

# Identifying areas for improvement and requirements

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This procedure sets out how the Care Inspectorate will identify areas for improvement in care services. The Care Inspectorate has a duty to support improvement and improve outcomes for people who experience care and this directs how we do our work.

Where outcomes and experiences for people are poor, or potentially poor, we may identify areas for improvement in our scrutiny work. We may also make requirements where, if circumstances do not improve, we should be prepared to exercise our enforcement powers.

This procedure supports staff where improvements need to take place to achieve better outcomes for people experiencing care. It helps people to decide the best ways of helping make this happen.

## 1. Legislation

The Public Services Reform (Scotland) Act 2010 sets out a broad legislative framework of the responsibilities placed on providers of care services. These are supported by detail in:

- The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011
- The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Amendment Regulations 2013
- Regulation 19 to 24 of The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002

The Health and Social Care Standards came into effect in April 2018 and the Public Services Reform (Scotland) Act 2010 sets out that the Care Inspectorate must take these standards into account when making decisions. The new standards describe the outcomes and experiences that people should expect from care and support. They are more outcomes-focused than previously, and are designed to help care services think about and plan their improvement activities to improve care.

In addition, the Regulatory Reform (Scotland) Act 2014 sets out duties on regulators and seeks to promote greater consistency by placing a statutory duty on them to exercise their functions in a way which contributes to achieving sustainable economic growth. Through a code of practice there is guidance for regulators and the regulated on what is expected and how the duty will work. This in effect means that the decisions we make in the course of our regulation work – which includes ensuring compliance with legislation and implementation of policies – should support our actions be proportionate and SMART (specific, measurable, achievable, realistic, time-bound).

## 2. Supporting improvement

### Outcomes that are likely to involve a low risk of harm to people

For us to regulate effectively and support services to improve, empowering providers to implement changes which lead to improvements is often a more effective strategy than a compliance approach that requires them to do it. This needs a degree of trust and in itself is risky, but follow-up processes that offer proportionate responses mean the risk can be managed appropriately and changes may be more likely to be embedded and sustained. Establishing effective, constructive improvement relationships are key. The tools in this document will help you make decisions about the best approach to take.

### How do we support improvement for people experiencing care?

Supporting improvement is a method or process which enhances value or excellence. It uses the combined unceasing efforts of everyone – professionals, those experiencing services and their families, researchers, planners, educators and others – to make the changes that will lead to better outcomes (health and social) better system performance (care) and better professional development (learning).

Research tells us that improvement should be done by those closest to the front line in order to make changes that are appropriate, sustainable and improve the lives of those experiencing care.

The responsibility for improvement rests with those providing and leading services. However, an improvement approach brings people together to identify, plan and make the changes that will lead to improvements. Improvement support provides opportunities, generates creativity and innovation and requires partners to collaborate, work differently, remaining relentless in the drive for excellent care.

There are many tools that support our decision making when supporting improvement as part of our scrutiny activity. Examples of these are detailed in Appendix 1.

Some examples of improvement support include:

- building relationships with care services and provider groups which support improvement
- working collaboratively through improvement conversations with a range of stakeholders
- providing guidance, helping to prioritise improvements and supporting services to develop their change ideas
- signposting to and sharing good effective practice locally and nationally and improvement resources
- signposting to the Model for Improvement and the plan-do-study-act approach, or other improvement methods and tools
- encouraging improvement, stories to be told and shared
- supporting services to measure the changes they make so that they can see if there is an improvement or not.

## 3. Identifying areas for improvement

### 3.1 What are areas for improvement (previously referred to as recommendations)?

An area for improvement is a statement that sets out an area or areas of care indicating where a care service provider should make changes, because outcomes or potential outcomes for people experiencing care need to be better than they currently are. These improvements should, if made, develop the quality

of the care being provided and improve outcomes for people. An area for improvement would be appropriate where you have the need to follow this up at the next inspection. Failure to address an area for improvement will not directly result in enforcement or lead automatically to a requirement.

Areas for improvement are based on and must be referenced to the Health and Social Care Standards, SSSC codes of practice or recognised good practice. They must also be outcomes-based and if the provider meets the area for improvement, should clearly improve outcomes for people experiencing care.

When services are carrying out improvements (linked to requirements or areas for improvement) the following questions should be considered by the inspector.

- What does the service need to accomplish to improve experiences and outcomes for people?
- What changes does the service need to make to improve?
- What timescales are appropriate?
- How and when will the service inform people experiencing care, care staff, families, friends and others about the improvements and involve them?
- What data could the service gather to show the change has been an improvement; it is being monitored and sustained?

### **3.2 What are requirements?**

A requirement is a statement which sets out what a care service must do to improve outcomes or potential outcomes for people who use services and must be linked to a breach in the Act, its regulations or orders made under the Act. In writing a requirement, we should also identify the most relevant part of the Health and Social Care Standards which are not being evidenced. Requirements are enforceable in law. When making requirements, we should be prepared to enforce their implementation through our enforcement process if they are not met.

Requirements must be clear and, when implemented, improve experiences and outcomes for people experiencing care. The fact that a provider has not complied with a regulation is not in itself enough justification for making a requirement.

Requirements should only be made where:

- (a) there is evidence of poor outcomes for people experiencing care or
- (b) there is the potential for poor outcomes which would affect people's health, safety or wellbeing.

Where any inspector considers making a requirement based on potentially poor outcomes associated with a risk, it is for the inspector to make the professional decision about the most appropriate and proportionate course of action. For example, if a service is not recruiting new staff appropriately and ensuring that staff are fit to work with vulnerable people, we would make a requirement based on the potential risk to people experiencing care. We would not have to wait until that risk materialised and a person had been exposed to harm.

When drafting a requirement, staff should refer to Appendix 3 which is a template for writing requirements.

### **3.3 Breaches of regulations which are not outcome based**

Where a service is in breach of the regulations but this has no impact on outcomes for people using the service, the inspector should not make a requirement, but should record this in the inspection report or complaint investigation report.

For example, where a service does not have a complaints procedure but is responsive to concerns and issues raised by people using the service, the inspection report or investigation outcome letter should note that the service does not have a complaints procedure. The report should explain that this is a breach of the relevant regulation and remind the service of the need to develop a policy. The inspector would not generally make a requirement but may identify the development of a policy as an area for improvement.

### **3.4 Deciding to make a requirement on inspection or following a complaint**

During inspections, it is important that the lead inspector makes decisions based on their knowledge of the service, the intelligence held by the Care Inspectorate and where the service is on their improvement journey.

Sometimes, poorly performing services receive a high number of requirements which makes it difficult for them to prioritise their improvement activity and the resources to support this. Determining the appropriate number can be a challenge for the Care Inspectorate, and understanding the relative priority of them can be a challenge for providers. In some cases, providers and managers meet requirements within the timescale, but assume little ownership and understanding of the issues. This can result in the improvements not being sustained and a consequential fall in the quality of outcomes for people experiencing care in that service.

In most cases the lead inspector will know what the main areas of risk are for a service and what the priorities for improvement should be. It is therefore important that they maintain awareness of any requirements that are made in the service. This is also important as the lead inspector has the responsibility to follow up any requirements made. However, it must be remembered that in some instances, due to changes in caseloads, the most up to date understanding of the service may lie with another colleague, so it is important for inspectors to share intelligence.

Complaints and inspection are two separate processes and the objectivity of the specialist complaint investigation can be very important. A complaint investigation is a detailed look at practice and a complaint investigation can uncover issues that were not identified at inspection where evidence was sampled as part of our methodology. Where a complaints inspector identifies poor practice and is considering requirements they must have considered in their assessment the risk to other people experiencing care. Where the practice only relates to the person the complaint is about the risk to other people experiencing care should be considered.

If an inspector is concerned that the practice issues identified may indicate that there are systemic weakness in the service, they must consider the likelihood of the issue affecting others in the service. The complaint inspector, if it is appropriate, can take account of other relevant evidence: an example of this is where there is a failure in a specific aspect of care such as nutrition and the findings suggest staff do not understand fortification. In these circumstances it is likely that they will not understand this for other people experiencing care from the service.

Where the outcome of a complaint investigation leads to requirements being considered to support improvement, these should be considered in line with any requirements that have been made during previous scrutiny activity. These can be referred to in the complaint report; similar requirements should not normally be repeated in the complaint report.

In these instances, the complaint inspector should uphold the complaint referring to existing requirements about a service either from a previous complaint investigation or inspection.

The complaint inspector should in most circumstances discuss their findings and any requirement / areas for improvement with the lead inspector prior to issuing the report, but this may not always be possible due to leave or other absence.

The same applies to a service at enforcement where an Improvement Notice has been served and the service has set requirements within this. If the complaint investigation evidences that the same requirements are relevant we would not make the requirements again in the complaint report but refer to the outstanding improvement notice while upholding the complaint.

All staff making requirements must use this guidance including the POET tool on page 11 to make the decision regarding requirements.

It is important that following complaint requirements being made, the lead inspector considers the improvement progress made and the impact this is having on outcomes for people. The lead inspector needs to consider this in line with intelligence about the service and update the regulatory plan for the service. An example could be to bring forward an inspection or to regrade/evaluate the service. It is the lead inspector's responsibility to report on all complaint requirements at the next inspection.

### **3.5 Timescales for requirements**

It is important that we consider the timescales for requirements and ensure that these support the improvement of outcomes for people experiencing care. We must give providers appropriate time to meet requirements as part of an improvement journey.

The timescale needs to be proportionate to the risk. When following up requirements, if providers have not made the required improvements within the set timescales, but there is evidence of changes being made that are leading to improvement, we should generally extend the timescale unless there is a clear unwillingness by the provider to work with the Care Inspectorate in meeting any requirements.

Giving a timescale for a requirement does not mean we support or accept the service continuing the poor practice. We need, however, to give people time to make the necessary improvements as improvements do not happen instantly. Often, improvements are more sustainable when sufficient time has been given to make the right change and test it out. Quality improvement theory tells us that making improvement without people having ownership or understanding of the process affects sustainability. We should also consider the questions from section 1.

### 3.6 Timescales that are immediate or within 24 hours

Where there is an immediate risk to the health, safety, or wellbeing of people experiencing care the inspector must:

- bring the matter to the attention of the manager or staff member in charge and seek immediate remedial action
- not leave the service until this action has been taken
- inform their team manager of their concern and the action they have taken.

If remedial action is taken immediately, and the inspector is satisfied that this has reduced the risk that was previously present, the inspector should reflect this when writing either the inspection or complaint report. Inspectors should state the requirement in the body of the text, under the "areas for improvement", and explain that this was met while the inspection/complaint/ registration visit was taking place.

Inspectors should also send a letter to the service outlining their concern and the improvement taken by the service or expected of them. This should be sent within 24 hours of the concerns being raised with the service. The letter should be saved in PMS under the service name. These actions should be fully detailed within the inspection or complaint report including details of the actions taken by the service.

Where there are concerns of serious risk to the life, safety, health or wellbeing of service users or emergency enforcement procedures are considered you must immediately notify your team manager. Senior managers and legal advisors should be alerted immediately along with relevant agencies where the concerns are of child or adult protection nature. Staff must follow the Care Inspectorate's adult and child protection procedures {LINK}.

All inspection, registration and complaints inspectors should follow this guidance where they see practice which requires immediate action. Inspectors should not make requirements that state timescales of "immediate" or "within 24 hours" in any circumstances; issues of this importance should already have been addressed before writing the inspection report.

## 4. Supporting better outcomes

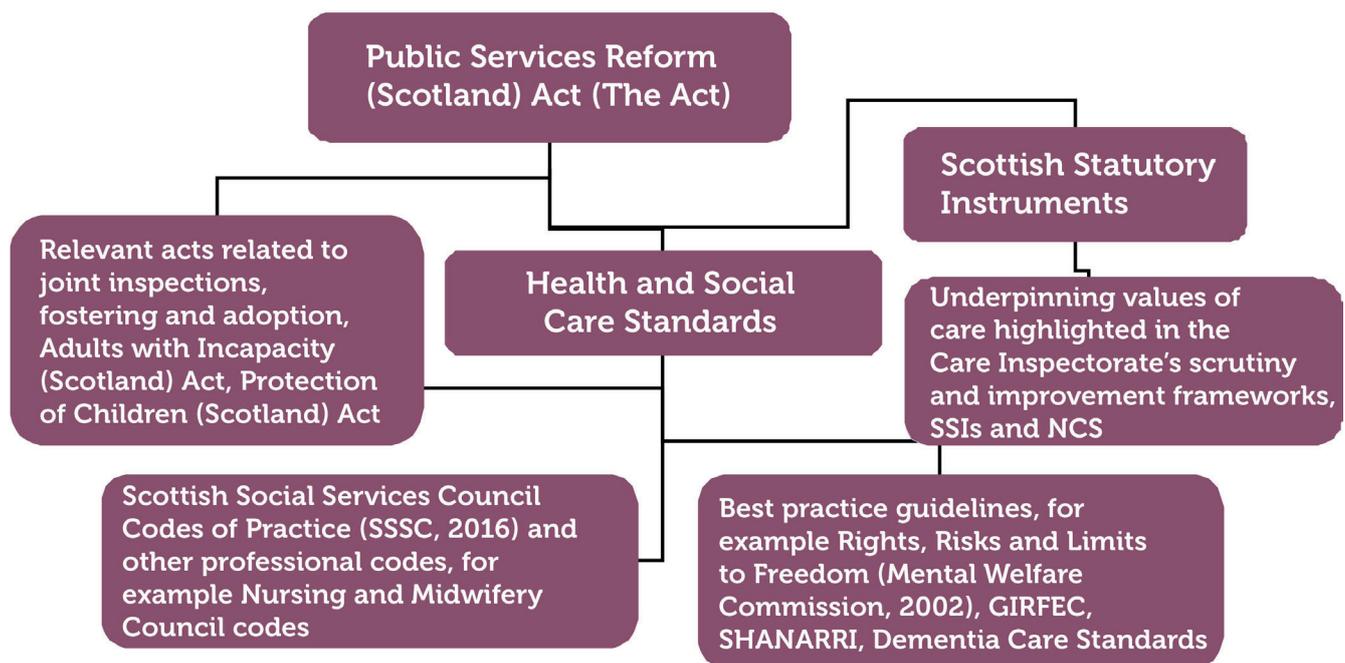
Some services may not have the capacity or capability for making or sustaining improvements in the quality of care provided. Where this is the case staff should consider the next actions in that circumstance in discussion with their senior inspector or line manager. A good understanding and consideration of the enforcement policy (LINK) is required. Current practice in relation to those services evaluated as weak or unsatisfactory or assessed as high risk, requires a Chronology and Regulatory Plan to be initiated with matters reviewed, as appropriate/necessary. Where services are evaluated as adequate (Grade 3) on more than two occasions any actions to support improvement should be agreed and discussed with the senior inspector and/or team manager.

## Appendix 1

### Making the professional judgement

The Care Inspectorate supports inspectors to make professional judgments identifying when improvement needs to take place and the form this should take. This includes providing improvement support which may take the form of improvement discussions, providing guidance, making an area for improvement or a requirement. This must be done within our framework of influence and with an approach that supports improvement.

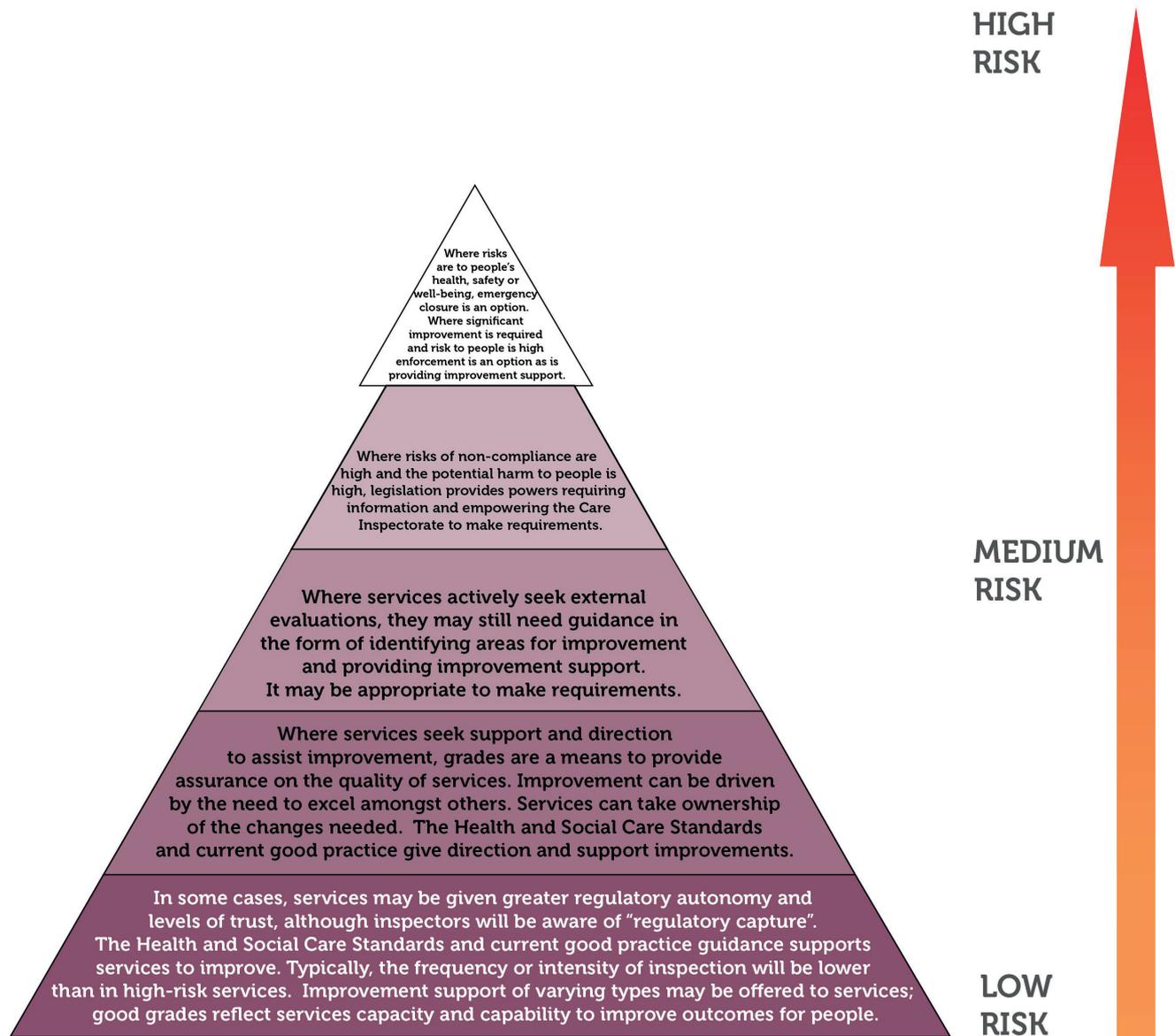
Figure 1: The Care Inspectorate's framework of influence



This framework provides different approaches and strategies to support improvement and achieve better outcomes for people who experience care. The Act gives the Care Inspectorate defined enforcement powers. The regulations allow the ability to require improvement, especially the regulations relating to health, safety and wellbeing. The Health and Social Care Standards set out clearly what people should experience from care, and are a helpful reference point in assessing whether changes are needed in order to improve outcomes for people experiencing care. Identifying areas for improvement through enabling conversations about quality care and writing these in an inspection report, helps to recognise developing standards and prioritise improvements in a service. Choosing what approach will best support improvement in a service will be based on the evaluation of evidence and analysis of any risks to people experiencing care.

It is important for inspectors to consider a requirement within the range of possible regulatory responses to poor practice. Approaches to support improvement can be represented by a pyramid of strategies related to risk. Where there are low risks to people who use services, the inspector may choose strategies from the bottom of the pyramid; where there are high risks, the inspector may choose strategies from the top of the pyramid, including emergency application for closure of the care service or emergency condition, if necessary.

Figure 2: The Care Inspectorate's response framework



In making any judgments, the inspector will use intelligence about services including:

- the service history in relation to its past willingness, capacity and capability to make and sustain improvements
- the record of service improvement, focused on outcomes for people
- the nature of the improvement and associated risks to people experiencing care
- the impact the improvement will have on the quality of care and support and on the lives of peoples experiencing care
- the nature of care being delivered, some services being inherently more "risky" than others because of the complexity of people's needs and wishes
- other, softer information which may impact on what decisions are made.

Taken together, these allow inspectors to consider the likely capacity and capability a service has for improvement, the willingness to do so, and the impact that making the improvement is likely to have. This helps inform proportionate approaches when considering the necessity in making requirements.

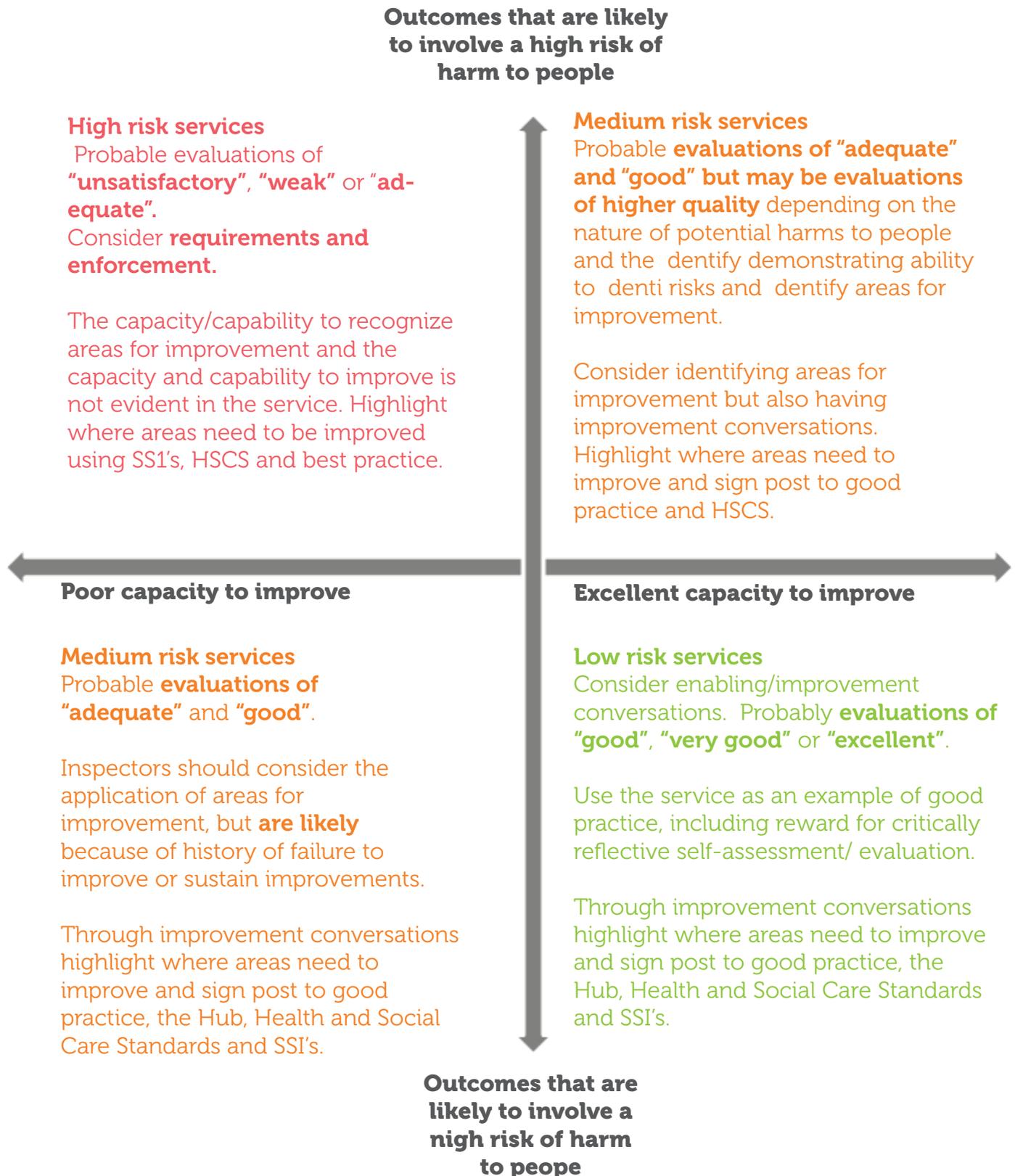
Where evidence exists that services have capacity to manage risks and improve, the inspector may consider through an improvement conversation that identifying an area for improvement is more proportionate than making a requirement.

To support inspectors in making decisions about what approach to use, the following framework developed by inspectors and underpinned by a validated theoretical approaches, should be used.

The Proportionate Outcome Evaluation Tool (POET) was developed by the Care Inspectorate to help assess the risks associated in outcomes for people experiencing care and the service's capacity and capability for improvement. This qualitative approach allows consensus on the nature of high, medium and low level risks and agreement on the best scrutiny and improvement support approach needed to improve care. Like many qualitative models it draws on the skills of the inspector to make informed and evaluated judgments. POET is a tool that assists the inspector to consider the risks and choose the most proportionate response. It allows for transparency, explanation and supports consistency in our decision making processes.

## Appendix 2

### Proportionate Outcome Evaluation Tool (POET)



## Appendix 3

### Writing requirements

Making requirements are steps to support improvement following an inspection or where a complaint is upheld. These must be SMART:

- Specific
- Measured
- Achievable
- Realistic
- Time-bound.

Inspectors must use the SMART guidance when making requirements. This will support improvement as services will be clear on what improvement(s) the Care Inspectorate expects them to make.

When writing requirements, we must ensure that we are clear in what the outcome is we expect the service to achieve, actions you expect services to take to achieve this, timescales (requirements only) for the actions to be in place and the legislation that underpins the requirement.

The language we use is very important and must reflect the status of a requirement which is mandatory and in legislation.

### Requirements

Do not use passive language that can give a different meaning like 'should' or 'consider'. If we are making a requirement we are not asking providers to consider but requiring them to make these improvements. Use language like 'must' or 'implement'.

The requirements must be written for the legal entity of the service to meet and not the 'manager', 'staff' or 'external manager'. To ensure consistency of this and to meet legal requirement staff must use the language **The Provider Must**.

The following template will assist staff to write requirements making sure they are SMART.

<b>The aim/objective/ outcome</b>	<b>The provider must ensure that</b> A brief description of the required outcome. This is the difference or effect instigating the requirement will make.
<b>Timescale</b>	By (insert date), <b>the provider</b>
<b>Inputs endorsed</b>	<b>In order to achieve this the provider must ensure that</b> What inputs are required to meet the outcome what must the provider do.
<b>Processes/outputs</b>	What processes outcomes would support the requirement being met? This section is not mandatory.

Reference to Health and Social Care Standards and/or published best practice guidance	In making improvements and achieving this requirement please make reference to the relevant health and social care standard/s.
Reference to relevant SSI	<b>This is in order to comply with ...</b> as above and state the legislation for example: This is in order to comply with Regulations 4(1)(a) and 15(b)(l) of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/210)

### Example of requirement of a requirement about medication management

**The provider must ensure that** people/children receive their medication in accordance with prescribing instructions. **(OUTCOME)**

**By (insert date) (TIMESCALE), the provider** must improve the management of medication within the service **(INPUT)**. In order to achieve this **provider** must adhere to the following:

- a) All staff must sign to confirm when they have administered medication and where a prescribed medicine is not administered, the reason(s) for this is/are recorded.
- b) Records must be maintained of all medicines received into the service, administered and returned to the pharmacy.
- c) All handwritten entries recorded on the Medication Administration Recording (MAR) Chart are signed and dated by the person making that entry and details of where the information was obtained or the authority for the entry, for example, instructions from the General Practitioner (GP), is recorded.

**(PROCESSES/OUTPUTS)**

**This is in order to comply with**

Health and Social Care Standard 1.24: Any treatment or intervention that I experience is safe and effective.

Regulation 4 (1) (a) of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/210) and Regulation 19(3)(j) of The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 (SSI 2002/114) **(LEGISLATION)**

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