



**LACORS** working  
together



*Making Social Care  
Better for People*

A WORKING ARRANGEMENTS PROTOCOL  
BETWEEN THE HEALTH AND SAFETY  
EXECUTIVE, LOCAL AUTHORITIES  
COORDINATORS OF REGULATORY SERVICES (ON BEHALF OF  
LOCAL AUTHORITIES IN ENGLAND) AND THE COMMISSION FOR  
SOCIAL CARE INSPECTION

3 November 2008

## **Contents**

Introduction

Section 1 Functions of the HSE, LAs and CSCI

HSE

HSE and LAs

LACORS

CSCI

Care Quality Commission (CQC)

Section 2 Safeguarding adults

Section 3 Guidance on working arrangements

Areas of regulatory interest

Inspection

Investigation of accidents, diseases and dangerous occurrences

Investigation of work-related deaths

Complaints, concerns and safeguarding

Information Security, Data Protection and Confidentiality

Liaison arrangements - local

Liaison arrangements - national

Review of the protocol

Annex A - Additional information about CSCI, HSE and LAs

Annex B - Enforcement matrix describing areas of regulatory interest and overlap

Annex C - Case study

## Introduction

1 This protocol is not legally binding but is intended to facilitate effective working relationships between the Health and Safety Executive (HSE), Local Authorities (LAs) in England, and the Commission for Social Care Inspection (CSCI) on areas of mutual interest. The aim is to improve health and safety standards within the care sector by using respective resources and expertise more effectively.

2 It replaces the Memorandum of Understanding (published in 2002) between the National Care Standards Commission (NCSC), HSE and the Local Government Association.

3 The protocol outlines areas of interaction between HSE, LAs and CSCI, clarifies respective roles and responsibilities and puts in place mechanisms to promote effective working relationships at a local and national level. Safeguarding adults procedures are also included as they are relevant to the operation of this protocol.

David Ashton  
Director of Field Operations  
HSE



Paul Snell  
Chief Inspector  
CSCI



Derek Allen  
Executive Director  
LACORS



## **Section 1 Functions of the HSE, Las and CSCI**

### **HSE**

4 The Health and Safety Commission (HSC) and HSE were originally established by the Health and Safety at Work etc Act 1974 as two separate non-departmental public bodies. From 1 April 2008, HSC and HSE merged into a unified HSE which became the single national body responsible for regulating health and safety at work. The merger will not fundamentally change the day to day operations of HSE but will strengthen the links between strategy and delivery. HSC's policies and documents mentioned in this protocol are still current but will be revised in due course and published by the 'new' HSE.

### **HSE and LAs**

5 HSE and LAs are responsible for the enforcement of the Health and Safety at Work etc Act 1974 (HSWA) and relevant statutory provisions throughout thousands of work places across Great Britain. Their mission is to "protect people's health and safety by ensuring risks in the changing work place are properly controlled".

6 The HSWA sets out general duties which employers, the self employed and people in control of premises, have towards employees and others who could be affected by work activities.

7 HSE and LAs undertake health and safety inspections and investigations of accidents or complaints covering occupational health, safety and welfare risks to employees, as well as health and safety risks to members of the public, arising from work activities. Further information about the regulatory role of LAs<sup>1</sup> and HSE, including a guide to the relevant health and safety enforcing authority for each key social care service registered by CSCI, can be found in [Annex A](#).

### **LACORS**

8 LACORS is a local government central body accountable to the UK Local Government Associations (which includes the Local Government Association, Welsh Local Government Association, Convention of Scottish LAs and Northern Ireland Local Government Association) to support local authority regulatory and related services. Their primary function is to support LAs and to advise on legislation and enforcement. Further information can be found on the LACORS website (<http://www.lacors.gov.uk/lacors/home.aspx>).

### **CSCI**

9 CSCI was created in April 2004 by the Health and Social Care (Community Health and Standards) Act 2003. It combines and extends the work formerly carried out by

---

<sup>1</sup> The reference to LAs throughout this protocol relates to their role with regard to the enforcement of health and safety legislation and not to their responsibilities under the National Health Services Community Care Act 1990 to assess an individual's social care needs.

the Social Service Inspectorate (SSI), the SSI/Audit Commission Joint Review Team and the NCSC.

10 CSCI registers and inspects adult care services under the Care Standards Act 2000, as amended by the Health and Social Care (Community Health and Standards) Act 2003 and associated legislation. CSCI also assesses how well local councils in England undertake their social services functions and analyses and comments on the impact of Government and local policies on the people who use social care services.

11 More detailed information about CSCI can be found in [Annex A](#).

### **Care Quality Commission (CQC)**

12 The Care Quality Commission was established by the Health and Social Care Act 2008 to regulate the quality of health and social care and look after the interests of people detained under the Mental Health Act. It will bring together the work of CSCI, the Healthcare Commission, and the Mental Health Act Commission. CQC became a legal entity in October 2008 and takes up its responsibilities for the quality of health and social care in April 2009. A new system of registration will replace the one currently operated by CSCI and for the first time NHS providers will also be within a legally binding system of registration. Further information can be found on the CQC website ([http://www.cqc.org.uk/about\\_us.aspx](http://www.cqc.org.uk/about_us.aspx)).

## Section 2 Safeguarding adults

13 The relevance of safeguarding adults procedures to this protocol is that HSE and Local Authority (LA) inspectors through the course of their work may come across situations where they believe (having considered the definition of “abuse or neglect”) that persons using care services are being abused or neglected. In those circumstances a ‘safeguarding’ referral to social services will be required (see paragraphs 17-22).

14 Safeguarding Adults refers to the local area-based, multi-agency arrangements to ensure that concerns or allegations of abuse are appropriately referred to and investigated by the most relevant agency.

15 Directors of Adult Social Services hold responsibility for establishing and co-ordinating the multi-agency procedures, required by the Department of Health guidance ‘No Secrets’ ([http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4008486?IdcService=GET\\_FILE&dID=1575&Rendition=Web](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4008486?IdcService=GET_FILE&dID=1575&Rendition=Web)) and the Association of Directors of Adult Services (ADASS) national framework document 'Safeguarding Adults' ([http://www.csci.org.uk/professional/Docs/safeguarding\\_adults\\_protocol.doc](http://www.csci.org.uk/professional/Docs/safeguarding_adults_protocol.doc)). The aim of both documents is to ensure that key local agencies, particularly but not solely health, social services and the police, are able to work together to safeguard from abuse adults who may find themselves in vulnerable situations, by developing local multi-agency policies and procedures.

16 The following types of abuse are described in “No Secrets”:

- **physical abuse**, including hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions;
- **sexual abuse**, including rape and sexual assault or sexual acts to which the vulnerable adult has not consented, or could not consent or was pressured into consenting;
- **psychological abuse**, including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks;
- **financial or material abuse**, including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits;
- **neglect and acts of omission**, including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating; and
- **discriminatory abuse**, including racist, sexist, that based on a person’s disability, and other forms of harassment, slurs or similar treatment.

## **Role of the Police**

17 The police will investigate allegations which relate to possible criminal activity arising from the referral (examples include; sexual assault, theft, fraud and physical assault) and related potential prosecutions. In addition the Mental Capacity Act (MCA) 2005 sets out a framework for supporting people who lack capacity to make decisions. It is a criminal offence under section 44 of the MCA for anyone to ill treat or wilfully neglect a person who lacks capacity.

## **Role of CSCI**

18 CSCI will follow their 'Safeguarding Adults Protocol and Guidance', which has been agreed with the Association of Chief Police Officers (ACPO) and ADASS and includes, but is not limited to, arrangements for responding to allegations of abuse and their role with regard to the multi-agency procedures. In any investigation CSCI will need to be mindful of their own statutory responsibilities as a regulator and wherever possible will coordinate actions with other agencies involved in order to preserve evidence and avoid impeding any investigations or enforcement action.

## **Role of HSE/LAs**

19 There are no formal arrangements for health and safety inspectors from HSE and LAs to make safeguarding referrals. However, inspectors may identify issues that they believe constitute abuse during the course of inspections or investigations. Where the service is registered under the Care Standards Act, the inspector should discuss their concerns with CSCI who would then have responsibility to make the referral should it be appropriate. However it is feasible that inspectors may have concerns in services which are not registered (for example day centres). In those circumstances inspectors should contact the safeguarding manager at the relevant LA (details can be found on the LA's social services website).

20 HSE/LA inspectors need to be aware that where social services have accepted a safeguarding adult referral, the safeguarding manager will be required to develop a multi-agency plan for assessing the risk and addressing any immediate protection needs (the Safeguarding Assessment Strategy). In many cases prior to any action being carried out to investigate the concern, a safeguarding assessment strategy meeting or discussion (sometimes referred to as a strategy meeting) is held to agree the investigation strategy, identifying who will do what and when and any risk management interventions that may be required.

21 HSE/LA inspectors should also be aware that a safeguarding investigation may be undertaken by the police and/or an investigation lead by social services. In some cases inspectors and the care provider may be asked to attend the strategy meeting. Whilst HSE/LA will assist as far as they can, they should be sensitive to the fact that any criminal investigation may mean that certain information cannot be disclosed to certain parties (in particular witnesses or potential suspects) at that time.

22 HSE/LA may also be invited to contribute to a serious case review which examines the lessons that can be learned by the agencies involved in a particular case.

## Section 3 Guidance on working arrangements

### Areas of regulatory interest

23 There will be many situations where work activities are covered both by the general provisions of HSWA, and also by care standards legislation.

24 The Care Standards Act, the underpinning service specific regulations, and the associated National Minimum Standards impose some health and safety responsibilities on registered service providers. In the main, these explicitly relate to the health and safety of people who use care services but they also implicitly relate to matters affecting staff such as the standard of training provided.

25 Section 2 of the HSWA requires employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees; and HSWA section 3 requires employers and the self employed to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that other persons not in their employment, (for example people who use care services) are not exposed to risks to their health and safety.

26 The application of HSWA section 2 is relatively straight forward. However the scope of HSWA section 3 is wide and HSE/LAs exercise discretion in deciding what enforcement action is appropriate in accordance with HSE's Policy Statement on the enforcement of HSWA section 3 (<http://www.hse.gov.uk/enforce/opalert.htm>).

27 In areas outside HSE/LA priorities, consideration is given to whether activities that give rise to risk are better regulated by other authorities who may be more suitably placed than HSE to address the risks in question. For example, HSE/LA will give a lower priority to the enforcement of HSWA section 3 where the principal issues involved are the level or quality of care provided, or relate to clinical judgements, such as diagnosis, the choice of treatment and the standard of healthcare. Such issues are regulated by a range of other bodies, including CSCI, the Healthcare Commission, the General Medical Council and the Nursing and Midwifery Council.

28 That said, there may be circumstances where HSE/LAs and/or the police may be involved in investigating deaths and serious injuries to service users under the work-related deaths protocol (see paragraph 49 onwards). For example, where serious systematic failures in the arrangements for delivery of care indicate significant failure to manage health and safety, and service users are exposed to a high level of risk, including risk of death or major injury.

29 Even where another body has responsibility for addressing risks to non-employees, HSE/LA may need to take action to secure control of an immediate risk. Further guidance on this can be found at <http://www.hse.gov.uk/enforce/hswact/imminentdanger.htm>.

30 [Annex B](#) provides a summary table that aims to clarify the role of HSE/LA and CSCI with regard to health and safety issues and identify those areas which overlap. However the limitation of the table is that it cannot account for every scenario that

may arise and in some instances (particularly those identified during accident investigations) the issues identified may span several sections of the table. In these circumstances discussions between the regulators will be key to ensuring that health and safety issues are dealt with appropriately. [Annex C](#) gives an example of a hypothetical case study and identifies how the different regulators might work together.

31 [Annex B](#) should be read in conjunction with the guidance below which outlines the four areas of work where HSE/LA and CSCI may have a mutual interest:

- inspections;
- accidents, diseases and dangerous occurrences;
- fatal accidents;
- complaints, concerns and safeguarding.

## Inspection

32 For the purposes of inspection work the following guidance should be applied to [Annex B](#):

- **Issues 1-3:** HSE/LA will take the lead;
- **Issues 4 and 5:** Health and safety issues affecting both staff and people who use services can be dealt with by CSCI or HSE/LA. In most cases the authority who identifies the issue should take appropriate action. However in some instances a multi-agency approach may be required to secure compliance with both health and safety and care legislation, particularly in those areas which affect both employees and people who use care services;
- **Issue 6:** CSCI will take the lead.

33 The rationale for the above is based on the following:

- it follows the Hampton Principles of “better regulation”; by suggesting that regulators behave in a manner which is targeted, risk-based, proportionate and transparent and which does not place an undue burden on business;
- it acknowledges CSCI’s role and areas of expertise in relation to social care issues;
- it accommodates the LAs’ role in protecting the safety of both employees and the public under the Health and Safety at Work etc Act 1974;
- it allows HSE to prioritise its work;
- it is underpinned by HSE, LAs and CSCI having a consistent approach and following the guidance contained in the Sector Information Minutes (SIM) (produced by HSE and reproduced as Local Authority Circulars (LAC));
  - Scalding risks from hot water in health and social care (SIM 7/2007/08 (<http://www.hse.gov.uk/enforce/opalert.htm>), LAC 79/5 (<http://www.hse.gov.uk/lau/lacs/79-5.htm>));
  - Burning risks from hot surfaces in health and social care (SIM 7/2007/09 ([http://www.hse.gov.uk/foi/internalops/sectors/public/7\\_07\\_09.pdf](http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_09.pdf)), LAC 79/4 (<http://www.hse.gov.uk/lau/lacs/79-4.htm>));

- Falls from windows in health and social care (SIM 07/2007/07 ([http://www.hse.gov.uk/foi/internalops/sectors/public/7\\_07\\_07.pdf](http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_07.pdf)), LAC 79/6(<http://www.hse.gov.uk/lau/lacs/79-6.htm>));
  - Bed rail risk management ( SIM 7/2007/06 ([http://www.hse.gov.uk/foi/internalops/sectors/public/7\\_07\\_06.pdf](http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_06.pdf)), LAC 79/8 (<http://www.hse.gov.uk/lau/lacs/79-8.htm>)).
- CSCI having adopted the guidance contained in the above SIMs/LACs have reproduced the key messages in their Guidance logs which are used by CSCI inspectors to determine how well a service provider is meeting the requirements of the National Minimum Standards. CSCI will also be consulted on any future health and safety guidance relating to health and safety issues for people who use care services to ensure that consistent and appropriate advice is provided to service providers.

### **Communication – working together**

34 It is envisaged that local arrangements will be established through the county liaison groups which are discussed in paragraphs 77-79. But in general terms CSCI, HSE and LAs will endeavour to keep each other informed about work in which the other has an interest, and will inform the other without undue delay of any relevant information that would require their action or assistance (provided that disclosure will not jeopardise any ongoing investigation or future proceedings).

35 In particular HSE and LA inspectors will inform CSCI of any formal enforcement action taken under health and safety legislation against any provider of care as soon as is practicably possible, by telephone, in writing or by email. In the case of Improvement Notices, CSCI should note that any appeal has the effect of suspending a notice. Accordingly the details of the notice should not be disclosed outside CSCI until the time of an appeal has expired (21 days from the service of the notice) or when the appeal process has come to an end.

36 During inspection activities it is likely that issues may arise outside the regulators' jurisdiction. In order to maximise the effectiveness of the inspection it is envisaged that the following action will be taken as appropriate:

- whilst registration is primarily a matter for CSCI, HSE and LA inspectors will inform CSCI if they become aware of any provider of care who is not registered, where that care falls within the scope of registerable activities. Guidance on registration is provided in [Annex A](#);
- where CSCI identifies that health and safety risks to staff are not being adequately managed the inspector should contact HSE or the relevant LA. For example where adequate precautions are not being taken to manage the risks arising from dermatitis, asbestos, legionella or where staff are using people handling equipment but have not been trained to do so;
- where the visiting inspector has reason to contact another regulator to inform them of any concerns, they will inform the care home manager that they have done so.

37 Any disputes about which regulator should take the lead in a particular circumstance should be resolved between the relevant line managers in the organisations concerned. Senior management of the relevant parties should be consulted as appropriate. Where there are national implications the issue can be raised with the Risk and Safety in Social Care Project Board (RSSCPB), discussed in paragraph 87-89.

## **Investigation of accidents, diseases and dangerous occurrences**

### **Role of HSE/LAs**

38 The Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) requires specified incidents to be reported, including the following:

- the death of any person, whether or not they are at work, if it results from an accident arising out of or in connection with work;
- accidents that result in an employee or self employed person dying, suffering a major injury or being absent from work or unable to do their normal duties for more than 3 days;
- accidents arising out of or in connection with work that result in a person not at work suffering an injury and being taken to a hospital;
- an employee or self employed person suffering one of the specified work related diseases;
- one of the specified dangerous occurrences (in social care these are most likely to be the failure of a hoist or sling or a serious fire causing the suspension of work activities for more than 24 hours).

39 The legal duty to report the incident is on the 'responsible person' which is normally the employer and the majority of accidents are reported to the Incident Contact Centre (ICC). In some instances the police, coroner's officer, CSCI, relative or others may inform HSE/LA/ICC of an incident (although the responsibility remains with the 'responsible person'). Further guidance can be found on the RIDDOR (<http://www.hse.gov.uk/riddor/index.htm>) pages of HSE's web site.

40 HSE and LA policy is to conduct investigations in accordance with HSE's Enforcement Policy Statement (<http://www.hse.gov.uk/enforce/enforcepolicy.htm>) which reflects the principles of the Regulators' Compliance Code (<http://www.hse.gov.uk/regulation/compliancecode/index.htm>) and the Code for Crown Prosecutors (<http://www.hse.gov.uk/enforce/enforcementguide/investigation/approving/approval.htm>).

41 Incidents involving issues 1-5 in [Annex B](#) may be considered for investigation by HSE/LA. A proportion of over 3 day injuries, major injuries, diseases and dangerous occurrences are selected for investigation by HSE and LAs, with all work-related fatal accidents being investigated (work-related deaths are dealt with in paragraphs 48-62). These decisions are informed by a number of factors including the published selection criteria (<http://www.hse.gov.uk/enforce/incidselcrits.pdf>) and HSE's Enforcement Policy Statement (<http://www.hse.gov.uk/enforce/enforcepolicy.htm>)

42 Where accidents to people who use care services are not attributed to a work activity they would not be reportable (examples are listed in Annex B- issue 6). Deaths from natural causes are also not reportable. In some instances due to the limited information provided, reportability is not clear and in those circumstances initial enquiries are made by HSE/LA to clarify the situation.

43 It is also foreseeable that HSE/LA inspectors during the course of their investigation may identify failings detailed in [Annex B](#) – issue 6 which may have contributed or been the main cause of an incident. Discussion between the regulators would then be required and further guidance on communication is provided in paragraphs 45-47.

## **Role of CSCI**

44 Registered care providers are required to notify any accident/injury suffered by anyone using the service to CSCI. However CSCI have no legal duty or obligation to investigate those accidents. CSCI powers to inspect relate to the registered service and not in respect of those individuals who use those services. However, whilst CSCI does not have a specific investigatory role, they do have a common interest where information suggests a breach of the Regulations under the Care Standards Act (such as the Care Home Regulations) and in particular where the breach suggests ongoing risks to the people who are using the care service. In such circumstances a random inspection may be undertaken, or the date of a key inspection may be brought forward. Further information about how CSCI inspects can be found in [Annex A](#).

## **Communication – working together**

45 Where HSE/LA selects an accident for investigation it would be helpful at the outset to consider the implications for CSCI and any overlap with care standards requirements. In some circumstances it will be appropriate for HSE/LA to inform CSCI by telephone that an investigation has commenced.

46 For more serious and complex investigations consideration should be given to holding a meeting between the interested parties to establish roles and responsibilities and to share information (provided that disclosure does not jeopardise any ongoing investigation or future proceedings) about the care provider and the circumstances of the incident. At such a meeting consideration may need to be given to the following issues:

- reasons for calling the meeting, including an explanation from the organisation responsible for the meeting;
- nature of the incident;
- role and responsibilities of the police (where applicable) and or HSE/LA and CSCI;
- securing and preserving evidence;
- arrangements for co-ordinating enforcement action that might need to be taken in the short term (to avoid any overlap or duplication);
- information to other interested parties, for example the safeguarding adults team (see paragraphs 13-22);

- sharing information; bearing in mind any restrictions which may be necessary due to the potential for criminal proceedings to be brought.
- contacting relatives of the injured person where appropriate;
- the need to inform and involve other investigating bodies, for example the Medicines and Healthcare Products Regulatory Agency;
- handling communications/media;
- future handling and coordination, including the appointment of a liaison officer from each organisation;
- making and keeping a record of key decisions/discussions;
- the need to inform professional regulatory bodies eg Nursing and Midwifery Council;

47 Each regulator will need to fulfil their statutory obligations throughout an investigation. For example in some instances CSCI may need to take action if people using the care service are at risk. At the same time HSE/LA may also need to serve enforcement notices in response to an on going risk and collate evidence to support possible future legal proceedings. The steps outlined above provide a framework for cooperation and liaison which should allow any conflicts to be resolved and should reduce the likelihood of any one regulator compromising any investigation.

## **Investigation of work-related deaths**

### **Role of HSE/LAs**

48 Taking into account the role of the police (described in paragraph 50), HSE and LAs are required by HSE's Enforcement Policy Statement (<http://www.hse.gov.uk/enforce/enforcepolicy.htm>) to carry out a site investigation of a reportable work-related death in most circumstances.

49 Where appropriate, HSE and LAs will prosecute breaches of health and safety law under the HSWA. In doing this HSE and LAs are guided by the principles of the HSE's Enforcement Policy Statement (<http://www.hse.gov.uk/enforce/enforcepolicy.htm>) which emphasises the serious nature of any death resulting from work activities and reflects the principles of the Regulators' Compliance Code (<http://www.hse.gov.uk/regulation/compliancecode/index.htm>) and the Code for Crown Prosecutors (<http://www.hse.gov.uk/enforce/enforcementguide/investigation/approving/approval.htm>). However, HSE cannot investigate or prosecute unlawful killing, or any other criminal offences outside its health and safety remit.

### **Role of the police**

50 The police, supported by HSE/LA will investigate a work-related death where there is an indication that an offence of corporate or individual manslaughter or a serious criminal offence other than a health and safety offence may have been committed. The police also have an interest in establishing the circumstances surrounding a work-related death in order to assist the Coroner's inquest.

## **Role of the coroner**

51 The Coroner is responsible for deciding on the scope or ambit of their investigation, which may include an inquest. The Coroner must ensure that the relevant facts are fully and fairly investigated and are the subject of public scrutiny during the inquest hearing. The wider public interest also includes the need to ensure that the risk of prejudice to any ongoing investigation and potential criminal proceedings is minimised. HSE's guidance to its inspectors on the roles and interface with coroners can be found in the Enforcement Guide (England & Wales) - Work Related Deaths and Inquests - The Coroner and HSE (<http://intranet/legal/enforcement-guide-ew/wrdeaths/coroner.htm>).

## **Role of the Crown Prosecution Service (CPS)**

52 The decision to prosecute any serious criminal offence (other than a health and safety offence) arising out of the death will be taken by the CPS according to the Code for Crown Prosecutors. Such an offence may be prosecuted either with or without health and safety offences. The decision will be made following discussion with the police, HSE or other enforcing authority involved in the joint investigation.

## **CSCI**

53 CSCI does not have a specific investigatory role as outlined in paragraph 44, although a safeguarding adults referral may be made (see paragraph 18 and the case study at [Annex C](#)). It is also possible that in extreme circumstances, where other people using the service remained at risk from the issue that had resulted in a work-related death, a provider's registration could be cancelled.

## **Communication – working together**

54 In investigating such work-related deaths HSE, LAs and the police will follow the principles contained in the Work-Related Deaths; A Protocol for Liaison (WRDP) (<http://www.hse.gov.uk/pubns/misc491.pdf>). The WRDP sets out the framework for the effective liaison between the police, HSE and LAs (and other signatories) in relation to work related deaths in England and Wales (other bodies acknowledge the principles of the WRDP, including Fire and Rescue Services, but are not signatories to it). The WRDP applies to any incident arising out of, or in connection with work, resulting in one or more fatality, or injuries so serious there is a clear indication, according to medical opinion, of a strong likelihood of death. The WRDP addresses issues concerning general liaison between the various regulators and is not intended to cover the operational practices of the signatory organisations.

55 CSCI will follow the principles of the WRDP and will produce further guidance for their inspectors to support these arrangements

56 The WRDP states that investigations will generally be conducted jointly, with one or more parties taking the lead, or having primacy, as appropriate. The police will always have primacy initially, and will retain primacy until they are satisfied that there is no evidence to suggest a serious criminal offence, (other than a health and safety

offence) has been committed. At that stage primacy can be transferred to HSE/LA to conduct their investigation as described in paragraphs 48-49.

57 Where the police have primacy they will also have responsibility for the management of the overall investigation but HSE/LA and other relevant authorities such as CSCI should remain actively involved in key decisions, similar to those contained in paragraph 46.

58 A further document entitled Work - Related Deaths; An Investigators Guide (<http://www.hse.gov.uk/enforce/investigators.pdf>) has been produced to assist those tasked with investigating deaths in the workplace. It is intended to be read in conjunction with the WRDP and whilst it is not mandatory it takes into account best practice and is intended as helpful practical guidance on following the principles of liaison from the Protocol.

59 Police officers also follow the guidance contained in the ACPO Murder Investigation Manual. HSE and LAs will also follow the advice contained in Operational Circular 165/9 - Work -related deaths: liaison with police, prosecuting authorities, LAs, and other interested authorities including consideration of individual and corporate manslaughter/homicide ([http://www.hse.gov.uk/foi/internalops/fod/oc/100-199/165\\_9.pdf](http://www.hse.gov.uk/foi/internalops/fod/oc/100-199/165_9.pdf)).

60 Decisions relating to investigation / prosecution will be co-coordinated in accordance with the WRDP.

61 This protocol does not affect the operation of the WRDP but should be used in conjunction with it.

62 A safeguarding referral can be made following a death in accordance with the guidance contained in paragraphs 13-22.

## **Complaints, concerns and safeguarding**

### **Role of HSE/LAs**

63 For the purposes of complaints the following guidance should be applied to [Annex B](#) – Areas of regulatory interest and overlap:

- **issues 1-5:** The complaints handling procedure (<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/complaints/>) will be instigated for complaints made by employees or members of the public to HSE. LAs will have their own formal system of redress for complainants. HSE/LA may contact CSCI where complaints affect both people who use care services and employees to ensure compliance with both health and safety and care standards legislation.
- **issue 6:** Complaints will be referred to CSCI for consideration under their Concerns, Complaints and Safeguarding (CCS) policy and procedure for regulated services, and where appropriate action under the CSCI Safeguarding Protocol.

## Role of CSCI

64 For the purposes of complaints the following guidance should be applied to [Annex B](#) – Areas of regulatory interest and overlap:

- **issues 1-3:** Where complaints are received by CSCI they should be referred to HSE or the LA.
- **issue 4:** CSCI may contact HSE/LA to discuss complaints involving both the person using the service and employee health and safety where appropriate to ensure compliance with both health and safety and care standards legislation.
- **Issues 5-6:** Where appropriate CSCI will deal with these in accordance with their Concerns, Complaints and Safeguarding (CCS) policy and procedure, and where appropriate action under the CSCI Safeguarding Protocol. All information received about regulated care services, including concerns and complaints are extremely important to CSCI. However, the role of CSCI in such instances is to ensure the compliance of the provider with their statutory obligations, and where necessary to take action to ensure the quality and fitness of the care service. CSCI does not facilitate remedy and redress for parties in dispute.

The table below illustrates how CSCI manages CCS information. CSCI's CCS policy can be found at: <http://www.csci.org.uk/professional/>

Information	Decision	Owned by
Lost laundry	Concern	Provider
Medicines not being recorded or stored correctly	Complaint	CSCI
Unexplained bruising	Safeguarding issue	Local authority

## Information Security, Data Protection and Confidentiality

65 All staff must comply with the provisions of the Data Protection Act 1998.

66 Each organisation will have a representative who holds overall responsibility for ensuring data protection, security and confidentiality within their own organisation.

### Information Security

67 Personal data or other confidential information must not be transferred using unencrypted portable media (e.g. CD's or USB devices) or e-mail, by regular post, by faxination (other than to agreed and verified 'safe-haven' machines) or by telephone (other than to appropriate and identified persons with a legitimate need-to-know). Information can be shared by registered or recorded post.

68 In particular each of the parties shall ensure that appropriate measures are taken to protect personal data and other confidential information during and after the disclosure process.

69 All information sharing and disclosure of personal data and other confidential information shall only take place and in accordance with the law, including the provisions in the Data Protection Act on a need to know basis.

70 Each of the parties shall ensure employee competency in handling information including a basic understanding of the relevant parts of the Data Protection Act 1998, the Human Rights Act 1998, the Freedom of Information Act 2000 and common law duty of confidentiality.

71 For the avoidance of doubt, there will be no disclosure of any personal data where disclosure would be in contravention of the Data Protection Act 1998, including where any of the exemptions in Part IV of that Act apply. These include (i) national security (section 28), (ii) crime and taxation (iii) regulatory functions. In addition, there will be no disclosure if doing so would be an actionable breach of confidence or would damage a party's ability to do its work in the future.

72 Each of the parties shall obtain the consent of the originator before further sharing or disclosing any information obtained under this protocol with organisations or individuals outside this protocol. The exceptions will be:

- disclosure to third parties that are required by law;
- disclosure in the public interest; each of the parties shall assume consent to disclose in response to a valid request made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 unless advised otherwise at the time of sharing or disclosure;
- disclosure of personal data to the individual concerned; each of the parties shall assume consent to disclose in response to a valid Subject Access Request made under the Data Protection Act 1998 unless advised otherwise at the time of sharing or disclosure unless one of the exemptions in the Data Protection Act 1998 apply;
- each of the parties shall, as a matter of courtesy, inform the others of any such requests received.

73 Each party will keep appropriate records of the personal data and other confidential information that it has provided to or received from other parties to this agreement.

74 Each of the parties is responsible for the integrity of any information that they make available to the other and shall clearly state whether information is fact, opinion or a combination of both.

75 Each party will already have appropriate policies and procedures for approving and authorising the sharing of personal data or other confidential information, and will share those procedures with the other parties.

76 Personal data and other confidential information will only be retained for as long as it is needed – in accordance with appropriate Retention and Disposal Schedules. At the end of this period, that information will be securely returned to the originating organisation or destroyed/deleted as appropriate.

## **Liaison arrangements - local**

### **LA Health and Safety Liaison County Groups**

77 These groups meet in general every three months and provide a forum for LA health and safety enforcement officers and HSE inspectors to promote consistent enforcement practice and uniformity within the county. Additionally they enable the exchange of information and promotion of joint initiatives regarding health and safety.

78 The County Groups provide an existing forum where HSE, LAs and CSCI can meet together to discuss liaison arrangements. For some time CSCI has been invited to attend and this will continue. However, there are numerous County Groups and as such CSCI will not be able to attend all of these meetings. It is anticipated that County Group Secretaries will send agendas and minutes to the named CSCI contact, (regional enforcement managers) who will attend when matters relevant to them are being discussed.

79 To supplement the above CSCI anticipate organising an annual meeting of the Chairs of the County Groups on a regional basis. These meetings will allow CSCI, HSE and LAs to discuss relevant issues, for example, local liaison arrangements or particular concerns at a local level.

Corporate providers of social care services

80 To ensure consistent advice is provided to the large national corporate care providers when inspections/investigations reveal deficiencies of potential national significance, it is recommended that HSE and LA inspectors:

- consult SIM 07/2008/06 (<http://www.hse.gov.uk/foi/internalops/sectors/public/070806.htm>) or LAC 79/10 (<http://www.hse.gov.uk/lau/lacs/79-10.htm>) - HSE National Leads for Corporate Care Providers. The SIM/LAC provides information on the lead contacts for the largest corporate care providers in the UK. Alternatively contact HSE's Public Services Sector to ascertain if there are already national liaison arrangements in place by emailing the [publicservicessector@hse.gsi.gov.uk](mailto:publicservicessector@hse.gsi.gov.uk) account.
- discuss their concerns with the CSCI inspector responsible for the premises. Many corporate providers have a CSCI Provider Relationship Manager (PRM – see [Annex A](#) for information about this role). They will assess whether the concerns should be shared with the PRM who may have additional organisational information about health and safety matters regarding the provider.

## **Work-Related Deaths Protocol – Regional Liaison Committees (RLCs)**

81 RLCs comprise representatives from the signatories of the WRDP. They meet twice yearly to review the operation of the protocol from a local standpoint, to monitor the protocols effectiveness and to communicate any issues to the National Liaison Committee.

82 HSE and LAs are already represented on the RLC.

83 It is anticipated that the secretaries of these groups will send the named CSCI contact agendas and minutes of the meetings. The named contact will be the local enforcement regulation manager. CSCI will only attend these meetings when matters relevant to their organisation are being discussed.

## **Liaison arrangements - national**

### **Work-Related Deaths Protocol–National Liaison Committee (NLC)**

84 The NLC comprises the six signatory bodies of the WRDP. It meets twice a year to review the operation of the protocol and consider the need for changes to the arrangements set out in the WRDP. The RLCs provide feedback to the NLC.

85 HSE and LAs are already represented on the committee.

86 The NLC will extend a standing invitation to the CSCI to attend its meetings. The National Operational Safeguarding lead for CSCI will attend these meetings wherever possible.

### **Risk and Safety in Social Care Project Board (RSSCPB)**

87 The RSSCPB was established in June 2005 following concerns about the regulation of health and safety issues in the social care sector. Membership of the RSSCPB consists of a national representation from HSE, LACORS on behalf of English LAs and CSCI and aims to meet 3-4 times a year.

88 The RSSCPB set out to achieve the following 3 objectives, namely to;

- improve the consistency of advice regarding key risk and safety issues in the social care sector;
- develop and improve the skills and understanding of CSCI, HSE and LA inspectors with regard to safety and risk issues in the social care sector;
- improve liaison and communication channels to enhance effectiveness between HSE, CSCI and LAs.

89 The RSSCPB will continue to work towards these objectives by:

- providing a forum for consulting on any new or existing policy or procedures that may have an impact on each others statutory responsibilities;
- monitoring the use of the protocol so that it can be developed further in light of experience;

- providing a point of focus to discuss and respond to issues of national significance.

### **Review of the protocol**

90 This protocol will be reviewed once the Care Quality Commission has become fully established in April 2010.

# Annex A - Additional information about CSCI, HSE and LAs

## HSE and LAs Working Together

### Organisational structure

1 HSE is subdivided into directorates and divisions. The Field Operations Directorate (FOD) is the largest operational directorate in HSE and is split into 7 geographical divisions. Staff in geographical divisions are involved primarily in front-line activities, giving advice and guidance, contacting and inspecting workplaces, investigating incidents/accidents/complaints and taking enforcement action. Each division has a Divisional Director, Heads of Operations (number depends on size of region) and teams of operational inspectors led by Principal Inspectors. A list of HSE regional and local offices can be found at : <http://www.hse.gov.uk/contact/maps/index.htm>

2 Each LA is an autonomous democratically elected body, accountable to its local community and therefore organisational structures and health and safety priorities vary. There are teams of health and safety inspectors for every LA in England and Wales.

3 **HSE's Public Services Sector** is part of HSE's Policy Group and has responsibility for national policy relating to health and social care, and the development of working protocols/memorandum of understandings etc between various regulatory bodies whose interests and functions overlap with HSE's remit.

4 **Enforcement Liaison Officers (ELOs)** are operational Principal Inspectors and are appointed within each main FOD office to facilitate effective co-operation and exchange of information between LAs and HSE. The ELO provides advice on enforcement and the allocation of premises for the purposes of enforcement under health and safety legislation between HSE and LAs. They also provide support to the LAs strategic enforcement plans.

5 HSE's Local Authority Unit - has national policy responsibility to promote consistency between HSE and LAs in the enforcement of health and safety legislation.

### Regulatory framework

#### Relevant enforcing authority for services registered with CSCI

6 The allocation of premises between HSE and LAs is set out in the Health and Safety (Enforcing Authority) Regulations 1998 (EA) (<http://www.hse.gov.uk/LAU/lacs/23-15.htm>).

7 Under these Regulations, allocation of the enforcement of health and safety in care homes is split between residential and nursing care. It should be noted that this legal distinction previously applied under the Registered Homes Act 1984 and was removed following the implementation of the Care Standards Act 2000. All such homes are designated care homes.

8 Detailed guidance about enforcement allocation for a variety of social care premises (including those not registered by CSCI) can be found in SIM 07/2008/03/LAC 79/9 - Balanced Decision Making for People who Use Health and Social Care Services. For those services registered with CSCI the enforcement allocation is:

- **Care homes.** Where the main activity is the provision of personal care LAs will normally be the enforcing authority, unless the service is owned by the LA in which case it falls to HSE. Where the main activity is the provision of nursing care HSE will be the enforcing authority. Where both services are provided at the same location, enforcement allocation will need to be decided locally;
- **Domiciliary care agencies.** HSE is the enforcing authority for work activities being undertaken in domestic premises. Regulating the actual work of those providing care in a person's home will therefore fall to HSE. LAs will be the enforcing authority for the office activities of the agencies themselves (with the exception of LA in house provision where HSE would enforce), and would therefore have a role in regulating health and safety management arrangements;
- **Nurses agencies.** HSE is the enforcing authority with regard to work activities in domestic premises, therefore regulating the actual work of those providing nursing care in service user's homes. LAs will be the enforcing authority for the office-based activities. and would therefore have a role in regulating health and safety management arrangements;
- **Adult Placement Schemes.** LAs will be the enforcing authority for the office-based activities except for LA in house services. For the work of the actual adult placement carers in domestic premises HSE will be the enforcing authority.

9 The situation above may not prevail in all locations because in 2004 the Health and Safety Commission (HSC) and the Department for Work and Pensions launched a "new strategy for workplace health and safety in Great Britain to 2010 and beyond" (<http://www.hse.gov.uk/aboutus/hsc/strategy.htm>) to improve standards of workplace health and safety. In order to achieve this HSC asked HSE and LAs to develop a Strategic Programme (<http://www.hse.gov.uk/lau/strategic.htm>) to facilitate more effective partnership working. As a result, one of the outcomes has been the piloting of a flexible warrant scheme which authorises both HSE and LA Inspectors to undertake inspection and enforcement activities at premises not allocated to them by the Enforcing Authority Regulations. This means that the list above is a guide only and local enquiries may need to be made to establish the relevant enforcing authority.

## Inspection

10 Inspectors are warrant holders, which affords them legal rights of access to premises and to talk to relevant staff during inspections or investigations.

11 Inspection is the process carried out by HSE and LA warranted inspectors which involves assessing relevant documents held by the duty holder, interviewing people

and observing site conditions, standards and practices where work activities are carried out under the duty holder's control. Its purpose is to secure compliance with legal requirements and to promote improving standards of health and safety in organisations.

## **Enforcement**

12 HSE and LA inspectors use a variety of enforcement tools in order to secure immediate and sustained compliance with the law. will prosecute These enforcement tools range from the provision of advice, to the service of enforcement notices and the taking of prosecutions as necessary. HSE's enforcement policy statement (<http://www.hse.gov.uk/enforce/enforcepolicy.htm>) gives overall direction to HSE and LAs in investigation and enforcement decisions which should adhere to the five principles of enforcement: proportionality, consistency, targeting, transparency and accountability. This reflects the principles of the, Regulators' Compliance Code (<http://www.hse.gov.uk/regulation/compliancecode/index.htm>) and the Code for Crown Prosecutors (<http://www.hse.gov.uk/enforce/enforcementguide/investigation/approving/approval.htm>). Enforcement decisions are also guided by the Enforcement Management Model (EMM). The EMM provides a framework which helps to ensure that enforcement decisions are taken in line with HSE's enforcement policy statement (<http://www.hse.gov.uk/enforce/enforcepolicy.htm>).

## **Commission for Social Care Inspection (CSCI)**

### **Organisational structure**

13 CSCI operates a head office in London, as well as two offices with head office functions in Leeds and Newcastle. There are also seven regional contact centers around the country, information on which can be found in the contact us section of the CSCI website.

14 Each region is managed by a regional director (RD). Business relationship managers (BRMs) report to the RD and are responsible for co-coordinating the programme in one or more local council areas for all inspection, review and regulation activities.

15 CSCI operate three different teams within their regulation of care homes and agencies. These are registration teams, inspection teams and enforcement teams. These teams are made up of regulation managers and inspectors. The registration teams handle everything to do with registration, including processing applications to register providers, managers and services. They also deal with applications to voluntarily cancel registrations. Inspection teams take the lead on all inspection activity and the writing of inspection reports. Enforcement teams manage the region's enforcement strategy, and take the lead in all enforcement activity.

16 Nationally, there are also provider relationship managers (PRM). Each PRM is responsible for working with approximately 8-10 corporate care providers of which there are around 90. This accounts for 20% of the registered adult social care services in England. The PRM's role is to help the corporate providers make

improvements in a consistent and proportionate way, whilst ensuring that innovation is not stifled by the requirements of the national minimum standards. It also provides a quick route for CSCI to deal with issues that arise locally but may have a national impact.

## **Regulatory framework**

17 CSCI regulates adult social care services in accordance with the statutory regulations, and the National Minimum Standards issued by the Department of Health, both of which can be obtained at: [www.csci.org.uk/professional](http://www.csci.org.uk/professional).

18 There are 5 sets of NMS covering the wide range of adult social care services available. Service providers are required to meet the regulations relevant to their service, and although the relevant NMS are taken into account when CSCI makes judgements about whether or not the service is complying with the relevant regulations, they are not legally enforceable in their own right. The NMS are used by CSCI inspectors to assess the performance against the outcomes for each of the NMS. On each outcome group, the provider will be judged as delivering excellent, good, adequate or poor outcomes for people using the service.

19 Inspectors also use GUIDANCE LOGS to interpret the NMS. These are used to interpret a particular standard or when clarification is needed on how a particular aspect of a service should be inspected against the standards for a particular sector.

20 Compliance with national minimum standards is not itself enforceable, but compliance with regulations is enforceable and the national minimum standards must be taken into account.

## **Regulated services**

21 CSCI regulate over 24000 services which fall into the following 5 categories (all required to be registered with CSCI):

- Care homes for older people 65+: residential homes with or without nursing care providing accommodation, meals and personal care;
- Care homes for adults 18-65: residential homes with or without nursing care providing accommodation, meals and personal care;
- Adult placement schemes: Similar to fostering schemes where adults who may have a learning disability, physical disability or mental health needs are placed with adult carers in order to live an ordinary and independent life in the community;
- Domiciliary care: Agencies providing workers for personal care e.g meal times, dressing, bathing;
- Nursing agencies – Agencies providing nurses (for medical care) directly to people's homes.

## Inspection

22 From April 2006, CSCI changed the way they carry out inspections as part of the "Inspecting for better lives" modernisation programme. Detailed information about the changes can be found on the CSCI website. The main changes include:

**23 Frequency of inspections** - In the past the Regulations required that CSCI must inspect adult care services twice a year but now they allow CSCI to apply a risk based approach to inspection, with poor quality services continuing to be inspected a minimum of twice a year, and excellent quality services having an inspection a minimum of once every 3 years.

**24 Key inspections** - The Service Provider is judged on the quality of the service based on their performance against the outcomes of the NMS and the experience of the people using the service. CSCI publishes quality ratings for adult services for all key inspections and ratings are either; 0 stars (poor), 1 star (adequate), 2 stars (good) or 3 stars (excellent). The frequency of future inspections is based upon this rating. Other inspections include random inspections to follow up a serious complaint or issues in an improvement plan, or to look into suggestions that people using the service might be at significant risk. CSCI also carry out thematic inspections looking at a particular social care topic chosen for regional or national reporting.

25 Following a key inspection, Service providers that are rated as 0 stars (poor) are required to produce improvement plans detailing areas for improvement and explaining how and when this will be achieved. These services are closely monitored and become part of a region's improvement and enforcement strategy. Service providers rated as 1 star (adequate) may also be required to produce an improvement plan.

26 Although services that are rated as 2 stars (good) or 3 stars (excellent) will not have a key inspection every year, CSCI still reviews and assesses all the information they hold on the service every year. On, or around the anniversary of the last key inspection an annual care service review takes place. This review includes gathering information from people who use services via surveys. The annual service review is published and assures the public that the quality rating is still sound. If CSCI is concerned that the quality rating may have changed then a random inspection may be triggered, or the key inspection date may be brought forward.

**27 Annual Quality Assurance Assessment (AQAA)** – Each year providers registered with CSCI have to complete a self assessment known as AQAA and send this to CSCI. The AQAA requires the provider to provide quantitative information about their service and to assess their service against the NMS outcome areas and demonstrate both their areas of strength, and those where they need to improve.

**28 Reports** - CSCI reports of key inspections describe how well the service care provider delivers good outcomes for users of the service and areas for improvement. The reports are available on the CSCI website.

## **Enforcement powers**

29 The range of legal powers open to them include immediate requirements for improvement, improvement plans, warning letters, issue of statutory requirement notices , formal cautions and cancellation of a registration. Prosecutions can also be undertaken, but usually after an enforcement notice has been issued and not complied with. In some circumstances for offences, such as breaches under the Care Standards Act, CSCI is able to prosecute without having issued a statutory requirement notice. And in very serious cases they can seek an urgent cancellation of registration via a magistrate.

## Annex B - Enforcement matrix describing areas of regulatory interest and overlap

The table below provides a break down of the key health and safety issues affecting employees and people who use care services. It sets out the relevant legislation and regulator with the lead responsibility for enforcement (sections 1,2,3 and 6) and identifies those areas which overlap (sections 4 and 5).

The table is not definitive and is provided as a guide only as it is not possible to encapsulate all scenarios. In order to use the table in context it should be read in conjunction with paragraphs 23-65 of the working arrangements protocol.

The police (as described in paragraph 51 of the protocol) will investigate a work-related death where there is an indication that an offence of manslaughter (corporate or individual) or a criminal offence other than a health and safety offence may have been committed.

See footnote for list of abbreviations

Issue	Legislation	Lead Enforcing Authority	Example
1. General Safety Management	HSWA 1974 MHSW 1999 MHOR 1992	HSE/LA	a)General safety policy b)Risk assessments related to work activities c)Health and safety arrangements d)Health and safety assistance (competent advice) e)Health and safety information for employees in relation to work related risks f)Co-operation & coordination between employers g)Employers Liability Compulsory Insurance
2. Employee Safety	HSWA 1974 MHSW 1999 COSHH 2002 Workplace (HSW) 1992 MHOR 1992	HSE/LA	Risks arising from: a)Manual handling operations b)Hazardous substances c)Challenging behaviour d)Slips and trips f)Falls from height g)Latex Other issues: h)welfare facilities for staff i)staff accident and ill health reporting
3. Building/facility management – issues arising from the fabric and maintenance of the building which could affect staff, people who use care services and other persons such as visitors and contractors	HSWA 1974 PUWER 1998 Workplace (HSW)1992 LOLER 1998 Electricity at Work Regs 1989 CDM Regs 2007 CAWR 20062006	HSE/LA	a)Maintenance of utilities eg gas, electrics, b)Pressure systems, control of legionella c)Construction and refurbishment work lift maintenance d)Maintenance of work equipment eg laundry, kitchen equipment
4. Risks affecting both people who use care services and employees	HSWA MHOR 1992 COSHH Care Standards Act	CSCI/HSE/ LA	a) Moving and handling activities involving both the person using the service and care worker b) Management of challenging behaviour where restraint techniques are deployed.

	2000		c) Floor & stair surfaces – risk of slip/trip d) Infection control e) Health and safety training provided to staff in areas such as moving & handling, V & A, infections control.
5. Risks to the health and safety of people using the service arising directly from work activities	HSWA 1974 MHSW 1999 Care Standards Act 2000	CSCI/HSE/ LA	Risks arising from: a) Hot water (SIM 7/2007/08 ( <a href="http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_08.pdf">http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_08.pdf</a> ) /LAC79/5 ( <a href="http://www.hse.gov.uk/lau/lacs/79-5.htm">http://www.hse.gov.uk/lau/lacs/79-5.htm</a> )) b) Hot surfaces (SIM 7/2007/09 ( <a href="http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_09.pdf">http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_09.pdf</a> )/ LAC 79/4 ( <a href="http://www.hse.gov.uk/lau/lacs/79-4.htm">http://www.hse.gov.uk/lau/lacs/79-4.htm</a> )) c) Falls from windows SIM 07/2007/07( <a href="http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_07.pdf">http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_07.pdf</a> )/ LAC 79/6 ( <a href="http://www.hse.gov.uk/lau/lacs/79-6.htm">http://www.hse.gov.uk/lau/lacs/79-6.htm</a> )) d) Wandering and absconding from establishments e) Use of Bedrails, (SIM 2007/06 ( <a href="http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_06.pdf">http://www.hse.gov.uk/foi/internalops/sectors/public/7_07_06.pdf</a> ),/LAC 79/8( <a href="http://www.hse.gov.uk/lau/lacs/79-8.htm">http://www.hse.gov.uk/lau/lacs/79-8.htm</a> )) use of lap belts f) Management of challenging behaviour e.g restraint techniques, g) Moving and manual handling operations h) Self harm including suicide (where risk has been clinically identified) i) Consumption and exposure to chemicals drowning whilst bathing
6. Risks to people using the service arising from their identified care needs	Care Standards Act 2000	<sup>2</sup> CSCI	a) Promotion and monitoring of risk assessments with respect to care issues relating to the persons safety: including: risks arising from the care needs of people using the service eg risk of falling due to condition, falling out of bed where bed rails not specified through clinical judgement b) elective risk where service user able to make a choice c) level of care provided d) control & administration of drugs, including incorrect administration of medication for example

Legislation abbreviations:

HSWA - Health and Safety at Work etc Act 1974

MHSW - Management of Health and Safety at Work Regulations 1999

MHOR 1992 - Manual Handling Operations Regulations 1992

COSHH - Control of Substances Hazardous to Health Regulations 2002

RIDDOR - Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 1995

<sup>2</sup> There may be circumstances where HSE/LAs and/or the police may be involved in investigating deaths and serious injuries to service users under the work-related deaths protocol (see paragraphs 26-29 and 49 onwards). For example, where serious systematic failures in the arrangements for delivery of care indicate significant failure to manage health and safety, and service users are exposed to a high level of risk, including risk of death or major injury.

Workplace (HSW) 92 - Workplace (Health, Safety and Welfare) Regulations 1992  
PUWER - Provision and Use of Work Equipment Regulations 1998  
LOLER - Lifting Operations and Lifting Equipment Regulations 1998  
CDM Regs - Construction (Design and Management) Regulations 2007  
CAWR 2006 - Control of Asbestos at Work Regulations 2006  
(\*Other legislation may also apply).

## **Annex C - Case study**

This is a fictional case study that demonstrates how the regulators that have signed up to the working arrangements protocol might work together to resolve an issue.

### **Care home for older people - scalding incident**

HSE receive a RIDDOR notification, informing them that a resident in a care home with nursing has been scalded and admitted to hospital after being put in a hot bath by two care assistants.

As the accident happened in a care home with nursing, it falls to HSE to investigate this incident, rather than the local authority that deals with homes without nursing care.

The HSE inspector contacts the local CSCI office, and asks to speak to the lead inspector for the home. It transpires that CSCI had not been informed of the accident by the home, although the home has a legal duty to inform them via a regulation 37 notification under the Care Home Regulations 2001.

The CSCI inspector and HSE inspector have an initial discussion about the accident. They agree that this requires a safeguarding alert to the local authority, as the nature of the accident indicates that this may fall under one of the types of abuse described in the “No Secrets” guidance. The CSCI inspector agrees to follow this up, and contacts the local safeguarding manager, following the principles of the joint protocol “Safeguarding Adults Protocol and Guidance.”

The local authority accepts the safeguarding referral, and calls a strategy meeting. CSCI already has some concerns about the home and is considering taking enforcement action in relation to staffing issues, the home has a poor (0 star) quality rating, and there have been previous concerns around staff incompetence. So in this instance the CSCI inspector attends the safeguarding strategy meeting. Following this meeting the inspector refers matter to their manager and follows the CSCI enforcement procedure.

HSE decide not to attend the strategy meeting, as CSCI will be there. The CSCI inspector agrees to feed back to the HSE inspector.

Due to the severity of the injuries, the accident meets HSE’s incident selection criteria and is put out for investigation. HSE will examine the procedures the home had in place to manage the risks arising from hot water.

CSCI decides to undertake a random inspection to check the compliance of the provider with the Care Home Regulations and National Minimum Standards in relation to staffing competencies and training, and the notifying of incidents to CSCI. The CSCI inspector also reviews all previous requirements made in relation to the installation of thermostatic mixer valve controls on baths.

The lead inspectors from CSCI and HSE agree to keep one another informed of their activities by phone. The local authority suspends any further admissions to the home, but decides to wait for the findings of HSE and CSCI before taking any further action.

HSE and CSCI agree that prior to either organisation taking any enforcement action, they will discuss their plans with one another.

Following the random inspection, where it was found that staff had not been appropriately trained, CSCI issues a statutory requirement notice in relation to the lack of appropriate staff training in providing personal care and staff competencies. CSCI also issues a statutory requirement notice regarding regulation 37 notifications to CSCI, for all required notifications in the future.

HSE investigate and find that the home has had a new bathroom installed and omitted to have a thermostatic mixer valve control fitted to the bath. HSE issue a prohibition notice in relation to the control of hot water temperatures, preventing the bath being used until a thermostatic mixer valve is fitted. HSE also requires that a bath thermometer is provided for each of the bathrooms and that staff are given instructions to ensure that safe bathing procedures are carried out. HSE identifies a serious breach of HSWA section 3 and following discussion with CSCI, legal proceedings are instigated.

The findings of CSCI and HSE are fed back to the local authority safeguarding manager. The local authority decides to continue suspending placements to the home until standards have improved. They also decide to review existing contracts with the home, to ensure that the home is able to meet the needs of people currently placed there.

CSCI consider whether or not they remain satisfied with the provider's carrying on of this service, and if there are sufficient grounds to cancel the registration or vary the conditions of registration.