



# **Regulation of Social Care and Childcare in Wales**

## **Memorandum of Understanding between Care Inspectorate Wales (CIW), Health and Safety Executive (HSE) and Local Authorities in Wales**

**1<sup>st</sup> July 2019**

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## **1 Introduction**

- 1.1 This Memorandum of Understanding (MoU) applies to social care and childcare provision in Wales. It comes into effect on 1<sup>st</sup> July 2019.
- 1.2 The purpose of this MoU is to enable effective, co-ordinated and comprehensive regulation of care, safety and health for people using services, workers and members of the public visiting such premises, within the current legal framework. The approach is based on collaborative working and early discussion between regulators to identify the lead organisation.
- 1.3 The MoU outlines the respective responsibilities of the Health and Safety Executive (HSE), Local Authorities (LA) and the Care Inspectorate Wales (CIW) for securing improvement, effective regulation and investigations in the social care and childcare sector, and the principles that will be applied where specific exceptions to these general arrangements may be justified. Where there is overlap, this may include joint working. Further information about each organisation is available in **Annex C**.

## **2 Principles of co-operation**

- 2.1 CIW and HSE/LA are committed to the principles of transparency, accountability, proportionality, consistency, and targeting when regulating social care and childcare in Wales. The organisations intend that their working relationship will be characterised by the following principles:
- Improvement in the delivery of safe social care and childcare;
  - Respect for each organisation's independent status;
  - The need to maintain public confidence in the organisations and regulation;
  - Openness and transparency between the organisations;
  - The efficient and effective use of resources.
- 2.2 CIW and HSE/LA will ensure:
- a) where serious harm occurs, we liaise with each other at an early stage to identify the lead organisation and co-ordinate any follow up. This means that the right people and organisations are approached to secure improvement, ensure statutory procedures are followed, and are held accountable when necessary.
  - b) where neither organisation has sufficient powers due to the legislative framework and current policies, they will inform other relevant parties, including the Welsh Government.
  - c) they review the process and MoU to ensure it remains fit for purpose for all parties involved.

## **3 Areas of co-operation**

- 3.1 The working relationship between the organisations involves co-operation in the following areas:
- Information sharing
  - Incident investigation

- Strategic collaboration

### Information sharing

3.2 Each organisation will work collaboratively by:

- notifying and liaising with the appropriate organisation as soon as possible about information they receive on incidents that may be in their jurisdiction;
- sharing relevant intelligence and data related to providers regulated in common; and,
- meeting periodically to discuss information sharing and to review procedures and working arrangements.

3.3 CIW, HSE/LA are subject to the Freedom of Information Act 2000 and Data Protection Act 2018. If one organisation receives a request for information that originated from the other, the receiving organisation will discuss the request with the other before responding. Each organisation will handle information in accordance with their respective data sharing protocols. **Annex B** sets out the arrangements and key contacts for sharing of intelligence.

### *Access to independent / expert advice (for civil / criminal investigation)*

3.4 If either HSE / LA or CIW require access to expert advice for civil / criminal investigations, they will liaise with each other, to ascertain whether they have relevant experts to support the other organisation. In addition, both organisations should share any learning from investigation or legal proceedings that may help in future regulation.

### *Referral of concerns to professional bodies*

3.5 HSE and CIW have MoUs with some professional bodies. If HSE or LAs do not have a MoU in place, they will liaise, where appropriate, with CIW to get advice on contacting the relevant professional body.

### *Cross border issues (e.g. commissioning)*

3.6 HSE is a GB wide regulator and is not confined by border constraints between Wales and the rest of GB. LAs have smaller boundaries but work together to secure effective regulation. In England, CQC has powers in respect of service user safety so where care is commissioned from England into services in Wales, the relevant regulatory lead will need to liaise with CQC to address any commissioning issues. Likewise, where care is commissioned from Wales into England and HSE/LA or CIW have intelligence of poor compliance or standards, each organisation will need to liaise with CQC to share intelligence where appropriate.

### Incident investigation

#### *Single incidents (of serious harm)*

3.7 Where a work-related death occurs, the police take primacy initially in the investigation in accordance with the [Work Related Deaths Protocol \(WRDP\)](#) and the associated [Practical Guide](#). The police / Crown Prosecution Service (CPS) are responsible for the investigation and prosecution of certain offences. This includes individual or corporate

manslaughter, ill treatment or wilful neglect and extends to cases of theft in an abuse case. CIW or HSE/LA will notify them of such incidents and work with them in accordance with the WRDP and this MoU.

- 3.8 Where primacy for investigation into work-related death or serious harm needs to be passed from the police, a decision will be made as to whether CIW or HSE/LA assumes primacy for the investigation.
- 3.9 **Annex A** contains illustrative examples of typical cases falling to CIW and HSE/LA respectively. It also identifies where early discussion and liaison is required to agree the best way forward. Decisions on whether to investigate specific incidents will be subject to each organisation's published policies. **Annex D** sets out a 'regulatory flowchart' to follow.

#### *Liaison for individual incidents*

- 3.10 Where there is uncertainty about jurisdiction or where specific criteria apply, the relevant bodies will:
- jointly determine who should have primacy for any regulatory action and whether joint or parallel regulatory action will be conducted;
  - keep a record of this decision and agree criteria for review;
  - designate appropriate contacts within each organisation to establish and maintain any necessary dialogue throughout the course of the regulatory action (see **Annex B**), and,
  - keep dutyholders / providers, injured parties and appropriate relatives informed accordingly.

#### *Special/exceptional circumstances (criteria for deciding on roles)*

- 3.11 In a small number of cases, it may be unclear who is the most appropriate body to take charge of the investigation and/or any related enforcement action. Where CIW and HSE/LA agree that neither organisation can take an active lead, the matter will be referred on to the most appropriate body. Any such cases will be considered individually on their merits.

#### Strategic Collaboration

- 3.12 CIW and HSE/LA will have regard to the circumstances in which their objectives may be best served by collaboration. Each organisation will seek to give consideration to the other when planning their work programmes and identify any possibilities for joint working.
- 3.13 They may, by agreement, undertake joint inspection, investigation or other work. Throughout such work the organisations will retain and act in accordance with their own statutory powers. This work may include:
- Joint reviews of information about a social care and childcare setting or provider

- Site visits to a social care or childcare organisation or provider
- The co-production of documents and reports
- Coordination of any follow up action planning to address any recommendations
- Intelligence based proactive interventions
- Other joint working deemed appropriate

**4 Duration and review of this MoU**

4.1 This agreement will be reviewed on a 2 yearly basis or whenever there are changes to existing legislation or there is new legislation. This will take into account feedback from staff, lessons learnt from implementation and the impact of any changes in legislation.

		
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## **ANNEX A**

### **Illustrative examples of social care and childcare cases for identifying the best placed lead regulator or where a joint approach is required**

#### **Introduction**

To assist in decision making, the following sets out broad areas where CIW or HSE/LA may be best placed to lead the discussions on primacy.

#### **1 Areas where CIW may have a primary role:**

These include incidents arising from failures in the quality of care of people being looked after, for example:

- a person suffers serious harm as a result of failure to receive care in line with their individual plan;
- a person develops chronic pressure ulcers;
- a person suffers harm from malnutrition or de-hydration;
- a child suffers harm as a result of force feeding;
- a child suffers harm as a result of poor staffing levels.

#### **2 Areas where HSE/LA may have a primary role:**

These include incidents involving service users, staff or others (e.g. visitors) who are injured by the activities of contractors or work being carried out at the premises; or incidents involving installed plant for the use of anyone (e.g. lifts or escalators).

For example:

- employees developing dermatitis related to glove use;
- a member of staff suffers a manual handling injury resulting from a work activity;
- a building contractor's tower scaffold collapses at a care facility;
- a carer receives a needlestick injury which sero-converts and infects the employee;
- an employee or service user contracts Legionnaires' disease and this is linked to on-site conditions at the premises;
- employers not required to be registered with CIW appear to be significantly at fault;

#### **3 Areas where further discussion between CIW and HSE/LA should take place to establish the lead organisation (or joint approach):**

These can include:

- incidents which have the potential to cause, or have exposed service users to, significant risk or harm;

- incidents which have exposed staff to harm, but the principal concern is the greater risk of harm to service users;
- incidents where both the commissioner and registered provider appear to be significantly at fault;
- providers of services that should be registered with CIW, but are not, appear to be significantly at fault. (In such cases CIW may consider the offence of failure to register, and HSE/LA the specific deficits in H&S standards.)

## **ANNEX B**

### **Arrangements for formal sharing of intelligence to support the MoU**

This Annex sets out the basis for the information sharing between the signatory organisations of this document.

- CIW is introducing a new template Information Sharing Protocol (ISP). The ISP will govern how CIW operates with other organisations in relation to information sharing and associated business processes. For the purposes of this MOU, the CIW ISP will govern how CIW shares its information with HSE and LA.
- In sharing information under this MoU, CIW and HSE/LA will at all times comply with their respective obligations under the Data Protection Act 2018 and General Data Protection Regulation.
- Each organisation will follow their own data sharing policies when transferring personal and sensitive personal data.
- All organisations believe that the arrangements set out in this MoU are compliant with the relevant aspects of legislation.

This Annex sets out the mechanism for sharing information with the other parties where it is clearly in the interest of the workers or people using services.

#### **General information sharing arrangements**

Each organisation will work collaboratively by:

- notifying and liaising with the appropriate organisation in relation to relevant concerns as soon as possible to share information on incidents that may fall within their jurisdiction; and
- sharing relevant intelligence about providers regulated in common; and,
- meeting annually to review procedures and working arrangements and share any issues or concerns.

#### ***Data sharing protocols***

CIW – Master Information Sharing Protocol (2019) – available from CIW

<https://careinspectorate.wales/>

HSE – Information Sharing Privacy Statement - <http://www.hse.gov.uk/privacy.htm> &

<https://www.hsl.gov.uk/privacy-notice>

LAs – each individual LA can be found at: <https://www.wlga.wales/welsh-local-authority-links>

**Key contacts for the MoU**

	<b>Who</b>	<b>What</b>
<b>Health &amp; Safety Executive (HSE)</b>	HSE Health and Social Care Team <a href="mailto:publicservicesector@hse.gov.uk">publicservicesector@hse.gov.uk</a>	HSE contact for: <ul style="list-style-type: none"> <li>• MoU management and information sharing queries.</li> </ul>
	Concerns Team  Tel: 0300 0031647  or complete an <a href="#">online request form</a>	For routine concerns identified by CIW or Local Authorities (LAs) where there is <b>no imminent risk</b> and where HSE is the enforcing authority for health and safety.
	HM Principal Inspectors	For specific incidents where <b>imminent risk</b> has been identified in the following areas and where HSE is the enforcing authority for health and safety, contact may need to be made directly with HM Principal Inspectors for the relevant geographical areas:
	Contact Wrexham office: Tel: 0203 028 5080	North Wales – Wrexham, Flintshire, Denbighshire, Conwy, Gwynedd, Anglesey, Powys
	Contact Carmarthen office: Tel: 0203 028 4730	South West Wales – Pembrokeshire, Carmarthenshire, Ceredigion, Swansea, Bridgend, Neath Port Talbot, Merthyr, Rhondda Cynon Taf
Contact Cardiff office: Tel: 0203 028 2260	South East Wales – Cardiff, Caerphilly, Newport, Torfaen, Vale of Glamorgan, Blaenau Gwent, Monmouthshire	

<p><b>Local Authorities /Welsh Local Government Association (WLGA)</b></p>	<p>Chair of All Wales LA Expert Panel                  Ian Jones                  Head of Service – Public Protection                  Wrexham County Borough Council  <a href="mailto:ian1.jones@wrexham.gov.uk">ian1.jones@wrexham.gov.uk</a></p>	<p>LA/WLGA contact for:</p> <ul style="list-style-type: none"> <li>• MoU management and information sharing queries</li> </ul>
<p><b>Local Authorities in Wales</b></p>	<p>Environmental Health Team</p>	<p>For concerns/specific incidents identified by CIW or HSE, where the LA is the enforcing authority for health and safety, contact the appropriate Environmental Health Team in each authority. Contact details can be found from the LA's respective websites.  <a href="https://www.wlga.wales/welsh-local-authority-links">https://www.wlga.wales/welsh-local-authority-links</a></p>
<p><b>Care Inspectorate Wales (CIW)</b></p>	<p>Main contact service                  Tel: 0300 7900 126                  Email: <a href="mailto:ciw@gov.wales">ciw@gov.wales</a></p>	<p>CIW contacts for general operational matters</p>

## **ANNEX C**

### **Role and functions of CIW, HSE and LAs**

#### **1 Role of Care Inspectorate Wales (CIW)**

- 1.1 CIW is the independent inspectorate and regulator for social care, childcare and social services in Wales.
- 1.2 CIW carries out its functions on behalf of Welsh Ministers. CIW's main functions and responsibilities are drawn from the following legislation and associated regulations:
  - Social Services and Well-being (Wales) Act 2014
  - Children Act 1989 (as amended)
  - Adoption and Children Act 2002
  - Children and Families (Wales) Measure 2010
  - Regulation and Inspection of Social Care (Wales) Act 2016
- 1.3 CIW registers and regulates a wide variety of services:
  - Services for children under 12 years, including child minders, nurseries, out of school care, crèches, sessional day care, open access provision.
  - Services for care experienced children including children's homes, residential family centres, independent fostering services and independent adoption agencies.
  - Adult care services including care homes, domiciliary care services, adult placement schemes and nurses agencies.
- 1.4 As part of CIW's regulatory function, it uses its civil powers to register, inspect and take action to improve childcare and social care in Wales, to make sure that only people and organisations that will provide a safe and high quality service are registered. CIW also has powers to pursue criminal sanctions when there has been a breach of the relevant regulations under which the service operates or certain requirements of the Regulation and Inspection of Social Care (Wales) Act 2016 or Children and Families (Wales) Measure 2010.
- 1.5 CIW's [Securing Improvement and Enforcement Policy](#) sets out CIW's overarching approach to enforcement as a regulator, including the principles and processes followed when using civil and criminal powers under the legislation listed in paragraph 1.2.

#### **2 Health and Safety Executive (HSE)**

- 2.1 The Health and Safety Executive (HSE) is an enforcing authority responsible for the regulation of health and safety at work in Great Britain and was established by the Health

and Safety at Work etc Act 1974 (HSWA). HSE is a non-departmental public body with Crown status, sponsored by the Department for Work and Pensions (DWP) and accountable to its ministers.

- 2.2 HSE regulates health and safety across a range of sectors and industries including major hazard sites such as offshore gas, oil installations and onshore chemical plants through to more conventional sites, quarries, farms, factories, waste management sites and hospitals. HSE and LA are co-regulators of health and safety in the workplace. This includes private or publicly owned health and social care settings in Great Britain. HSE inspects, investigates and where necessary takes enforcement action. HSE regulates residential nursing care and local authority (LA) provision.
- 2.3 HSE also investigates incidents and concerns about health and safety practices, and develops new or revised health and safety legislation and codes of practice.

### **Policy and procedures**

- 2.4 To enable HSE to conduct its functions in an open and transparent manner all of the operational procedures that it works to, plus the associated internal guidance and instructions, are publicly available on its [website](#).

## **3 Local Authorities (LAs)**

- 3.1 Local authorities (LAs) are enforcing authorities under the Health and Safety at Work etc Act 1974 (HSWA) with responsibilities for the regulation of health and safety at work in Great Britain together with HSE.
- 3.2 LAs regulate health and safety across a range of sectors and industries. Premises enforced by LAs include retail premises, warehouses, leisure facilities, residential care, private day care nurseries, and child care providers. LAs may inspect these premises or specific activities undertaken on those premises and investigate incidents and concerns about health and safety practices. LAs regulate independent non-nursing residential care.
- 3.3 LAs are also the enforcing authority in respect of areas including food safety, public health, environmental protection and building control.
- 3.4 LAs have a responsibility to safeguard children and vulnerable adults. LA Inspectors have safeguarding obligations and need to raise concerns about children or vulnerable adults with the appropriate LA Safeguarding Teams.

## **4 Role of HSE and Local Authorities**

- 4.1 Both HSE and LAs enforce the provisions of the **Health and Safety at Work etc Act 1974** (HSWA) and the Regulations made thereunder. Under the main provisions of this Act, employers have legal responsibilities in respect of the health and safety of their

employees and other people, including patients and service users, who may be affected by their undertaking and who may be exposed to risks as a result. Employees are required to take reasonable care for the health and safety of themselves and others. Breaches of health and safety legislation amount to criminal offences. Further information on HSWA can be found on HSE's website at: <http://www.hse.gov.uk/legislation/hswa.htm>.

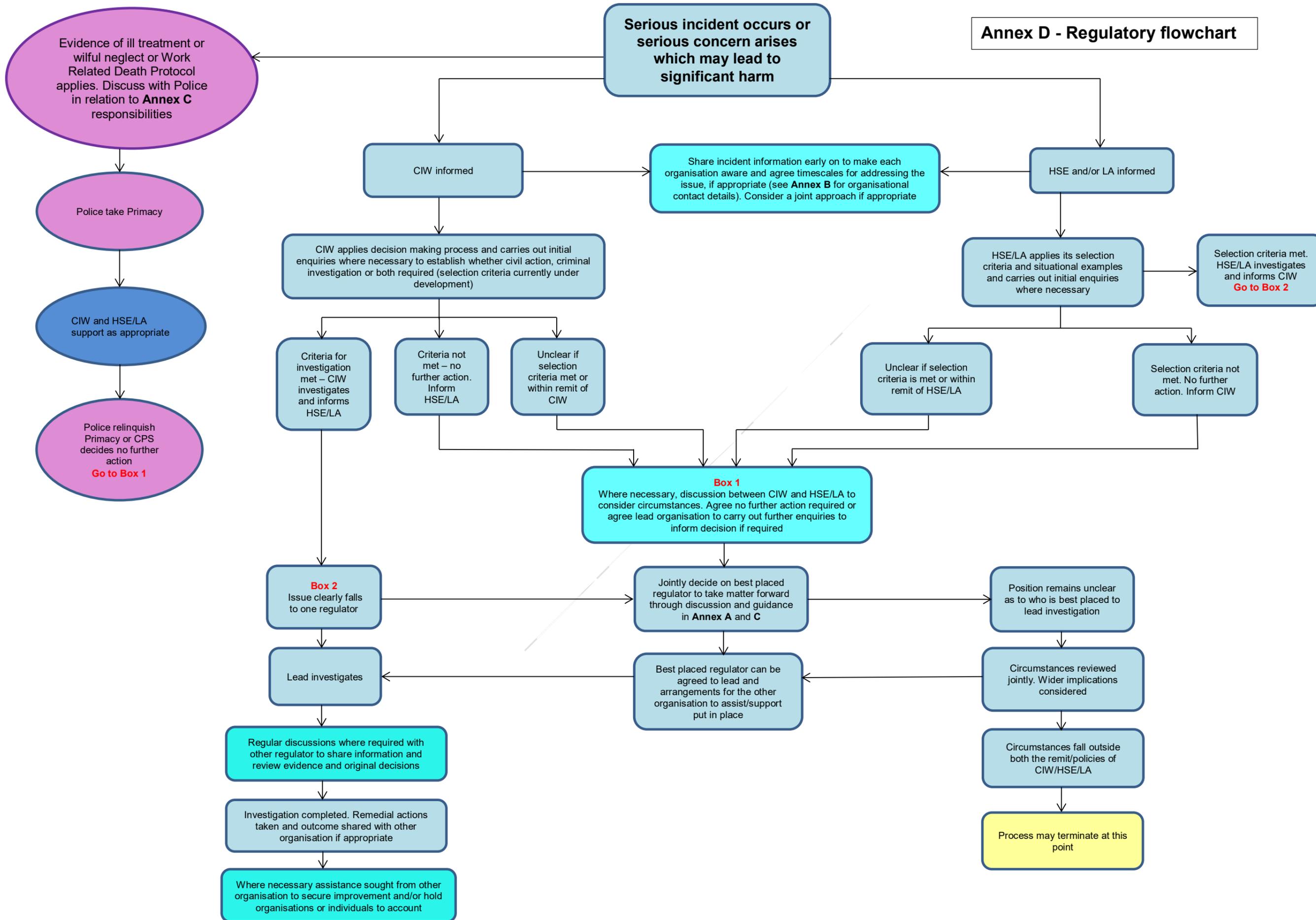
### **Incident Selection Criteria**

- 4.2 As part of their Operational Procedures for Investigation, both HSE and LAs use a published [Incident Selection Criteria](#) for selecting which incidents should be selected for investigation by an inspector.
- 4.3 HSE has a [HSWA Section 3 enforcement policy](#) about whether or not specific accidents to non-employees (e.g. service users) should be investigated. In addition to this general policy, HSE's [who regulates health and social care](#) web page also provides specific guidance on the regulation of health and social care.

### **Enforcement Policy Statement**

- 4.4 HSE has prepared and published an [Enforcement Policy Statement](#) (EPS) which sets out the general principles and approach which HSE staff, mostly inspectors, are expected to follow when taking enforcement decisions. The EPS covers areas such as the purpose and method of enforcement, the principles of enforcement, investigation, prosecution and death at work.

**Annex D - Regulatory flowchart**



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