



Memorandum of Understanding concerning cooperation between The Office of the Ombudsman for Children and the Health Information and Quality Authority

24 October 2016

1. Background

The **Ombudsman for Children's Office (OCO)** established under the Ombudsman for Children Act, 2002 and having its office at Millennium House, 52-56 Great Strand Street, Dublin 1, Ireland and the **Health Information and Quality Authority (HIQA)**, established under the Health Act 2007, as amended, and having its head office at Unit 1301 City Gate, Mahon, Cork, Ireland wish to establish a framework for cooperation and information sharing about those elements of health and social care services which fall within their respective remits, and to establish effective procedures for signposting members of the public to each other's services.

The Ombudsman for Children's Office has an overall statutory mandate to promote and monitor the rights and welfare of children up to the age of 18 living in Ireland. The Ombudsman for Children has statutory independence in fulfilling this mandate and is directly accountable to the Oireachtas. The OCO's functions encompass the traditional role of an Ombudsman to protect the rights of individuals or groups by independently and impartially investigating complaints made about public bodies. Specifically, the OCO can investigate complaints made by or on behalf of children in relation to the administrative actions of public bodies providing services to or making decisions about children and families as well as organisations providing services on behalf of the State. The OCO also has a mandate to promote the rights and welfare of children under section 7 of the Ombudsman for Children Act.

The Health Information and Quality Authority is the independent authority established to drive continuous improvements in Ireland's health and social care services. HIQA's mandate extends across the quality and safety of the public, private (within its social care function) and voluntary services. Its remit includes setting standards, monitoring compliance with standards and regulations, and carrying out investigations where there are reasonable grounds to do so.

2. Objectives

This Memorandum of Understanding (MOU) is intended to assist and support both the OCO and HIQA in performing their individual functions. In particular it takes note of areas of potential cooperation and collaboration in the interest of ensuring appropriate assessment and / or examination of information by the OCO and protection of the health and welfare of children who use health and social services. The objectives of this MOU are:

- a) to promote cooperation in areas of strategic and high-level operational interest
- b) to facilitate cooperation on cross-referral of information where one organisation believes that it falls within the remit of the other (or both).

This MOU represents the understanding reached by the OCO and HIQA, in particular:

- that both signatories operate under separate schemes: the OCO is concerned with promoting and monitoring the rights and welfare of children up to the age of 18 living in Ireland; HIQA is concerned, *inter alia*, with governance and all other factors affecting children who use health or social care services. This MOU is intended to cover areas of common interest where cooperation will lead to better services and better outcomes for children using services; and
- that both signatories may in particular circumstances, limit the scope of disclosure of information only if the disclosure is contrary to the public interest or the interests of the participant concerned, is in breach of or is inconsistent with statutory obligations or requirements or other obligations and requirements imposed by law.

3. Governing legislation

The OCO was established under the Ombudsman for Children Act 2002. The main areas of work of the OCO are:

- Independent complaints handling
- Education & Participation
- Research & Policy.

The general functions of the OCO, as defined by the Ombudsman for Children Act 2002 are:

- Under section 7, the OCO has a function to promote rights and welfare of children
- Under section 8, the OCO has a function to examine and investigate complaints against public bodies
- Under section 9, the OCO has a function to examine and investigate complaints against schools and voluntary hospitals.

The Health Information and Quality Authority was established by the Health Act 2007 with the object to 'promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public' (section 7 Health Act 2007). The principal functions under the Health Act 2007 include:

- to set standards on safety and quality in relation to services provided by the Health Service Executive (HSE) or a service provider in accordance with:
 - the Health Acts 1947 to 2015, except for services under the Mental Health Acts 1945 to 2001 that, under the Health Act 2005, are provided by the HSE
 - the Child Care Act 1991

- the Children Act 2001, and
 - services provided by a nursing home as defined in section 2 of Health (Nursing Homes) Act 1990
- to monitor compliance with standards and to advise the Minister and HSE accordingly
 - to undertake investigations as to the safety, quality and standards of services
 - to evaluate the clinical and cost effectiveness of health technologies including drugs and provide advice arising out of the evaluation to the Minister and the HSE
 - to evaluate available information respecting the services and the health and welfare of the population
 - to provide advice and recommendations to the Minister and the Executive about deficiencies identified by HIQA in respect of information identified respecting the services and health and welfare of the population
 - to set standards as HIQA considers appropriate for the Executive and service providers respecting data and information in their possession in relation to services and the health and welfare of the population
 - to operate other such schemes aimed at ensuring safety and quality in the provision of services.

The Health Information and Quality Authority must comply with Data Protection Acts 1988 and 2003, and the Freedom of Information Act 2014.

4. Areas of cooperation

4.1 The OCO and HIQA having reached the above understanding will:

- a) undertake to communicate as appropriate on all matters of strategic mutual and operational interest. Communication will be conducted on both a formal basis through scheduled meetings and informally on an ad hoc basis.
- b) facilitate cooperation on cross-referral of information where one organisation believes that it falls within the remit of the other (or both) and where there are concerns in relation to health and social care services provided to children. In the conduct of this activity both organisations will respect, maintain and adhere to all requirements of the relevant legislation.
 - For HIQA this includes but is not limited to HIQA's statutory role under the Health Act 2007 and subsequent amendments.
 - For the OCO this includes but is not limited to the OCO's statutory role under the Ombudsman for Children Act 2002 as amended.
 - A protocol governing the means by which the cross-referral of relevant complaints received by HIQA to the OCO outlined above will take place is set out in the Schedule to this MOU.

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4.2 In accordance with the Schedule (*Practical Arrangements for Cross-Referral of Information from HIQA to the Ombudsman for Children's Office further to Section 4 of this Memorandum of Understanding*), where HIQA is informed of a complaint which has already been dealt with at local level and may be within the OCO's remit, it will transfer the complaint directly to the OCO where appropriate, with the consent of the complainant. Where consent is not provided, HIQA will provide full contact details for the OCO to the complainant. HIQA staff will advise members of the public of their right to complain to the OCO as and when appropriate. If the OCO receives information that may be of relevance to HIQA, it will transfer this information to HIQA as it deems appropriate. The OCO will also provide contact details for HIQA to members of the public, including users of health and social care services for children, as and when appropriate.

5. Confidentiality

Before transferring any information, each office will satisfy itself that any such transfer is not in breach of its own legislative provisions regarding confidentiality and/secrecy, or in breach of any other relevant statutory provisions, including the Data Protection Act 1988 and 2003. Where information can usefully be anonymised before being transferred, each office will do that. Both offices recognise the prime importance of protecting services users and thus want to facilitate effective and timely information exchange designed to secure this outcome.

a) The Ombudsman for Children's Office

- i. Nothing in this MOU requires the OCO to release confidential information to HIQA except in accordance with law.
- ii. Unless otherwise required by law, the OCO will not disclose any information received from HIQA under this MOU, except with the written consent of HIQA. If disclosure is required by law, the OCO will take all reasonable measures to ensure that the information received from HIQA will be disclosed in a manner that protects the information from any disclosure that is not required or authorised by law.
- iii. Unless otherwise required by law, the OCO will not use the information disclosed to it under this MOU for any other purpose other than the performance of its regulatory activities/statutory functions.

b) Health Information and Quality Authority

- i. Nothing in this MOU requires HIQA to release confidential information to the OCO except in accordance with law.
- ii. Unless otherwise required by law, HIQA will not disclose any information received from the OCO under this MOU, except with the written consent of the OCO. If disclosure is required by law, HIQA will take all reasonable measures to ensure that the information received from the OCO will be disclosed in a manner

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that protects the information from any disclosure that is not required or authorised by law.

- iii. Unless otherwise required by law, HIQA will not use the information disclosed to it under this MOU for any other purpose other than the performance of its regulatory activities/statutory functions.

6. Financial arrangements

Each participant will be solely responsible for the administration and expenditure of its own resources associated with activities conducted under this MOU.

7. Variation

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

8. Status of Memorandum of Understanding

This MOU reflects the intentions of the participants. It is not intended to create legal obligations of any nature, either in domestic or international law. The participants will, however, observe and give due respect to confidentiality undertakings which they have expressed in this MOU.

9. Effective date and review

This MOU will come into effect upon the date of signature of both signatories and will continue in effect until its termination in accordance with clause 11.

This MOU will be subject to formal annual review on each anniversary of its signing. In addition the content of the MOU will be reviewed to ensure that it remains relevant, for example in light of legislative changes.

This review will be conducted by the agency contacts shown under paragraph 10 and any required variations arising made in accordance with paragraph 7.

10. Agency contact

The liaison officers responsible for the administration of this MOU are:

- a) For HIQA, the person holding the position of Chief Executive.
- b) For the OCO, the person holding the position of Ombudsman for Children.

11. Termination

- a) Either participant may, at any time, give written notice of termination to the other participant. This MOU (excepting clause 5) will terminate six months after the date of receipt of the notice of termination.
- b) The termination of this MOU will not affect the confidentiality undertakings expressed by the participants 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.

Signed in the *Dublin Regional Office of the Health Information and Quality Authority*

on this 24 day of October 2016

by Niall Muldoon

for and on behalf of the Ombudsman for Children's Office

on this 24 day of October 2016

by [Signature]

for and on behalf of the Health Information and Quality Authority

Schedule

*Practical Arrangements for Cross-Referral of Information
from HIQA to the Ombudsman for Children's Office
further to Section 4 of this Memorandum of Understanding*

In cases where HIQA is in receipt of a complaint (either verbally or in writing) which it believes may be appropriate for examination by the OCO (see section 4 of this Memorandum of Understanding in relation to the cross-referral of information where there are concerns in relation to health and social care services provided to children) and HIQA believes the complainant has exhausted any relevant local complaints mechanism, the following procedure will be followed.

1. HIQA shall seek the consent of the complainant (in writing or verbally as the case may be) to transfer the complaint to OCO.
2. If consent is forthcoming, HIQA will explain to the complainant that it is entirely a matter for OCO to decide in any given case if it is proper for it to pursue the complaint with the public body in question.
3. HIQA will transfer any information it has received to OCO together with confirmation of consent and the full contact details for the complainant in the following format (or as close as is reasonably possible or appropriate):

Name

Postal address

One telephone number (mobile or fixed, as the complainant decides)

One email address (if available)

4. OCO and HIQA each provide to the other the direct contact details for the relevant liaison staff. These staff will arrange normal screening of any potential complaints.
5. Nothing in this arrangement shall prevent HIQA from using the complaint information in furtherance of its own regulatory role.

