



**Memorandum of Understanding between the
Care Quality Commission and AVIVA Health
and Protection**



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Introduction

1. This Memorandum of Understanding (MoU) sets out the framework to support the working relationship between the Care Quality Commission (CQC) and Aviva Health UK Ltd (AVIVA), in order to safeguard the wellbeing of the public receiving health and social care in England.
2. The working relationship between CQC and AVIVA is part of the maintenance of a regulatory system for health and adult social care in England that promotes patient safety and high quality care.
3. CQC is the independent regulator of health and social care in England. AVIVA is an insurance company providing a variety of private medical insurance products under which members receive funding for private medical treatment. The responsibilities and functions of CQC and AVIVA are set out in Annex 1. Both organisations share a concern for the quality and safety of health and care services, and recognise that the development of models of health and care service delivery requires closer cooperation between the two organisations.
4. This MoU does not override the statutory responsibilities and functions of CQC and AVIVA and is not enforceable in law. However, CQC and AVIVA are committed to working in ways that are consistent with the principles of this MoU.

Principles of Co-operation

This MoU is a statement of principle which supports our focus on promoting patient and public safety and wellbeing. More detailed operational protocols and guidance can be developed as required.

5. CQC and AVIVA intend that their working relationship be characterised by the following principles:
 - a. The need to make decisions which promote people's safety and high quality health and social care.
 - b. Respect for each organisation's independent status.
 - c. The need to maintain public and professional confidence in the two organisations and the regulatory process.
 - d. Openness and transparency between the two organisations as to when co-operation is and is not considered necessary and/or appropriate.
 - e. Addressing gaps in the regulatory framework.

Areas of Co-operation

6. The working relationship between CQC and AVIVA involves co-operation in the following areas:



- a. "To act in the public interest by the lawful sharing of data and information of concern to inform the regulatory functions of CQC through its inspection, registration and monitoring of CQC registered providers.

Consideration of information should include but is not exclusive to:

- A patient safety risk.
 - Evidence of a theme emerging which may be indicative of a wider issue across a hospital or provider group.
 - Outcomes of AVIVA's visits to services.
 - Poor clinical treatment or poor clinical outcomes for patients.
 - A decision to suspend practising privileges or place a condition on a consultant's private practice at a hospital or other registered service.
 - Event or incident that has led to a particular procedure being suspended on a temporary or permanent basis. This may be related to clinician practice, equipment failure, staffing, high number of incident or one serious incident or other reason.
 - Failure to investigate or respond to clinical complaints made by patients.
- b. To the extent permitted by law, to be open and transparent when in receipt of information regarding the safety and quality of services received by their customers from services that are registered with CQC. The information is shared with CQC in a timely way through the recognised CQC routes. By safe, we mean people are protected from abuse* and avoidable harm. Concerns may also relate to financial and corporate issues such as fitness of staff including board members. *Abuse can be physical, sexual, mental or psychological, financial, neglect, institutional or discriminatory abuse.
- c. To the extent permitted by law, to share data that has been agreed on a regular and ongoing basis.

7. Both organisations recognise that all processing of personal data (including the sharing of personal data) must be carried out in accordance with the Data Protection Act 1998 (the 'DPA') (and from 25 May 2018, in accordance with the General Data Protection Regulation) (together 'Data Protection Legislation'). Both organisations agree that the sharing of personal data will be carried out in a manner consistent with the Data Sharing Code of Practice published by the Information Commissioner's Office. The legal basis for Aviva to share information with the CQC is referred to in Annex 3.
8. Both parties recognise CQC's responsibilities under the Freedom of Information Act 2000. Where CQC receives a request under that Act for information that was sent by Aviva under this MoU, CQC agrees to take reasonable steps to consult with Aviva on the proposed disclosure and the application of exemptions, but Aviva recognises that the responsibility for disclosure lies with the CQC as the public authority responsible for responding to the request.
9. Suggested methods by which Aviva may contact the CQC are referred to in Annex 2.

Resolution of Disagreement



10. Where there is disagreement between CQC and AVIVA, this should be resolved in the first instance at working level. If this is not possible, it may be referred through those responsible for the management of this MoU, up to and including Chief Executive of the CQC and CEO of Aviva Health who will then be jointly responsible for ensuring a mutually satisfactory resolution.

Duration and Review

11. This MoU commences on the date of the signatures below. It is not time limited and will continue to have effect unless the principles described above need to be altered and/or cease to be relevant.
12. This MoU will be reviewed every 2-3 years but may be reviewed at any time at the request of either party. Any alterations to the MoU will, however, require both parties to agree.
13. Both organisations have identified a person responsible for the management of this MoU (known as 'Relationship Leads') and their contact details are set out in Annex 4. Relationship Leads will liaise as required to ensure that:
- a. This MoU is kept up to date;
 - b. They identify any emerging issues in the working relationship between the organisations;
 - c. They resolve any questions that arise in regards to the interpretation of this MoU.

Signatures



Sir David Behan CBE
Chief Executive
Care Quality Commission

Date: 11 May 2018.



Name: GRANT O'CONNOR CROCKETT

Authorised Signatory
AVIVA HEALTH UK LIMITED

Date: 10/5/18
N0R18/0885

Annex 1: Responsibilities and functions of CQC and AVIVA

Care Quality Commission

CQC is the independent regulator of health and adult social care in England. Its purpose is to make sure health and care services provide people with safe, effective, compassionate, high-quality care and to encourage them to improve.

CQC does this by registering, monitoring, inspecting and regulating hospitals, adult social care services, dental and general practices and other care services in England, to make sure they meet fundamental standards of quality and safety. We set out what good and outstanding care looks like and we make sure services meet these standards which care must never fall below.

CQC reports publicly on what it finds locally, including performance ratings for care providers, to help people choose care and encourage providers to improve. It also reports annually to Parliament on the overall state of health and adult social care in England.

AVIVA Health and Protection

Aviva Health and Protection UK is part of the international AVIVA plc insurance network and provides Health and Protection products to a wide customer base across corporate and individual markets, by providing flexible PMI propositions including services which encourage behaviours to reduce health risks and improve wellbeing. Its primary purpose is 'to help people to live more healthily, get better when they fall ill and support those customers and families when this is not possible'. This is based on a directional approach to customer access to specialists and suppliers, and increasingly based on safety and quality of services provided.

Annex 2 Contacting CQC

There are various ways in which information about a service/hospital/location/provider can be shared with CQC. To ensure information reaches the correct inspector for the location it is important to include the following detail if known:

- Name of location e.g. hospital/clinic/service
- Address
- CQC location ID
- Name of provider
- CQC provider ID

Please do not send emails direct to an inspector, all information is logged centrally and it will be assigned to the location and the relevant inspector.

Information can be shared by:

- Calling the National Customer Service Centre (NCSC) on 03000 616161 or by e mail to enquiries@cqc.org.uk

Annex 3 – Potential Legal Basis for sharing information with CQC



Sharing data must comply with the Data Protection Legislation. The key principles for sharing with CQC are:

- Sharing must be fair and lawful.
- Sharing must be for the purposes specified upon collection, and not processed in a way incompatible with those processes.
- Sharing must be done in a way that is adequate, relevant and not excessive.

In order for sharing to be lawful, there must be a legal basis to share, and a condition under schedule 2 of the DPA, and where it is sensitive personal data, an additional consideration under schedule 3 of the DPA, must be met.

The lawful basis to share with CQC is that the personal data is something which CQC will need as part of its regulatory functions as established by the Health and Social Care Act 2008 (HSCA 2008).

For any personal data, the condition at schedule 2, part 5(b) will apply where sharing is necessary for the exercise of functions conferred under enactment, that being HSCA 2008.

For any sensitive personal data, the condition at schedule 3, part 7(b) will apply where sharing is necessary for the exercise of functions conferred under enactment, that being HSCA 2008.

The exemption at section 31 of the DPA, removes the need to inform data subjects about any disclosure where such a disclosure would prejudice regulatory functions. Any concerns shared with CQC are handled confidentially and CQC would not want a provider to become aware of concerns before they had been considered against our regulatory powers. We would therefore take the view that disclosure would exempt AVIVA from the fair processing requirements laid out in Schedule 1, Part II, paragraph 2 of the DPA. However, it does not remove the fair processing requirement to inform data subjects in any privacy notice that the insurer may share information with the appropriate regulatory bodies, such as CQC where necessary.

Where disclosure is deemed necessary to CQC, it would meet the first principle in that sharing must be fair and lawful.

Moving onto to principle two and the specified purposes, sharing would be permitted for related purposes. AVIVA will want to be satisfied that the care their customers receive is safe, effective, caring, responsive and well led. Therefore, customers should have a reasonable expectation that their personal data may also be used by their insurer for related purposes such as assisting the regulator in ensuring the high standards of health and social care.

Moving on to principle three and the adequacy and relevance of sharing, AVIVA will need to consider:

- Whether sharing is necessary for CQC to receive to assist in its regulatory functions.
- Whether sharing requires them to share any personal data relating to patients or health professionals.

- Whether they can share information that has been redacted or anonymised to protect individuals' privacy.
- Sharing only the minimum amount of information necessary for CQC to perform its regulatory functions.

It is important to bear in mind that CQC only has legal powers to regulate those organisations and registered individuals responsible for providing care. We do not have powers to investigate individual medical professionals, so whilst some personal data could be pertinent to a GMC investigation, it is likely different information would be necessary for CQC's regulatory role. That said, CQC might sometimes require personal data to follow up on some issues directly with the provider if it may breach the regulations.

Legal Protections on personal data shared with CQC

Any information shared with CQC by AVIVA that contains personal data would be shared on the basis that it is confidential and subject to the common law duty of confidentiality and any relevant data protection law.

Therefore, any information shared which identifies a living individual, would also be considered to be Confidential Personal Information (CPI). Section 76 of HSCA 2008 makes it a criminal offence for CQC to disclose CPI to a third party. Section 77 provides a defence to this in specific circumstances, such as where disclosure is necessary for protecting people's welfare or for criminal investigations, whilst section 79 provides for permitted disclosures where CQC may share information on a similar basis to the defences.

Where CQC does not have a legal basis to further disclose, it will be protected by the section 76 offence, along with the provisions of the Data Protection Legislation and the Human Rights Act 1998, as CQC is designated as a public authority under this act.

For more information about how CQC handles CPI that it receives please see the [Code of Practice on Confidential Personal Information](#) on our website

The DPA also recognises that an organisation may have legitimate reasons for processing personal data that the other conditions for processing do not specifically deal with. The 'legitimate interests' condition permits such processing, provided three requirements are met. The requirements are:

- (i) Purpose test. The data is processed for the purposes of a legitimate interest, which for these purposes would be customer and patient safety.
- (ii) Balancing test. The legitimate interest must be balanced against the interests of the data subject. For these purposes, customer and patient safety would warrant the sharing of the data.
- (iii) Necessity test. The processing must be necessary for the purpose e.g. it must help to further the legitimate interest and is a reasonable way of doing so. In this instance the processing is necessary for patient safety by assisting the regulator (the CQC) to perform its function. Aviva

Annex 4: Contact details for all parties

Care Quality Commission 151 Buckingham Palace Road London SW1W 9SZ 03000 616161	Aviva health and Protection C/O Dr Doug Wright Chilworth House Hampshire Corporate Park Templars Way Eastleigh SO53 3RY
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Named contacts between CQC and AVIVA UK are as follows:

Relationship Leads: (First points of contact for any specific matters relating to this MoU)		
	Care Quality Commission	AVIVA
Name:	<u>Heidi Smoult</u>	<u>Doug Wright</u>
Position:	<u>Deputy Chief Inspector</u>	<u>Medical Director</u>
Email:	<u>Heidi.smoult@cqc.org.uk</u>	<u>Doug.wright@aviva.com</u>
Tel:		

Chief Executives (Internal escalating policies should be followed before referral to Chief Executives)	
Sir David Behan CBE Chief Executive David.behan@cqc.org.uk	Mark Noble Chief Executive (Uk Health and Protection) Mark.Noble@aviva.com

Other Useful Contacts: (e.g. Media Team, Legal Team etc.)		
	Care Quality Commission	AVIVA (all at Aviva.com)
Name:		<u>Moya Emery</u> Clinical risk and Governance Consultant
Position:		<u>Subashini M</u> Assistant Medical Director
Email:		<u>Adam Hayward</u> – Senior Clinical Business Consultant
Tel:		<u>Martin Docherty</u> – Clinical Governance Manager