

Memorandum of Understanding

between the
Welsh Ministers

and the
Chief Inspector of
Care Inspectorate Wales

and the
Chief Executive of Healthcare
Inspectorate Wales

July 2021

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MEMORANDUM OF UNDERSTANDING BETWEEN THE WELSH MINISTERS AND THE CHIEF INSPECTOR OF CARE INSPECTORATE WALES AND THE CHIEF EXECUTIVE OF HEALTHCARE INSPECTORATE WALES

Introduction

1. This memorandum sets out the basis of the Welsh Ministers' relationship with the Chief Inspector and the Chief Executive ("the Chief Officers") of inspectorial and regulatory functions within the Education and Public Services Group.

Functions

2. A summary of the principal functions to be exercised by the Chief Officers, as authorised under section 52 (9) of the Government of Wales Act 2006 and drawn from current legislation, is at Annex A. Save in the most exceptional circumstances, these functions will not be withdrawn, and not without formal submission to the Welsh Ministers and the Permanent Secretary.
3. Care Inspectorate Wales (CIW) is responsible for the inspection and regulation of childcare, social and non-health care for adults and children, and local authority social services in Wales. Healthcare Inspectorate Wales (HIW) is responsible for the inspection of Welsh NHS services (including Welsh NHS funded care) and the inspection and regulation of independent healthcare services in Wales. Both Inspectorates carry out their functions on behalf of the Welsh Ministers.

Welsh Ministers

4. Welsh Ministers recognise the importance of CIW and HIW's professional independence and judgment. The Minister for Finance and Local Government is therefore responsible for the governance and oversight of audit, inspection and regulation as they relate to public services, including the organisation arrangements for CIW and HIW.
5. The Welsh Ministers accept the relevant Chief Officers of the Inspectorates should have the capacity to monitor, evaluate, review, assess, and report on the quality and provision of public, commercial and voluntary services pertinent to their functions, without prejudicial pressure or improper constraint. The Welsh Ministers also accept it is in the public interest that unbiased, objective and informed statements of the facts about the service provision inspected and regulated by CIW and HIW should be published, being intrinsic to developing citizen centred and community focused service design; effective and consistent measurement of standards; service improvement; practitioner development; and information that can underpin good policy-making.
6. Thus, bodies such as CIW and HIW are not subordinate elements of, or integral to, the Health and Social Services Group, which is most closely concerned with the services upon which they report and to which they attend. They are deliberately separated from the Health and Social Services Group. While policy responsibility for childcare sits in the Communities and Tackling Poverty Directorate, the principles of this MOU apply in exactly the same way in respect

of those services, recognising the operational independence of the inspectorial and regulatory functions.

Operational responsibilities

7. The Director General of the Education and Public Services Group (the “Director General”) is responsible for supporting the Chief Inspector of CIW and the Chief Executive of HIW in respect of:
 - ensuring requirements for high standards of professional judgement, and the independence necessary to form such judgements and to speak of them publicly, (not least in Senedd Committees), should be reflected in job descriptions and wider administrative practice;
 - enabling them to shape their own programmes of work based on their respective statutory and policy frameworks and on the work of auditors, regulators and inspectorates which are not covered by this protocol; to respond as necessary to unanticipated or emergent concerns related to service failings in year; to report under conditions of their own editorial control; and likewise to issue accompanying media statements; and
 - guaranteeing direct and independent rights of access to Welsh Ministers, and providing a framework of wider developmental assistance within which they can operate under their own responsibility day by day, prioritising activity as necessary.
8. The Director General will formally delegate to each Chief Officer, on an annual basis, the resources available to them to support the delivery of their statutory responsibilities and overall work programme.
9. The Director General is also responsible for the personal performance management of the Chief Inspector and Chief Executive respectively, and, in strategic terms, the functions they lead. Though the Chief Officers are required to act on the reasonable requests and instructions of the Director General and/or the Welsh Ministers, the relationships are not that of direct and continuous command and control.
10. Instead the Chief Officers have delegated responsibilities and are accountable to the Director General and the Welsh Ministers for delivering upon them under conditions of suitably transparent governance. In turn the Chief Officers are required to contribute to the corporate operation and development of the Group as a whole; to commit, in so far as their functions apply, to achieving Welsh Government objectives; to contribute to delivering on mainstream requirements and principles; and to share resources for that purpose where it is possible to do so without compromising their ability to deliver on their determined priorities and statutory responsibilities.

11. The Chief Officers are specifically responsible for:

- acting properly and lawfully over discharging statutory roles and responsibilities - including consideration of appropriate criminal and/or civil enforcement action where service providers are not fulfilling their obligations;
- any failure to fulfil or discharge statutory roles and responsibilities or for failing to act where their ability to fulfil such roles and responsibilities has been identified as a risk;
- determining the inspectorates' work programmes (following consultation) and delivering on their work programmes and operational objectives within available resources; and
- complying with all Welsh Government financial systems and the related requirements of governance, answerable fully to the Director General as Additional Accounting Officer.

Application and Implications

12. It follows that it is for the Chief Officers to determine how to fulfil their statutory obligations, and how to deploy their staff teams for that purpose, keeping the Welsh Ministers informed in the context of briefings, formal meetings and direct access throughout the year as appropriate.

13. In consequence, neither the Welsh Ministers nor the Director General exercise practical operational decision making or professional judgement in relation to specific cases or settings; for any related issue of staffing (save as detailed in paragraph 14 below); nor for any detailed decisions about how best to meet priorities and objectives in year. All of those matters fall entirely to the operational responsibility of each Chief Officer.

14. In relation to complaints handling, fraud controls, information asset management, the systems and controls operated by the Inspectorates must comply with Welsh Government and civil service requirements: this needs to be clear to staff and to clients. The process of recruitment must comply with the Civil Service code.

Review

15. At the behest of the Chief Officers this memorandum will be regularly reviewed, with the Director General and any recommendations for change submitted to the Welsh Ministers for their consideration.

Reviewed: July 2021

Annex A

Summary of relevant legislation

The following text is intended to summarise the main legislative powers exercised by CIW and HIW. It is not intended to be exhaustive but is intended to broadly set out the legislative basis under which they both operate. References to legislation include legislation as amended. There may be additional legislative provisions upon which both CIW and HIW will rely from time to time.

CIW

CIW carries out regulation and inspection functions under the **Regulation and Inspection of Social Care (Wales) Act 2016** for:

- care home services
- secure accommodation services
- residential family centre services
- adoption services
- fostering services
- adult placement services
- advocacy services
- domiciliary support services

Under part 2 of the **Children and Families (Wales) Measure 2010**, CIW also regulate and inspects:

- Child minders
- Day Care (including Play) for children under twelve

CIW also has powers to inspect independent schools, having regard to the welfare of children accommodated in such schools (part 12 of the **Children Act 1989**). It can also consider whether to grant a waiver from disqualification from carrying on or being involved in children's homes under part 8 of the Act.

CIW reviews the operation of local authority social services departments in Wales. The Regulation and Inspection of Social Care (Wales) Act 2016 insert provisions in section 149 of the Social Services and Well-being (Wales) Act 2014 for CIW to review the exercise of local authority social services functions.

Healthcare Inspectorate Wales

HIW is the independent inspectorate and regulator of all health care in Wales. The **Health and Social Care (Community Health and Standards) Act 2003** provides the basis for HIW to undertake reviews and investigations of health care provided by and for Welsh NHS bodies. This legislation gives HIW the power to enter and inspect NHS premises, and to require information and documentation from NHS bodies.

In relation to Mental Health, HIW monitors compliance with the **Mental Health Act 1983** and carries out the functions formerly carried out by the Mental Health Act Commission in relation to Wales. It also monitors compliance with the **Mental Capacity Act 2005** and the Deprivation of Liberty Safeguards (DOLS) introduced under that Act.

HIW considers, where applicable, compliance with the **Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008**, which contain measures underpinning the safe management and use of controlled drugs in Wales. The legislation also requires HIW to publish a list of Controlled Drugs Accountable Officers for service based in Wales.

HIW is responsible for monitoring compliance with the **Ionising Radiation (Medical Exposure) Regulations 2017**. These Regulations are intended to protect patients from hazards associated with ionising radiation.

HIW also carries out regulation and inspection functions under part 2 of the Care Standards Act 2000 in relation to independent health care in Wales. The **Care Standards Act 2000** provides for a registration and inspection regime for the following services:

- Independent hospitals
- Independent clinics
- Independent medical agencies
- Private Dental Practices