

How the Care Inspectorate uses requirements and recommendations to help regulated care services improve

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This policy sets out when requirements and recommendations should generally be made. The Care Inspectorate has a duty to support improvement and this must inform how and when we make requirements. We must ensure that in making requirements we are using our legal powers to bring about change and improvements for people using the service.

1. Legislation

The Public Services Reform (Scotland) Act 2010 does not set out what a requirement is, but does identify regulations that providers of services must meet. These are set out 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.

There is no legislation that says the Care Inspectorate must make a requirement where a care service is not meeting a regulation made under the Act.

The Regulatory Reform (Scotland) Act 2014 sets out new 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 will be 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 to be proportionate and SMART (specific, measurable, achievable, realistic, time-bound).

2. What are requirements?

A requirement is a statement which sets out what a care service must do to improve outcomes for people who use services and must be linked to a breach in the Act, its regulations, or orders made under the Act, or a condition of registration. Requirements are enforceable in law. When making requirements, we should be prepared to enforce their implementation if they are not met.

Requirements must be clearly focused and, when implemented, improve the outcome for service users.

The simple 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 using the service or (b) there is the potential for poor outcomes which would affect people's health, safety or welfare.

Where an inspector considers making a requirement based on potential 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 robustly and ensuring that staff are fit to work with vulnerable people, we would make a requirement based on the potential risk to people using

a service arising from that. We would not have to wait until that risk materialised and a person had been exposed to harm.

3. Breaches of regulations which are not outcome-focused

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, and should record this breach in the inspection report or investigation letter.

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 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 should not generally make a requirement.

4. What are recommendations?

A recommendation is a statement that sets out actions that a care service provider should take to improve or develop the quality of the service, but where failure to do so would not directly result in enforcement.

Recommendations are based on the National Care Standards, SSSC codes of practice and recognised good practice. These must also be outcomes-based and if the provider meets the recommendation this would improve outcomes for people receiving the service.

5. 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, if at all.

Sometimes, poorly performing services receive a high number of requirements which makes it difficult for them to prioritise resources. 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 changes not being sustained and a consequent fall in the quality of outcomes for people using the 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 the lead inspector agrees any requirements to be 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 a 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 supports our values. Where the outcome of a complaint investigation leads to requirements being considered, in order to support improvement, these should be agreed with the lead inspector for the service. This helps to ensure consistency of practice and that the lead inspector is taking a strategic

overview of the service. Where a service is poorly performing, a risk-based approach has to be taken to consider enforcement actions. To make requirements that could fall out of the risk/regulatory plan may delay appropriate action being taken.

To support the agreement of requirements between complaint and inspection teams, the following guidance must be followed:

- the complaints team should notify the lead inspector and inspection team manager of a complaint at the point at which it is logged
- the lead inspector will share any relevant information with the complaints team
- where a complaint investigation is to be carried out, the date and time will be notified to the lead inspector and team manager
- where a scheduled inspection is imminent, the lead inspector must notify the complaints inspector of the date and time of the visit
- when a complaint investigation is concluded and one or more elements are upheld, the complaint inspector should arrange to have a discussion (by phone, in person, using video conference or using email) with the lead inspector as soon as possible to discuss the findings and consider these within the wider issues for the service; a note of the decisions should be placed within PMS under the complaint case
- where requirements are to be made, these should be agreed between the complaints and the lead inspector, and must be outcome focused
- the lead inspector and complaints inspector should discuss and agree any recommendation for re-evaluating where a complaint is upheld.

Where an agreement cannot be reached between inspectors then this should be referred to the team managers, or to the head of inspection and national complaints manager if necessary, who will make the required decision. All decisions must be noted in PMS under the service name.

6. Timescales for requirements

It is important that we consider the timescales for requirements and ensure that these support the improvement of outcomes for service users. We must give providers appropriate time to meet requirements.

The timescale needs to be proportionate to the risk. When following up requirements, if providers have not made the required changes within the set timescales, but there is evidence of progress, we should generally extend the timescale unless there is a clear unwillingness by the provider to comply. If we move to enforcement we need to ensure that we have given realistic timescales to providers to change outcomes for people and we have assisted the provider to comply and improve.

Giving a timescale for a change does not mean we support or accept the service continuing the poor practice. We need, however, to give people time to make the necessary changes as some cannot happen instantly. Often, improvements are more sustainable when sufficient time has been given to make a change. Change management theory suggests that making changes without people having ownership or understanding of them are less likely to be successful in the long term. Therefore when we give timescales we need to consider such questions as:

- how long will the change in practice take to communicate with staff?
- how will the service inform/support staff to change practice?

- how will this be monitored by the service to ensure change is sustained?
- how will people who use the service provide their views on the improvements made?

Sometimes, we make requirements where we specify a period of time for complying with it, and state that the provider should start addressing this immediately. Where possible, inspectors should provide a date for compliance in order to reduce ambiguity.

7. Timescales that are immediate or within 24 hours

A timescale of “immediate” or “within 24 hours” must only be given where there is an immediate risk to service users health, safety, and wellbeing. In these cases, the inspector must:

- bring the matter to the attention of the manager 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 action 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.

Where there are concerns of serious risk to the life, safety, health or wellbeing of service users and emergency procedures are considered, senior managers, line managers and legal advisors should be alerted immediately along with relevant agencies where the concerns are of child or adult protection nature. Staff should be aware of the Care Inspectorate’s adult and child protection policies.

All inspection, registration and complaints inspectors should follow this guidance where they see practice which requires immediate action.

8. Writing requirements and recommendations

Making requirements and/or recommendations are the first 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 and recommendations. This will support improvement as services will be clear on what improvement(s) the Care Inspectorate expects them to make.

When writing requirements or recommendations, we must ensure we are clear about:

- what outcome we expect the service to achieve
- what actions we expect services to take to achieve this
- what timescales we set for the actions to be in place and the legislation that underpins the requirement.

The language we use is very important and must reflect whether it is a requirement, which is mandatory and in legislation, or a recommendation, which relates to best practice.

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 them to consider, but **requiring** them to make these improvements. Use language like 'must' and '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 and to meet legal requirement, we must use the language "the provider must".

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

The Outcome	The provider must ensure that A brief description of the required outcome. This is the difference or effect instigating the requirement will make.
Timescale	By (insert date), the provider
Inputs endorsed	In order to achieve this the provider must ensure that What inputs are required to meet the outcome what must the provider do.
Processes / outputs	What processes outcomes would support the requirement being met? This section is not mandatory.
Reference to relevant SSI	This is in order to comply with and state the legislation for example: This is in order to comply with Regulations 4(1) (a) and 15(b)(i) of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/210)
Reference to relevant National Care Standard and/or published best practice guidance	In making improvements and achieving this requirement it may be useful for the provider to refer to relevant national care standards or best practice. If referring to best practice it would be helpful to give a link to this.

Example of Requirement

Medication Management

The provider must ensure that in meeting this requirement, people/children using the service can be confident that they will receive their medication from staff if they need help. They will know that there are clear policies and guidelines in the service on the use, storage and administration of medication. (OUTCOME)

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

NCS Care homes for older people, Standard 5 and Standard 15

"Handling Medicines in Social Care" 2007

www.rpharms.com/support-pdfs/handling-medicines-socialcare-guidance.pdf

and Care Inspectorate Health Guidance: Maintenance of Medication Records

www.scswis.com/index.php?option=com_docman&task=doc_details&gid=213&Itemid=720

Recommendation

When writing recommendation staff should ensure these are SMART but they do not need to be in the same detail as requirements. It should be clear from the recommendation what it is we are asking the service to consider.

Language used should be less formal than with requirements and staff should use language like 'should' or 'may' or 'consider'.

Staff should direct providers to best practice or the relevant national care standards.

The following template will help staff write recommendations that are SMART.

The Outcome	A brief description of the required outcome. This is the difference or effect instigating the requirement will make.
Inputs endorsed	This is only needed if the inspector thinks this would be helpful.
Processes/Outputs	This is only needed if the inspector thinks this would be helpful to the service.
Reference to relevant National Care Standard and/or published best practice guidance	In making improvements and achieving this requirement it may be useful for the provider to refer to Standard 5 of NCS, care homes for older people.

Example of Recommendation

The service should ensure that each individual and their legal representative are fully consulted in any changes affecting their care and support while residing within the care home.

Any issues raised through consultation should provide evidence of an action plan, proposed outcome and date of resolution to ensure positive outcomes for people using the service.

NCS Care homes for older people: Standard 5 - Management and staffing arrangements; Standard 11 - Expressing your views.

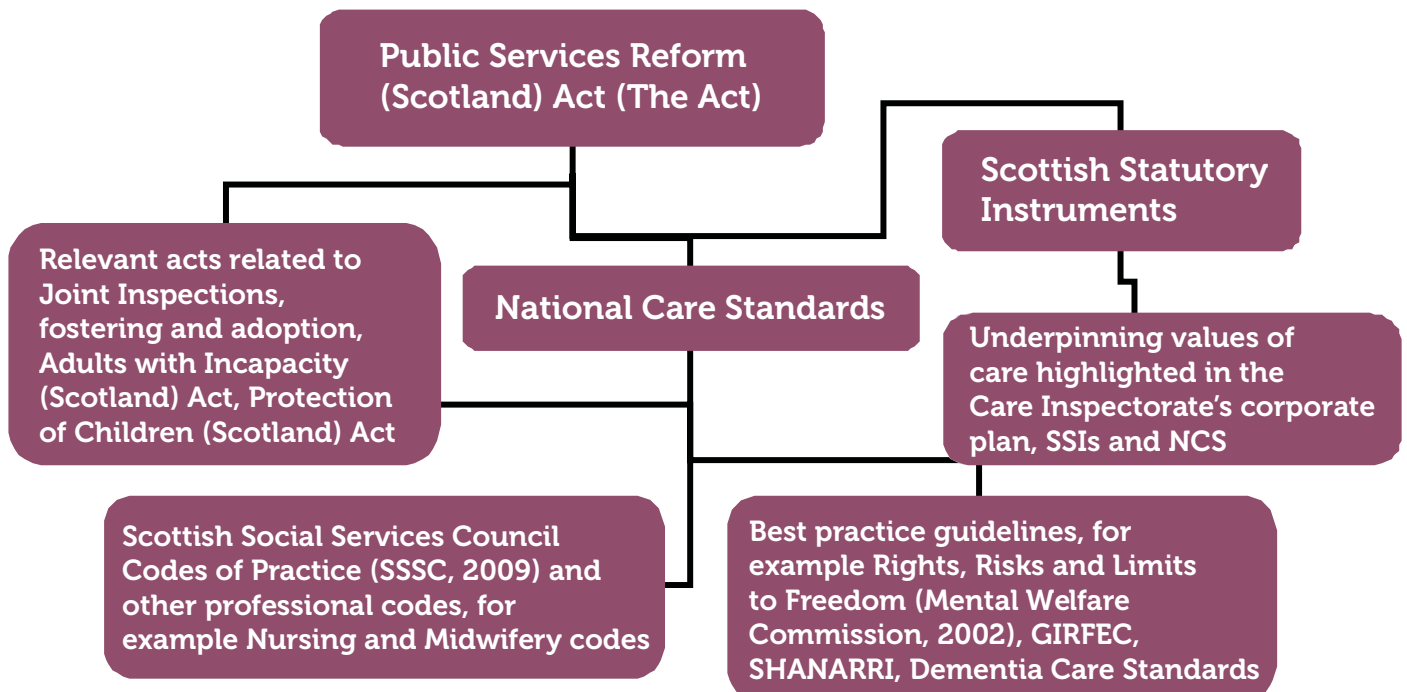
Promoting Excellence: A framework for health and social services staff working with people with dementia, their families and carers.

Standards of Care for Dementia in Scotland.

9. Making the professional judgement

The Care Inspectorate supports inspectors in making professional judgements about when to make a requirement and/or recommendation. This must be done within our framework of influence and in order to support improvement.

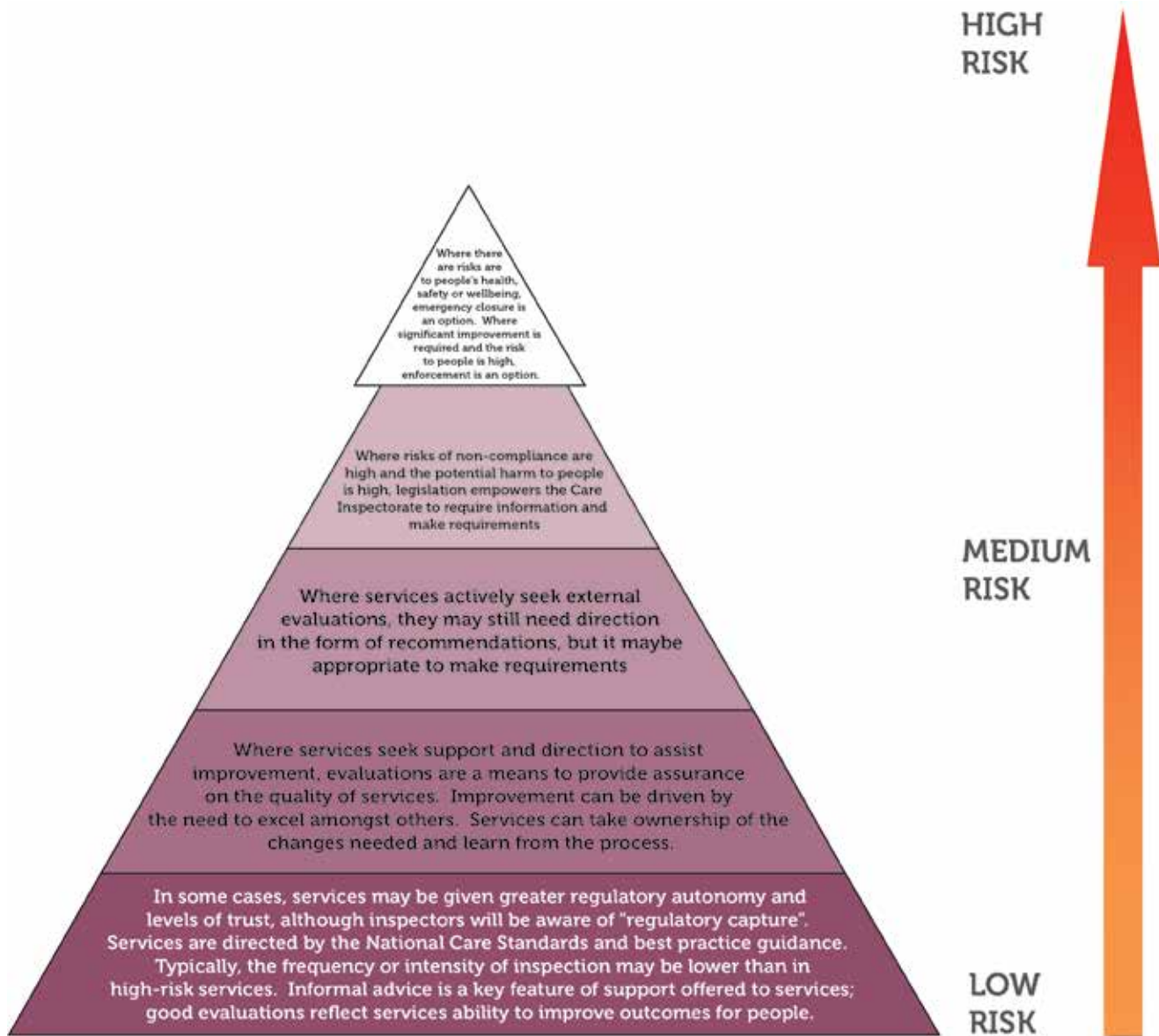
Figure 1: The Care Inspectorate's framework of influence



This framework provides different approaches and strategies to support improvement and better outcomes for service users. The Act gives the Care Inspectorate defined enforcement powers. The regulations allow the ability to require improvement, especially the regulation relating to health and welfare. The National Care Standards allow softer approaches like recommendations, areas for improvement and facilitate enabling conversations about quality care and recognition of developing standards in a service. Choosing what strategy to use with a service will be based on evaluation of evidence and analysing any risks.

It is important for inspectors to consider a requirement within the range of possible regulatory responses to poor practice. Approaches can be represented by a pyramid of sanctions/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 closure if necessary.

Figure 2: The Care Inspectorate's response framework



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

- the service history in relation to compliance/non-compliance and ability to sustain improvements
- the record of service improvement, focussed on outcomes for people
- the nature of the improvement needed and associated risks to people using the service
- the impact the improvement will have on the quality of care and support and on peoples' lives
- the nature of care being delivered, some services being inherently more "risky" than others because of the needs and wishes of people using the service
- other, softer information may impact on how decisions are made
- feedback from people who use services and their carers.

