

## ISCAS Position Statement

### Complaints Management and Practising Privileges

#### ISCAS Position Practising Privileges:

The **ISCAS position** is that subscribing Independent Healthcare Providers (IHPs) are required to provide a **single response** to a complaint. The response to complaints shall be based on an investigation that involves all relevant persons, whether those are staff who are engaged through an employment contract, agency / bank staff, or those who are granted of practising privileges. IHPs may need to obtain statements or feedback from those granted practising privileges, including on matters of the consent process, but this should be incorporated into a single response to the complainant from the IHP.

#### Background to position statement – poor practice:

The Independent Adjudicators (IAs), engaged by ISCAS to adjudicate on complainants at stage 3 of the independent sector complaints process, identify areas of learning from adjudications. The IAs have identified an increasing number of adjudications that show limited cooperation in the complaints process between the IHP and those medical practitioners that the IHP engages through practising privileges. Furthermore, the IAs have identified that poor documentation with regard to the consent process, as a theme in the complaints they are asked to adjudicate upon.

It is **not acceptable** for Consultants with practising privileges (or other persons engaged by the IHP) to write **separate responses** to complainants. IHPs that continue to permit multiple points of communication and responses to be forwarded the complainant will be deemed to be non-compliant with the ISCAS Code. As stated above the position of ISCAS is that the IHPs shall provide a single response to a complaint that incorporates feedback from all relevant clinicians including consultants with practising privileges.

#### ISCAS Code and Practising Privileges Principles:

The ISCAS Code states that the Code includes complaints about those healthcare professionals granted practising privileges working in subscribing IHPs. Practising privileges are a well-established system of checks and agreements whereby doctors can practise in hospitals and clinics without being directly employed by them. The

ISCAS Code also outlines the regulatory requirements and information about the system regulators with respect to complaint management.

The ISCAS Code does not provide details about how practising privileges operate in IHPs or information on the consent process. ISCAS and the IAs refer to the following documents published by the Association of Independent Healthcare Organisations (AIHO):

- Key Principles in Practising Privileges: <https://aiho.org.uk/689-aiho-practising-privileges-principles/file>
- Key Principles in Consent and Capacity: <https://aiho.org.uk/707-aiho-consent-and-capacity-key-principles-july-2017/file>

The Key Principles in Consent and Capacity states that *“it is important to have in mind that consent is a process which must be precisely documented”*. ISCAS position is that subscribers shall ensure those with practising privileges can answer the key question: *“would this record help me remember what happened, what was said and most importantly the thinking behind my decision if I am not here to continue the patients care, if there is an audit or if the matter comes to court in years to come?”*

#### **Accountability Framework subscribing IHPs:**

The relevant regulations of the four home countries define specific roles and responsibilities, as well as the meaning of practising privileges (see below – IH regulations). The Registered Person (IHP) retains the responsibility for the management and monitoring of systems and processes that support continuous quality improvement and learning, including the consent process and complaint management.

The Registered Person is responsible for supervising the service provision (for example, Regulated Activities or similar, such as diagnosis, treatment or surgery). The Registered Person (for example the Nominated Individual who may be at corporate level) is responsible for ensuring ‘fit and proper’ Registered Managers are engaged.

The Registered Manager is responsible for engaging ‘fit and proper’ staff, including those with practising privileges. The Registered Manager is responsible for ensuring that those engaged to deliver the Regulated Activity for which the IHP is registered, operate in accordance with the approved policies and procedures of the IHP, including complaints management and consent.

The Registered Manager must ensure that where there are hosting, renting or sub-contracted arrangements in place with other registered providers, the contract or service level agreement clearly defines the boundaries of responsibilities for the activities taking place, including complaints management and consent.

### **Relevant regulations and guidance - England:**

In 1999 the Fifth Report of the House of Commons Health Select Committee (on the Regulation of Private and Other Independent Healthcare), identified that the directing body should accept responsibility for compliance with relevant regulation by those to whom it grants practising privileges.

In April 2002 The Private and Voluntary Health Care (England) Regulations 2001 (PVH) came into force and the requirements of “Registered Providers” with respect to practising privileges, were defined in regulations and the National Minimum Standards. In 2010 in England the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 came into force supported by the Essential Standards.

The current regulations in England (The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014) continue to include practising privileges within the employment definition, for the purposes of those regulations (that is, not with reference to any employment law). The current interpretation is that employment means:

- *employment under a contract of service, an apprenticeship, a contract for services or otherwise than under a contract, and*
- *the grant of practising privileges by a service provider to a medical practitioner, giving permission to practice as a medical practitioner in a hospital managed by the service provider,*
- *and “employed” and “employer” is to be construed accordingly;*

The Care Quality Commission guidance on the scope of registration states for practising privileges to apply:

- *.....it means that all aspects of the consultation must be carried out under the hospital’s management and policies. For example, being subject to the hospital’s requirements for clinical governance and audit, and the hospital’s policies and systems for complaints and for records (with the hospital owning*

*the records). It means that the hospital takes responsibility for ensuring that essential levels of quality and safety are met. In practice, this may be done quite readily through granting 'practising privileges'.*

- *....doctors (or other health care professionals) sometimes practise in outpatient departments under their own arrangements, with the hospital only acting as landlord. In that case, where the doctor or other health care professional is carrying on regulated activities independently of the hospital, the doctor or other health care professional must register [with CQC], as this does not amount to the exercise of practising privileges.*

### **Relevant regulations and guidance - Scotland:**

The regulations in Scotland (The Healthcare Improvement Scotland (Requirements as to Independent Health Care Services) Regulations 2011) also define employment within the context of those regulations:

- *In these Regulations, references to employing a person include employing a person whether or not for payment and whether under a contract of service, a contract for services or otherwise than under a contract, and allowing a person to work as a volunteer; and references to an employee or to a person being employed are to be construed accordingly and includes a registered medical practitioner or registered dentist having practising privileges who provides medical or dental care within the independent health care service.*

### **Relevant regulations and guidance - Wales:**

The regulations in Wales (The Independent Health Care (Wales) Regulations 2011) define practising privileges and state how employee is to be construed:

- *"practising privileges", in relation to a medical practitioner, refers to the grant to a person who is not employed in an independent hospital of permission to practise in that hospital.*
- *In these Regulations, unless the contrary intention appears, references to employing a person include employing a person whether under a contract of service or a contract for services and references to an employee or to a person being employed is to be construed accordingly.*

### **Relevant regulations and guidance – Northern Ireland:**

The regulations in Northern Ireland (The Independent Health Care Regulations

(Northern Ireland) 2005) define practising privileges and state what employing a person includes:

- *“practising privileges” in relation to a medical practitioner, refers to the grant to a person who is not employed in an independent hospital of permission to practise in that hospital.*
- *In these Regulations, references to employing a person include employing a person whether under a contract of service or a contract for services.*