

# Care Commission Complaints Procedure

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## Complaints Procedure

### General

The Care Commission is obliged to establish a procedure by which a person (or someone acting on a person's behalf) may make complaints (or other representations) in relation to:

- The provision to the person of a care service, or
- The provision of a care service generally, or
- The exercise by the Care Commission of, or failure by it to exercise, any of its functions under the Regulation of Care (Scotland) Act 2001.

This paper describes the complaints system that will be operated by the Care Commission to deal with such complaints (or other representations - referred to here as "complaints"). The paper sets out the main principles and policy considerations and identifies the mechanism by which complaints will be processed.

Complaints received by the Care Commission will fall into two distinct groups:

- those concerning regulated services
- those concerning the Care Commission

Complaints concerning the Care Commission will fall into two further categories:

- those concerning an individual member of staff
- those relating to how the Care Commission goes about its business

### Key Principles

The Care Commission is committed to ensuring that the Care Commission Complaints Procedure and those staff operating it will take account of the needs of the individual complainant.

Each complaint will be considered by the Care Commission on its individual merits. The Care Commission will take account of the following principles when implementing the Complaints Procedure and will aim to strike a fair balance between them in each case:

- **accessibility:** in particular, complaints should be resolved as close to the point of complaint as possible;
- **effectiveness:** complaints are to be taken seriously and, if found to be justified, appropriate remedies provided;
- **clarity:** the remit of the Care Commission and the roles and responsibilities of members of staff are to be clearly defined;

## Complaints Procedure

- **openness and transparency:** both the complainant and the subject of the complaint should see what process has been applied, that adequate reasons have been given for the determination of the Care Commission and that all parties are kept adequately informed. The procedure will be available in appropriate languages and formats;
- **balance and objectivity:** each complaint should be dealt with on its individual merits and impartially;
- **fairness:** all those involved in the complaints process are to be treated fairly;
- **lawfulness:** the Care Commission will operate within the limits of its statutory authority;
- **confidentiality:** to protect complainers and those complained against where appropriate and possible;
- **consideration:** the Care Commission will deal with people in a courteous and helpful manner;
- **speed:** complaints should be dealt with as quickly as is reasonably possible, and generally within defined timescales;
- **regular monitoring and audit:** to ensure the systems and procedures are operating properly and are appropriately reviewed and improved.

### Legislative Background

The Regulation of Care (Scotland) Act 2001 (“the Act”) states that the Care Commission shall:

#### Section 6

- Establish a procedure by which a person or their representative can make complaints (or other representations) in relation to the care service they are receiving, or about the provision of a (regulated) care service generally;
- Allow people to access its Complaints Procedure regardless of whether they have first gone through the service provider's own procedures;
- Consult all local authorities and health bodies and anyone else it considers appropriate on its proposals for a Complaints Procedure;
- Obtain the consent of Scottish Ministers to its proposals;
- Keep its Complaints Procedure under review, varying it when appropriate, and after consultation, and obtaining consent as above; and,
- Publicise the procedure as appropriate and give a copy to any person who requests it.

#### Section 64

- Establish a procedure by which a person or their representative may make complaints (or other representations) regarding the way in which the Commission has carried out, or failed to carry out, any of its functions under the Act in respect of the person;

## Complaints Procedure

- Consult Scottish Ministers on proposals for such a procedure and obtain their consent to those proposals;
- Keep the procedure under review and vary it whenever appropriate, obtaining consent as above;
- Publicise the procedure as appropriate and give a copy of the procedure to any person who requests it.

Complainants can direct their complaints to the Care Commission (either through a local office of the Care Commission or direct to its Headquarters in Dundee). Complainants do not have to pursue a complaint through the local service provider's own Complaints Procedure before lodging a complaint with the Care Commission. However, the Care Commission will encourage individuals, in the first instance, to pursue a complaint through the local service provider's Complaints Procedure wherever possible.

The Care Commission Complaints Procedure will take account of other relevant legislation such as the Data Protection Act 1998. The Complaints Procedure will be regularly reviewed and may be amended in the light of future legislation such as the proposed legislation relating to adults with incapacity.

### Consultation

The Act requires the Care Commission to consult with its stakeholders on its Complaints Procedure. As part of the preparatory work carried out by the Scottish Executive Regulation of Care Project Group a policy statement on a proposed Complaints Procedure for both the Scottish Commission for the Regulation of Care and the Scottish Social Services Council was drafted and issued for extensive consultation in 2001. All comments received were passed to the appropriate bodies for their consideration.

### Liaison with other Regulatory Authorities

The Care Commission will work with other regulatory authorities such as the Clinical Standards Board for Scotland, the Health & Safety Executive, professional regulatory authorities such as the General Medical Council, Local Authorities, the NHS, the police, HM Inspectorate of Education, and the Mental Welfare Commission. The Care Commission intends that working relationships with these and other relevant organisations will be defined in a Memorandum of Understanding with each organisation.

### The Scottish Social Services Council

The Care Commission and the Scottish Social Services Council (SSSC) want to ensure that people wishing to register a complaint do not need to worry about whether to send it to the Care Commission or the SSSC and can address their complaint to either organisation.

## Complaints Procedure

The Care Commission will therefore work particularly closely with the SSSC in the handling of complaints. The Care Commission and SSSC will enter into a protocol for this purpose. The Care Commission and the SSSC will operate from a single headquarters in Dundee.

A dedicated low-cost telephone line will be available (jointly staffed by the Care Commission and Scottish Social Services Council) for the receipt of complaints and suggestions.

Given the complementary roles of the Care Commission and the Scottish Social Services Council, both organisations may receive complaints which raise concerns pertinent to the statutory functions of the other. The Care Commission and the Scottish Social Services Council will liaise closely to determine how such complaints will be handled on receipt and which body should take the lead in responding to the complaint.

A designated member of each organisation will be responsible for ensuring the appropriate course of action is initiated, and will be responsible for the on-going monitoring of all complaints activity. The Designated Person within the Care Commission is the Care Commission Complaints Officer. The Designated Person within the Scottish Social Services Council is the Registrar.

### **Purpose of the Care Commission Complaints Procedure**

The aims of the Care Commission's Complaints Procedure are:

- to address complaints thoroughly and sensitively within agreed timescales;
- to take account of the needs of individual complainants;
- to resolve complaints as close to the source of the complaint as possible;
- to handle complaints in the way most appropriate to the circumstances, by ensuring that the nature of the complaint and expectations of the complainant are fully understood by key parties before trying to resolve it, and by having available a number of options for investigation and resolution. The complainant will be informed of the method of investigation by which their complaint will be pursued. Complaints investigations may be handled in a number of ways, the following examples of which are not exhaustive:
  - Informal discussion with the complainant
  - Nomination of officer(s) from within or outwith the Care Commission who will clarify the nature of the complaint and the expectations of the complainant and investigate matters

## Complaints Procedure

- Interviews with the complainant, who may be accompanied by a representative
  - Interviews with relevant Care Commission staff, service provider, and service provider's staff, who may be accompanied by a representative
  - Study of documents relevant to the complaint, including letters, reports, forms, procedures, service provider's records and care documentation
  - "round table" discussions with the complainant and relevant Care Commission staff.
- To record and monitor suggestions and complaints received to inform practice with a view to service improvement.

A clear and effective Complaints Procedure has a number of positive benefits:

- it gives those affected by regulation or inspection a means of challenging the decisions of the Care Commission staff, or of seeking redress for mistakes made by the Care Commission;
- it can be used as a commentary on the quality of the work, processes and procedures of the Care Commission and thus help the Care Commission to both plan and practise better;
- it protects the interests of staff, by preventing "ad hoc" inconsistent approaches to dealing with complaints;
- it enables business to continue while matters of concern are being looked into.

### Time Limits

There will be no time limit on making a complaint but, in deciding how to deal with the complaint, the Regional Manager or the Care Commission Complaints Officer will have regard to the practicality of undertaking the investigation of long past incidents and of providing meaningful redress.

However, all allegations of abuse, neglect or improper conduct made by Care Commission staff will be investigated immediately in accordance with the Complaints Procedure.

## Complaints Procedure

### **Fast Track Action/Liaison with Other Agencies**

During the initial assessment of a complaint a judgement may be made that the issues raised require immediate action. Such issues would include allegations of abuse or neglect of service users, conduct which might amount to a criminal offence, serious malpractice or circumstances indicative of a present or potential risk to the welfare of service users.

In such cases, immediate action will be initiated as considered necessary. All relevant authorities will be notified immediately of all known circumstances and the action proposed or taken. Other relevant authorities may include the police, Local Authorities, Health Boards, the Health & Safety Executive, the Mental Welfare Commission, Children's Rights Officers and the Scottish Social Services Council. The complainant will be advised of any appropriate advocacy services, for example the Mental Welfare Commission Welfare Attorney. The decision to initiate Fast Track Action will be taken by either the Regional Manager, or the Complaints Resolution Officer in consultation with the Regional Manager. On every occasion Fast Track Action is taken, this must be recorded.

### **Vexatious Complainants**

Guidance on the designation of a complainant as vexatious, and the procedures which should be followed thereafter, appears in Annex 1.

### **Impartiality**

No employee of the Care Commission or member of the Review Committee should be involved in investigating or determining a complaint in relation to their own acts, omissions or decisions.

### **Chief Executive of the Care Commission**

The Chief Executive is the Principal Officer for the purpose of the handling of cases involving the Parliamentary Ombudsman. The Principal Officer is responsible for informing the Head of the sponsor division within the Scottish Executive about any complaints accepted by the Parliamentary Ombudsman for investigation, and about the Commission's proposed response to any subsequent recommendations from the Parliamentary Ombudsman.

## How to Make a Complaint

A complaint may be made at any Regional Office of the Care Commission or at its Headquarters in Dundee. Complaints may be made in writing, by telephone, by e-mail or in person. A low cost telephone number, operated from the Care Commission Headquarters in Dundee will be available.

Location	Address	Telephone Number
Headquarters Dundee	Compass House 11 Riverside Drive Dundee DD1 4NY	01382 207100 (Prime) 0845 6030890 (Lo-Call)
Central East Region	Compass House 11 Riverside Drive Dundee DD1 4NY	01382 207200
North Region	Johnston House Rose Street Aberdeen AB10 1UD	01224 793870
Central West	Care Commission 4th Floor No 1 Smithhills Street Paisley PA1 1EB	0141 843 4230
South West	Princes Gate Castle Street Hamilton ML3 6BU	01698 208150
South East	Stuart House Eskmills Musselburgh EH21 7PB	01316 534100

Complainants are likely to include:

1. Residents in establishments or users of care services registered or regulated by the Care Commission.
2. Persons or bodies enquiring about or applying for registration with the Care Commission.
3. Staff/Volunteers of services regulated by the Care Commission.
4. Anyone legitimately representing any of the above including MPs, MSPs, and locally elected members.

## The Key Elements

### THE KEY PARTICIPANTS

#### Regional Offices

- 1 **The Regional Manager:** The Regional Manager is responsible for ensuring the Complaints Procedure is adhered to within the Regional Office, for ensuring that all evidence is considered, and for issuing a final decision. Throughout this document, all references to Regional Manager shall include any person(s) for the time being nominated by the Regional Manager to act as his/her deputy and the Manager of the Care Commission Independent Healthcare Division. It is the responsibility of the Regional Manager to ensure that complaints are investigated in a manner proportional to the nature of the complaint and resolved as close to the source of the complaint as possible.
- 2 **The Complaints Resolution Officer:** This person is appointed by the Regional Manager to seek to resolve the complaint as close as possible to the source of the complaint. The Complaints Resolution Officer reports to the Regional Manager. Throughout this document all references to the Complaints Resolution Officer shall include any person(s) nominated to act as deputy for the Complaints Resolution Officer.
- 3 **The Care Commission Officer:** This person is nominated by the Complaints Resolution Officer to investigate the concern(s) raised by the complainant. The Care Commission Officer will work with the Complaints Resolution Officer to ensure the Complaints Procedure is adhered to.

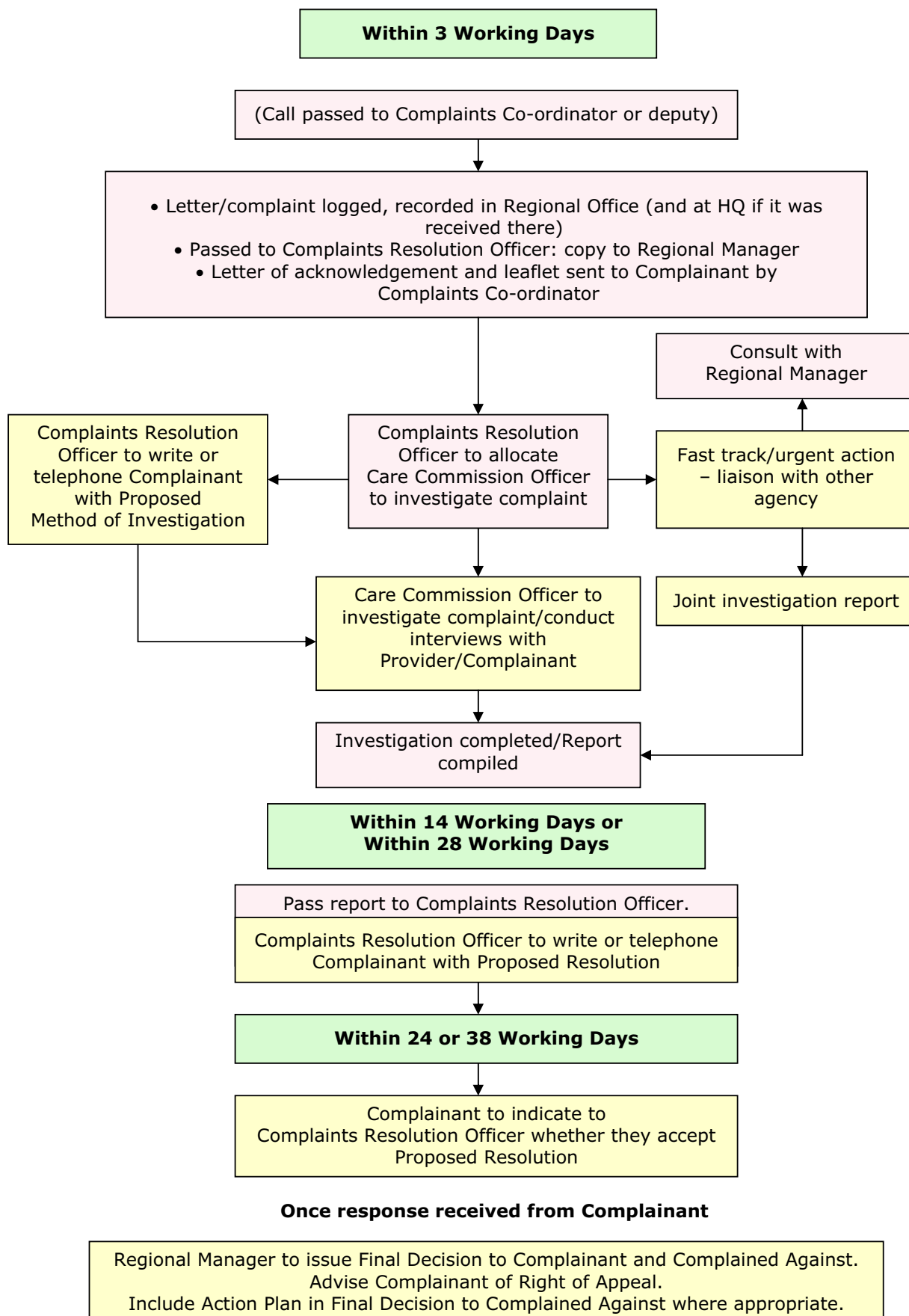
#### Headquarters

- 4 **The Care Commission Complaints Officer:** this role is largely advisory and administrative and is based in the Care Commission's Headquarters in Dundee. Throughout this document all references to the Care Commission Complaints Officer shall include any person(s) nominated to act as deputy for the Care Commission Complaints Officer. The Complaints Officer logs all complaints received by the Care Commission at Headquarters and will receive all complaints activity recorded in the Care Commission's Regional Offices. The Complaints Officer provides a liaison role for all parties, if required, as the procedure progresses. The Complaints Officer receives in the first instance all applications made by complainants for the review of a final decision made by a Regional Manager on a complaint. The Complaints Officer coordinates the functioning of the Review Committee and Complaints Committee. Annex 2 provides further details on the role of the Care Commission Complaints Officer.

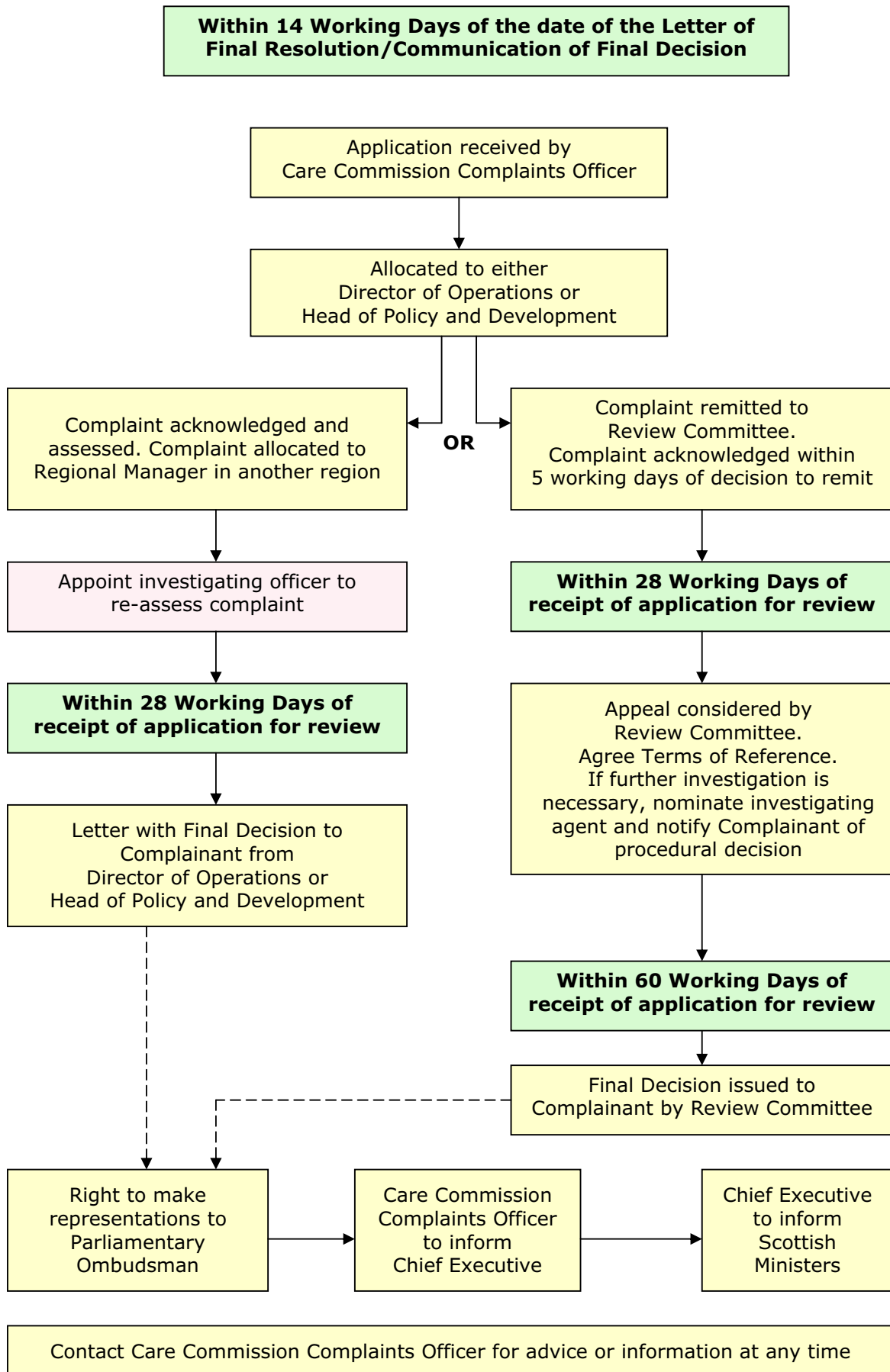
## The Key Elements

- 5 **The Director of Operations:** The Director of Operations receives all review applications for those complainants who are not satisfied with the final decision of a Regional Manager on a complaint relating principally to the way in which the Care Commission has carried out, or failed to carry out, any of its functions under the Act in respect of the complainant (including a complaint relating principally to Care Commission staff).
- 6 **The Head of Policy & Development:** The Head of Policy & Development receives all review applications for those complainants who are not satisfied with the final decision of the Regional Manager on a complaint relating principally to a (regulated) care service the complainant is receiving, or about the provision of a (regulated) care service generally.
- 7 **The Care Commission Review Committee:** this Committee considers those review applications that are remitted to it either by the Director of Operations or the Head of Policy & Development. Annex 4 provides further details.
- 8 **The Care Commission Complaints Committee:** this Committee monitors the operation of the Care Commission Complaints Procedure and makes decisions as to the designation and treatment of vexatious complainants. Annex 3 provides further details.

# The Key Stages of the Care Commission Complaints Procedure



# Review Procedure



## Key Stages of the Complaints Procedure

### 1. Receiving a Complaint

Complaints may be made in person, by telephone, by fax, e-mail or by letter. Individuals making a complaint are encouraged to speak openly and freely and Care Commission staff receiving a complaint should provide reassurance that whatever is said will be treated with sensitivity and, as far as possible, in confidence.

In all cases, the complainant will be advised that they do have the right to request that the Care Commission investigate the complaint. Complainants will be asked if they have pursued the matter with the service provider directly. If they have not, Care Commission staff will suggest that the complainant might like to pursue the matter with the service provider through their complaints procedure in the first instance. Regardless of whether this option is taken up, the complainant details will be recorded and the complainant notified that such a record is being kept.

All complaints will be allocated to a Complaints Resolution Officer or a nominated deputy within 1 working day of receipt. The Regional Manager will be notified of all complaints received at a Regional Office. Within 3 working days the complainant will receive a letter of acknowledgement together with a Complaints Leaflet for their information.

### 2. Assessing a Complaint

Every complaint is dealt with in accordance with the principles of the Care Commission Complaints Procedure. A preliminary assessment of the nature of the complaint is made by a Complaints Resolution Officer and/or the Regional Manager, as appropriate. This assessment will include deciding whether Fast Track Action is appropriate and deciding how the complaint may best be dealt with, having regard to its nature, complexity and seriousness.

The Care Commission does not categorise complaints, but the way in which it tries to resolve complaints will vary. Many complaints may be capable of being resolved quickly. For example, it may be that the issue can be resolved by answering a question, providing information, clarifying a misunderstanding, acknowledging or rectifying a clear error. In these cases, the aim is to seek to resolve the complaint within 14 working days of receipt. If necessary, other people can become involved to help to resolve the complaint; for example, an advocate, friend or the manager of the care service.

## Key Stages of the Complaints Procedure

Other complaints may be more complex and involve talking to several people and a visit to the premises, therefore the investigation may take longer. In these cases the aim is to seek to resolve the complaint within 28 working days of receipt. In all cases if a delay is anticipated with regard to investigating a complaint, the Care Commission will inform the complainant.

Having made an assessment of how best to investigate the complaint, the Complaints Resolution Officer will inform the complainant of how their concerns will be addressed by the Care Commission and the expected timescale. If the timescale is likely to exceed the maximum limit of 28 working days, the complainant will be notified of this in writing giving the reason for the delay and an indication of the likely completion date, where reasonably practicable.

### 3. Investigating a Complaint

Every complaint is allocated to a Complaints Resolution Officer who will, in most cases, nominate a Care Commission Officer to investigate the complaint.

Having been allocated a complaint, the Care Commission Officer (or nominated deputy) charged with investigating the complaint should offer to interview the complainant at a time and place mutually convenient and advise the complainant in advance that they may have a friend/relative/advocate present. (In the case of a child or young person, they must be informed of the services of the Children's Rights Officer).

Failure to arrange an interview should not be taken as a reason to stop any investigation as long as the Care Commission has sufficient information about the nature of the complaint to allow and justify the continuation of the investigation.

The content of the interview with the complainant, including the listing of each complaint should be recorded accurately at interview or within 24 hours thereafter. If prepared after the interview, a draft copy of this statement should then be sent to the complainant for approval and signature. The complainant should always be invited to retain a copy of this signed statement. If any changes are made to the statement, the complainant must be sent a revised copy for signature and retention.

## Key Stages of the Complaints Procedure

All records or notes of interviews are to be treated as confidential. They should not be copied to any other person without the interviewee's knowledge and consent. However, in certain circumstances, the statement may be disclosed to certain authorities having a direct and legitimate interest in the matter, including the police, the Procurator Fiscal, the Health & Safety Executive, the Scottish Social Services Council and the Mental Welfare Commission. The interviewee should be advised of this possibility. (See Annex 1 for further guidelines on confidentiality and dealing with anonymous complaints)

The complainant and any person complained against (including the service provider) should be given a reasonable opportunity to express their views on the subject matter of the complaint and to respond to allegations made against them. The precise timing of seeking such response, in the course of the investigation, is a matter for the discretion of the investigating officer.

### 4. Completing an Investigation

Once the complaint has been investigated a report will be prepared by the Care Commission Officer for the Complaints Resolution Officer. The report will not be disclosed to the complainant or party complained against.

Having received the report, the Complaints Resolution Officer will telephone or write to the complainant with a Proposed Resolution detailing the nature of the complaint, how the complaint was investigated, the conclusion (whether the complaint is upheld, not upheld or partially upheld) and the expected outcome. *In the case where the Proposed Resolution takes the form of a letter, a Complainant's Statement will accompany the letter. This must be completed by the Complainant to indicate whether or not they accept the conclusion, and returned within 10 working days of the date of the Letter of Proposed Resolution. The complainant may alternatively indicate their response by telephone within the same deadline. In the case where the Proposed Resolution is communicated by telephone, the deadline for response will be 10 working days from the date of the telephone call.*

## Key Stages of the Complaints Procedure

### 5. Final Decision by the Regional Manager

A Final Decision will be prepared by the Complaints Resolution Officer for issue by the Regional Manager which takes account of the Proposed Resolution and the Complainant's Statement, where applicable, together with any subsequent discussions between the Care Commission and the complainant. The Final Decision will be communicated to the complainant and the party complained against. Where a complaint has been upheld or partly upheld, an Action Plan and timetable for implementation will form part of the Final Decision.

The complainant will be advised at this time of their right to seek a review if they are not satisfied with the Final Decision. The complainant will be advised that any such review application must be received by the Care Commission Complaints Officer at Headquarters no later than **14 working days** after the date the Final Decision was issued by the Regional Manager.

### 6. Action by the Regional Manager Following the Issue of a Final Decision

Subject to the making or outcome of any review application, the Regional Manager shall ensure that any action that requires to be taken by the Care Commission following on from the outcome of the complaint is taken.

Where the complainant is satisfied with the response, or fails to seek a review, or following the outcome of a review:

- a) All the papers should be filed in the Regional Office or Local Resource Centre;
- b) Where appropriate, an Action Plan should be included clearly stating the Care Commission's intentions for action, with timescales and personnel specified. If the action is dependent on a decision by the Regional Manager or the Board of the Care Commission this should be stated;
- c) The Director of Operations and/or Regional Manager shall monitor the implementation of the Action Plan;
- d) The computerised complaints record system will be updated to ensure appropriate monitoring.

It is the responsibility of the Director of Operations to monitor the Regional Manager's response and actions in relation to complaints and to report to the Head of Policy and Development where the response or actions, or subsequent inaction warrant it. This information will be collated and reported to the Care Commission Complaints Committee for review.

## The Review Procedure

Where the complainant is not satisfied with the Regional Manager's decision and seeks a review, the Regional Manager should;

- a) Cease any contact with the complainant in respect of the complaint;
- b) Send the original papers to the Care Commission's Complaints Officer within three working days; and
- c) Ensure that copies of the papers are archived in the Regional Office.

### 1. Right to Seek a Review

If the complainant is not satisfied with the Regional Manager's decision (in whole or in part), the complainant may seek a review of the complaint (in whole or in part) by the Director of Operations or Head of Policy & Development, as appropriate.

To do so, the complainant must lodge a written application ("the review application") with the Care Commission Complaints Officer in Dundee within 14 working days from the date of the final decision of the Regional Manager. The review application must explain the basis on which the review is sought.

On receipt of the review application (and the decision and related papers from the Regional Manager), the Complaints Officer will acknowledge receipt of the review application and determine whether the complaint relates principally to:

1. the way in which the Care Commission has carried out, or failed to carry out, any of its functions under the Act in respect of the complainant (including a complaint relating principally to Care Commission staff);  
or
2. a (regulated) care service the complainant is receiving, or about the provision of a (regulated) care service generally.

If the complaint relates principally to paragraph (1) above, the Complaints Officer shall remit the review application to the Director of Operations for processing and decision.

If the complaint relates principally to paragraph (2) above, the Complaints Officer shall remit the review application to the Head of Policy & Development for processing and decision.

## The Review Procedure

Having regard to the nature of the outstanding complaint and review application, the Director of Operations or Head of Policy & Development (as appropriate) shall determine the nature of any further investigation to be carried out, nominate an investigating agent (if appropriate) and generally determine further procedure. The complainant (and the party complained against) shall be advised of any decisions regarding such further investigation and procedure.

Within 28 working days from the date of receipt of the review application, the Director of Operations or Head of Policy & Development (as appropriate) shall seek to issue their final decision. This final decision will contain the findings, conclusions and any action to be taken.

### 2. Review by Review Committee

The Director of Operations or the Head of Policy & Development may remit the complaint (in whole or in part) to the Care Commission Review Committee for its consideration.

Within 5 working days of a decision to remit to the Review Committee, the Complaints Officer shall:

- (i) log the review application, and
- (ii) issue an acknowledgement to the complainant

**Within 28 working days** of receipt of the review application, the Complaints Officer shall convene the Review Committee.

Having regard to the nature of the complaint and review application, the Review Committee shall examine the evidence and judge whether a further investigation is necessary, or whether the original decision should be upheld. The Committee will determine the nature of any further investigation and nominate an investigating agent. The complainant will be notified in writing of the Committee's procedural decision.

The report of any investigating agent appointed by the Review Committee shall be forwarded immediately upon completion to the Review Committee. The report should not be disclosed to the complainant or party complained against, except on the instruction of the Review Committee. It is for the Review Committee to respond to the complainant.

Following receipt of a report following re-investigation, the Review Committee may convene a hearing to hear submissions by, or on behalf of, the complainant or party complained against.

Prior to reaching a final decision, the Review Committee may issue a proposed decision for comment by the complainant.

## The Review Procedure

**Within 60 working days** from the date of receipt of the review application by the Care Commission Complaints Officer in Dundee, the Review Committee shall issue to the complainant its final decision on the complaint, detailing its findings, conclusions and any action to be taken, if appropriate.

The final decision of the Review Committee should not conclude that disciplinary proceedings be taken against any person.

Unless the Convener decides otherwise, the Review Committee's report will be sent only to the complainant and the Committee members.

The final decision will state that the complainant has the right to pursue matters with the Parliamentary Ombudsman, if not satisfied. Further details appear in Annex 4 (Terms of Reference for Review Committee).

The outcome of each review will be recorded, and the type of investigation and the determination logged.

### 3. Conduct of Proceedings before the Review Committee

The process should be informal and flexible and not confrontational, adversarial or legalistic. Proceedings before the Review Committee must be held in private.

The complainant, and any person complained against, should be given a reasonable opportunity to express their views to the Review Committee. Only with the approval of the Convener may those accompanying the complainant and the complained against contribute to the panel's proceedings.

The specific needs of the complainant such as those from ethnic minority communities, children, or those with physical and other disabilities should be fully considered.

Reasonable records of the Review Committee's proceedings should be kept to facilitate the preparation of its report.

## Specific Issues

### **Allegations of Abuse**

All allegations of abuse, neglect or improper conduct made to and by Care Commission staff must be reported through the Complaints Procedure. Such allegations will always be investigated by senior members of staff. Where there is prima facie evidence of a criminal offence the Regional Manager will ensure the complaint is referred to the police or Procurator Fiscal for criminal investigation.

### **The Care Commission Disciplinary Procedure**

The Complaints Procedure has distinctly different aims and objectives from the Care Commission's Disciplinary Procedure and the two processes should be kept quite separate. Where it emerges in the course of investigating a complaint that there is prima facie evidence of serious wrongdoing by a Care Commission employee or where it otherwise appears appropriate, the Care Commission Disciplinary Procedure will be initiated. All such cases will be reported to the Director of Operations. The Complaints Procedure may be suspended pending the outcome of the Disciplinary Procedure or, alternatively, it may be allowed to continue concurrently with the Disciplinary Procedure, depending on which course of action appears appropriate in the circumstances. The complainant and relevant Care Commission staff shall be advised of the decision.

In most cases Care Commission staff will be informed when a complaint has been made in connection with their work performance. However, there may be circumstances where this is not appropriate, for example when the proper investigation of the complaint is liable to be prejudiced by such disclosure.

Similarly, the Care Commission Complaints Procedure is not the appropriate means by which to investigate grievances of employees regarding terms and conditions of employment with, or acts or omissions of, their employer (including the Care Commission), except where such grievance relates to the provision of a care service or the exercise by the Care Commission of its statutory functions. Where it does not, such grievance should be pursued under separate employment grievance procedures.

### **Complaints by Care Commission Staff including those who have recently left the service**

Care Commission staff have a clear duty to report situations in which they believe individuals or bodies are being disadvantaged or unfairly treated either by other Care Commission staff or by the policies and practices adopted by the Care Commission.

## Specific Issues

### **Issues Relating to the Scottish Social Services Council (“SSSC”)**

A complaint which raises issues relevant to the statutory functions of the SSSC will be referred to the Care Commission Complaints Officer by the Regional Manager concerned.

The Complaints Officer will log the complaint and pass on details of the complaint to the Registrar of the SSSC for appropriate action.

The Complaints Officer and the Registrar of the SSSC will determine who is to undertake direct liaison with the complainant and relay that decision to the complainant and Regional Manager.

Following conclusion of the investigation, a letter determining the complaint will be issued to the complainant by the lead officer with a copy to the other organisation.

### **Information on Complaints Received by the Care Commission**

All complaints will be logged and archived in the appropriate Region. Details of each complaint will be transmitted to Headquarters via the Care Commission electronic practice management system.

A quarterly report of complaint activity will be presented to the Complaints Committee for examination (see Annex 3 for Terms of Reference).

A report detailing complaint activity, together with Care Commission key performance indicators such as response times, will be published annually in the public domain.

In addition, reference to complaints regarding a specific service will be included in inspection reports, which are also in the public domain.

Complaints received about the Care Commission and how it conducts its business will also be published annually.

### **Monitoring of Complaints Activity**

The Care Commission accepts that the outcomes from the investigation of complaints provide valuable learning material for the organisation. Accordingly, the Care Commission will record and monitor all outcomes and will prepare reports to be considered by the Complaints Committee of the Care Commission on a quarterly and annual basis. The indicators by which each complaint will be monitored include

- Type of complaint
- The geographic location of the complaint
- Care service
- Nature of investigation
- Findings, conclusions and recommendations
- Outcome

### **Timescales for Complaints Procedure**

It is recognised that in certain cases (particularly those involving multiple allegations, complexity, disciplinary action, criminal proceedings, or non-availability of witnesses), targeted timescales may require to be extended. In the event of such a delay, the Care Commission will keep the complainant informed. The Complaints Committee will monitor performance on targeted timescales and report to the Care Commission Board.

For the purposes of targeted timescales for response or action by the Commission, a working day is any week day from Monday to Friday which is not a local or national public holiday.

### **Concurrent Investigations by Other Authorities**

Where another body has a legitimate interest in the subject matter of a complaint and commences, or proposes to commence, a concurrent investigation, the Care Commission shall liaise with that body to attempt to agree how the matter should be handled, by whom and within what timescales. The Care Commission shall be entitled to proceed with, or suspend, the Complaints Procedure, in whole or in part, in connection with that complaint, during the concurrent investigation, depending on which course it considers appropriate in the circumstances. Where the Care Commission elects to adopt, in appropriate cases, a secondary role to an investigation by, for example, the police or another regulatory or statutory body, it may await the findings of such investigations before determining what action to take. In appropriate cases, the Care Commission may choose to take certain interim measures to protect the interests of service users. This may include (but shall not be limited to) a temporary freeze on new admissions to a service, pending the outcome of the concurrent investigation.

The Care Commission shall not be obliged to suspend its investigation by reason merely of the interest or concurrent investigation of another body. The complainant will be notified in the event of a suspension.

## Specific Issues

### **Reopening a Completed Complaint**

Guidance on the reopening of a closed or completed complaint appears in Annex 1.

### **The Relationship between the Complaints Procedure and Concurrent Court Action**

Where the subject matter of Court proceedings involving the Care Commission is connected with, or related to, the subject matter of a complaint pursued by a person under this Complaints Procedure, the Complaints Procedure may be suspended pending the outcome of the Court proceedings. If suspended, the Complaints Procedure may be recommenced in connection with the whole or any part of the complaint following conclusion of the Court proceedings. Such Court proceedings may include the exercise of any right of appeal to the sheriff under the Act or judicial review proceedings or otherwise.

Nothing in this Complaints Procedure shall alter or affect the obligation of any person to lodge or pursue any such Court proceedings within time limits imposed under statutory authority.

# Annexes

## Annex 1

### **Anonymous Complaints/Confidentiality**

Normally the Care Commission will respect the wishes of complainants who identify themselves but ask for their identity to be protected throughout any investigation. However, this may not be possible where it appears that a criminal offence may have been committed, as the Care Commission may be obliged to pass the information to the police to investigate. The complainant will be notified if the Care Commission has passed information to the police. The Care Commission recognises that the general right to have the identity of an individual protected could be abused and, therefore, in all cases protection of identity should be subject to the Care Commission being satisfied, on reasonable grounds, that there is a good reason for doing so.

The Care Commission will only accept anonymous complaints where it seems, from compelling and reasonable grounds, that the principle of openness ought to be overridden in the interests of a person or persons in receipt of a care service. When accepting anonymous complaints it will often be the case that anonymity will limit fuller investigation of the complaint and that it reduces the ability of the Commission to give a proper response to the allegation.

### **Reopening Cases/New Information**

Once a complaint has been processed in accordance with the Care Commission Complaints Procedure, the case will be closed. The case would not be reopened unless information were provided which may have been previously available, but was unknown to either the complainant or the Care Commission. Such information will be classified as new information. A case may also be reopened where new information is provided which was available at the time of the previous investigation but which was, for whatever reason, not in the hands of the Care Commission at the time of the decision. A “new case” might be used to trigger re-investigation of an old “closed” case, where there exists the possibility of a pattern of behaviour being established.

### **Vexatious Complainants**

A very small minority of complainants may properly be treated as vexatious. The limited resources of the Care Commission, and the time of its staff should be expended on a vexatious complainant only in limited circumstances, to be determined by the Care Commission Complaints Officer under the direction of the Complaints Committee.

## Annex 1

Recommendations to treat a complainant as vexatious will be referred to the Complaints Committee of the Commission. If, after appropriate investigation, such a recommendation is endorsed by the Complaints Committee, the complainant will be advised accordingly. All Regional Managers will be advised of such decisions. Thereafter the vexatious complainant will not be entitled to make use of the Complaints Procedure except with special leave of the Care Commission Complaints Officer.

Such special leave may be granted where, for example, a complaint is made by the vexatious complainant which is unrelated to a previous complaint, involves allegations of serious malpractice, abuse or neglect and is supported by prima facie evidence from an independent source. In that event, where such special leave is granted, the complaint will be considered on its individual merits and investigated according to the Complaints Procedure. Complaints by a complainant who has been designated as vexatious will be referred by the Complaints Officer on a case by case basis to the Complaints Committee, for information and monitoring purposes only.

The following circumstances may be regarded as illustrative of conduct by a vexatious complainant. This list is not exhaustive or conclusive.

- **Unreasonably persisting in pursuing a complaint** where the Care Commission Complaints Procedure has been fully and properly implemented and exhausted.
- **Unreasonably changing the substance** of a complaint, or continually raising new issues, or seeking to prolong contact by continually raising further concerns or questions whilst the complaint is being addressed. (Care must be taken not to discard new issues which are significantly different from the original complaint. These might need to be addressed as separate complaints.)
- **Unreasonable refusal or failure to accept documented evidence** of treatment e.g. from drug records, nursing records.
- **Unreasonable refusal or failure to identify the precise issues** which the complainant wishes to have investigated.
- **Unreasonable and disproportionate focus on trivial issues.** It is recognised that determining what is a 'trivial' matter can be subjective and careful judgement must be used in applying this criterion.

## Annex 1

- **The threat or use of physical violence, verbal abuse or harassment** towards Care Commission staff at any time. This will in itself cause personal contact with the complainant and/or their representatives to be discontinued, and the complaint will, thereafter, only be pursued through written communication. All such incidences should be documented. Staff must recognise that complainants may sometimes act out of character at times of stress, anxiety, or distress and should make reasonable allowances for this.
- **Grossly excessive numbers of prior contacts** with other regulatory or supervisory bodies in connection with the present or prior complaint.
- **Displaying unreasonable demands or expectations** e.g. insisting on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice.

## Annex 2

### **ROLE OF COMPLAINTS OFFICER AT CARE COMMISSION HEADQUARTERS**

The Care Commission will designate a 'Complaints Officer', who is readily accessible to the public and front-line staff. The Complaints Officer's role is to oversee the Complaints Procedure on behalf of the Chief Executive to whom he/she is accountable.

The Complaints Officer of the Care Commission has a liaison role in the administration of the procedure, providing a central point of contact and a source of advice to the Senior Managers of the Care Commission, Regional Managers and also to individuals, groups or bodies contemplating or making complaints.

Key Responsibilities of the Care Commission Complaints Officer:

- To provide support and help to staff to respond to complaints and to implement any aspect of the Complaints Procedure
- To receive complaints addressed direct to the Care Commission in Dundee – record and pass to Regional Manager for action within 1 working day
- To receive all review applications and remit these to either the Director of Operations or the Head of Policy & Development
- To convene the Complaints Committee and prepare quarterly and annual reports of anonymous complaints data
- To convene the Review Committee and prepare relevant documentation to assist consideration of each complaint
- To record recommendations for vexatious complainants and ensure these are referred to the Complaints Committee for endorsement
- To notify such complainants of the determination and advise relevant Regional Managers

## Annex 2

In addition the Care Commission Complaints Officer:

- Will send a copy of complaints involving someone with a mental illness or learning disability to the Mental Welfare Commission, where the Regional Manager judges the complaint to be serious
- Should have access to all the relevant records (including personal medical records where appropriate and possible) which are essential for the investigation of any complaint referred to him/her
- Will identify training needs associated with the Complaints Procedure and ensure that these are met
- Should be aware of the availability of, and advise complainants about, the support available from local advocacy services

### CARE COMMISSION COMPLAINTS COMMITTEE

#### 1. Terms of Reference

- 1.1 To review quarterly and annual complaints activity received from all sectors of the Care Commission, including the Independent Healthcare Division and Headquarters.
- 1.2 To determine whether the complaints activity is being pursued in accordance with the principles of the Care Commission and the Care Commission Complaints Procedure.
- 1.3 To examine the data and complaints reporting activity for critical incidents, themes and trends, and require investigations and follow up reports as considered appropriate.
- 1.4 To examine the effectiveness of liaison with other regulatory bodies under the terms of relevant memorandums of understanding, and require refinements if deemed appropriate.
- 1.5 To examine and endorse recommendations for vexatious/persistent complainants.
- 1.6 To examine the application of criteria for decision making by Regional Managers in their implementation of the complaints system to ensure consistency and impartiality of decision making.
- 1.7 To report to the Care Commission suggested amendments to the Care Commission Complaints Procedure.

#### 2. Membership

Chair (Member of Care Commission)  
Vice-Chair (Member of Care Commission)  
**2 Members** of Care Commission

In Attendance

Head of Policy & Development  
Care Commission Complaints Officer  
Other Directors/Heads of Services as required

Quorum

The meeting shall be quorate with 3 members.

## Annex 3

### **3. Frequency**

3.1 The Complaints Committee shall meet at least 4 times per year.

### **4. Method of Reporting**

4.1 The reporting mechanism will be by submission of minutes and reports to the Care Commission.

The Complaints Committee is made up of Non-Executive Members of the Care Commission Board.

## Annex 4

### CARE COMMISSION REVIEW COMMITTEE

#### 1. Terms of Reference

- 1.1 Where the decision/outcome of an individual complaint is deemed unsatisfactory by the complainant at a local level, the complainant has the right of appeal to the Care Commission Review Committee.
- 1.2 Where the complaint concerns a member of the Care Commission staff, such cases will be reviewed by the immediate line manager and reported to the Complaints Committee as part of the general reporting of complaints, but the complainant has the right of appeal to the Care Commission Review Committee.
- 1.3 The Care Commission Review Committee has the power of review to re-investigate a complaint, set terms of reference in collaboration with the complainant, accept new information and reach a determination, call in additional expertise if deemed appropriate, recommend action and provide a report to the complainant.

#### 2. To consider a complaint whose terms of reference have been clearly defined

- 2.1 To investigate the facts of the case, taking into account all the evidence.
- 2.2 To investigate the complainant's concerns in a conciliatory way.
- 2.3 To provide a written report setting out the conclusions with appropriate comments and suggestions.

#### 3. Membership

Chairperson - Member of Care Commission  
**2 members** of the Care Commission

In Attendance

Director of Operations (as appropriate)  
 Head of Policy & Development (as appropriate)  
 Head of Legal Services  
 Care Commission Complaints Officer

## Annex 4

### Quorum

The review committee will be quorate with 2 members and a Chairperson.

#### **4. Frequency**

4.1 When required.

#### **5. Reporting**

5.1 The Review Committee will report to the Care Commission Complaints Committee subject to the deletion of any reference identifying a particular individual or agency.

The Review Committee is made up of Non-Executive Members of the Care Commission Board.

## Annex 5

### **AIMS AND PURPOSE OF THE CARE COMMISSION**

#### **AIM**

The Care Commission's aim is to ensure improvement in the quality of care services in Scotland, respecting the rights of people who use those services to dignity, choice and safety.

#### **PURPOSE**

The Care Commission's task is to put in place a new, unified and effective system of regulation which puts the safety and wellbeing of users at its heart.

In carrying out that task, the Care Commission will

- provide information to the public and to the Minister about the availability and quality of care services;
- take into account the National Care Standards for all care services;
- take into account the Codes of Practice for employees and employers issued by the Scottish Social Services Council;
- consult with the Council when carrying out its tasks.

#### **PRINCIPLES**

The Care Commission will carry out its task according to the principles laid out in Section 59 of the Regulation of Care (Scotland) Act 2001:

- The safety and welfare of all persons who use, or are eligible to use, care services are to be protected and enhanced
- The independence of those persons is to be promoted
- Diversity in the provision of care services is to be promoted with a view to those persons being afforded choice

## Annex 5

### OUR COMMITMENT

The Care Commission is committed to the following:

- That the needs of users will be at the heart of regulation – there will be active involvement of service users and carers – and the focus will be on best outcomes for people

and it will

- be independent and impartial;
- be a lever for change and positively encourage imaginative and creative solutions;
- be open and accessible;
- devise procedures which are consistent, and applied rigorously and fairly;
- work in partnership with all stakeholders;
- apply the same high standards it expects of others to itself.

## Annex 6

### References:

1. The Regulation of Care (Scotland) Act 2001
2. The Management Statement and Financial Memorandum, Scottish Executive 2002
3. Local Authorities Complaints Procedure
4. The NHS Complaints Procedure
5. Cause for Complaint? An evaluation of the effectiveness of the NHS complaints procedure: The Public Law Project
6. The Scottish Executive: Regulation of Care Project – consultation responses and policy position statement issued 2001

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The Scottish  
Commission  
for the  
Regulation of  
Care

For further information log onto [www.carecommission.com](http://www.carecommission.com)  
or telephone any of the above offices