



Procedure for Care Commission Staff in Respect of Child Protection

■ Procedure for Care Commission Staff in Respect of Child Protection

The role of the Care Commission in promoting the protection of children and vulnerable adults is enshrined in the principles set out in the Regulation of Care (Scotland) Act 2001, which states that ‘the safety and welfare of all persons who use, or are eligible to use, care services are to be protected and enhanced’. All activity associated with the regulatory process must be carried out in accordance with this principle, with a view to ensuring that services meet the identified needs of individual service users in a manner which promotes and respects their independence and, in so far as it is practicable to do so, affords them choice in the way the service is provided, while maintaining their safety.

The need for the Care Commission to develop a child protection policy and practice guidelines for staff was identified in a previous operational plan. Appendix 1 provides background definitions in respect of child protection. The report of the Scottish Executive’s child protection audit and review along with the publication of the Framework Standards for Child Protection and the Children’s Charter, has reinforced the need for the Care Commission to have a coherent position.


The purpose of this procedure is to provide the mechanism whereby Care Commission staff can consider child protection matters, both in the context of assessing the policies and procedures of providers and in responding to any child protection concerns they may come across in their day to day work. It is important to emphasise that the role of the Care Commission is not to undertake child protection investigations. That is the responsibility of local authority social work staff and the police, and the methodology for it is set out in local area child protection guidelines. Rather, the role of the Care Commission is a regulatory one in considering the safety of service users in any care service.

Registration

In considering any application for registration, Care Commission officers should assess the extent to which a provider has demonstrated their commitment to ensuring the protection of children.

Where a fit person interview is undertaken, the interviewee should be required to demonstrate a sound understanding of child protection issues and describe their child protection procedures.

During the process of registration, the Care Commission may be made aware of concerns regarding an applicant’s suitability to provide a service to children and young people. The source of this information may be anonymous, or provided by another organisation including Disclosure Scotland. All such allegations/information must be discussed with the applicant



and, if appropriate, permission sought to request further information from other relevant agencies eg the local authority/police. Where the allegation implies immediate or significant risk to a child, this must be reported to social work/police, in line with the area child protection guidelines. The Care Commission officer, in conjunction with their team manager will need to exercise professional judgement in reaching a decision regarding the suitability of an applicant for registration.

An effective child protection policy is of central importance; however this should not be viewed in isolation. Consideration should be given to any other policy or procedure which may serve to protect the safety and wellbeing of children, eg recruitment and selection, restraint, behaviour management/use of sanctions, confidentiality, and the management and supervision of therapeutic interventions. It should be noted that a thorough assessment of child protection measures should not be confined only to those services which provide direct care to children. All applications to provide care services to adults should also be examined to ensure that there is understanding of their responsibilities in relation to child protection. During the process of registration and inspection Care Commission officers will be required to assess the content and effectiveness of a service provider's child protection policy. The following checklist provides guidance for staff in identifying the key components of a comprehensive policy. This should cover the points below.

1. A statement that the provider will follow the local area child protection committee guidelines.
2. A description of the staff/provider/manager responsibilities.
3. A statement of what the provider will do if there are suspicions of abuse/neglect. This should include contacting police and local social work department and, where relevant, the 'placing' local authority.
4. A description of information which will be recorded in the event of concerns regarding child protection; date, time, place and a record of concerns, eg observations or adult/child disclosure.
5. Arrangements to ensure staff awareness of child protection issues; access to policy, induction/on-going training.
6. Phone numbers for local social work and police.
7. Arrangements to ensure that children and young people have access to independent advice appropriate to their needs, eg Childline, children's rights officer, Children 1st, social work, police, Who Cares?.
8. Arrangements for regular review of the policy.

A child protection policy should not be viewed in isolation but be considered as integral to the process of ensuring a safe, caring and supportive environment for children and young people. It is therefore important that Care Commission officers consider other relevant policies which serve to protect the interests of service users. The following procedures

should be cross referenced with the child protection policy as appropriate:

- Staff recruitment/training ie staff are selected, recruited and trained in compliance with SSI 2002/114. This should include enhanced disclosures, references, policy and procedure on use of internet
- External manager functions
- Whistle blowing policy
- Behaviour management policy
- Bullying policy
- Incident & accident reporting procedures
- Restraint policy
- Sanctions policy
- Complaints policy
- Staff code of conduct
- Staff supervision policy and arrangements for team meetings
- Staff disciplinary procedures
- Policy on dealing with young people who abscond, who monitors the register, will children be interviewed?
- Arrangements for recording external providers of support, eg Who Cares?, children's rights officer.

A childminder does not require a child protection policy but must provide a statement on how they will address child protection matters. Finally, it should always be remembered that any policy or procedure is only as good as the understanding of those operating it. The most important concern is that the provider knows what to do if confronted with a child protection concern.

Inspection

The process of inspection provides an opportunity to assess the overall quality of a service, taking into account compliance with regulations and the attainment of the National Care Standards. Inspection also provides an opportunity to test the effectiveness of a service's policies and procedures. Assessing the robustness of a service's child protection policy and procedures is fundamental. The process requires to be evidence based, providing an evaluation of the extent to which the prescribed standards are met.

In order to help Care Commission officers determine the robustness of a service's child protection policy and procedure, the following checks should be undertaken. Child protection procedures should be invoked by the service if the service has concerns that the child may be the subject of abuse outwith the service or there is concern that activity within the service may be abusive.



Check as to whether the service has had to invoke child protection procedures since the last inspection.

If they have, then follow the path of this child(ren) through the inspection process (you may need to include others who have not been party to child protection activity).

If they have not invoked child protection procedures, select randomly three case files for cross referencing with, for example the following records.

Cross reference the following records, as appropriate:

- Child protection policy and procedure
- Policy and procedure on use of internet
- Whistle blowing policy
- Behaviour management policy
- Bullying policy
- Care plans
- Review records
- Correspondence
- Detail records
- Incident/accident log
- Restraint records
- Sanctions policy and records
- Log book
- Complaints record
- Staff supervision
- Details of any disciplinary investigations
- Team meetings.

Discuss with staff and young people:

- their knowledge of the service's child protection policy and procedures
- what has happened when they have raised matters of concern?
- what staff training has been available?

Where child protection measures have been undertaken, contact the social worker(s) involved (and the placing social worker(s), where different) to establish whether they consider the service's response/actions to be appropriate. This can be done by telephone. Record the responses.



An assessment should be made with regard to:

- the suitability of the policy/procedure
- whether action taken (where necessary) was appropriate
- any patterns which may emerge with regard to practice in the service
- whether any improvements (informal or formal legal enforcement) are required on the basis of evidence gathered.

This assessment should be recorded in the report and on PMS.

This is applicable to all services for children and those adult services where children might visit or be accommodated on a temporary basis.

Protection of Children (Scotland) Act 2003 and the ‘Disqualified from Working with Children List’

During inspection (or indeed, through any other channel) if a member of Care Commission staff becomes aware that a person working in a ‘child care position’ paid or unpaid:

1. harms a child or puts a child at risk of harm (this includes harm that is not physical), and
2. is dismissed or moved away from contact with children because of this, or would have been dismissed if they hadn’t resigned, retired, been made redundant or left at the end of a temporary contract, they must be referred to the list.

If a person is convicted of an offence against a child, the court can refer them to the list.

Detailed guidance on the Protection of Children (Scotland) Act 2003 is already available on Compassnet and should be referred to where necessary.

Addressing matters of immediate and/or serious concern during an inspection

During the course of an inspection, Care Commission officers may find evidence of abuse or poor practice which potentially places children at risk, or a child may disclose that (s)he is being, or has been, abused. In either case the Care Commission officer must take action to ensure the matters are addressed. Where a lay assessor has such concerns, these must be immediately raised with the Care Commission officer leading the inspection. The welfare and safety of the child must always be the paramount consideration.

Concerns that a child is suffering from abuse

- As part of the inspection, the Care Commission officer should have access to the agency's policies and procedures with regard to the recognition and referral of cases of suspected child abuse.
- The Care Commission officer should advise their team manager and, in all cases where it is believed that a child has suffered previously un-investigated abuse, or is suffering (or is at risk of suffering) from abuse, the matter must be referred immediately to the relevant agencies. (The contact information and explanation as to how this will be done is contained in the area child protection guidelines which will be accessible to the Care Commission officer and these guidelines must be followed. **Note: the placing social worker must be advised either by the investigating team (police/social work) or by Care Commission staff. It is the responsibility of these agencies to act upon the information provided, not the responsibility of the Care Commission officer. The Care Commission officer should check that action has been taken and note this in the inspection file. In addition, the Care Commission officer must liaise with the investigators to ensure that issues pertaining to the ongoing regulation of the service can be considered. Consideration must also be given to whether the Care Commission, the investigating agency, or both, should advise other local authorities (as potential commissioning/placing authorities) of the situation.** Discussion needs to take place with the team manager to determine whether enforcement action is required to ensure the safety of children.
- If the concern has come about as a result of a disclosure from a child or children, the Care Commission officer must take the disclosure seriously and take appropriate action by referring immediately to the relevant agencies. The child must be reassured and advised that their concerns will be shared with the appropriate people.
- If the disclosure alleges abuse by a parent or other relative, the matter must not be raised directly with the parent. To do so may contaminate evidence. Instead, the child protection guidelines for the area should be followed.
- If the disclosure alleges abuse by staff, eg in a residential unit for children and young people, school or early years setting, the matter must not be raised directly with the staff concerned. To do so may contaminate evidence. Instead, the area child protection guidelines should be followed and the disclosure should be referred on as they advise.
- Where the disclosure alleges abuse by other children or young people, the manager of the service should be verbally advised as quickly as possible and subsequently in writing. The Care Commission officer must ensure that the matter is referred on, as advised by the area child protection guidelines.
- If the disclosure relates to allegations of abuse within a setting regulated by another body, eg in a residential school inspected by HMIE etc, that body should also be informed verbally at the earliest opportunity and this followed up in writing.

Concerns that a child is at risk because of poor practice

On occasion, the Care Commission officer may judge that the quality of a service is so poor that children are being placed at risk, eg a worker who condones very risky behaviour by a child, a severe shortage of staff in a care service, premises which are unsafe, or a plan to protect an individual child that has not been implemented.


- In such circumstances, following discussion with the team manager, the matter must be raised with the person responsible for the day to day management of the service and (if different) the person responsible for the service. Consideration must be given to alerting all placing local authorities.
- The reasons for the concern must be fully explained to these persons and they must be advised that they are required to immediately address the matter in such a way as to ensure that children are kept safe.
- If the concerns relate to a setting inspected by another body, eg in a school inspected by HMIE etc, that body should also be informed, verbally in the first instance, and this subsequently followed up in writing.

The key principle is that the safety and welfare of the child is paramount. All decisions and subsequent actions must reflect this principle.

On other occasions it may be that, in the assessment of the Care Commission officer, the quality of the service has been very poor over a considerable period and, whilst not putting children at immediate risk, endangers their safety, health or well-being in the longer term, eg a child living in a residential school that has no facilities to support their disability.

- In such circumstances, following discussion with the team manager, the matter must be immediately raised with the person responsible for providing the day to day running of the service and (if different) the person responsible for the service, as well as the host local authority and the placing social worker.
- The reasons for the concern must be fully explained to these persons and they must be asked to quickly address the matter in such a way as to ensure that children are kept safe and healthy, and feel well supported. They must be required to inform us, either verbally or in writing, how they have done so within an agreed timescale. This may need to be evidenced.
- If the concerns relate to a setting inspected by another body, eg in a school inspected by HMIE etc that body should also be informed.

The key principle is that the safety and welfare of the child are paramount. All decisions and subsequent actions must reflect this principle.



In all cases of concern, the Care Commission officer must fully record details of the allegation and the actions taken to raise the matter with the appropriate agency(ies). The Care Commission must also subsequently follow up the matter with the agency(ies) to ensure that it has been fully and competently dealt with. Formal legal enforcement action may be considered to ensure necessary improvements.

Guidance for Care Commission officers in dealing with disclosure

1. Listen carefully and reassure.
2. Let the person know that you have a duty to report but ensure confidentiality amongst peers and community.
3. Explain what you have to do next and who you will report to.
4. It is not our job to investigate child protection allegations, do not ask leading questions.
5. Ensure you make a full written record of what has been said and, if possible, check the content of this with the person disclosing. Record date, time, place, actual words used by the child and any observed non-verbal behaviour.
6. Do not destroy original notes.
7. Report your concerns to your team manager immediately.
8. The service manager must also be alerted immediately so that they can put into place the service's child protection procedure.
9. Ensure that any allegations of abuse are reported to social work and/or police in line with the area child protection guidelines. Do not assume that the service has reported the incident.

Safe inspection

Consider the environment in which you are operating. Professional judgement should be made as to where and when it is best to interview children and young people in private. Staff of the service should be asked for guidance with regard to this.

If children and young people invite you to their rooms, this should be checked with staff on duty regarding the appropriateness of this. If it is appropriate, then let staff know this is what you are doing.

If at any time you feel uncomfortable, withdraw from the situation, but ensure that measures are put in place to secure the safety of children and young people.

Complaints

The Care Commission's complaints procedure provides a framework for dealing with allegations of child abuse. In such circumstances complaints should follow the Fast Track procedure, with regional managers being notified immediately of concerns and agreeing an appropriate course of action.

Responding to allegations

When an allegation of child abuse is made, irrespective of the nature of the allegation or the source (including anonymous complaints), it should be acted upon regardless of evidence. Such action involves the immediate notification of the relevant social work department and/or the police, in line with local arrangements as detailed in the area child protection guidelines. The statutory responsibility for the investigation of allegations of child abuse rests with local authority social work and the police. However there may be circumstances in which it would be legitimate for the Care Commission to become involved, ie where the allegation relates to a registered service. In such circumstances it **may** be appropriate for the Care Commission to participate in a multi-agency case discussion to review information and agree action. At this stage an initial risk assessment must be undertaken to establish any regulatory action which requires to be taken with the provider/service to ensure the safety of the child and any other children being cared for. The process of risk assessment should include a review of all available information about the relevant care service, in particular past complaints. There should be ongoing liaison with the local authority/police, in relevant circumstances, to ensure that the Care Commission can take account of the outcome of any investigation they make with regard to our ongoing regulatory duties and activities.

Enforcement

Where it is established that a service is operating in a manner which fails to adequately protect children, the Care Commission will require to take enforcement action, either to protect the child who has been subject to abuse, or other children who are receiving a service. Such enforcement action may include the imposition of conditions on registration, serving an improvement notice, or making application for emergency cancellation of registration. Decisions regarding proposed enforcement action should be agreed within the Scheme of Delegation. It should be noted that the implications of unnecessary delays in taking enforcement action, in particular moving to emergency cancellation, is likely to significantly undermine the Care Commission's ability to demonstrate the reasonable grounds for such action. In addition, enforcement action may be appropriate in circumstances when there is insufficient evidence to lead to criminal proceedings, but where there is evidence which suggests the provider may not be suitable to provide a care service to children.

Appendix 1

Background child protection definitions

Area Child Protection Committees

Each local authority has duties in relation to child protection, which are developed by the inter-agency Area Child Protection Committees, which address all allegations of abuse or neglect.

It is imperative that the Care Commission's response to child protection issues is based on best practice, and compatible with local arrangements.

Definition of a child

For the purposes of these guidelines a child is defined as a person under 16 years of age. However, the guidelines should also be followed where concerns relate to any child under the age of 18 who has learning disabilities, or who is a service user of a service the primary purpose of which is to provide care to young people, eg school care accommodation, care homes for children and young people.

Legislative framework

The legislative framework for intervention in child protection matters in Scotland is found mainly in the following:

- The Children (Scotland) Act 1995 which requires local authorities to promote the welfare of children in need, and to make enquiries when they receive information that a child may be in need of compulsory measures of supervision.
- The Police (Scotland) Act 1967, which requires the police to guard, watch and patrol in order to prevent crime, preserve order and protect life and property, and to pass information to the Procurator Fiscal when an offence may have been committed.
- The Criminal Procedure (Scotland) Act 1995 – Schedule 1 which lists offences against children.

Categories of abuse

All forms of child abuse involve the elements of a power imbalance, exploitation and the absence of true consent, whether they relate to deliberate acts where the predictable outcome would include harm to the child, or acts where the outcome is a failure to protect the health, safety or welfare of a child.



Physical injury

Actual or attempted physical injury to a child, including the administration of toxic substances, where there is knowledge, or reasonable suspicion, that the injury was inflicted or knowingly not prevented.

Non-organic failure to thrive

Failure to meet expected weight and growth norms or developmental milestones, which does not have a basis in a hereditary or medical condition, and is reversible.

Emotional abuse/emotional neglect

Failure to provide for the child's basic emotional needs such as to have a severe effect on the behaviour and/or development of the child.

Sexual abuse

Any child below the age of consent will be deemed to have been sexually abused when any person, either deliberately or by neglect, causes that child to be involved in any activity that might reasonably be expected to lead to sexual arousal or gratification of that, or any other person, including organised networks. This definition holds whether or not there has been genital contact, and whether or not the child is said to have initiated the behaviour.

Physical neglect

This occurs when a child's essential needs are not met. Such needs include food, sleep, nappy changing, clothing, cleanliness, shelter and warmth. A lack of appropriate care, including deprivation of access to health care, may result in persistent or severe exposure, through negligence, to circumstances, which endanger the child.

This can also occur when an adult carer persistently pursues or allows a child to follow a lifestyle inappropriate to the child's developmental needs, or which jeopardise the child's health. Or, when a child is left unattended or inadequately supervised, though careful judgment is required as to the appropriateness of any care arrangements.

■ HEADQUARTERS

Care Commission
Compass House
11 Riverside Drive
Dundee
DD1 4NY
Tel: 01382 207100
Fax: 01382 207289
Lo-call: 0845 603 0890
enquiries@carecommission.com
www.carecommission.com

■ REGIONAL OFFICES

■ CENTRAL EAST

Compass House
11 Riverside Drive
Dundee
DD1 4NY
Tel: 01382 207200
Fax: 01382 207288
Lo-call: 0845 600 8331

■ CENTRAL WEST

4th Floor
1 Smithhills Street
Paisley
PA1 1EB
Tel: 0141 843 4230
Fax: 0141 843 4289
Lo-call: 0845 600 8334

■ NORTH

Johnstone House
Rose Street
Aberdeen
AB10 1UD
Tel: 01224 793870
Fax: 01224 793899
Lo-call: 0845 600 8332

■ SOUTH EAST

Stuart House
Eskmills
Musselburgh
EH21 7PB
Tel: 0131 653 4100
Fax: 0131 653 4149
Lo-call: 0845 600 8335

■ SOUTH WEST

Princes Gate
Castle Street
Hamilton
ML3 6BU
Tel: 01698 208150
Fax: 01698 282162
Lo-call: 0845 600 8336