

Protection policy

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1. Introduction

Purpose of the policy

This protection policy is a joint statement between the Care Inspectorate and Scottish Social Services Council (SSSC). It promotes a shared intent between the two organisations and ensures an overarching proactive approach to protecting people, through both our scrutiny of social work and social care services and workforce regulation.

The approach detailed in this policy document sets the framework for our operational protection procedures which staff must follow when they have an adult or child protection concern. Both the Care Inspectorate and the SSSC have developed their own protection procedures.

Scope of the policy

This joint Protecting People Policy is primarily focused on protecting people experiencing care but is also applicable if there are protection concerns about people working, visiting or otherwise involved in care.

This policy covers every employee of the Care Inspectorate and SSSC regardless of role or function. It also includes locum inspectors, sessional staff, inspection volunteers, associate assessors and anyone carrying out work on our behalf.

The policy must be read in conjunction with the Care Inspectorate or SSSC [Protection Procedures](#).

Legislative context

Protecting people is at the heart of what the Care Inspectorate and the SSSC do.

Under the Public Services Reform (Scotland) Act 2010, the Care Inspectorate is responsible for:

- protecting and enhancing the safety and wellbeing of all persons who use, or are eligible to use, social services
- identifying, promulgating, and promoting good practice
- furthering improvement in the quality of social services.

The Care Inspectorate has an important role supporting public protection through its regulation of registered social care services and the strategic inspection of health and social care partnerships/local authorities. The regulation of services includes powers to investigate complaints and take enforcement action, including emergency procedures. The Care Inspectorate also acts if a registerable service is operating illegally without being registered. Strategic inspection of individual health and social care partnerships/local authorities includes joint inspections of adult support and protection, joint inspection of services for children and young people in need of care and protection as well as scrutiny and assurance of justice social work and community justice partnerships.

See appendix 1 for definition of harm across these service areas.

The SSSC was set up under the [Regulation of Care \(Scotland\) Act 2001](#) to regulate social service workers and to promote their education and training. The SSSC is responsible for:

- publishing the national codes of practice for people working in social work, social care, children's services and their employers
- registering people working in social work, social care and children's services and making sure they adhere to the SSSC Codes of Practice
- promoting and regulating the learning and development of the social work, social care and children's services workforce
- taking the national lead for workforce development and planning for social work, social care, and children's services in Scotland.

The SSSC is the regulator for the social services workforce in Scotland and has a similarly important role in supporting public protection as the Care Inspectorate. The SSSC protects the public by registering social service workers, setting standards for their practice, conduct, training, and education and by supporting their professional development. By doing this they increase the protection of people who experience care. Where people fall below the standards of practice and conduct the SSSC can investigate and take action. This can include enforcing temporary restrictive measures on a registered worker while an investigation is ongoing and enforcing sanctions at the end of an investigation, where necessary and proportionate.

2. Principles

Our vision for protecting people is enshrined throughout the values of both organisations and is set out in the strategic objectives in our corporate plans.

Our values

Care Inspectorate

- **Person-centred** – we will put people at the heart of everything we do.
- **Fairness** – we will act fairly, be transparent and treat people equally.
- **Respect** – we will be respectful in all that we do.
- **Integrity** - we will be impartial and act to improve care for the people of Scotland.
- **Efficiency** – we will provide the best possible quality and public value from our work.
- **Equality** - we will promote and advance equality, diversity and inclusion in all our work and interactions.

Scottish Social Services Council

- **Work together** - we treat each other with kindness and respect and value the contribution every member of staff makes.
- **Accept responsibility and accountability** - we recognise the trust placed in us to ensure the safety and wellbeing of people who use social services and that is our guiding mission.
- **Recognition and respect for others** - we value the social service workforce and the life changing work they do. Our work increases recognition of their role and further develops that role. All our stakeholders contribute to our success and we recognise and respect their views.

Our values and strategic objectives place people who experience care, and their interests, safety, and well-being, at the heart of our work.

This policy document covers both child and adult protection. Both organisations are committed to the protection of adults and children at risk of harm. Protecting people means acting on information which identifies anyone who is – or could be - at risk of harm, exploitation, or neglect in any form.

Key accountabilities

In protecting people through our work, we are each accountable – regardless of role – for ensuring issues of protection are highlighted and acted upon. Both organisation's protection procedures outline how staff, who become aware of protection concerns, should report and act on these.

Our commitment

As a demonstration of our commitment to ensuring the protection of adults and children at risk of harm, we will:

- communicate our responsibilities for the protection of adults and children at risk of harm
- set out and clearly communicate the standards and expectations of all staff and volunteers in relation to protecting adults and children at risk of harm
- ensure staff have appropriate training and opportunities for continuous professional development to understand and fulfil their protection responsibilities, relevant to their role
- monitor the processes, procedures and conduct expected of staff to ensure high standards and consistency in care to help keep adults and children at risk of harm safe
- provide information for people who experience services, and carers, about how to alert the Care Inspectorate and/or the SSSC if they or others feel unsafe, and a route by which to do so
- provide information for the public to raise any concerns about how services and/or workers are protecting adults and children at risk of harm, and a safe route by which to do so
- keep up to date with developments about the protection of children, young people and adults
- provide evidence-based advice to Scottish Ministers, policy makers and planners to inform national and local developments in child and adult protection
- share information with other relevant professional regulators where we have concerns about conduct or competency of registered professionals
- promote a rights-based approach to people's care and support experiences and the Health and Social Care Standards
- set out in the SSSC Codes of Practice for Social Service Workers clear standards of professional conduct and practice that social service workers must meet, and act when necessary if registered workers fail to do so.

Our Protecting People policy and associated procedures are fully aligned with the expectations for child and adult protection set out in the Health and Social Care Standards.

The policy is also fully aligned with the SSSC Codes of Practice.

3. Roles and responsibilities

The Care Inspectorate Board and the SSSC Council are accountable for governance and joint working, with the Conveners being members of the respective Council and Board, which hold regular joint events.

The executive teams of both organisations meet quarterly to share and update each other on strategic issues. Action or tasks can be developed and delegated from this meeting for joint working with officers from both organisations, including the SSSC/CI Joint Working Group and the CI/SSSC Protection Group.

A range of communities of practice are established to implement partnership working at an operational level.

Scottish Social Services Council

3.1 Council and committee

The Council is responsible for:

- taking forward the strategic aims and objectives as agreed by the Scottish Ministers
- working to the six core principles of the Good Governance Standard for Public Services.

3.2 Executive Management Team

The Executive Management Team (EMT) is responsible for:

- ensuring Directorates undertake the requirements set out in this policy
- considering our policies, processes and procedures and agreeing modifications as appropriate.

3.3 Operational Management Team

The Operational Management Team (OMT) oversee the day-to-day operational management of the SSSC. They are responsible for:

- ensuring their teams undertake the requirements set out in this policy.

3.4 Staff

All staff:

- must be aware of and comply with this policy and our statutory obligations
- are expected to participate in training (which the SSSC will provide) which supports the implementation of this policy, as appropriate
- should consider how we can promote and model equality within our role
- should consider and develop equality impact assessments (EQIA) as relevant.

Care Inspectorate

3.5 The Board

The Board is responsible for:

- setting the strategic direction of the Care Inspectorate
- taking into account legislation and policy guidance set by the Scottish Government.

3.6 Executive Team

The Executive Team constitutes the Chief Executive and the four Executive Directors. They will:

- ensure directorates undertake the requirements set out in this policy
- identify key agenda items for consideration and discussion by the Strategic Management Group.

3.7 Strategic Management Group (SMG)

The SMG ensures there is collaborative input from across the organisation into decision making. They are responsible for:

- ensuring their teams undertake the requirements set out in this policy.

The Care Inspectorate leadership teams are under review and will be updated accordingly.

3.8 Staff

All staff:

- must be aware of and comply with this policy and our statutory obligations
- are expected to participate in training (approved by the Care Inspectorate) which supports the implementation of this policy, as appropriate
- should promote equality within our role.

4. Statutory duties in child and adult protection

The Care Inspectorate and the SSSC do not have a statutory duty or remit to carry out child or adult protection investigations. The statutory duty to enquire, and then to undertake investigations, lies with local authorities/health and social care partnerships or Police Scotland.

Where an alleged crime comes to our attention, we must ensure that this is reported without delay to Police Scotland. This can include the Care Inspectorate and the SSSC making independent referrals if not referred by the service or the individual making the allegation. This includes the potential for wilful neglect as defined within the Health (Tobacco, Nicotine, etc. and Care) (Scotland) Act 2016.

Other child and adult protection concerns should be reported to the relevant health and social care partnership/local authority.

Both organisations have a duty to act on all protection concerns which come to our attention. This may be by ensuring that these have been appropriately referred for consideration by the individual or service source or by making the referral ourselves. Information must be shared to keep children and adults safe. Guidance for staff when they are concerned about the safety or wellbeing of a child, young person or adult, is contained in the Care Inspectorate's child and adult protection procedures and the SSSC protection procedures. All staff must make sure they are familiar with their organisational procedures.

This policy relates to the Care Inspectorate and the SSSC's duties to ensure referrals to local authorities/health and social care partnerships or Police Scotland are made, and to follow up any issues arising from referrals regarding the regulation of a registered service or worker. This can involve following up individual protection concerns resulting from a statutory investigation in our regulation of a service or worker, including taking enforcement action if needed. Both the Care Inspectorate and the SSSC work closely with local authorities/health and social care partnerships and Police Scotland, which have the statutory authority for child and adult protection investigation.

The policy also covers the Care Inspectorate's responsibilities regarding its engagement with child and adult protection committees and involvement in large-scale investigations.

In addition, the Care Inspectorate and the SSSC are responsible for ensuring that staff working in social care and social work are fit to practice and follow their statutory duties with regard to public protection.

The overall expectations to generally protect people from experiencing potential hazards, including health and safety risks, are not covered by this policy.

4.1 The role of the Care Inspectorate and Scottish Social Services Council in local child and adult protection committees

Under respective legislation, each local authority must convene a Child Protection Committee (CPC) and an Adult Protection Committee (APC). These are sometimes operated jointly as Public Protection Committees (PPCs). The membership of each committee is multi-agency and includes representatives from the local authorities/health and social care partnerships, Police Scotland, NHS Boards, and partner agencies. They will also include representation from the independent and voluntary sectors. The Chairs of APCs are mostly independent, but the Chairs of CPCs are not always independent of the partnership.

Each committee sets the strategic direction for multi-agency working in their local area, in line with the legislation. They play a central role in overseeing protection activity in each partnership area and make recommendations to make sure that activity is efficient and effective.

CPCs and APCs have a range of functions and duties that include:

- monitoring and advising on protection procedures
- ensuring appropriate co-operation between agencies
- improving the skills and knowledge of those with a responsibility for the protection of children or adults at risk
- providing information and advice
- promoting good communication
- coordinating learning reviews.

A Care Inspectorate representative is not a standing member of Child or Adult Protection Committees but will attend on occasion with the agreement of the Chair of the Committee. This attendance could be either at the request of the Care Inspectorate or at the request of the Chair of the Committee. The Care Inspectorate representative can request copies of the minutes of an APC or CPC.

The Care Inspectorate leads on joint strategic inspections of services for children and young people and for adults, carried out with colleagues from Her Majesty's Inspectorate of Constabulary for Scotland, Education Scotland and Healthcare Improvement Scotland and other regulatory bodies. These inspections can include consideration of the work of child and adult protection committees and their impact on the protection of children and young people and adults.

The Care Inspectorate also provides relationship manager and link inspector advisory roles to partnerships and contribute to developments in working practices. This may include sharing intelligence.

The Care Inspectorate is also a member of the Scottish Government's National Strategic Forum for Adult Support and Protection.

The SSSC will not normally have a link to local child and adult protection committees.

4.2 Large-scale, police and other complex investigations

A large-scale investigation is a multi-agency response to circumstances in which there may be a risk of serious harm within a care setting. This may be either in residential care, day care, care at home or in a healthcare setting. The circumstances could have arisen during a short timeframe or accumulated over a longer period. Additionally, there could be circumstances where the seriousness of the harm experienced by one person and/or potential impact on others, would merit a large-scale investigation.

A large-scale investigation would be considered when:

- concerns are raised about the systemic failure in the delivery of services which is placing those who use them, at risk of harm
- a report of harm to a person which may affect a number of other people also in receipt of care (not necessarily in the same setting, for example, adults living in the community who may be systematically targeted)
- multiple allegations are received from those using services against others using that service.

In these and other complex investigations, it is likely that the Care Inspectorate would be requested to be party to meetings relating to the investigation, although would not lead these. The Care Inspectorate would expect a clear point of contact within the local authority/HSCP to manage any such investigation and for there to be clear liaison across agencies. The Care Inspectorate would share information held on the service and provide professional advice or joint visits as required as part of the investigation.

Where the concerns relate to the actions or practice of individual workers the SSSC will provide information they hold in relation to individual workers and will liaise with the identified point of contact to provide advice and guidance regarding the fitness to practice process making sure investigations and proceedings do not compromise the wider investigation.

Care Inspectorate staff should be proactive in seeking information on the outcome of any child or adult protection investigation to determine any further action that may be required noting the higher standard of proof for criminal matters.

Gold meetings

Where there is a police investigation of a serious incident, the Care Inspectorate may be invited to attend a meeting called a GOLD meeting when the incident relates to social care. This meeting will likely, but not always, be chaired by a senior official of Police Scotland.

The terminology reflects the police command structure implemented in order to deal with major incidents. The structure is:

Gold - strategic, Silver - tactical and Bronze - operational.

When the Care Inspectorate is invited, it is normally attended by a member of staff from the Strategic Leadership Team.

The Care Inspectorate representative's role in these meetings is in providing a link between the lead agency and the Care Inspectorate, sharing information, and supporting coordinated

responses, playing a key role in decision making, and providing resources as necessary to support activity.

The SSSC will not normally have a role in such meetings, although in certain circumstances they may be invited to attend for specific discussions.

Regulating and improving protection policy and practice across social work, social care, early learning and children's services.

In addition to directly making and following up child and adult protection referrals, the Care Inspectorate and the SSSC are responsible for regulating and improving the policy and practice of services, workers, and the whole sector with regard to public protection.

For example, when registering a service, the Care Inspectorate checks that the manager has sufficient understanding and experience of protection, and that adequate policies and procedures are in place. Similarly, when registering a worker, the SSSC ensures there is nothing on an applicant's record to indicate any concerns regarding their understanding of public protection or their ability and willingness to follow their Code of Practice. Once a service or worker is registered, the Care Inspectorate and the SSSC regulation will scrutinise public protection policy and practice. For example, through notifications of protection matters we receive, inspection and complaint investigations, the Care Inspectorate checks that the service is making the required referrals to police/social work and acts if necessary. The Care Inspectorate also checks that the provider is ensuring that staff are supported to maintain and develop their protection knowledge through learning and development. Similarly, the SSSC regulation of workers checks that registrants are maintaining and developing their own continuous professional learning with regard to protection. The SSSC also provides and signposts services and registrants to learning and development resources for protection.

5. How we manage information to protect adults and children at risk of harm

5.1 Managing Information

Guidance for appropriate information sharing is enshrined in the General Data Protection Regulations, the Data Protection Act 2018 and human rights legislation, however, these are NOT a barrier to the sharing of information when it applies to the safety and wellbeing of a person, or a group of people at risk of harm.

The Care Inspectorate and SSSC have clear information governance processes which provide frameworks to bring together all the requirements, standards and best practice that apply to the handling of information. It allows both organisations to make sure information is accurate, dealt with legally, securely, efficiently and to deliver the best possible care.

The Care Inspectorate and SSSC aim to work collaboratively with partner agencies to make sure any information governance issues which span more than one organisation are handled effectively and appropriately. To this end, we have a variety of memoranda of understanding and data sharing agreements to support the sharing of information in a controlled manner, which ensures the protection of people's interests. We also abide by the Information Commissioner's Office Code of Practice on Data Sharing and will incorporate this into future agreements and processes. <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/data-sharing-a-code-of-practice/>

The sharing of information regarding actual or potential protection concerns in our work is imperative to ensure the safety and protection of people who experience care.

Principles of sharing information

The principles which apply to the sharing of information ensure that information is shared:

- as necessary
- proportionately
- relevantly
- accurately
- adequately
- in a timely manner
- securely
- and recorded
- with appropriate consent.

These principles also apply to the sharing of information with regard to protection, however, these are not a barrier to that information sharing.

5.2 Recording and the management of information

The Care Inspectorate and SSSC are committed to ensuring a high standard of practice in recording when, how (by which method), why (for what purpose) and with whom we share information, regarding actual or potential protection concerns, as well as recording the outcome. This includes following operational procedures in recording when we do decide to share information and when we decide not to share information.

There is a formal referral process between the Care Inspectorate and SSSC. There is also a requirement for each organisation to consider referral to Disclosure Scotland when appropriate.

5.3 Consent and confidentiality

Consent

Any person (adult or child) with the capacity to do so, has the right to withhold consent for any intervention proposed on their behalf and this should be respected. This includes the sharing of information.

The reporting of any issue of protection, including harm or neglect, however, is paramount, even in situations in which a person with capacity does not consent to a referral being made. Such concerns may be identified via complaints, fitness to practice referrals or whistleblowing processes.

Consent is not required to share information where there is a legislative requirement to do so, for instance, in the prevention or detection of a crime.

'Consent' is defined here as any freely given specific agreement or permission by a person. Consent can be either 'implied' or 'expressed' on an informed basis.

'Implied consent' is permission or agreement which is not explicitly expressed by the person but is, or can be, inferred from a person's action or a particular set of circumstances. On occasion, consent can be implied from a person's inaction or silence.

Good practice, however, would dictate that consent should always, where possible, be fully expressed and informed. This type of consent is where the person:

- explicitly agrees or gives his/her permission to do something in a situation in which he/she understands what is being asked
- has the ability to assess any relevant factors before making a decision
- has the ability to understand the implications of his/her decision and retain that understanding.

In accordance with data protection legislation, if we are relying on consent, we must also allow people to withdraw consent.

Consent and children and young people

[National Guidance for Child Protection in Scotland](#) (1.133) states that:

UK General Data Protection Regulation (GDPR) sets a high standard for consent and, in most cases where there are child protection concerns, consent is unlikely to be an appropriate lawful basis to rely upon as it requires that individuals have real choice and control about the processing of their personal data. Relying on 'consent' as the lawful basis is not appropriate if, for example, refusal to give consent would prejudice a criminal investigation or might lead to serious harm to the child. Furthermore, due to the power imbalance between a child or families and the authorities, it would be difficult to demonstrate that consent was freely given. In matters of child protection, it is therefore likely that reliance on consent would be the exception and not the rule.

Consent and adults

Adults are autonomous and have the right of self-determination. Even in circumstances in which an adult does not have the capacity to give or withhold consent, the Adults with Incapacity (Scotland) Act 2000 provides that the adult's past or present wishes, those of the nearest relative, any guardian, power of attorney or other people authorised to speak on the person's behalf, should be taken into account in making decisions about the adult's life, in so far as it is reasonable or practicable to do so.

Legislation, including the Adult Support and Protection (Scotland) Act 2007, supports information sharing without consent when it is necessary to protect an adult at risk. The [Adult Support and Protection \(Scotland\) 2007 Act Codes of Practice](#) (para 38) states that:

The Act specifically allows for disclosure of information with or without consent where a person knows or believes an adult is at risk of harm. This information should be shared only with those who need to know, be proportionate to the harm it will prevent, and be relevant to the concern. Each case should be considered individually.

Confidentiality

'Confidentiality' is not legislative, it is a common law duty. However, it is governed by legal provisions which aim to safeguard personal information. These include:

- The Human Rights Act 1998
- The Data Protection Act 1998
- Professional codes of conduct

Confidentiality is often 'understood' or 'implied' in professional settings as a set of unspoken rules which guide the sharing of information. This includes the limiting of access to, or the placing of restrictions on, the sharing of information. Confidentiality is not a right, particularly where an issue of protection is concerned.

Confidentiality does not, and must not, prevent the sharing of information about the safety and wellbeing of an adult or child, rather it empowers this process, as the guiding principle is always about the individual adult's or child's best interests.

Common principles

- The wellbeing of the child or adult is of paramount importance when making decisions about the lawful sharing of information about them.
- Children and adults have a right to express their views and have those views taken into account in any decisions being made about their lives.
- Open and honest communication between agencies should take place about the reasons why information is being shared.
- In general, information should only be shared with the informed consent of the individual adult or child, however, issues of protection must always be shared with appropriate agencies, regardless of whether consent is given or withheld and the person, where possible and appropriate, should be informed about this sharing of information.
- Information shared should always be relevant, necessary, and proportionate to the person's circumstances and limited to only those who require to know. This may include relevant historical or family information, as appropriate.

Where actual or potential protection concerns arise, consent and confidentiality are not a barrier to sharing information to protect people. It is imperative that information is shared to fulfil our duty to protect adults and children at risk of harm.

In relation to children and young people, the Information Commissioner has set out a clear statement:

'Where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances... If there is any doubt about the wellbeing of the child and the decision is to share, the Data Protection Act should not be viewed as a barrier to proportionate sharing.'

You can read the full statement at: <http://www.gov.scot/Resource/0041/00418080.pdf>

Appendix 1

Definition of harm relating to child protection

When we say children at risk of harm, we mean children up to the age of 18 years who need urgent support due to being at risk of harm from abuse and/or neglect. We include in this term children who need urgent support due to being a significant risk to themselves and/or others or are at significant risk in the community.

Definition of harm relating to adult support and protection

S 53 of 'the Act' states harm includes all harmful conduct and, in particular, includes:

- (a) Conduct which causes physical harm.
- (b) Conduct which causes psychological harm (for example: by causing fear, alarm or distress).
- (c) Unlawful conduct which appropriates or adversely affects property, rights or interests (for example, theft, fraud, embezzlement or extortion).
- (d) Conduct which causes self-harm.

The Code of Practice to 'the Act' explains that the definition is not exhaustive, and no category of harm is excluded because it is not explicitly listed. In general terms, behaviours that constitute 'harm' to a person can be physical, sexual, psychological, financial, or a combination of these. The harm can be accidental or intentional, as a result of self-neglect or neglect by a carer or caused by self-harm and/or attempted suicide. Domestic abuse, gender-based violence, forced marriage, human trafficking, stalking, hate crime and 'mate crime' will generally also be harm.

Definition of risk of serious harm relating to justice

There is a risk of harmful behaviour which is life threatening/ and or traumatic and from which the victim's recovery, whether physical or psychological, can be expected to be difficult or impossible.