

MEMORANDUM OF UNDERSTANDING

Between

THE SCOTTISH PUBLIC SERVICES OMBUDSMAN

and

**SOCIAL CARE AND SOCIAL WORK IMPROVEMENT
SCOTLAND**

(‘THE CARE INSPECTORATE’)

July 2016

1. Scope and purpose of Memorandum of Understanding

- 1.1 The purpose of this Memorandum of Understanding (MoU) is to set out the functions of the Scottish Public Services Ombudsman (SPSO) and the Care Inspectorate and to describe the arrangements for co-operation and communication between the two bodies in relation to their respective functions and handling of complaints.
- 1.2 Each organisation will take steps to ensure that staff are aware of the content of this MoU and the responsibilities it places on them.
- 1.3 This MoU aims to help achieve the statutory functions, objectives and responsibilities of both organisations by:
 - securing co-operation and the exchange of information between the SPSO and the Care Inspectorate subject to any legal constraints, including the need to respect personal or commercial confidentiality;
 - fostering mutual understanding and effective relations generally between the two bodies;
 - securing consistent treatment of matters which affect them both; and
 - ensuring an open and transparent relationship between the organisations.

2. Functions, duties and powers of the SPSO

- 2.1 The SPSO has the functions set out in the Scottish Public Services Ombudsman Act 2002 (the 2002 Act). These include raising awareness of its service, promoting good administrative practice by Scottish public services and leading the development of simplified and standardised complaints handling procedures across the public sector. The SPSO aims to work in partnership with public services across Scotland to help prevent complaints from arising and to help public services improve their complaint handling processes.
- 2.2 The SPSO can consider complaints from members of the public who claim to have sustained injustice or hardship as a result of maladministration or service failure on the part of an authority within the SPSO's jurisdiction. The matter complained about must also be one that the SPSO is entitled to investigate. Schedule 2 of the 2002 Act lists the authorities that come within the jurisdiction of the SPSO (listed authorities). This list includes the Care Inspectorate. The SPSO may investigate a complaint about the Care Inspectorate provided the complaint meets the criteria set out in the 2002 Act.

3. Functions, duties and powers of the Care Inspectorate

- 3.1 The Care Inspectorate was established under section 44(1) of the Public Services Reform (Scotland) Act 2010 (the PSR Act 2010) as an independent body responsible for the scrutiny and improvement of social care and social work services, including criminal justice social work. The Public Bodies (Joint Working) (Scotland) Act 2014 establishes that the Care Inspectorate also has power to carry out joint inspections with Healthcare Improvement Scotland of integrated health and social care services and of the strategic commissioning of integrated health and social care services. The role and functions of the Care Inspectorate are set out in the PSR Act 2010, the Adults with Incapacity (Scotland) Act 2000 (the AWI Act) (Part 4 only), the Mental Health (Care and Treatment) (Scotland) Act 2003, and the Public Bodies (Joint Working) (Scotland) Act 2014.
- 3.2 The Care Inspectorate has a general duty of furthering improvement in the quality of social services for the benefit of people who use or are eligible to use them. The system of regulation adopted by the Care Inspectorate takes account of the National Care Standards and the Codes of Practice for Social Service Workers and Employers of Social Service Workers, as published by the Scottish Social Services Council ('the SSSC Codes of Practice'). The Care Inspectorate has a statutory responsibility for ensuring that providers of care services are fit to provide the service and that they continue to comply with the PSR Act 2010 and Regulations made under it, taking account of the National Care Standards and the SSSC Codes of Practice. The Care Inspectorate has a range of powers under the PSR Act 2010 to enable it to fulfil these regulatory functions. The Care Inspectorate also has a responsibility to carry out joint inspections of services for children and young people and adults and older people across Scotland with other partner organisations.

4. Complaints procedures and requirements relating to complaints

- 4.1 Section 16A of the 2002 Act requires listed authorities to have in place a complaints procedure which complies with the Complaints Handling Principles approved by Parliament in February 2011. Section 16B allows the Ombudsman to create a model complaint handling procedure for a sector. Subsequent sections deal with how a listed authority would be informed that such a procedure applies and the enforcement action the Ombudsman may take in the event of non-compliance. Section 16G places obligations on the Ombudsman to share best practice and to monitor complaint handling trends.
- 4.2 Section 22 of the 2002 Act (information about right to make a complaint) requires a listed authority (which includes the Care Inspectorate, but also includes some providers of registered care services and social services in which the Care Inspectorate has an interest) to take reasonable steps to publicise the application and effect of the 2002 Act. It includes in particular the right conferred by the 2002 Act to make a complaint, the time limit for doing so and how to contact the

SPSO. This information must be included in, or provided with, any document published by the listed authority that contains information about the services it provides to members of the public or about how it deals with complaints. The information must also be included in the final response to a complainant who may be entitled to complain to the SPSO.

- 4.3 Under section 79 of the PSR Act 2010, the Care Inspectorate has a duty to **establish a procedure by which a person, or someone acting on a person's behalf, may make a complaint in relation to the provision to the person of a care service or about the care service generally.** The Care Inspectorate also has a duty under section 97 of the PSR Act 2010 to establish a procedure by which people can make a complaint (or make representations) in relation to the exercise of, or failure by it to exercise, any of its functions under Part 5 of the PSR Act 2010.
- 4.4 Under section 40(3) of the AWI Act, the Care Inspectorate has a duty to investigate any complaint received as to the manner in which the managers of a care home are managing residents' financial affairs where the care home is an 'authorised establishment' within the meaning of the AWI Act. (Authorised establishment in this context relates to any care home registered with the Care Inspectorate, except those care homes which have opted out of Part 4 of the AWI Act).

5. Consultation and Co-operation

- 5.1 The SPSO and the Care Inspectorate agree that where the functions and actions of one body affect the functions and actions of the other, they will consult and co-operate together in order to fulfil their respective functions as fully, effectively and efficiently as possible. This will take into account the legislative restrictions on disclosure of information which may apply.
- 5.2 Within available resources, the SPSO and the Care Inspectorate will invite representation from the other party to project teams, working groups etc where both parties believe there would be an advantage in joint working. The two parties will encourage formal and informal contacts between their staff to raise awareness of the roles and responsibilities of the other.

6. Sharing Information

- 6.1 SPSO and the Care Inspectorate recognise that complaints may be submitted (or may be capable of being submitted) to both organisations which raise the same or related issues. In these circumstances, the bodies undertake to liaise as far as possible having due regard to the requirements on each to comply fully with relevant data protection and confidentiality obligations. The focus of such liaison will be to ensure that the wishes of the person raising the concerns are respected

and that they are informed about the options open to them.

- 6.2 The SPSO can require the Care Inspectorate to release information for the purposes of investigations in line with powers in section 13 of the 2002 Act. The SPSO may release to the Care Inspectorate information obtained during an investigation if they consider it appropriate because they have identified a health or safety risk (in line with section 19 (3) of the 2002 Act). Section 20 and Schedule 5 of the 2002 Act allows the SPSO to share information it obtains with some named individuals/organisations if the information appears to the Ombudsman to relate to any matter specified in relation to that person or body in the second column of that schedule. From 1 April 2017, this will include named functions of the Care Inspectorate and The SPSO will release information proactively under this section or in response to a request from one of the individuals/organisations listed if they consider it meets the standards for release. Prior to any such release to the Care Inspectorate, it may be appropriate to liaise with the Care Inspectorate having due regard to the requirements on each to comply fully with relevant data protection and confidentiality obligations to ensure that any release is appropriate and in line with the relevant legislation.
- 6.3 This MoU may be supplemented by a separate information sharing or complaints handling agreement which will set out detailed arrangements where appropriate.
- 6.4 As well as information in relation to an individual complaint, the SPSO holds and publishes statistical information and may hold other information about themes and trends from complaints they receive in relation to care and social services. They will share, whenever possible, relevant information with the Care Inspectorate to help them fulfill their regulatory function.

7. Public Information and Information to Other Organisations

- 7.1 Before issuing any guidance, publicity and information to the public or other organisations about any aspect of their current or proposed functions relating to complaints, each party will consider the extent to which it would assist the other in the effective and efficient discharge of its functions if mention were made of that organisation and its functions. Where relevant and possible, each party will invite the other to participate in any conferences, seminars or workshops it organises.
- 7.2 The SPSO and Care Inspectorate will seek to share their proposals and publications, including any early drafts, about complaints functions where they may impact on the other organisation.

8. Liaison meetings

- 8.1 SPSO and Care Inspectorate representatives will meet as appropriate to consider matters of mutual interest arising from their respective functions.

9. Monitoring and reviewing this MoU

- 9.1 SPSO and the Care Inspectorate will ensure that the other has been provided with appropriate named contacts to liaise as required to carry out day to day business.
- 9.2 SPSO and the Care Inspectorate will keep this MoU under review and may suggest amendments to the MoU to ensure it remains relevant and up to date and will endeavour to review it at least every three years. If the review indicates no changes are required the MoU will continue in its current form.
- 9.3 Where either party identifies problems in operating this MoU, it will seek to resolve them quickly and informally. If this is not possible then the Ombudsman and the Chief Executive of the Care Inspectorate will take responsibility for achieving a mutually acceptable resolution. Their decision will be final.

Signature for the Care Inspectorate

Signature for the Scottish Public Services Ombudsman

Signed:

Signed:

Karen Reid

James B Martin

Name: Karen Reid

Name: Jim Martin

Position: Chief Executive

Position: Ombudsman

Date: 21/7/16

Date: 18 July 2016