

Better regulation: regulatory bodies inspecting social care

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Target Audience:

Local Authority Health and Safety Enforcement Managers, Health and Safety Regulators and others

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Summary

This SIM provides advice to enforcement officers with information on the national arrangements and work activities between the Health and Safety Executive (HSE), Commission for Social Care Inspection (CSCI) and Local Authority Coordinators of Regulatory Services (LACORS). The SIM is applicable to England only (reference to Scotland and Wales is made in paras 28 and 29). Version 2 has been updated throughout and has been produced as LAC 23/21.

Background

1 In 2004 CSCI became the first single independent inspectorate for all social care services in England, replacing the work previously undertaken by National Care Standards Commission (NCSC), the Social Services Inspectorate and the SSI/Audit Commission Joint Review Team (which assesses whether local council's social services provide value for money).

2 In line with the Hampton recommendations and the principles for better regulation HSE, LACORS and CSCI recognised that a Memorandum of Understanding (MOU) and/or other document was required to ensure effective regulation of health and safety issues in the social care sector. To facilitate this HSE, LACORS and CSCI have established a "Risk and Safety in Social Care Project Board" (RSSCPB).

Introduction

3 This circular has been produced to:

- Provide information on the roles and responsibilities of the three key organisations responsible for the regulation of social care in England.
- Communicate the work undertaken by RSSCPB.
- Provide an update on recent and proposed changes.
- Detail the action required by HSE, Local Authorities (LA) and CSCI Inspectors to support delivery of the RSSCPB objectives.

Roles and responsibilities

The Commission for Social Care Inspection

4 CSCI is the single, independent inspectorate for all social care services in England. Its primary aim is to improve social care by putting the needs of people who use social care first. Their main function is to inspect, regulate and promote improvements in adult and children's social care.

5 CSCI was created by the Health and Social Care (Community Health and Standards) Act 2003. CSCI inspects over 28,000 social care services including:

- Adult care homes – 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 learning difficulties, physical disabilities or mental illness are placed with adult carers in order to live an ordinary and independent life in the community.
- Domiciliary care agencies and nursing agencies – Agencies providing care workers (for personal care e.g meal times, dressing, bathing) and nurses (for medical care) directly to peoples homes.

These care providers are required to register with CSCI and seek permission to operate. In April 2007 the regulation of children's services was moved to Ofsted, see para 15.

More detailed information about CSCI can be found in annex 1.

Health and Safety Executive and Local Authorities working together

6 HSE and LAs are responsible for the enforcement of the Health and Safety at Work etc Act 1974 (HSWA) and relevant statutory provisions, to ensure that risks to people's health and safety from work activities are properly controlled. Health and safety inspections and investigations of accidents or complaints may cover all occupational health, safety and welfare risks to employees, as well as health and safety risks to members of the public.

7 HSE enforces in over 740,000 establishments such as factories, farms, mines, nuclear and offshore installations as well as hospitals, private nursing homes and local authority owned residential and nursing homes.

8 LAs enforce in over a million workplaces in Great Britain including privately owned residential care homes.

9 Historically the allocation of premises between HSE and LAs is based on the Health and Safety (Enforcing Authority) Regulations 1998. 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" to improve standards of work place

health and safety. In order to achieve this HSC asked HSE and LAs to develop a Strategic Programme 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. Further information about the regulatory role of LAs and HSE can be found in annex 2.

Local Authorities and Local Authorities Coordinators of Regulatory Services

10 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. Its primary function is to support LAs and to advise on legislation and enforcement. Further information can be found at LACORS website.

Work of the Risk and Safety in Social Care Project Board

11 The RSSCPB was established in June 2005 to “to promote sensible risk management in the social care sector which strikes the right balance between enabling adults and children who use care services to lead independent and dignified lives and the need to avoid and prevent unnecessary harm to them and their carers.”

12 RSSCPB identified 3 key objectives to achieve this aim:

i) Improving the consistency of advice regarding key risk and safety issues in the social care sector by:

- Updating the CSCI Precedence logs (since renamed guidance logs).
- Developing shared guidance for Inspectors based on HSE’s Sector Information Minutes (SIMs).
- Influencing the Review of the National Minimum Standards to promote a consistent approach.

ii) Developing and improving the skills and understanding of CSCI, HSE and LA Inspectors with regard to safety and risk issues in the social care sector by reviewing:

- CSCI Inspector training to identify areas where additional training would improve competencies in Health and Safety.
- The understanding of HSE and LA Inspectors with regard to the operation of CSCI and social care policy.

iii) Improving liaison and communication channels to enhance effectiveness between HSE, CSCI & Local Authorities by:

- Establishing national liaison arrangements.

- Improving local liaison arrangements.
- Providing investigation guidance and advice.
- Revising and replacing the previous Memorandum of Understanding (MOU) (agreed between HSE, Local Government Association (LGA) and National Care Standards Commission) to establish a framework that fosters greater co-operation, co-ordination and to eliminate unnecessary duplication.

13 RSSCPB recognised from the outset the importance of ensuring that all three organisations would be equipped to follow the principles laid down in a future MOU (or similar document). Consequently the early stages of work have concentrated on issues such as communication, liaison and training.

The MOU between HSE, LGA, and NCSC has been removed from the internet as it no longer accurately reflects current operational policy and CSCI's role with regard to work related accident investigations. A new protocol is being developed and will deal with proactive inspection and the investigation of major and fatal injuries. Any operational difficulties that arise whilst new working arrangements are being developed should be directed to contacts in para 27.

Forthcoming changes

Healthcare Commission (HC)

14 The Healthcare Commission was launched in 2004 as an independent body to promote and derive improvement in the quality of healthcare and public health. They are responsible for regulating provision of services in the independent healthcare sector through registration, annual inspection, monitoring complaints and enforcement. CSCI, Healthcare Commission and the Mental Health Act Commission are due to merge in April 2008. It is anticipated that the relationships built now at a national and local level and any formal working agreements will continue under the new body. Discussions are planned to take place with the parties involved.

Office for Standards in Education (Ofsted)

15 In April 2007, regulation of children's care services was moved from CSCI to the Office of Standards in Education (Ofsted). Ofsted are now responsible for the registration and inspection of residential family centres, adoption services, fostering services, adoption support agencies and boarding schools.

16 Ofsted is a non -ministerial government department established under the Education (Schools) Act 1992 to take responsibility for the inspection of all schools in England. It is also responsible for inspecting and regulating childcare, colleges, local authority children's services, teacher training and youth work institutions.

Department of Health (DH)

17 The Department provides strategic leadership to the NHS and social care organisations in England. It has overall responsibility for setting national standards, shaping the direction of health and social care services and promoting healthier living. Health and social care services are delivered through the NHS, local authorities, arm's length bodies and other public and private sector organisations. The DH has appointed a new Director General for Social Care to lead and champion improvements in social care.

Review of National Minimum Standards (NMS)

18 The national minimum standards are currently under review. Changes to the content of the NMS and accompanying regulations (implementation proposed in July 2007) are being considered. There will also be a further review to address possible longer-term changes in response to wider changes in the way social care and health services are regulated. HSE is contributing to the consultation process in order to influence and promote a consistent and proportionate approach to health and safety issues.

Action required

Communication and liaison

19 Local liaison at present varies across the country and a uniform approach may not be practicable, however it is likely that links between the organisations will need to be strengthened in some areas. It is acknowledged that good communication exists between HSE - CSCI and/or LAs - CSCI in some counties, and these should continue. However, it is less likely that good communications exist between all three organisations. For these reasons the following action is recommended.

LA Health and Safety Liaison County Groups

20 The groups meet in general every three months and provide a forum for LA health and safety enforcement officers and HSE to promote consistent enforcement practice and uniformity within the county. Additionally it enables the exchange of information and promotion of joint initiatives regarding health and safety.

21 The County Groups provide an existing forum where HSE, LAs and CSCI can meet together to discuss liaison arrangements. To facilitate this the following action has been initiated:

- The RSSCPB has written to the Chairs of the LA Health and Safety Liaison County Groups asking them to invite a CSCI representative to attend.
- The local HSE Partnership Manager has been contacted and asked to identify and invite the appropriate inspector(s) responsible for the regulation of social care issues in the county.

22 The response to these invitations is being monitored and action to further facilitate liaison at county level will continue. It is envisaged that this forum will provide an on-going opportunity for HSE, CSCI & LAs to discuss and develop liaison arrangements to suit individual county needs.

Corporate providers of social care services

23 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 inspectors:

- Contact Health and Social Care Services Unit (HSCSU) to ascertain if there are already national liaison arrangements in place by either HSE or a LA by emailing the healthservices.gsi.gov.uk account.
- Discuss your concerns with the CSCI Inspector responsible for the premises and obtain the contact details for the relevant CSCI Provider Relationship Manager (PRM – see annex 1 for information about this role). Your concerns should be shared with the PRM who may also have relevant information about health and safety matters.

Work Related Deaths Protocol

24 For information only: Since 1998, a “work- related deaths protocol” has existed signed by the Police, HSE, CPS and later extended to include LAs through their representative body the Local Government Association and the British Transport Police.

A National Liaison Committee on Work Related Deaths (WRD) was established with representatives from the five signatory bodies to review the operation of the protocol.

Regional liaison committees have also been established with representatives from the signatories bodies to meet regularly and to review operation of the protocol from a local standpoint, to monitor the protocols effectiveness and to communicate any issues to the national committee.

The RSSCPB has encouraged local CSCI Business Relationship Managers to make contact with the Regional Liaison Committees to explore the possibility of securing attendance at the meetings as non-signatories, in the same way that Coroners and fire authorities already do. In addition the National Liaison Committee has invited CSCI to attend.

Training

25 CSCI organised a series of 30 one day training workshops for their inspectors between October 2006 and June 2007. The overall aim of this training was to take forward the principles contained in the Government's white paper “Our health, our care, our say” which

sets out the vision for the future of social care. The paper recognises that many service users regard taking risks as a way of enhancing their lives, allows them greater independence, and that personal risk can be a positive influence for people, if it is correctly managed. The training dealt with risk in its widest sense but also dealt with the key health and safety issues which cause the most harm to service users. CSCI inspectors were reminded of the regulatory boundaries between CSCI and other regulators, including the HSE and LAs.

26 A place at each event was reserved for a HSE and an LA inspector to attend, which provided an opportunity for HSE/ LA Inspectors to develop a better understanding of the challenges facing CSCI Inspectors and to contribute to debates about health and safety issues that arose.

Further advice

England:

27 Further information can be obtained from:
HSE-Health and Social Care Services Unit by emailing healthservices.gsi.gov.uk

Wales:

28 A formal MOU has been agreed between Local Authority and Care Standard Inspectorate Wales (CSIW).

Scotland:

29 Work is continuing in Scotland to develop a protocol between HSE and the Scottish Commission for the Regulation of Care (the Care Commission).

Annex 1 - Commission for Social Care Inspection (CSCI)

1 Organisational structure

CSCI comprises 3 head offices in London, Newcastle and Leeds, 9 regional offices and approximately 70 local offices in England. The address of each office can be found in the 'contact us' section of the CSCI website.

Each region is managed by a regional director (RD) with between 4 to 10 Business Relationship Managers (BRM) reporting to them. The BRM is responsible for co-ordinating the inspection programme in one or more Local Council areas for all inspection, review and regulation activities. Each BRM will manage and support between 2-4 Regulation Managers (RM). The RMs are responsible for the inspection, complaints and

enforcement functions undertaken by their team of Regulatory Inspectors (typically 10), including making enforcement recommendations to the BRMs.

Within the regions there are also 14 Provider Relationship Managers (PRM). Each PRM is responsible for around 8 corporate care providers of which there are a total of 110 (including children's services at the moment). This accounts for 25% of the industry. This role was established 2 years ago in response to concerns raised by corporate providers about consistency and uniformity. The PRMs 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.

2 Regulatory framework

CSCI regulates social care services in accordance with the statutory regulations and the National Minimum Standards (NMS) issued by the Department of Health.

CSCI's regulatory role has three statutory functions; registration of social care services, regulation of social care services and annual performance assessment and star rating of Local Authority social care services.

There are 15 NMS covering the wide range of social care services available. Service providers are required to meet the relevant NMS for the service they provide. The NMS are used by CSCI Inspectors to assess the performance against the outcomes for each of the NMS. They make judgments about how well the service provider is meeting those outcomes. On each outcome group, the provider will be judged as providing excellent, good, adequate or poor outcomes for service users.

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.

CSCI apply their enforcement policy when registered services provide unsafe care and fail to comply with the law.

Compliance with national minimum standards is not itself enforceable, but compliance with regulations is enforceable subject to national standards being taken into account.

The range of legal powers open to them include immediate requirements for improvement, improvement plans, warning letters, issue of statutory requirement notices (adult and children's services only), formal cautions and cancellation of a registration. Prosecutions can also be undertaken but only after an enforcement notice had been issued and not complied with, i.e. CSCI are not empowered to prosecute for a breach of an offence other than failure to comply with a notice. However in very serious cases they can seek an urgent cancellation of registration via a magistrate.

3 Inspection

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:

- **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. The frequency of children’s services is currently being consulted on by DfES.
- **Key inspections** - For all adult services, thorough, unannounced “key” inspections are scheduled to take place between April 2006 and June 2007. The Service Provider will be judged on the quality of the service based on their performance against the NMS and the experience of the service user. CSCI are currently consulting on quality ratings for adult services and plan to publish them for all key inspections from April 2007 and will be either; excellent, good, adequate or poor. The frequency of future inspections will be based on this rating. Other inspections include random inspections for investigation of incidents and complaints and thematic inspections for national or regional issues.

Following a key inspection, Service providers that score adequate or poor will be required to produce improvement plans detailing areas for improvement and explaining how and when this will be achieved.

On the anniversary of the first key inspection an annual care service review will take place. This will review and discuss all the information with the service provider before it is published.

- **Annual Quality Assurance Assessment (AQAA)** - A self assessment called AQAA for care homes, domiciliary care agencies and adult placement schemes will be a requirement for all adult services from April 07. The AQAA requires the provider to assess their own service and provide improvement plans for areas which CSCI may have identified during an inspection.
- **Reports** - CSCI have introduced new style reports which report on how well the service care provider delivers good outcomes for users of the service. The reports are available on the CSCI website.

4 Investigation of accidents and complaints

CSCI have confirmed that the current legislation does not impose any obligations or duties upon them to separately undertake investigations in respect of work related accidents that have occurred. The only powers CSCI have are of inspection and that is in respect of inspection of regulated services or local authorities (and not in respect of individuals who use those regulated services) as contained in sections 31 and 32 of the CSA 2000 and similar provisions in the H&SCA 2003. Whilst they do not have a specific investigatory

role, they do have a common interest where information suggests there are breaches 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 using the service as defined in their “Safe guarding Adults” protocol.

The safeguarding adult’s protocol has been developed by CSCI, the Association of Directors of Social Services (ADSS) and Association of Chief Police Officers (ACPO). The document promotes consistency with regard to the ‘no secrets’ guidance produced by DH for LAs. The new protocol clarifies the role of the key agencies collaborating in multi-agency procedures designed to protect vulnerable adults who may be the subject of abuse or neglect. It sets out key elements to the way in which CSCI will respond to a safeguarding alert. There may be occasions when HSE are contacted via this route as some accidents to service users may be as a result of neglect. Discussions are taking place to clarify HSE’s role in this procedure and will be communicated in due course.

CSCI encourage care providers to follow up complaints themselves but will inspect the service for more serious cases when it appears that regulations may have been breached. Complaints are investigated using the enforcement policy and working closely with the police, local council, NHS trust and other agencies.

Annex 2 - HSE and Local Authorities working together

1 Organisational structure

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 in the link below.

There are teams of Health and Safety Inspectors for every Local Authority Council in England and Wales. Each local authority is an autonomous democratically elected body, accountable to its local community and therefore organisational structures and health and safety priorities vary.

HSE’s Health and Social Care Services Unit is part of the Public Services Programme in the Policy Group Directorate. It has responsibility for national policy relating to health and social care and the development of MOUs between various regulatory bodies whose interests and functions overlap with HSE’s remit.

2 Regulatory framework

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

HSE and LA inspectors use a variety of enforcement tools in order to secure immediate and sustained compliance with the law and, where appropriate, to hold duty holders to account for breaches of the law. These enforcement tools range from the provision of advice, to the service of enforcement notices and the taking of prosecutions as necessary. HSCs enforcement policy statement 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.

Section 18(4) of the HSWA requires that LAs perform their duties in accordance with guidance from the HSC. This guidance commonly known as 'Section 18 Guidance' is therefore mandatory. The aim of this guidance is to ensure LAs manage their enforcement function effectively.

3 Inspection

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 dutyholder's control. Its purpose is to secure compliance with legal requirements and to promote improving standards of health and safety in organisations.

4 Investigation of accidents and complaints

The way that inspectors investigate complaints and accidents are governed by set procedures. The procedures details the action required from receipt to selection, follow up, investigation and enforcement. All Local Authority and HSE staff who take enforcement decisions are required to follow Health and Safety Commission's Enforcement Policy Statement.