



## Enforcement Policy

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## 1.0 Foreword

This policy relates to the provision of care services registered under the Public Services Reform (Scotland) Act 2010 (“the Act”).

## 2.0 Introduction

The Care Inspectorate is the independent scrutiny, assurance and improvement support body for regulated care services in Scotland. Our vision is for world-class care, where every person experiences high quality support, tailored to their rights, needs and wishes.

We take account of Scotland’s Health and Social Care standards when making decisions about enforcement action. The [Health and Social Care Standards](#) describe what people should expect from a regulated care service. They seek to provide better outcomes for everyone, to ensure that individuals are treated with respect and dignity, and their human rights are upheld.

Responsibility for the quality of care and support lies with those who provide it. The Care Inspectorate has the general duty of further improvement in the quality of social services, which includes care services. We will work cooperatively with care service providers and other public and scrutiny bodies to help improve the quality of care experienced by the people of Scotland. We believe that that by working together we can support improvement.

We will seek to understand the context services are provided in, and the challenges they experience, so that we are better able to support improvement. However, we will not lower our expectations for people who experience care. We will target our resources where the need is greatest.

Enforcement is a powerful and necessary element of scrutiny, assurance and improvement. The public rely on the Care Inspectorate to help keep vulnerable people safe and protected from harm. When people who use regulated care services experience poor outcomes we will take prompt action to make sure services improve.

This enforcement policy links with the Care Inspectorate’s corporate plan 2022-2025, our Quality Improvement and Involvement Strategy 2022 -2025, our scheme of delegation, staff procedural guidance on enforcement and complaints procedure.

## 3.0 Principles

The Care Inspectorate must carry out its work in accordance with the principles set out in Section 45 of the Act:

- The safety and wellbeing of all persons who use, or are eligible to use, any social service are to be protected and enhanced.
- The independence of those persons is to be promoted.
- Diversity in the provision of social services is to be promoted with a view to those persons being afforded choice.

- Good practice in the provision of social services is to be identified, promulgated and promoted.

We are also committed to working in a way that upholds the principles of better regulation, meets our duties under the Scottish Regulators Strategic Code of Practice ([see link](#)), and takes account of the Scottish Social Services Codes of Practice ([see link](#)).

The five Principles of Better Regulation are:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted

#### **4.0 Proportionate approach to enforcement**

In keeping with the principles set out above, we take a proportionate approach to enforcement. This means we will use the minimum sanction that is likely to bring about the necessary improvement in outcomes for people. This does not rule out the option to take enforcement action where this is necessary to protect people's health, safety and wellbeing.

For example, where risks to people are low and there is confidence in the service's capacity for improvement, we are likely to facilitate enabling conversations about areas for improvement. When risks are higher and there is less confidence in the service's capacity for improvement, we are more likely to consider taking informal or formal enforcement action to require the provider to make the necessary improvement.

#### **5.0 Targeting scrutiny and improvement support where it is needed most**

We continuously gather information about regulated services from a range of sources. When the information we have gathered suggests people may be at increased risk of experiencing poor outcomes we will use the Hull early indicators of concern tool to assess the situation.

When a pattern of concerning early indicators indicates there may be an increased risk of harm we will work with the provider and other public and scrutiny bodies to ensure the service receives the right level of scrutiny, assurance and improvement support.

Evidence from inspections and thematic reviews shows that the quality of care has generally improved over the past few years. However, there are still regulated services that do not support positive outcomes for people. We will target scrutiny, assurance and improvement support on these less well performing services, including:

- Services that are evaluated as unsatisfactory or weak

- Services that fail to make improvements and continue to perform at an adequate, or less than adequate level, for more than two consecutive inspections
- Services where early indicators of concern are identified

Less well performing services will have a scrutiny and improvement support plan that will assist us to gather and analyse relevant information about service performance and outcomes for people. This information will be used to plan how we regulate services and work with providers and other public and scrutiny bodies to support improvement.

Importantly, increased scrutiny of less well performing services will enable us to be responsive to new information that may highlight increasing risk of harm. It will also assist us to identify chronic underperformance and failure to sustain required improvements, circumstances that may also lead to enforcement.

## **6.0 Informal and formal enforcement powers**

### **Informal enforcement - requirements**

Requirements are part of our proportionate approach to enforcement. We will follow our policy on making requirements.

A requirement is a clearly focused statement that sets out what a care service must do to improve outcomes for people who use services. Requirements should only be made where there is evidence of poor outcomes for people using the service or there is the potential for poor outcomes which would affect people's health, safety or welfare.

When we make a requirement, we will refer to the relevant health and social care standard first then detail the relevant regulation or law that has been breached. Requirements are enforceable in law and we are prepared to enforce their implementation through formal enforcement action if they are not met.

Requirements can be made in inspection and complaint reports. There may also be circumstances when providers are notified of requirements by a serious concern letter, such as when an urgent matter cannot wait until the inspection or complaint report is issued.

The wording of requirements must be clear about the outcome the service must achieve. The requirement must also be 'SMART' i.e.

Specific  
Measurable  
Achievable  
Relevant  
Time framed

The service provider will be asked to provide an action plan detailing how they will make the required improvements within the timescales. The lead inspector will review the action plan and assess whether the provider has identified suitable actions to bring about necessary improvement. Where the provider seeks to adjust

the timescales set, the lead inspector will assess and agree or reject on the basis that these changes are not reasonable or justifiable.

The Care Inspectorate will ensure the service provider's response to requirements is monitored and recorded. The service provider's action plan will be taken into account by the Care Inspectorate when assessing risk and planning future scrutiny and improvement support activity.

The lead inspector will carry out scrutiny activity to assess whether the necessary improvements have been made and people's outcomes have been improved promptly after the requirement timescale is reached.

Where risks to people are significant, or the necessary level of improvement has not been made, and people continue to experience poor outcomes, we will assess whether it is necessary to take formal enforcement action.

### **Formal enforcement**

Formal enforcement refers to formal legal powers set out in the Act which the Care Inspectorate can use to change conditions of registration, require improvements or to cancel a service's registration. The Care Inspectorate has been given statutory powers to take formal enforcement action and service providers have legal rights of review and appeal against such action.

The enforcement procedural guidance will be followed when consideration is being given to the use of our formal enforcement powers. We will consider their use when there is evidence of performance at an unsatisfactory or weak level; and when outcomes for people are poor or there is potential for poor outcomes. When informal enforcement action (making requirements) does not result in improvement, we will also consider using our formal enforcement powers.

The following formal enforcement options are available:

### **Condition notice**

The service provider may be served with a notice of proposal to impose an additional condition or to vary an existing condition of registration. Conditions provide a way to set parameters around the operation of the care service. Conditions imposed on the registration of a service will be designed to ensure that the service is safe or to ensure the service complies with the Act and relevant regulations made under the Act. Details of the service provider's right to make representations against the imposition of the condition will be provided. In most cases the Care Inspectorate will meet to discuss with the service provider prior to the written notice being issued. Providers have a right of appeal to the sheriff court if the Care Inspectorate ultimately implements any condition notice.

### **Improvement notice**

Where there is a serious breach of regulation(s) or conditions of registration, leading to poor outcomes for people, such as to justify cancellation of registration if the improvements are not made, the service provider may be served with an improvement notice. This will detail the nature of the improvement required, the legal basis for this action, and the timescale for implementation.

A service may be subject to more than one improvement notice at a time. Conditions may be imposed at the same time as improvement notices.

**Cancellation notice**

Where the timescale for meeting the terms of the Improvement Notice has expired, there has been no significant improvement and service users are still experiencing poor outcomes, the Care Inspectorate may move to giving notice of proposal to cancel the service's registration. The service provider will be informed of the legal basis of the action and details of the service provider's right to make written representations against cancellation will be included. The service provider will also be informed of its right to appeal to the sheriff should the Care Inspectorate decide to implement its proposal to cancel the registration. However, it is not possible to cancel the registration of certain Local Authority care services if such a service has failed to comply with an Improvement Notice. Section 7.0 of this policy contains further details.

**Emergency procedures**

Emergency procedures provide important safeguards. They will only be used where it can be evidenced that, without them, there would be a serious risk to service users' life, health or wellbeing. In each case where emergency enforcement is being considered, operational staff must seek legal advice without delay. It is not possible to take emergency enforcement against certain types of local authority services. Section 7.0 of this policy provides more information about this.

**Emergency condition notice**

The Care Inspectorate may impose an emergency condition on the registration of a service at any time if it believes not to do so would pose a serious risk to the life, health or wellbeing of people. In issuing such a notice, the Care Inspectorate must be able to evidence that the absence of the condition would result in continued serious risk to service users' life, health or wellbeing.

An emergency condition comes into effect immediately on receipt of the notice by the service provider. The notice must give the reason for it and explain the rights of the provider to make written representations concerning any matter which it wishes to dispute and its right of appeal to the sheriff.

The Care Inspectorate will take account of any written representations received and decide whether to leave the condition in place, vary or remove it. The Care Inspectorate will notify the provider of its decision. If the condition remains in place, the notice will again explain the provider's right of appeal to the sheriff.

**Emergency cancellation of registration**

The Care Inspectorate may apply to the sheriff at any time seeking an order to cancel a care service's registration where it believes there is a serious risk to the life, health or wellbeing of people.

The sheriff may grant such an order where it appears to them that unless the registration is cancelled there would be such a serious risk to people.

The sheriff may also make such interim order as they think fit. When making an application for cancellation, the Care Inspectorate will usually also seek an interim order suspending the registration of the care service while the application is being considered by the court. This will be on the basis that we believe there would be a serious risk to the life, health or wellbeing of persons should the service continue in operation.

The Legal Services team will draft the application to court and all court documents and formal pleadings required in any court proceedings.

## **7.0 Certain local authority services**

Different rules apply to some care services which are provided by local authorities. These are mainly adoption and fostering services but can be any other type of care service a local authority has determined it has a legal duty to provide. These services are sometimes known as “chapter 4 services” which refers to the part of the Act they are registered under. Scottish Ministers must be informed of any formal enforcement action taken against services which fall into this category.

If a local authority is given an improvement notice in respect of a chapter 4 service, then within 14 days after expiry of the timescale for compliance with the Improvement Notice, we will report to the Scottish Ministers on whether the Improvement Notice has been complied with or not. We must also give Scottish Ministers such other information as they may reasonably require in relation to the compliance or failure to comply. Non-compliance with an Improvement Notice will be reported to Scottish Ministers by a senior manager.

At the point of informing Scottish Ministers of the issuing of an Improvement Notice, we will consider if we should also provide Scottish Ministers with such other relevant information as may be helpful and which it would be lawful to share with them. This could include inspection and complaint reports, and any associated documentation or notices.

## **8.0 Notifying others of enforcement action**

Notice of any formal enforcement action taken will be given to local authorities and other scrutiny bodies as appropriate. This will be done in accordance with statutory reporting obligations set out in the Act and within any memoranda of understanding that exists between these organisations and the Care Inspectorate or otherwise as may be set out within Care Inspectorate policy or as determined by a senior manager. This will allow local authorities, health and social care partnerships and the Director of Nursing to provide support.

Details of formal enforcement action taken are posted on the Care Inspectorate website, under individual care service entries held on the public register of services. Emergency condition notices and the fact of the raising of any section 65 application will ordinarily be published under the enforcement section of the care service entry. The Care Inspectorate will make this information publicly accessible as set out above.

While we recognise that service providers are responsible for informing people who use services of any enforcement action, we are committed to working collaboratively with them, and the relevant public bodies to ensure people are informed about the action being taken. A communication plan will be used to ensure timely, sensitive and lawful information-sharing.

The Care Inspectorate may provide other public and scrutiny bodies with copies of enforcement notices it issues, provided it is lawful to share this. The Care

Inspectorate may also refer people working in care services to any professional organisations they are registered with if necessary, to protect people from harm.

## **9.0 Professional judgement and consistency**

The Care Inspectorate will act fairly and proportionately when using informal and formal enforcement powers, taking account of all relevant factors. Each situation will be carefully considered on its own merits. Evidence-based assessments will inform professional judgements about the most appropriate method to bring about improvement and to protect vulnerable people.

Care Inspectorate staff will as appropriate, be conversant with and refer to the Care Inspectorate's risk principles and decision-making guidance before taking any formal enforcement.

### **The decision-making process**

The decision will be informed by up-to-date and accurate facts about the outcomes and that have led to formal enforcement action being considered. We will assess what the provider has failed to do and how people have been harmed or may be harmed as a result. We will make a professional judgement of the service's and the provider's capacity to improve. This will take account of current performance and relevant regulatory history, including grading history, requirements and how the service complied with them.

The decision-making process will also take account of the Scottish Regulators Strategic Code of Practice, our duties under Section 45, the Health and Social Care Standards and the SSSC Codes of Practice. Where applicable, we will also take account of our responsibilities under the Islands (Scotland) Act 2018, the United Nations Convention on the Rights of the Child and Human Rights Legislation.

The process will identify what must be improved, and the most effective and proportionate way to secure those improvements. A record of the main facts that informed the enforcement action decision and the reasons for the decision will be recorded, usually before formal enforcement notices are issued. Where differing professional views are expressed, they must be resolved and recorded. This will ensure a clear auditable decision-making trail.

In the case of emergency procedures witness statements will inform the content of the application to the Sheriff which will be drafted by solicitors.

The lead inspector will review the scrutiny assessment tool for the service and the service's grades where formal enforcement action has been taken out with inspection.

## **10.0 Monitoring arrangements in response to formal enforcement action**

Arrangements will be made to monitor services that are subject to formal enforcement action. This will allow the Care Inspectorate to assess compliance with condition notices, progress towards meeting improvement notices, and to assess whether any further action is required to protect people from harm. The Care



Inspectorate will work cooperatively with other public and scrutiny bodies to coordinate monitoring activity when relevant to reduce the burden on the service.

### **11.0 Reflective practice opportunities for staff involved in enforcement activity**

All staff involved in enforcement activity will have opportunities for reflective practice to support staff development and to improve organisational practice.

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