

Our complaints procedure

Contents

- Introduction
- What is a complaint
- Complaints that we are unable to investigate
- Public protection and criminal acts
- Time limits for making complaints
- Who can make a complaint
- Identified complainant
- Complainant anonymity
- Anonymous complainants
- Making a complaint directly to the registered service
- Complaints that involve more than one service
- Working with other regulators and public bodies
- Meeting your expectations
- How to make a complaint
- What happens when you contact us.
- Taking a proportionate and risk- based approach – our pathway
- The outcome of investigation
- Investigation timelines
- What happens after completion of investigation?
- Report
- Post Investigation Review

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.

There are four things 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 complaint?

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.

Complaints we are unable to deal with or investigate

We are not able to deal with complaints that fall under the remit of other organisations:

- 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 provider 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 provider.
- complaints about social work decisions or contracting with a provider.
- 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 services or police
- criminal offences - we will refer complaints of this nature to the relevant authority, such as 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 in relation to a theft or an assault, we will refer this to Police Scotland for investigation.

We will let you know that we have referred the complaint, but will not ask your permission to share the information as 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 the issue arose as possible, 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 have to consider the practicality of investigating long past incidents and providing a meaningful outcome, before we agree to investigate. Because of this, we reserve the right to refuse to investigate after six months and instead to use the information provided to inform our scrutiny and assurance work

However, we recognise that this is not always possible so we will consider complaints where there are exceptional circumstances as to why the complaint was not made within six months of the issue arising. We will ask you to explain clearly your reasons for not raising the complaint with us within the six-month timescale. The decision on what meets exceptional circumstances will be for the Care Inspectorate to decide 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 as long as we know 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.

Identified complainant

Where we have your name and address we will make contact to discuss the complaint ensuring 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.

Complainant confidentiality

Where possible, we will respect your wishes if you identify yourself to us but ask for your identity to be kept confidential from the service provider throughout the investigation.

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 have your identify kept 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, including anonymous ones, seriously. Generally, we will consider anonymous complaints if there is enough information in the complaint to enable us to make further enquiries. If an anonymous complaint does not provide enough information to enable us to take further action, we may decide not to pursue it. However, we will share this information with the inspection team to use at the next inspection where appropriate.

If you wish to remain anonymous then this means we cannot give you any information on our findings. However, if you give us your details and ask that we keep this confidential as detailed in section headed Complaint Anonymity we will be able to give you the outcome of the complaint.

Making a complaint to the registered care service directly

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 provider, 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 service provider we may assess your complaint as being appropriate for the service to investigate. In these circumstances, we will inform you of our decision to refer the matter back to the service provider and the reasons why we have made it.

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 the Care Inspectorate, we will advise you to contact the appropriate organisation directly. If we need to make enquiries in relation 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 a number of 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 can make requirements for care services to improve, but 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 assist you if your behaviour or action makes it very 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.

The care inspectorate has policies and procedures for managing difficult behaviour experienced by our staff. We will endeavour to work with you to resolve your complaint but where we have concerns about how you conduct yourself we will take action. This may include one point of contact for you in the organisation or to only communicate by email or letter. We will discuss this with you and will 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 as stated above only communicate with you in these circumstances by email or letter and will only terminate contact when all other approaches to support you to communicate with us have failed.. (LINK TO POLICY ON WEB)

If the contact is unreasonable, we will write to the complainant to explain this and may terminate further contact.

How to make a complaint

You can complain in a number of ways.

Write us a letter and post to:
ADDRESS

Send us an email to: ADDRESS

Call our Contact Centre on 0345 600 9527 where you can give your complaint details or if you would rather arrange for an inspector to contact you to arrange to meet to discuss your complaint.

Speaking to an inspector who you meet in the course of their work in a service who will note your complaint and details and pass this to the complaints team.

Complete our online complaints form: LINK

What happens when you contact us?

We will decide whether the issue can be defined as a complaint. If we agree it is a complaint we will begin our complaints procedure and within three working days of receiving the complaint, a complaints inspector will determine the appropriate action for dealing with it. We will make contact with you at this stage to discuss your complaint to ensure we have all the sufficient information to decide how we assess your complaint.

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

Our decision will be final and there is no right of appeal. in the care inspectorate procedures.

If you are unhappy with the service you have received and/or you are not confident we have followed the correct process you may submit a complaint against the care inspectorate. This would be dealt with through our professional standards department who investigate complaints against the care inspectorate.

A complaints process that is proportionate and based on risk

In order 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, taking into account what else we know about the service. This enables us to decide how we will proceed and what action we need to take to achieve the best outcome for people experiencing care.

Assessment of risk and pathway action

Our risk assessment process helps us determine the appropriate action to resolve your complaint.

There are three routes we can take.

1. To 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. Frontline resolution, where we talk to the provider on your behalf.

It may be most appropriate to resolve your complaint through front line resolution and this may involve us phoning the provider and asking them to take action.

Where we assess your complaint as being appropriate for frontline resolution we will contact the care service on your behalf and ask them to engage in frontline resolution directly with you to resolve the complaint.

We will discuss this with you before making any contact with the care service.

In practice, front line resolution means resolving the complaint at the first point of contact with the person raising the concern.

3. Investigation by the provider/care service

We may assess your complaint as being appropriate for investigation by the provider /care service and we will:

- contact the provider/care service and ask them to investigate and then send us written confirmation of the action taken and resolution.
- The Inspector for that service will assess the written response to establish if the complaint has been dealt with appropriately, then close the case and note the outcome.
- If we don't think the complaint has been dealt with appropriately we will investigate it ourselves.

4. Investigation by the Care Inspectorate

Not all complaints are suitable for front line or provider resolution. We will have risk-assessed these complaints as needing investigation by the care inspectorate.

Our investigations aim to establish all the relevant facts and give complainants a full, objective and proportionate response that represents our final position.

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.

Our investigation will include:

- writing to you to confirm the areas we will be investigating
- visiting the care service to investigate the complaint were appropriate
- examining and assessing evidence, including documentation and speaking to relevant people
- writing to you with the outcome of investigation

Investigation visit to the care service

Visits to care services to investigate complaints should be 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 them no more than three days' notice (a short-notice announced visit).

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 at the first visit. This applies to unannounced or short-notice announced visits.

Investigation outcomes

There are two possible outcomes when we investigate a complaint.

Upheld

We say we have upheld a complaint where we have investigated and found evidence that the cause of the complaint is valid and true. Where we have upheld a complaint, we may take action. We will tell both you and the care service about any requirements or recommendations we have made of the care service.

The care service will have to give us an action plan that details how they will improve outcomes for the people who use their service. We may also regrade a service following a complaint.

Not upheld

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

Investigation timescales

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

- We will contact you within 10 working days to tell 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

Feedback

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

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
- action the service must take.

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

Post investigation review

If you believe we have made a mistake in our findings and 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
- you do not agree that our decision is correct and you want us to reconsider our findings.

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, we will write to you within five working days to confirm we received it.

How we carry out a post investigation review

Once the 10 working days are up, we will review the content submitted post investigation reviews and review this with the evidence gathered. We will decide whether to:

- investigate further
- update the report to reflect comments received
- update the outcomes of the complaint
- not make any changes to the outcomes.

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.