



Memorandum of Understanding (MOU)

Health Information and Quality Authority and Mental Health Commission

8 January 2021

1. The Parties

The **Health Information and Quality Authority** having its head office at Unit 1301 City Gate, Mahon, Cork, Ireland

And

The **Mental Health Commission** having its office at Waterloo Exchange, Waterloo Road, Dublin 4, Ireland

2. Interpretation and Definitions

2.1. This Memorandum of Understanding means the clauses of and the appendices to this Memorandum of Understanding all of which shall be read as one document.

2.2. In this Memorandum of Understanding, the following definitions shall apply:

- (i) "2007 Act" means the Health Act 2007 as amended from time to time;
- (ii) "2001 Act" means the Mental Health Acts 2001-2018 as amended from time to time;
- (iii) "2015 Act" means the Assisted Decision Making Capacity Act 2015 as amended from time to time;
- (iv) "DSS" means the Decision Support Service;
- (v) "HIQA" means the Health Information and Quality Authority and shall include the Chief Inspector of Social Services;
- (vi) "MHC" means the Mental Health Commission, which includes the DSS;
- (vii) "MOU" means Memorandum of Understanding;
- (viii) "parties" means HIQA and the MHC and "party" means either of them.

3. Background

3.1. The parties wish to enter into this MOU to establish a framework for co-operation and information sharing in areas of mutual responsibility and shared interest, which fall within their respective statutory remit.

3.2 The parties agree that the MOU entered into between the parties on 26 August 2013 is hereby terminated, and this MOU shall come into effect in accordance with Clause 10 of this MOU.

4. Legislative Mandate

Statutory Role and Functions of HIQA

4.1 HIQA, having been established under the 2007 Act, is an independent statutory authority established to promote safety and quality in the provision of health and social care services for the benefit of the health and welfare of the public. HIQA's mandate to date extends across a wide range of public, private and voluntary sector services. Reporting to the Minister for Health and engaging with the Minister for Children, Equality, Disability, Integration and Youth, HIQA has responsibility for:

- (a) **Setting standards for health and social care services** – Developing person-centred standards and guidance, based on evidence and international best practice, for health and social care services in Ireland
- (b) **Regulating social care services** - The Chief Inspector of Social Services within HIQA is responsible for registering and inspecting residential services for older people, people with a disability and children's special care units
- (c) **Regulating health services** - Regulating medical exposure to ionising radiation
- (d) **Monitoring Services** – Monitoring the safety and quality of health services and children's social services, and investigating as necessary serious concerns about the health and welfare of people who use these services
- (e) **Health Technology Assessment** - Evaluating the clinical and cost-effectiveness of health programmes, policies, medicines, medical equipment, diagnostic and surgical techniques, health promotion and protection activities and providing advice to enable the best use of resources and the best outcomes for people who use our health service

- (f) **Health Information** – Advising on the efficient and secure collection and sharing of health information, setting standards, evaluating information resources and publishing information on the delivery and performance of Ireland’s health and social care services
- (g) **National Care Experience Programme** - Carrying out national service-user experience surveys across a range of health services, in conjunction with the Department of Health and the HSE

- 4.2 For the purposes of this MOU, all references to HIQA shall be taken to include the Chief Inspector of Social Services.
- 4.3. In carrying out its functions under the 2007 Act, HIQA shall have regard under Section 8(2)(b) to the need to co-operate with and co-ordinate its activities with public authorities, the performance of whose functions affect or relate to the functions of HIQA, other than those functions described in Section 8(1)(c)(d) and (l) of the 2007 Act.
- 4.4. Under Section 38 of the 2007 Act, HIQA may, subject to any directions given by the Minister for Health under Section 29 of the 2007 Act, and on terms and conditions HIQA sees fit to impose, give assistance to a body which performs or proposes to perform a function similar or ancillary to a function that HIQA may perform.

Statutory Role and Functions of the MHC

- 4.5. The MHC, having been established under the 2001 Act is an independent statutory body established to promote, encourage and foster high standards and good practices in the delivery of mental health services and to protect the interests of patients who are involuntarily admitted and detained. The MHC is responsible for regulating mental health services in Ireland. The MHC’s remit includes general adult mental health services as well as mental health services for children and adolescents, older people, people with intellectual disabilities and forensic mental health services.
- 4.6. The remit of the MHC was extended by way of the 2015 Act and provides for the establishment by the DSS. Central to the 2015 Act are the guiding principles of presumption of capacity and minimal intervention in the affairs of others in order to respect individual preferences. The Director of the DSS within the MHC has responsibility for the implementation of the 2015 Act. Parts of the 2015 Act await commencement, however, the Director of the DSS will be responsible for

informing the public about the 2015 Act and about the supports available through the DSS to those who require assistance with their decision making. The Director of the DSS will establish and maintain panels of suitable people willing to act as decision-making representatives, court friends and special general visitors. The Director will also approve and publish Codes of Practice in relation to the 2015 Act. The Director will have a number of specific regulatory functions under the 2015 Act in respect of six different types of decision-making support arrangements and will supervise and handle complaints against decision making assistants, co-decision makers, decision-making representatives, attorneys with enduring powers of attorney and designated healthcare representatives.

4.7. Reporting to the Minister for Health and the Minister for Children, Equality, Disability, Integration and Youth, the MHC has responsibility for:

(a) **Regulation**

- **Registration** - the registration of all approved centres in Ireland
- **Inspection** – the visiting and inspection of all mental health services in Ireland
- **Compliance monitoring** - the monitoring of services' compliance with legislative requirements and putting in place corrective and preventative action plans to address areas of non-compliance identified by the Inspector
- **Enforcement** - the power to initiate escalating enforcement actions up to, and including, removal of an approved centre from the Register, prosecution of the registered proprietor, and attaching conditions to the registration of approved centres.

(b) **Mental Health Tribunals** – the establishment of and all matters relating to the organisation of mental health tribunals for involuntarily detained persons

(c) **Decision Support Service (DSS)** – the establishment of a framework to ensure dignity and choice for older persons and people with Mental Health difficulties. This includes adults with mental health difficulties and older people including those with age-related cognitive impairment, disabilities and head injuries.

It will also introduce important tools for advance planning, as any of us could lose the ability to make and communicate decisions for ourselves in the future.

- (d) **Notifications** - approved centres and other community mental health services are required to submit quality and safety notifications to the MHC.
- (e) **Development** - the development of guidance and standards to both mental health and decision support service to include but not limited to rules and codes of practice together with standards .

5. Purpose and Objectives

5.1 The purpose of this MOU is to provide a mechanism to enable co-operation between the parties to ensure maximum effectiveness and efficiency when performing their respective statutory functions. This MOU is intended to cover areas of common interest where co-operation will lead to improved health and social care services for the benefit of the health and welfare of service users and in the interest of service-user safety and public protection.

5.2 The objectives of this MOU are:

- a) to promote co-operation and consultation, where appropriate, on mutual areas of strategic and operational interest in order to promote a common understanding of the statutory responsibilities and working procedures of each of the parties;
- b) to examine or pursue opportunities, and where appropriate, to collaborate on initiatives within each parties statutory remit, where it is deemed by the parties to be in the interests of promoting the safety and quality of health and social care services for the benefit of service users;
- c) to facilitate and provide the necessary safeguards for the cross referral of information of concern where one party believes that the information falls within the statutory remit of the other or both; in this regard both parties will adhere to, comply and respect all legal and legislative requirements.

6. Primary Areas of Cooperation and Exchange of Information

6.1 The parties agree that they may co-operate, in particular, in relation to the following matters (without limitation):

- (a) To consider, consult and collaborate on joint projects or initiatives, where appropriate and where it is within both parties statutory remit. Such projects or initiatives may include but are not limited to collaborating on the development of standards and associated implementation support tools in order to promote improvements in services for the benefit of service users.
- (b) To promote consultation, where appropriate, in relation to the implementation of mandated Government policy in so far as it relates to areas of mutual interest and responsibility of each party.
- (c) On cross referral of information of concern, where appropriate, where one party believes that the information of concern falls within the remit of the other;
- (d) For HIQA this includes but is not limited to: circumstances where HIQA becomes aware of information of concern which may relate to potential deficits in the safety, quality and standard of services regulated or monitored by the MHC; this may include concerns regarding the provision of a service that may lead to a risk to the safety of service user/s; and this may include concerns relating to the operation of decision-making support arrangements following commencement of the 2015 Act;
- (e) For the MHC this includes but is not limited to: circumstances where the MHC, through its regulatory function, mental health tribunal function or DSS function becomes aware of information of concern which may relate to potential deficits in the safety, quality and standard of services regulated or monitored by HIQA; this may include concerns regarding the provision of a service that may lead to a risk to the safety of service users;
- (f) Any other matter in respect of which the parties agree that their co-operation would be in keeping with the spirit of this MOU.

7. Exchange of Information

- 7.1 The parties will ensure that any disclosure of information under the terms of this MOU is carried out in a manner that is prompt, efficient, proportionate and fully in compliance with the law, including in particular the Data Protection Acts 1988 to 2018, the General Data Protection Regulation 2016/679, the 2007 Act, the 2001 Act, the 2015 Act and the Protected Disclosures Act 2014.
- 7.2 The parties will, where appropriate, anonymise information before it is transferred to the other party.
- 7.3 Any sharing of personal data undertaken between the parties will be appropriately documented and will be subject to strict access and security controls and will ensure secure disposal of shared data.
- 7.4 The parties agree to enter a Data Sharing Agreement which will set out the legal basis for the sharing of any personal data pursuant to this MOU. No personal data shall be shared by the parties unless there is a lawful, necessary and proportionate basis to do so.
- 7.5 Neither HIQA nor the MHC will use any information disclosed under the MOU for any purpose other than the purpose of performing its statutory obligations.
- 7.6 Without prejudice to any obligations under the Freedom of Information Act 2014, the Data Protection Acts 1998-2018, the General Data Protection Regulation 2016/679 or any other statutory obligations that either party may have, the parties will not disclose any information received under the terms of this MOU to any third party without first notifying and / or consulting the other party in the interests of fairness and to ensure that the information is not exempt from release under exemptions or restrictions provided under relevant legislation.
- 7.7 Nothing in this MOU requires the parties to disclose confidential information except in accordance with law.

8. Liaison and Communication

- 8.1. The parties agree to meet once every calendar year and more regularly where necessary to review the effectiveness of this MOU and identify any issues that require to be addressed. Strategic, policy and operational meetings will be arranged as required and as agreed between the designated contact persons.

- 8.2 All communication between the parties pursuant to this MOU will be carried out via the designated contact persons as set out in Appendix 1 of this MOU. This is in order to ensure that matters are dealt with by the appropriate person.
- 8.3 Upon signing of this MOU, each party will ensure that the identity and contact details (name, email and telephone number) of the designated contact person as set out in Appendix 1 of this MOU will be exchanged with the other party. In the event that there is a change in the identity of a designated contact person during the term of this MOU, the relevant party will inform the other party of same and will forward the identity and contact details of the appropriate designated contact.
- 8.4 Communication will be conducted between the designated contact persons on a formal basis through scheduled meetings and informally as and when required.
- 8.5 The parties agree to use the pro forma form as set out in Appendix 2 of this MOU, to exchange any concerns or report any incidents except in the case of an emergency where information can be exchanged orally which shall then be followed up in writing.
- 8.6 Each party will, before publishing any materials, statements, reports or press releases on a joint partnership, project or initiative, notify the other party in advance of the publication and provide sufficient detail to the other party on the proposed publication.
- 8.7 The parties agree to publish this MOU on their respective websites.

9. Collaboration Arrangements

- 9.1 Save where otherwise agreed between the parties, each party to this MOU shall be solely responsible for the administration and expenditure of its own resources associated with activities conducted under this MOU.
- 9.2 Notwithstanding the above, where the parties consider that they may collaborate on a joint project or initiative in accordance with Clause 5.2 of this MOU, they will communicate with each other, where possible, when preparing annual business plan objectives for the following year. This is to ensure that appropriate funding for joint projects or initiatives is considered at an early stage.
- 9.3 Where the parties agree to collaborate on a joint project or initiative in accordance with Clause 5.2 of this MOU, the parties will, where appropriate,

implement governance arrangements which will set out the parameters within which the parties agree to work together.

- 9.4 In accordance with Clause 9.3 of this MOU, the parties will agree in advance and where appropriate, Terms of Reference which may include the following;
- (a) the purpose of the project;
 - (b) oversight, governance and management arrangements for the project;
 - (c) the funding and resources to be provided by the parties for the purpose of executing the project;
 - (d) any other matter which the parties deem relevant to the implementation of the project.

10. Miscellaneous Matters

Legal Status of MOU

- 10.1. Each party acknowledges that this MOU does not create any legally binding obligations of any nature on either party. This MOU reflects the intentions of the parties who will observe and give due respect to the agreed terms of the MOU.

Variation

- 10.2 Any provision of this MOU may be amended at any time by the mutual consent in writing of the parties via the respective signatories.

Effective date

- 10.3 This MOU will come into effect upon the date of signature of both parties and will continue in effect until its termination.

Review

- 10.4. This MOU will be subject to a formal review every three years from the date of its signing or otherwise as requested by a party to this MOU. The content of this MOU will be reviewed to ensure that it remains relevant, fit for purpose and up to date.

Termination

- 10.5 Each party may at any time give written notice of termination of this MOU to the other party. This MOU will terminate three months after the date of receipt of the notice of termination. The termination of this MOU will not affect the confidentiality undertakings expressed by the parties in this MOU or any commitments given under, or as a consequence of, this MOU in respect of any arrangements or action taken during the period before the termination takes effect.

Execution

- 10.6 The parties consent to the execution of this MOU by means of an electronic signature, which shall be considered as an original signature and shall have the same validity, enforceability and permissibility as the original signature for the purpose of this Agreement.

No Disclosure if prohibited

- 10.7 This MOU does not oblige either party to disclose information to the other party if the disclosure of that information is not agreed by the parties Executive and/or Board of the party concerned is prohibited by law to do so.

Exceptional cases

- 10.8 While it is intended that the arrangements in this MOU should apply generally, it is recognised that some circumstances will require separate arrangements or agreements. Nothing in this MOU prevents the making of such arrangements or agreements.

Disputes

- 10.9 The designated contact persons agree to act in good faith and to resolve any dispute arising on foot of this MOU amicably. In the event, that the designated contact persons cannot resolve a matter, such disagreement will be referred to the Chief Executive Officer of each party who will endeavour to resolve the matter.

IN WITNESS where of this **Memorandum of Understanding** has been entered into on the 8th of January 2021.



Signed by Phelim Quinn

Signed by John Farrelly

Chief Executive Officer

Chief Executive

Health Information and Quality Authority

Mental Health Commission

Date: 8 January 2021

Date: 8 January 2021

Appendix 1 - Designated Contact Persons

Area of Liaison and Communication	HIQA	MHC
Regulation and Monitoring (including exchange of information of concern)	Chief Inspector of Social Services Deputy Chief Inspector of Social Services – Older Persons Deputy Chief Inspector of Social Services – Disabilities Head of Programme Childrens Services Head of Programme Healthcare	Inspector of Mental Health Services Director of Regulation
Standards	Director Health Information and Standards	Senior Regulatory Manager
Decision Making Support Arrangements	Chief Inspector of Social Services	Director of DSS
Legal	Head of Legal Services	General Counsel
Data Protection	Data Protection Officer	Information Governance Manager
Freedom of Information	Freedom of Information Liasion Officer	Information Governance Manager
Corporate	Chief Operating Officer	Chief Operating Officer
Dispute Resolution	Chief Executive Officer	Chief Executive Officer

Appendix 2

Form for the Sharing of Information
Confidential

FROM	Mental Health Commission Name: Position: Email Address: Phone Number:	Please Tick Appropriate Box <input type="checkbox"/>
	OR [delete as appropriate]	
	Health Information and Quality Authority Name: Position: Email Address: Phone Number:	<input type="checkbox"/>

TO:	Mental Health Commission Name: Position: Email Address: Phone Number:	<input type="checkbox"/>
	OR [delete as appropriate]	
	Health Information and Quality Authority Name: Position: Email Address: Phone Number:	<input type="checkbox"/>

Name and Address of Centre/Facility/Service:

	Type of Service	Please Tick Appropriate Box
	Designated Centre	<input type="checkbox"/>
	Approved Centre	<input type="checkbox"/>
	Other Mental Health facility	<input type="checkbox"/>
	Health Service	<input type="checkbox"/>

Date of Concern/ Incident:	
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Date HIQA/MHC were on notice of Concern/ Incident:	
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<p>Description of Concern/Incident</p> <p>[Note: All personal data should be anonymised where possible. No personal data should be shared by HIQA/MHC unless there is a lawful basis and it is necessary and proportionate to do so]</p>
<p>Pease use additional pages if necessary</p>

Date: [refers to date form is completed]	
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