controller must act to ensure that shared data is processed in accordance with current data protection legislation. It is necessary that each Controller is accountable for their respective involvement in the joint processing and must be able to describe their liability for the joint activity.

**Controller:** NPCC on behalf of UK police forces

**Contact Details:** DCI Natalie Dalby, Greater Manchester Police, [natalie.dalby@gmp.police.uk](mailto:natalie.dalby@gmp.police.uk)

**Controller:** CQC

**Contact Details:** CQC Information Access Team, [information.access@cqc.org.uk](mailto:information.access@cqc.org.uk)

**Lead Controller:** CQC will act as lead controller for the purposes of this MoU and act as the primary contact for data subjects and the ICO in terms of how information sharing works. Data subjects may have to contact individual Police forces for any matters that fall outside of our control.

### **Purpose(s) of the Joint Processing:**

Investigating specific incidents involving avoidable harm to users of health and social care services in England or where service users have been exposed to a significant risk of exposure to avoidable harm: a protocol for liaison and effective communication between the Care Quality Commission (CQC) and National Police Chiefs’ Council (NPCC)

Ensuring effective co-operation and sharing of information where necessary between CQC and Police forces in their respective roles relating to CQC’s regulatory role under the Health and Social Care Act 2008, and the Police’s role in upholding law and order within the UK.

**Legal Basis for Processing:** Personal data is shared under Part 3 of the DPA 2018 where both parties are ‘Competent Authorities’ sharing data for law enforcement purposes.

Article 10 of GDPR and section 10 of the Data Protection Act 2018 allows for the processing of personal data relating to criminal convictions and offences when the processing is authorised by Union or Member State law and where it meets a condition under schedule 1. This will be the legal basis where CQC is using its regulatory powers for non-law enforcement purposes, such as when taking civil enforcement action in relation to providers.

**Definitions:** All data protection wording within this MoU is as defined in the DPA 2018.

**Information to be Shared:** This will be based on a determination of necessity to be made on a case by case basis based on the CQC Information Sharing Guidance, or other appropriate guidance at local force level.

Systematic sharing of personal data is not proposed as part of this agreement, however, should such sharing become necessary in the future, a DPIA would need to be conducted before any systematic sharing took place.

**Roles and Responsibilities:** Each Controller must ensure that their data processing meets the requirements of the Data Protection Act 2018 and any current data protection legislation. This includes the following processes

- Maintaining a record of all processing activities carried out as part of this MoU.
- Meeting the individual rights of data subjects, that are applicable to law enforcement processing, and to inform the Controller where such rights may impact the other Controllers data processing. For example the right to rectification requires a change to data shared between the Controllers.
- A joint Fair Processing or Privacy Notice to be developed and agreed between the Controllers.
- Where a data breach that may impact on the shared data, is identified by either Controller, requires that the other Controller is notified within 24 hours of the Controller being aware of the breach.
- Each Controller is liable for any damage caused, DPA 2018 Article 82, by their processes.

**Security:** Security processes and protocols for the data sharing will be commensurate with the nature, scope, context and purpose of the processes. They will be documented within the DPIA.

**Review, Retention & Disposal:** Each Controller is responsible for effectively managing their responsibilities for the review, retention and secure disposal of personal data, shared under this MoU, in accordance with the requirements of the DPA 2018 and other current data protection legislation.