

## **Memorandum of Understanding between the Scottish Charity Regulator and Social Care and Social Work Improvement Scotland**

### **Purpose of the Memorandum of Understanding**

The purpose of this memorandum of understanding is to set out the powers and responsibilities of the Scottish Charity Regulator and Social Care and Social Work Improvement Scotland, and the framework that the organisations have agreed for co-operation and collaboration.



## **1. Purpose of Memorandum of Understanding (MOU)**

1.1 The purpose of this MOU is to set out the framework by which the Scottish Charity Regulator (OSCR) and the Care Inspectorate will work in partnership in respect of care services registered with OSCR and the Care Inspectorate.

1.2 OSCR and the Care Inspectorate are fully committed to the aims of this MOU which are to:

- promote a common understanding of the role and functions of each organisation and their regulatory responsibilities, working procedures, legal powers and constraints;
- promote co-operation between OSCR and the Care Inspectorate and their staff at an operational level;
- promote better regulation and minimise the burden of regulation for care services in Scotland registered as charities;
- facilitate effective and appropriate exchange of information with the objective of assisting each organisation to achieve its objectives; and
- ensure appropriate consultation on matters of mutual interest.

1.3 This MOU does not affect existing statutory functions or amend any other policies or agreements relating to the activities of OSCR and the Care Inspectorate. Furthermore, nothing in this MOU restricts the exercise of each body's respective statutory responsibilities.

1.4 This MOU is not a contract and is not legally enforceable. However, OSCR and the Care Inspectorate agree to adhere to its principles and show proper regard for each other's activities, all so far as is consistent with ensuring compliance with their respective statutory responsibilities.

## **2. Role and function of the Scottish Charity Regulator (OSCR)**

2.1 OSCR is established under the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act') and is the regulator of charities in Scotland. Section 1 (5) of the 2005 Act sets out OSCR's general functions:

- to determine whether bodies are charities
- to keep a public register of charities
- to encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act
- to identify and investigate apparent misconduct in the administration of charities and take remedial or protective action in relation to such misconduct;
- to give information or advice, or to make proposals, to the Scottish Ministers on matter relating to OSCR's functions.

### **3. Role and function of the Care Inspectorate**

- 3.1 The Care Inspectorate was established under section 44(1) of the Public Services Reform (Scotland) Act 2010 ('PSR Act 2010') as an independent body responsible for the scrutiny and improvement of care, social work and child protection services in Scotland. The Care Inspectorate has a general duty of furthering improvement in the quality of social services. It has a number of duties and powers specified in the PSR Act 2010 and regulations made there under.

### **4. Registered social landlords**

- 4.1 A number of charitable care services are Registered Social Landlords (RSL's) and are also registered and regulated by the Scottish Housing Regulator. OSCR and the Care Inspectorate both have an MOU with the Scottish Housing Regulator which outlines working arrangements in relation to RSL's, and both these documents should be referred to when dealing with an RSL. These documents are available on the Scottish Housing Regulator, the Care Inspectorate and OSCR's websites (except from time to time when they may be temporarily removed for the purpose of updating and revision).

### **5. Information sharing**

- 5.1 Section 24 of the 2005 Act permits OSCR to disclose information to any public body or office holder for any purpose connected with the exercise of OSCR's functions or for the purpose of assisting the public body or office holder to exercise their functions. It also permits an office holder in the Scottish Administration, a Scottish Parliamentary Corporate Body, a local authority, a police officer or Scottish public authority to disclose any information to OSCR for the purpose of enabling or assisting OSCR to exercise its functions.
- 5.2 The Care Inspectorate has a duty under section 51(1) of the PSR Act 2010 to provide information to the public about the availability and quality of social services.
- 5.3 Both OSCR and the Care Inspectorate will ensure that any disclosure of information under the terms of this MOU is carried out in a manner that is efficient, proportionate and fully compliant with the law including, the Data Protection Act 1998, the Freedom of Information (Scotland) Act 2002, the Human Rights Act 1998, the common law duty of confidentiality, the 2005 Act and the General Data Protection Regulation (Regulation (EU) 2016/679).
- 5.4 Information exchanged by both parties under the terms of this MOU is not a disclosure under the Freedom of Information (Scotland) Act 2002.
- 5.5 OSCR and the Care Inspectorate will not disclose information received under the terms of this MOU to any other person or body without the

consent of the disclosing party. If, however, the request is made under the Freedom of Information (Scotland) Act 2002 we will make a decision based on its legislative requirements and consult with the disclosing party before releasing. When disclosing information, the provider will make it with the appropriate government protective security classification wherever possible.

## **6. Regulatory joint working**

6.1 OSCR regulates over 24,000 charities and the Care Inspectorate approximately 15,000 care services. Our joint constituency can include, amongst others:

- Registered Social Landlords providing care services;
- Playgroups and nurseries;
- School Care Accommodation Services; and
- Care Homes

6.2 OSCR and the Care Inspectorate agree where possible to share information about regulated service in order to identify the extent of joint constituency.

## **6.3 Specific areas for collaboration**

### Complaints and investigations:

6.3.1 The Care Inspectorate is the regulator of care services, so will deal with any complaint that is of a care standard nature. OSCR is the charity regulator and will deal with complaints where there is evidence of serious misconduct or mismanagement in the administration of a charity or threat to charitable assets. Should either receive a complaint not under their jurisdiction they will refer appropriately.

6.3.2 Complaints about care services can be taken directly to the Care Inspectorate prior to the complainer going through the care service's internal complaints procedure. Therefore, should OSCR receive a complaint about the care provided by a care service registered with the Care Inspectorate, the complainant will be given the Care Inspectorate's contact details at the point of referring them back to the service provider. If the complaint is serious, either regulator may investigate following their set procedures. In cases where it transpires both regulators are conducting an investigation simultaneously, if appropriate, they will liaise with a view to determining their respective roles and responsibilities and any potential for information sharing arising out of the said investigation.

6.3.3 If there are inquiries by either body as a result of any type of complaint, discussions about this inquiry may take place between OSCR and the Care Inspectorate and the information and plans of action shared will follow the procedure outlined in section 7 below.

6.3.4 Both bodies will also notify each other if an inquiry is of a significant nature and is likely to result in action being undertaken by either body. For example:

- Where a safeguarding issue occurs that gives rise to a concern about whether charity trustees are complying with their legal requirements
- Where a charitable care provider has failed to comply with enforcement action taken by or directions from either body
- Where inquiries by either body have identified issues with a charitable care provider that:
  - put beneficiaries'/service users at substantial risk
  - put in question the continued viability of the charitable care provider
  - indicate serious wrongdoing by the charity trustees
- Where initial inquiries indicate a need for OSCR to take protective action pending the outcome of a full inquiry

#### Regulatory reporting

6.3.5 The reporting/notification requirements of both regulators are quite different and therefore charitable care services must follow the requirements of each regulator in regards to annual reporting and any changes a care service wishes to make.

6.3.6 There are a number of changes that a charitable care service can make that requires the consent of or notification to either or both regulator(s). Generally charitable care services should make themselves familiar with all these instances and ensure they follow the process defined by either regulator.

6.3.7 To inform their regulatory activities OSCR and Care Inspectorate have agreed that they will specifically share information in the following instances:

- OSCR with the Care Inspectorate
  - When OSCR is notified that a charitable care service has changed its name.
  - When an application is made to OSCR from a charitable care service to wind up or dissolve.
  - When an application is made to OSCR from a care service to become a charity.
- Care Inspectorate with OSCR
  - When a notification is made to the Care Inspectorate in respect of a charitable care service that a liquidator, receiver, administrator or trustee in bankruptcy has been appointed in respect of the provider of that care service.

This process will follow the procedure set out in section 7 below.

#### Change of legal form

6.3.8 Where a charitable care service decides to change legal form (e.g. from an unincorporated body to a SCIO) they must follow the process set out in guidance agreed by OSCR and the Care Inspectorate. Both bodies have specific requirements in this area that charitable care services must review before starting out in this process. The guidance will not be altered or amended without the agreement of both bodies.

#### Individual or Group Review

6.3.9 OSCR will provide the Care Inspectorate with any anticipated timetables for individual or group review that involves a charitable care service. This will allow the Care Inspectorate to take cognisance of this in respect of any of their planned reviews.

#### Notifiable Events

6.3.10 OSCR has in place a Notifiable Events scheme where charities are required to report to us when something serious has happened or is happening to the charity. Charitable care bodies are required to report to us where there is a significant financial, funding or charity trustee issue that would impact on the overall charity. OSCR does not require a notification on situations regarding the delivery of care services and these should be reported to the Care Inspectorate directly. OSCR and the Care Inspectorate will share information on these as appropriate.

### **7. Agreed process for information sharing on individual cases**

7.1 In order to facilitate the flow of information in relation to individual cases/services, the Care Inspectorate and OSCR will appoint specific points of contact ("SPOCs") for casework related matters.

7.2 Any sharing of information between both regulators will be conveyed by the relevant SPOCs. If a matter is to be reported in either direction, the SPOCs will first consult with each other, preferably by telephone, and later in writing, to provide:

- A briefing on the case, including actions that have already been taken and actions that are likely to be taken. Where appropriate, information about any previous involvement with the organisations and the individuals concerned should be included.
- Written details of the name, telephone number and e-mail address of the relevant case officer.

### 7.3 The SPOCs will ensure that:

- The disclosure of information and referral of individual cases are screened and processed with an appropriate degree of uniformity and speed.
- Any general information, intelligence, announcement or warning that either OSCR or the Care Inspectorate considers will impact directly on the other must be brought to the attention of the other and it must be disseminated appropriately within OSCR and the Care Inspectorate.

7.4 SPOCs will also be available to provide general advice about OSCR's or the Care Inspectorate organisation and procedures.

## **8 Policy development and liaison**

8.1 Both regulators recognise there are areas where it will be possible to work together on the development of similar policy. An example of this could be in regard to consultation and participation methods, policy, performance frameworks, equality and risk.

8.2 The regulators will also collaborate on external communications or handling external media interest where there is matter of mutual interest. Both regulators will also have regard to each other in the production of guidance and where applicable agree strategies for the dissemination.

8.3 As regulators of charitable care providers, both regulators will work together to ensure that the relevant law is interpreted and applied in a way that achieves consistency of decision making and a seamless regulatory regime that promotes effective regulation without imposing an unnecessary burden on charitable care services.

8.4 In order to achieve this, representatives of OSCR and the Care Inspectorate will make contact as appropriate either by telephone or e-mail, and where major issues arise meetings may be arranged.

8.5 In order to ensure that matters are handled at the appropriate level, contact between OSCR and the Care Inspectorate should be established between designated points of contacts (see Appendix). Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

## **9. General**

9.1 Whilst it is intended that the arrangements in this MOU should apply generally, it is recognised that some circumstances will require special handling. Nothing in this MOU prevents the making of arrangements to meet specific exceptional needs.

9.2 Any disagreement arising from the interpretation of this MOU will be referred to the Chief Executives of OSCR and the Care Inspectorate, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements. The MOU will be amended if necessary to reflect the agreed outcome of the referral.

9.3 The MOU will be reviewed every three years

  
**David Robb**  
**Chief Executive**  
**Scottish Charity Regulator**

  
**Karen Reid**  
**Chief Executive**  
**Care Inspectorate**

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**Appendix 1 – Specific points of contact**

<b>Area of Liaison</b>	<b>Care Inspectorate</b>	<b>OSCR</b>
Development of Strategic Policy and Legal Framework	Chief Inspector; Children's Services .	Head of Casework
Register Information		
Charitable Status Issues		
Monitoring & Compliance		