

# How we deal with concerns and complaints about care



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# Introduction

The Care Inspectorate is the independent scrutiny and improvement body for social care and social work across Scotland.

We regulate, inspect and support improvement of care services for the benefit of the people who use them. We aim to ensure that people receive safe, high-quality, compassionate care that meets their needs and promotes their rights and choices.

We have a statutory duty to deal with complaints made to us about registered care services and this procedure sets out how we do this. Anyone can complain to us about a care service, whoever they are. People who experience care services, care staff and members of the public all have a right to complain about the performance of the services we regulate.

We want this procedure to be:

- **Open:** we want it to be easy for people to find and use. We offer it in different formats on request.
- **Transparent:** it should tell you clearly what we will do when we receive information and what you can expect from us.
- **Risk-based:** we will look at all the information we receive to assess the risks posed to people experiencing the service. This helps us decide what action we take to ensure the safety of people using services.
- **Focused on people's experience:** we will identify what the outcomes are for people and how these can be improved. We will promote and support learning and improvement in services.

## What is a concern and what is a complaint?

We define a concern as:

*'An expression of worry or doubt over an issue considered to be important for which reassurances are sought.'*

We define a complaint as:

*'An expression of dissatisfaction by a person receiving care or support from a registered care service or from one or more members of the public about the care and/or support of an individual or individuals by a registered care service.'*

A complaint may relate to:

- inadequate standards of care
- failure to uphold the rights of a person using a service, or their relatives or carers
- a care service's failure to follow appropriate safe care practices
- the practice of staff, including treatment by, or conduct of, a member of staff, fitness of staff, inadequate staff training and staff numbers or deployment

## How we deal with concerns and complaints about care

We are not able to deal with, or investigate complaints that fall under the remit of other organisations such as:

- a request for compensation
- issues that are in court or have already been heard by a court or tribunal
- a complaint that has already been upheld by the care service and action taken to change/improve practice
- staff employment issues that are covered by contract, grievance, and employment conditions
- issues that are not within the remit of the care service
- complaints about social work decisions or contracting with a care service
- an attempt to reopen a previously concluded complaint or to have a complaint reconsidered where we have already given our final decision
- child and adult protection issues – we will refer complaints of this nature to the relevant authority, such as social work agencies or the police
- criminal offences - we will refer complaints of this nature to the relevant authority, such as the police.

If your complaint is not part of our remit or is better dealt with by another organisation, we will let you know how you can get in touch with the relevant organisation.

## Public protection and criminal acts

We have a duty to protect people and we will refer all complaints that we consider have an element of adult or child protection to the relevant social work agencies. Where a complaint may relate to a criminal matter, for example, relating to a theft or an assault, we will refer this to Police Scotland to investigate.

We will let you know that we have referred the complaint but will not ask your permission to share the information. This is because we are legally obligated to share information relating to criminal offences and to public protection.

We will not log these referrals as complaints until the protection issues or criminal investigations have been addressed by the relevant organisations. We will then assess any implications for us in regulating the service and any action we need to take.

## Time limits for making a complaint

It is important that we investigate complaints as near to the time as possible when the issue arose. This is to allow us to access relevant information and assess the complaint. We will usually only take complaints where the issue arose no more than six months before the complaint is made.

The passage of time may prevent us holding a full and fair investigation. Even where you have given good reason for not raising matters sooner, we still consider the practicality of investigating long past incidents and providing a meaningful outcome, before we agree to investigate.

Normally, we reserve the right to refuse to investigate after six months and instead use the information provided to inform our scrutiny and assurance work. However, we will consider complaints where there are exceptional circumstances which clearly explain your reasons for not raising the complaint within the six-month timescale. The decision on what meets exceptional circumstances will be for us to make and cannot be appealed.

## Who can make a complaint?

Anyone can complain to us about a care service, whoever they are. People who experience care services, care staff, and members of the public all have a right to complain about the performance of the services we regulate.

Sometimes a person may be unable or reluctant to make a complaint on their own. You can make a complaint on someone else's behalf when you confirm that they have given their personal consent or that you are acting as a personal advocate, guardian or attorney. Where there is limited information about whether you have the person's consent, or where it appears that you are not legally entitled to their personal information, we will not share their personal information with you, even if we accept the complaint.

When we can identify a complainant and have your name and address, we will contact you to discuss the complaint to make sure we have understood your concerns correctly and to update you on any progress and with the outcome of the complaint. We may also share your details with the care service you are complaining about if you agree to this.

## Whistleblowing

Our organisation is a 'prescribed person' under The Public Interest Disclosure (prescribed Persons) Order 2014. This Act provides protection to workers that make disclosures in the public interest. This means that employees can raise issues of concern (disclosures) in confidence with us about the quality of care that is provided in services that are registered with us. We will use the information we received to improve the services we regulate, and we will protect the person's identity throughout.

We are legally obligated to share information relating to criminal offences and to public protection. We cannot give advice about the legal protection offered to whistle-blowers. However, if you are an employee or a social work student and you are unsure about how to raise a concern in your workplace, [guidance](#) is available on our website. It explains the difference between raising a concern and whistleblowing, and when a person raising a concern qualifies for legal protection under whistleblowing law.

## **Complainant confidentiality**

If you have told us who you are but you ask us to keep your identity confidential from the care service, we will respect your wishes wherever possible.

However, there will be exceptions to this. For example, where it appears that a criminal offence may have been committed or the issue you have raised with us is about adult or child protection, we will pass any relevant information to Police Scotland or social work to investigate in line with legislation and we will also pass on your details to them.

If you choose to keep your identity confidential from the care service, this may limit what we can investigate if it may identify you. We will discuss this with you and support you to make some decisions about this.

## **Anonymous complaints**

We take all complaints seriously. Anonymous concerns provide a valuable source of information about how well a service is operating. Most anonymous concerns are used as intelligence that helps us decide how and when to inspect services.

We assess each anonymous complaint and will only investigate if we think that there may be substance to the complaint and that investigation is likely to be in the best interests of the people using the service. With anonymous complaints, full investigation may not be possible because there may not be enough information provided in the complaint to enable us to make further enquiries. However, we will share this information with the inspection team to use at the next inspection where appropriate.

If you wish to remain anonymous, this means we cannot give you any information on our findings. However, if you provide your details, we will keep this information confidential (as described above) and we will then provide you with the outcome of the complaint.

## **Making a complaint directly to the registered care service**

Research evidence suggests that complaints are best resolved as close to the point of service delivery as possible. We will encourage you to raise your complaint with the care service in the first instance. All registered care services must have a complaints procedure and are required to record any complaint made by a person using, accessing, or visiting a care service.

Where you are happy to raise the matter directly with the care service, we will not investigate matters further at that time. However, we will record the detail of your contact with us. If you decide that you

do not wish to raise your complaint directly with the care service, we may assess your complaint as being appropriate for the service to investigate. In these circumstances, we will let you know we have decided to refer the matter back to the care service and the reasons why.

## **Complaints involving more than one service**

If a complaint relates to the action of two or more registered care services, we will address these separately and give you separate responses following any investigation we carry out at each service.

If the complaint involves another care service or agency that is not registered with us, we will advise you to contact the appropriate organisation directly. If we need to make enquiries relating to a complaint and that means talking to a service not registered with the Care Inspectorate, we will take account of confidentiality, data protection legislation and any relevant codes of practice.

## **Working with other regulators and public bodies**

We work with several other regulators, including:

- Scottish Social Services Council (SSSC)
- Nursing and Midwifery Council (NMC)
- Education Scotland (formerly HM Inspectorate of Education)
- Health and Safety Executive
- Healthcare Improvement Scotland (HIS)
- Local authorities
- Police Scotland
- Audit Scotland
- Scottish Housing Regulator
- Registrar of Independent Schools
- Fire and Rescue Services
- Mental Welfare Commission for Scotland
- Scottish Public Services Ombudsman (SPSO).

If you raise matters that are relevant to the regulatory function of other agencies or to our joint working activities, we may share this information. If we do this, we will let both you and the care service know and keep you informed. Where you raise matters about the competency of staff that must be registered with a professional body, we may redirect you to the appropriate professional regulatory body or make a referral to them ourselves.



## Meeting your expectations

We investigate complaints in an independent, impartial, and fair way. We believe that complainants have a right to be heard, understood, and respected and we aim to be as open and accessible as we can.

Following our complaint investigations, we may make requirements to the care services about areas of practice which we expect them to improve. We may not always be able to meet your expectations of what you think the outcome should be. We will discuss with you the actions we can take.

While we appreciate that the cause of a complaint can generate strong feelings, we may have to decide that we cannot help if your behaviour or action makes it difficult for us to deal with your complaint.

Examples include:

- subjecting staff to behaviour that is aggressive, abusive, threatening, or unreasonable
- persistent refusal to accept our decision about a complaint
- persistent refusal to accept our explanations about what can or cannot be done about a complaint
- continuing to pursue a complaint without presenting any new information
- unreasonably frequent or persistent contact with Care Inspectorate staff.

We have policies and procedures for managing difficult behaviour experienced by our staff. We will work with people to resolve their complaint but where we have concerns about conduct, we will act. This may include allowing only one point of contact in the organisation or to only communicate by email or letter. We will discuss this with you and inform you of any action we will take.

We have a [zero tolerance](#) approach to any threatening or abusive behaviour towards our staff and will terminate contact with people who are abusive. We will only terminate contact when all other approaches to support communication have failed. If the contact is unreasonable, we will write to explain this and may terminate further contact.

## How to make a complaint

Before we can fully consider your concern or complaint, we must have enough information. When you first contact us, remember to tell us:

- the name of the care service
- the full names of people who are affected by the issue or concern
- details of the incidents or concern which happened during the last six months
- your full name, an email address and telephone number.

You can complain to us, providing the necessary information in several ways:

### Write us a letter and post to:

Care Inspectorate  
Compass House  
11 Riverside Drive  
Dundee  
DD1 4NY

Send us an email to: [concerns@careinspectorate.gov.scot](mailto:concerns@careinspectorate.gov.scot)

Call our Contact Centre on **0345 600 9527** where you can give provide details of your concern.

Speak to an inspector who you meet in the course of their work in a service. They will note your complaint and details and pass this on to be logged by our Contact Centre.

Complete the [online complaints form](#) available through [careinspectorate.com](http://careinspectorate.com)

## How children and young people can get in touch

We are committed to keeping The Promise and delivering our responsibilities as a corporate parent. If a child or young person is unhappy about the standard of care they are receiving, or want to talk to someone in confidence, they can now send us a text directly on **07870 981785**.

## What happens when you contact us

We decide whether your concern can be defined as a complaint. If we agree your concern is a complaint, we will begin our complaints procedure and within three working days, a complaints inspector will determine the appropriate action. We will contact you at this stage to listen to you, discuss your complaint and ensure we have sufficient information to assess your complaint.

It is for us to determine if the information provided meets our complaint criteria, what elements of the complaint we will investigate, including how these are worded and the appropriate way of handling your complaint using our complaints pathway, shown on the following pages.

Our decision will be final and there is no right of appeal.

If you are unhappy with the service you have received, or you do not believe we have followed the correct process you may submit a complaint against us. This would be dealt with by our professional standards department. Our '[Procedure for handling complaints about the Care Inspectorate](#)' explains what to do if you are unhappy about the way we handled your complaint.

## **A complaints process that is proportionate and risk based**

To respond in a proportionate way, we always assess the risks that a complaint presents so we can decide the right course of action. This ensures we identify, prioritise, and respond quickly to complaints that have caused, or have the potential to cause, negative outcomes for people relating to health, safety, and wellbeing. We have developed a risk assessment process that allows us to assess the risk identified by a complaint, considering 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.

### **Assessment of risk and pathway action**

Our risk assessment process helps us determine the appropriate action to resolve your complaint. There are five routes we can take.

#### **1. We can use the information you have given us as intelligence about the service**

We will treat the information you have given us as intelligence and pass it to the inspector responsible for regulating the service. This will help inform future scrutiny activity.

#### **2. Direct service action – where we talk to the care service on your behalf**

Where we assess your complaint as suitable for quick or immediate action, we use direct service action. We will contact the care service on your behalf and ask them to engage directly with you, take action and resolve your concerns. We will discuss this with you before making any contact with the care service.

#### **3. Investigation by the care service provider**

We may assess your complaint as appropriate for investigation via the provider's complaint procedure. If this is the situation, we will ask the service provider to investigate your concern and reply directly to you within 20 working days. The care service will also provide us with a copy of their response to you.

If you are unhappy with the way the service provider handles your complaint, you can ask us to re-assess your complaint for further investigation. We will assess your concern and decide on any action that may be appropriate.

#### **4. Adult and children support and protection**

Any concerns which need to be assessed as adult or child protection concerns are referred to the lead agency, the Social Work Department.

#### **5. Investigation by us**

Not all complaints are suitable for direct service action or investigation by the care service. We use a risk assessment to decide if we will investigate your complaint. Our investigations aim to establish all the relevant facts and give you a full, objective, and proportionate response that includes whether we uphold your complaint.

Our investigating inspector will speak with you and discuss your complaint. They will then write to you to tell you about what areas we will investigate. The areas for investigation are called "heads of complaint."

Our investigation will include:

- writing to you to confirm the areas we will be investigating
- contacting the care service to investigate your concerns
- examining and assessing evidence, including documentation, and speaking to relevant people
- writing to you with the outcome of investigation.

## **Investigation methods**

Visits to care services to investigate complaints are usually unannounced. However, there may be times when it is appropriate for us to tell the service we are coming. If we do this, we will give no more than three days' notice (a short notice announced visit).

We use video calls to engage with care providers, staff, people receiving care and families. Video calls are now a regular means of communication along with telephone call and site visits.

We will not tell the care service in advance what the complaint is about or tell them who has complained. We will share this information with them on the day the investigation starts.

## Investigation outcomes

There are two possible outcomes when we investigate a complaint.

### Upheld

We say a complaint is upheld where we investigate and find evidence that the cause of the complaint is valid and true. When we have upheld a complaint; we may take action. We will tell both you and the care service about requirements or areas for improvement we expect as a direct result of your complaint.

We will require the care service to provide us with an action plan that details how they will improve outcomes for the people who use their service. We may also re-evaluate the grade awarded to a service following a complaint.

### Not upheld

We say a complaint is not upheld where we have investigated and find a lack of evidence to validate the complaint.

## Investigation timescales

The following timescales will apply to cases at the investigation stage.

- We aim to contact you within 10 working days to tell you what we will be investigating.
- We aim to give you a full response as soon as possible but no later than 40 working days from the time we have decided we can investigate.

### Extension to the timescale

Sometimes, we may not be able to meet the timescale. For example, some complaints are so complex that the level of consideration and investigation they need takes us beyond the 40-day limit.

If there are clear and justifiable reasons for extending the timescale, we will tell you the reason for the delay and give you a revised date for completion.

## When our investigation is finished

We will call you to let you know the outcome of our investigation and that we will be sending you a complaint report.

### The complaint report

We will issue a report to the complainant and complained against, which will detail the:

- elements/areas of the complaint
- action we took to investigate
- evidence to uphold
- evidence to not uphold
- conclusion
- any areas for improvement that we have identified
- any action the service must take.

We will send the complaint report to both the complainant and the complained against at the same time.

## Post investigation review

If you believe we have made a mistake in our findings and have come to the wrong conclusion, you can ask for a post investigation review.

You can ask for a post investigation review if you consider that:

- we made our decision based on important evidence that was inaccurate and you can show this using readily available information
- you have new and relevant information that was not previously available about the complaint we investigated, and which affects the decision we made.

If you have new information that changes the focus of the complaint we investigated or introduces a new part to the complaint, we may need to start a new investigation.

Whether it is the complainant or the complained against who asks for a post investigation review, we will let both parties know we have received a request.

## Time limits and timescales for post investigation reviews

If you do not agree with the complaint report, you have 10 working days from receiving it to ask us for a post investigation review. This timescale applies to both parties, and we will wait until the 10 working days are up before deciding whether to carry out a post investigation review.

When we receive your request, an inspector will contact you within five working days to confirm we received it.

Once the 10 working days are up, we will look at your request and review it along with the evidence we have gathered.

We will decide whether to:

- investigate further
- update the report to reflect comments received
- update the outcomes of the complaint
- make no further changes to the report.

We will write to you to explain the outcome of the review and the decision we have reached. If the complaint has changed, we will issue an amended complaint report and if no changes are made, we will confirm the report you received as final. We aim to do this within 20 working days of the end period for submission of the post investigation response.

Once we have concluded our review and informed you of our final position there is no appeal or review of the complaint outcome.

## Headquarters

Care Inspectorate  
Compass House  
11 Riverside Drive  
Dundee  
DD1 4NY  
Tel: 01382 207100  
Fax: 01382 207289

Website: [www.careinspectorate.com](http://www.careinspectorate.com)

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