

## **ISCAS Position Statement Complaints Management and Practising Privileges**

### **ISCAS Position Paper - Practising Privileges:**

The **ISCAS position** is that subscribing Independent Healthcare Providers (IHPs) are required to provide **a single response** to a complaint. This ISCAS position mirrors the position of the Care Quality Commission (CQC) in defining staff in the broadest sense. The CQC define staff as *“all persons employed or appointed for the purpose of providing a regulated activity.”*

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 have been granted practising privileges. IHPs may need to obtain statements or feedback from those granted practising privileges in addition to other members of staff, however they should be incorporated into a single response to the complainant from the IHP. The position of ISCAS is that the single response to a complaint should incorporate feedback from all relevant clinicians including consultants with practising privileges.

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

The Independent Adjudicators (IAs), engaged by ISCAS to adjudicate on complaints at stage 3 of the independent sector complaints process, identify areas of learning from adjudications.

It is **not acceptable** for Consultants with practising privileges (or other persons engaged by the IHP) to write **separate responses** to complainants and send their responses to complainants directly. IHPs that continue to permit multiple points of communication and responses to be forwarded to the complainant will be deemed to be non-compliant with the ISCAS Code.

### **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.

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

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

The Registered Manager (or 'nominated individual') is responsible: *"for supervising the management of the carrying on of the regulated activity by the body"* (for example, diagnosis, treatment or surgery). The Registered Manager (for example the Nominated Individual who may be at corporate level) is responsible for ensuring that '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.

The Registered Manager must ensure that where there are hosting, renting or sub-contracting 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.

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

ISCAS considers that it is important to remind IHPs that the requirements relating to practising privileges are not new. 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 the relevant regulations 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 the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 came into force in England supported by the Fundamental Standards introduced in 2014 when the Regulations were amended.

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 CQC guidance on the Scope of Registration (<https://www.cqc.org.uk/file/4525>) states that for practising privileges to apply:

- *....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'.

The CQC guidance on the Scope of Registration is also clear in that where doctors are acting independently of the hospital they would require registration with the CQC:

- *....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**. This applies to doctors (or other health professionals) working in clinics as well as hospitals.*

### **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.***
- [IHC - Practising Privileges Principles \(PDF, 233K\)](#)

Practising privileges in Scotland are encouraged for all clinicians. See below:

- [IHC - Practising Privileges - Checklist for Clinics \(PDF, 554K\)](#)

### **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.*