



**MEMORANDUM OF UNDERSTANDING BETWEEN
THE REGULATION AND QUALITY IMPROVEMENT AUTHORITY
AND
THE INDEPENDENT SECTOR COMPLAINTS ADJUDICATION
SERVICE**

March 2021

CONTENTS

Title	Page number
1. Introduction	3
2. Principles of Cooperation	3
3. Areas of Cooperation	4
4. Cross Referral of Concerns	4
5. Exchange of Information	5
6. Media Publications	6
7. Data Protection and Human Rights	7
8. Reconciliation of Disagreement	7
9. Duration and Review	7
Annex A Responsibilities and Functions	9
Annex B Lead Contacts	11
Annex C Data Access Agreement	12
Annex D Data Access Agreement	13

1. **Introduction**

The objective of this memorandum is to establish the framework to support the working relationship between the Independent Sector Complaints Adjudication Service (ISCAS) and the Regulation and Quality Improvement Authority (RQIA).

ISCAS is an appropriate body for the independent adjudication of wholly private patient complaints, whether the private treatment was delivered in an independent or public healthcare setting. RQIA is the independent body responsible for monitoring and inspecting the availability and quality of health and social care services in Northern Ireland, and encouraging improvement in the quality of those services.

The working relationship between ISCAS and RQIA is part of the maintenance of an assurance system for independent healthcare in Northern Ireland, which promotes patient safety and high quality healthcare. ISCAS and RQIA agreed for cooperation, joint working and the exchange of information relating to each body's respective responsibilities.

This protocol does not affect existing statutory functions or supersede any policies or arrangements relating to the ISCAS or RQIA. It does not imply any transfer of responsibilities from one party to another, nor does it imply any sharing of statutory responsibilities.

Nothing in this protocol restricts the exercise of each party's statutory responsibilities.

This protocol is not enforceable by law, however the ISCAS and RQIA agree to adhere to its principles and to show due regard for each other's activities.

2. **Principles of Cooperation**

ISCAS and RQIA are committed to a working relationship which ensures high standards of quality and safety within the independent healthcare sector and is characterised by the following principles:

- The need to make decisions which promote patient safety and high quality healthcare.
- Respect for each organisation's independent status.
- The need to maintain public and professional confidence in the two organisations.
- Openness and transparency between the two organisations, as to when cooperation is and is not considered necessary or appropriate.

- The need to utilise resources effectively and efficiently.
- The need for an environment in which all patients have access to high quality complaints systems.
- Awareness within the two organisations of the benefits of following these principles.

ISCAS and RQIA are also committed to an assurance system for healthcare in Northern Ireland which is transparent, accountable, proportionate, consistent, and targeted: the principles of better regulation.

3. Areas of Cooperation

The working relationship between the ISCAS and RQIA involves cooperation in the following areas:

- Cross referral of concerns
- Exchange of information
- Individual media publications

ISCAS and RQIA are committed to a working relationship involving co-operation regarding the outcomes of stage 3 independent external adjudication decisions for ISCAS subscribing providers. This information could be used to inform inspections carried out by RQIA (see Annex A, Responsibilities and Functions) as part of its ongoing monitoring of care provision within the Independent Healthcare sector.

RQIA will ensure that there is clear signposting for both ISCAS subscribed providers and service users, including clarification that wholly private patients do not have access to the Northern Ireland Public Service Ombudsman service.

4. Cross Referral of Concerns

Where ISCAS or the RQIA encounters a concern, which it believes falls within the remit of the other, they will at the earliest opportunity convey the concern and relevant information to a named individual with relevant responsibility within the other party. In the interest of patient safety, the referring party will not wait until its own investigation has concluded. This only applies to only those settings which fall under the regulatory remit of RQIA.

In particular, ISCAS will refer in a timely manner to RQIA:

- Any concerns and relevant information about an independent healthcare organisation's quality of care and internal process for complaint resolution, if that organisation subscribes to ISCAS. Annex C provides detailed information about the sharing.
- Any concerns and relevant information about an independent healthcare organisation's quality of care even if not a current subscriber of ISCAS, but falls under the remit of RQIA.

In particular, RQIA will refer in a timely manner to ISCAS:

- Any concerns and relevant information about an independent healthcare organisation's internal process for complaint resolution, if that organisation subscribes to ISCAS.

5. Exchange of Information

Cooperation between ISCAS and RQIA will often require the exchange of information. Where this is required each party must ensure the information is:

- **Relevant and necessary**
Only information that is relevant to the purposes should be shared with those who need it. When making decisions of what information to share, the party will consider how much information they need to release to fulfil a disclosure proportionate to its need and level of risk. Each party will be made aware of the other's retention policy and any information shared will not exceed this time unless in agreed exceptional circumstances. If it is the case where information exceeds this time, there will be regular reviews to ensure that data is not kept for an inordinate amount of time.
- **Timely**
Information will be shared in a timely fashion to reduce the risk of missed opportunities to safeguard service users. Each party, when considering the sufficiency of information to share, will also consider how urgent the need is to share it on a risk based approach.

- **Adequate**
Information shared will be of the right quality to ensure it can be utilised efficiently. This means information will be accurate and up to date, clearly distinguishing from fact and opinion and if the information is historical then this fact will be clearly explained.
- **Secure**
Each party will follow their procedures ensuring the complete security of any disclosed information in line with the Data Protection Act 2018.
- **Recorded**
All information sharing decisions will be recorded no matter the outcome. If there is a decision not to share information with the other organisation then good practice dictates a discussion of the record around the decision making process is necessary.

a. ISCAS' responsibility in sharing information

A nominated Director from ISCAS will decide on a case by case basis to disclose any information to all relevant legislation. Where it is deemed that a disclosure is to be made, the named ISCAS contact in this protocol (see Annex B will be responsible for making it available to the relevant official(s) within RQIA. Such information may include:

- Information which raises concerns over the suitability of an individual providing services or working within a registered setting.
- Information that was passed to ISCAS as a complaint but falls under the definition of whistleblowing.
- Concerns around a registered service's complaints procedure.

b. RQIA's responsibility in sharing information

A nominated Director from RQIA will decide on a case by case basis whether to disclose any information to ISCAS. Such information may include:

- Complaints about wholly private patients in independent healthcare providers made to RQIA.
- Concerns regarding the complaints procedure of an independent healthcare provider with a subscription to ISCAS.

6. Media Publications

Each party will liaise with the other to determine how any media interest relating to a mutual concern is addressed. ISCAS and RQIA agree to give at least 24 hours of notice ahead of any media publication or press statement which may be of

relevance to the other organisation while respecting the confidentiality of any documents shared in advance of publication.

7. Data Protection and Human Rights

The areas of corporation outlined above will require the exchange of information and personal data. All arrangements for collaboration and exchange of information set out in this protocol and any supplementary agreements will take account of and comply with; the Data Protection Act (2018), the Freedom of Information Act (2000) and any applicable codes of practice or policies relating to information and personal data held by ISCAS and RQIA.

Both organisations acknowledge that they are obliged to act in a way which is compatible to the Human Rights Act (1998).

Where ISCAS or the RQIA encounters any personal data breach involving any shared information and data, they will as soon as possible notify, in writing, the relevant data protection guardian for the other party and make all other notifications as may be required in accordance with the relevant legislation, codes of practice or policies.

8. Reconciliation of Disagreement

Any disagreement between ISCAS and RQIA will normally be resolved at working level. If this is not possible, it may be brought to the attention of the protocol managers identified at Annex B who may then refer it up to and including the Director of ISCAS and the Chief Executive of RQIA who will be jointly responsible for ensuring a mutually satisfactory resolution.

9. Duration and Review

This protocol originally came into effect when it was signed by the Director of ISCAS and the Chief Executive of RQIA. This protocol is not time-limited and will continue to have effect unless the principles described need to be altered or cease to be relevant. The protocol may be reviewed at any time at the request of either party.

Both parties have identified a protocol manager (identified in Annex B) and these will liaise as required to ensure this protocol is kept up to date and to identify any emerging issues in the working relationship between the two organisations.

Both ISCAS and RQIA are committed to exploring ways to develop increasingly more effective and efficient partnership working to promote quality and safety within their respective regulatory remits.

Signed



Sally Taber
Director
ISCAS

Dr Tony Stevens
Interim Chief Executive
RQIA

07/04/2021

Date of signature

07/04/2021

Date of signature

ANNEX A

Responsibilities and Functions

ISCAS and RQIA acknowledge the responsibilities and functions of the other and will take account of these when working together.

Independent Healthcare Sector Complaints Adjudication Service

ISCAS is a recognised body for the independent adjudication of wholly private patient complaints, whether the private treatment was delivered in an independent or public healthcare setting. ISCAS is a voluntary subscription scheme that includes the vast majority of all independent healthcare providers across the United Kingdom. The remit has recently been extended to include Private Patient Units (PPUs) and providers of Independent Ambulance Services. Since 2016 ISCAS has operated independently of any trade association and is currently hosted by the Centre for Effective Dispute Resolution (CEDR).

Regulation and Quality Improvement Authority

RQIA is an independent body established by the Department of Health and Social Services and Public Safety in April 2005, under the Health and Personal Social Services (Quality, Improvement and Regulation) Order (2003 NI).

- Under the provision of The Order (2003) the RQIA is required to keep the department informed about the provision, availability and quality of services; and also encourage improvement in the delivery of services.
- RQIA has powers to conduct reviews and carry out investigations/inspections into the management, provision, quality of or access to and availability of HSC services; including clinical and social care governance arrangements.
- Any person who carries on or manages an establishment or agency must make an application to RQIA to register. Once granted, RQIA issues a certificate of registration to the applicant. RQIA maintains a register of all approved establishments and Agencies.
- Under the Mental Health Order (1986 NI) and from 1 October 2019, the Mental Capacity Act, 2016, RQIA undertakes a range of responsibilities for people with a mental illness and those with a learning disability.

- RQIA is designated as a National Preventative Mechanism (NPM) under the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT); an international human rights treaty designed to strengthen protection for people deprived of their liberty. OPCAT requires NPMs to carry out visits to places of detention to monitor the treatment of and conditions for detainees and to make recommendations regarding the prevention of ill-treatment. All NPMs report to and work towards guidance and reports issued by the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading treatment or Punishment.

ANNEX B

Lead Contacts

Regulation and Quality Improvement Authority 9 th Floor, Riverside Tower 5 Lanyon Place Belfast BT1 3BT Tel: 028 9536 1111	Independent Healthcare Sector Complaints Adjudication Service 70 Fleet Street London EC4Y 1EU Tel: 020 7536 6091
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Chief Executives

RQIA Dr Tony Stevens Email: Tony.Stevens@rqia.org.uk	ISCAS Sally Taber Email: sally.taber@iscas.org.uk
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Operational Contacts

RQIA David McCann (Assistant Director Improvement) Email: David.McCann@rqia.org.uk	ISCAS Jordan Yates Email: jyates@iscas.org.uk
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ANNEX C

Data provided by ISCAS

Data period	Data sub-topic/ element
Ongoing: as and when produced following adjudication decisions	<p>a) For all stage 3 adjudications a copy of the letter from the independent adjudicator with the actions to the ISCAS subscribing organisation (with the person who has complained details anonymised).</p> <p>b) On a case-by-case basis, and on a specific request from RQIA to inform specific inspections or investigations, copies of the full redacted adjudication.</p>
Ongoing	<p>c) RQIA does not investigate individual complaints, however it ensures that providers of regulated services have an effective complaints procedure and investigate complaints thoroughly. ISCAS will refer any concerns regarding the lack of ability to investigate complaints.</p>
Quarterly updates as stipulated	<p>d) A report in an agreed format that summarises the adjudication decisions (three to four times per year, following each ISCAS Operational meeting);</p> <p>e) An up-to-date report listing the names of all ISCAS subscribing organisations, three to four times per year, following each ISCAS Directors Board meeting.</p>

ANNEX D - Principles Governing Information Sharing¹

Code of Practice 8 Good Practice Principles ²	DPA Principles	Caldicott Principles ³
<ol style="list-style-type: none"> 1. All organisations seeking to use confidential service user information should provide information to service users describing the information they want to use, why they need it and the choices the users may have. 2. Where an organisation has a direct relationship with a service user then it should be aiming to implement procedures for obtaining the express consent of the service user. 3. Where consent is being sought this should be by health and social care staff who have a direct relationship with the individual service user. 4. 'Third Party' organisations seeking information other than for direct care should be seeking anonymised or pseudonymised data. 5. Any proposed use must be of clear general good or of benefit to service users. 6. Organisations should not collect secondary data on service users who opt out by specifically refusing consent. 7. Service users and/or service user organisations should be involved in the development of any project involving the use of confidential information and the associated policies. 8. To assist the process of pseudonymisation, the Health and Care Number should be used wherever possible. 	<ol style="list-style-type: none"> 1. Data should be processed fairly and lawfully. 2. Data should be processed for limited, specified and lawful purposes and not further processed in any manner incompatible with those purposes. 3. Processing should be adequate, relevant and not excessive. 4. Data must be accurate and kept up to date. 5. Data must not be kept longer than necessary. 6. Data must be processed in line with the data subject's rights (including confidentiality rights and rights under article 8 of the Human Rights Act). 7. Data must be kept secure and protected against unauthorised access. 8. Data should not be transferred to other countries without adequate protection. 	<ol style="list-style-type: none"> 1. Justify the purpose(s) for using confidential information. 2. Only use it when absolutely necessary. 3. Use the minimum that is required. 4. Access should be on a strict need-to-know basis. 5. Everyone must understand his or her responsibilities. 6. Understand and comply with the law.

¹ These principles must be followed by health and social care organisations when considering use and disclosure of service user information.

² Code of Practice, paragraph 3.17.

³ PDG Principles are adopted from the Caldicott Principles established in England and Wales.