

Report on “Whistleblowing” Disclosures

1 April 2017 – 31 March 2018

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Introduction

The Care Inspectorate is responsible for inspecting standards of care in Scotland. It regulates and inspects care services to ensure that they meet the required standards and to help (or compel) them to improve if necessary. The Care Inspectorate also carries out joint inspections with other scrutiny bodies to ascertain how well different organisations in local areas are working to support adults and children. It seeks to ensure that social work, including criminal justice social work, meet high standards. Across all its work, it provides independent assurance and protection for people who experience care, their families and carers and the wider public. In addition, the Care Inspectorate plays a significant role in supporting improvements in the quality of care in Scotland.

The Care Inspectorate was established on 1 April 2011, by s44 of the Public Services Reform (Scotland) Act 2010. In terms of s102 of that Act, it is the statutory successor to the Scottish Commission for the Regulation of Care, established on 1 April 2002, by s1 of the Regulation of Care (Scotland) Act 2001. The Care Inspectorate has the general duty of furthering improvement in the quality of social services and must act in accordance with the following principles, set out as s45(2) – 45(5) of the 2010 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 these 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;
and;
- Good practice in the provision of social services is to be identified, promulgated and promoted

In terms of the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017, the Care Inspectorate is required to report annually on certain matters. Those matters are:-

(a) the number of workers' disclosures received during the reporting period that it reasonably believes are qualifying disclosures within the meaning of section 43B of the Employment Rights Act 1996 and which fall within the matters in respect of which the Care Inspectorate is prescribed ("Matters relating to the provision of care services, as defined in the Public Services Reform (Scotland) Act 2010").;

(b) the number of those disclosures in relation to which the Care Inspectorate decided during the reporting period to take further action;

(c) a summary of—

(i) the action that the Care Inspectorate has taken during the reporting period in respect of the workers' disclosures; and

(ii) how workers' disclosures have impacted on the Care Inspectorate's ability to perform its functions and meet its objectives during the reporting period;

(d) an explanation of the Care Inspectorate's functions and objectives.

Complaints Received

In 2017/18 we received 1,057 whistleblowing complaints. These were qualifying disclosures as defined in s43B of the Employment Rights Act 1996, principally relating to alleged failures of care services to comply with legal obligations or allegations that the health and safety of an individual or individuals had been or was likely to be, endangered.

In November 2017, we introduced a new procedure for handling complaints about care services. This procedure is designed to be open, transparent, risk-based and focused on people's experiences. The changes give us more flexibility in how we can respond, to try to resolve simple matters quickly and focus more attention on more serious issues. Our new approach emphasises frontline resolution which is where we try to resolve a matter at the first point of contact, without the need for a formal investigation. We have developed a risk assessment process that allows us to assess the risk identified by a complaint, taking into account what else we know about the service. This enables us to decide how we will proceed and what action we need to take to achieve the best outcome for people experiencing care. There are four routes we can take:

- **Intelligence:** where we receive information about a care service, we may use the information given by a person as intelligence about the service, to help inform future scrutiny activity
- **Frontline resolution:** where we contact services and ask them to engage directly with complainants to resolve the complaint. Typically this is used for straightforward or simple matters where people are unsatisfied with their experiences and we intervene quickly with a care service to achieve a positive result.
- **Provider resolution:** where we contact the provider and ask them to investigate the concerns and send us written confirmation of the action taken to resolve the complaint.
- **Investigation by the Care Inspectorate:** depending on our assessment of risk, we may decide that we need to formally register and investigate the complaint.

In 2017/18 from November 2017, we received 407 whistleblowing complaints. 72 complaints (18%) were resolved by frontline resolution; we logged 67 concerns as intelligence (16%); and 21 cases (5%) were passed directly to providers to investigate. A further 21 cases (just over 5%) identified child or adult protection concerns and were passed to the appropriate authorities (police or local authority) to investigate. These cases are included in the total number of complaints received during the year. As these are a product of our new procedure we do not have comparable data from previous years, but will monitor and explore this in the next report when we have a full year's data.

Frontline Resolution

Of the total 1,057 whistleblowing complaints received in 2017/18, 207 (18% of all complaints received) were resolved by frontline resolution without the need for a formal investigation.

Withdrawn Complaints

Many complaints do not proceed to a full complaint investigation for a number of reasons, for example concerns not being within our remit, the issues raised in complaints being addressed through the inspection process and complainants not wishing to proceed with the complaint. In these cases the complaint is withdrawn. Of the 1,057 whistleblowing complaints received in 2017/18, 674 were withdrawn. Note: to remain consistent with our annual report we have included complaints resolved through frontline resolution in the numbers withdrawn. However we will change this in future reports, as these complaints are acted upon and resolved.

Complaint Investigations Completed

Once our investigation is complete the inspector decides if the complaint should be “upheld” or “not upheld”. We say we have not upheld a complaint where we have investigated and found there is a lack of evidence to validate the complaint. Where we have investigated and found evidence that the cause of the complaint is valid the complaint will be upheld and we will take action, letting both the complainant and the care service know about any requirements or recommendations we have made. In 2017/18 we completed 256 investigations of whistleblowing complaints, of which 96 (38%) were upheld.

Impact of Whistleblowing Complaints

Complaints generally are an important source of information, and whistleblowing complaints form a significant part of the overall number of complaints we receive. In 2017/18, 23% of the complaints we received were whistleblowing complaints. These complaints serve an important purpose in informing the nature and extent of the regulatory activity that we undertake in the services to which they relate, and can bring to our attention, situations where people who use care services are at risk and where we need to act urgently to ensure their safety and wellbeing. On one occasion during 2017/18, a whistleblowing complaint contributed to the Care Inspectorate’s decision to take action which resulted in a care home being closed.

Headquarters

Care Inspectorate
Compass House
11 Riverside Drive
Dundee
DD1 4NY

web: www.careinspectorate.com

email: enquiries@careinspectorate.com

telephone: 0345 600 9527



@careinspect

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