



THE SCOTTISH  
HOUSING  
REGULATOR

## **MEMORANDUM OF UNDERSTANDING**

**between**

### **THE CARE COMMISSION AND THE SCOTTISH HOUSING REGULATOR**

#### **INTRODUCTION**

1. The purpose of this memorandum is to set out the powers and responsibilities of the Care Commission and the Scottish Housing Regulator and the framework that the organisations have agreed for co-operation and collaboration.

#### **CONTEXT**

2. The Scottish Housing Regulator is responsible for the regulation and inspection of independent Registered Social Landlords (RSLs) and the landlord, factoring and homelessness functions of local authorities.
3. The Care Commission is responsible for the registration, regulation and inspection of Scottish care services as defined in Section 2(1) of the Regulation of Care (Scotland) Act 2001.
4. While the Scottish Housing Regulator and the Care Commission have distinct statutory responsibilities regarding the housing and care services provided by local authorities and RSLs, there are areas where their duties overlap. For example, both bodies are concerned with improving the quality of services and protecting the interests of service users.
5. This Memorandum sets out the working arrangements between the Care Commission and the Scottish Housing Regulator by:
  - a. Establishing the legal basis for the partner organisations' regulatory responsibilities;
  - b. Explaining how the partner organisations carry out these responsibilities;
  - c. Setting out the areas of responsibility where the partner organisations will co-operate.

6. This Memorandum relates to the areas of interface between the Care Commission and the Scottish Housing Regulator. It does not imply any transfer of responsibility from one to the other or sharing of statutory responsibilities but may affect the way in which responsibilities are fulfilled in some cases.
7. This Memorandum of Understanding aims to support joint working arrangements between the Scottish Housing Regulator and the Care Commission, which satisfy the statutory responsibilities of each body. Nothing in this agreement restricts the exercise of these responsibilities by either organisation. This Memorandum is not a contract and is not legally enforceable. However the Scottish Housing Regulator and the Care Commission agree to adhere to its principles and to show proper regard for each other's activities.

## **STATUTORY ROLES OF THE SCOTTISH HOUSING REGULATOR AND THE CARE COMMISSION**

### **The Scottish Housing Regulator (SHR)**

8. The Scottish Government has set up the Scottish Housing Regulator as an executive agency to exercise the regulatory powers in the Housing (Scotland) Act 2001. Its purpose is to regulate to:
  - Protect the interests of current and future tenants, and other service users;
  - Ensure the continuing provision of good quality social housing in terms of decent homes, good services, value for money and financial viability; and
  - Maintain the confidence of funders.
9. The Scottish Housing Regulator achieves this purpose by:
  - a. Assessing the regulatory risk presented by RSLs to decide what level and type of engagement we need to have with the regulated body;
  - b. Assessing the financial viability, capacity and efficiency of RSLs;
  - c. Engaging with RSLs about any issues or areas of risk relating to their financial viability, stock quality, governance, and service quality and using our regulatory powers to support them to manage and improve their performance including carrying out inspections to report publicly on performance against national Performance Standards;
  - d. Dealing with matters and issues raised by or about RSLs including complaints raised by service users and others (unless there is a more appropriate route such as the SPSO);
  - e. Maintaining and publishing a range of performance, financial and statistical information about the RSL sector;
  - f. Intervening and taking statutory action where performance is poor.

### **The Care Commission**

10. The Scottish Commission for the Regulation of Care (the Care Commission) was set up under the Regulation of Care (Scotland) Act 2001 to establish a new unified system of registration and regulation for care services in Scotland. This new national organisation

puts the safety and well-being of people who use care services at its heart. The aim of the Care Commission is to ensure improvement in the quality of care services in Scotland, respecting the rights of people who use those services to dignity, choice and safety.

11. The Act and associated legislation makes provision for the manner in which the Care Commission will carry out regulation of care services. The Act also specifies a set of principles which must inform the manner in which the Care Commission carries out its duties and functions.
12. The Act introduced National Care Standards for a range of care services. These National Care Standards are published by the National Care Standards Committee. The system of regulation adopted by the Care Commission takes account of the National Care Standards. Care service providers should comply with all relevant legislation, whether regulated or enforced by the Care Commission or elsewhere. The Act also specifies a set of principles, which must inform the manner in which the Care Commission carries out its duties and functions.
13. The Care Commission has the statutory responsibility for ensuring that providers of care services are fit to provide that service and that they continue to comply with the statutory regulations taking into account the National Care Standards. The Care Commission has a range of powers to carry out these regulatory responsibilities.
14. The Care Commission has a statutory responsibility to investigate complaints about registered services. Under the Care Commission's complaints procedure, complainants do not have to pursue a complaint through the local service provider's own Complaints Procedure before lodging a complaint with the Care Commission. However, the Care Commission will encourage individuals, in the first instance, to pursue a complaint through the local service provider's complaints procedure wherever possible.

## **OBJECTIVES OF THE MEMORANDUM**

15. The primary objectives of the Memorandum are to:
  - a. Provide a seamless and co-ordinated approach to the regulation and inspection of RSLs and local authority housing and homelessness services to avoid over-regulation and duplication of effort.
  - b. Ensure that the Scottish Housing Regulator and the Care Commission can fulfil their statutory duties in the most effective way possible.
  - c. Develop joint working arrangements that ensure service users are protected and any concerns are dealt with appropriately.
  - d. Enable best use to be made of regulation and inspection resources in ensuring standards are achieved and the quality of services is improved.

The Memorandum covers areas where the Scottish Housing Regulator and the Care Commission consider collaborative working would achieve these objectives.

## **AREAS FOR CO-OPERATION**

16. Examples of some of the areas of responsibility where co-operation is needed, include:

- a. The Care Commission is required to ensure that housing support services are managed by “fit” persons (by meeting the requirements of Regulations made under section 29 of the Act). Any regulated bodies providing housing support services have to ensure that both the day-to-day managers of services and, for RSLs, their office bearers, are not unfit persons in terms of the Regulations. The Scottish Housing Regulator will have to take account of this requirement when making appointments to RSL governing bodies or appointing Special Managers.
- b. The Care Commission deals with any complaints that relate to a housing support service and in some circumstances the Scottish Housing Regulator also deals with complaints about RSLs which may come from tenants who are receiving a housing support service.
- c. The Scottish Housing Regulator inspects the housing services provided by RSLs and local authorities. The Care Commission will inspect housing support services; some of these will be provided by RSLs.

## **THE FRAMEWORK FOR JOINT WORKING**

17. To ensure effective collaborative working, the Scottish Housing Regulator and the Care Commission are committed to developing a framework that supports joint working based on the following principles. We will:

- a. Exchange such information as is necessary to fulfil our respective statutory functions and to ensure the safety and well-being of people who use care services;
- b. Co-operate and share information regarding mutual concerns and complaints from service users and others about registered organisations;
- c. Work together to ensure our respective inspection processes complement each other;
- d. Ensure our respective intervention strategies take account of our different powers and duties, and liaise when statutory intervention is proposed for a registered organisation;
- e. Maintain effective consultation and liaison between the Scottish Housing Regulator and the Care Commission;
- f. Review this Memorandum to ensure its continuing relevance.

## **JOINT WORKING**

### **Exchange of Information**

18. Underpinning any exchange of information, the Care Commission and the Scottish Housing Regulator:

- a. Fully endorse and adhere to the Data Protection Principles, as set out in the Data Protection Act 1998 and amended by the Freedom of Information (Scotland) Act 2002. Both parties regard the lawful and correct treatment of personal information as very important to fulfilling their functions, and to maintaining the confidence of all individuals who come into contact with

them. Both parties agree to share information only where this is in line with the Data Protection Principles.

- b. Are obliged to act in a way that is compatible with the Human Rights Act 1998 and any information sharing between the parties must be compatible with The European Convention on Human Rights.

Information exchanged by both parties is not a disclosure under the Freedom of Information (Scotland) Act 2002.

19. The Care Commission and the Scottish Housing Regulator will share information about trends, concerns, data, approaches and initiatives, which are relevant to the shared aim of protecting the safety and well being of vulnerable people and improving the quality of care services. For example:

- a. If asked, each organisation will endeavour to assist the other in securing expert advice and provide information for investigations and initiatives to promote the objectives of the two organisations, as needed and to the extent that it is reasonably able to do so;
- b. The Care Commission will provide copies of published inspection reports at the request of the Scottish Housing Regulator;
- c. Where either body identifies instances of exemplary practice, it will draw the practice to the other's attention and discuss appropriate methods of sharing the information to drive up standards in housing support, such as:
  - featuring the information in the public inspection report;
  - publishing or otherwise disseminating case study material;
  - including the information in thematic reports.

## **Mutual Concerns and Complaints**

20. In situations where the work of the Care Commission and the Scottish Housing Regulator give rise to issues of mutual concern, the bodies will act co-operatively to ensure that their functions can be fulfilled effectively and efficiently.

21. The Care Commission and the Scottish Housing Regulator will inform each other of any issues emerging from the inspections, regulatory engagement or complaint investigations which each conducts, or specific concerns within a housing support service (including financial concerns), which raise significant issues about the fitness to practice of individuals, and/or the quality and/or safety of housing support services provided or purchased by social landlords.

22. Each organisation will notify the other on a "for information" basis of information they receive about concerns relevant to their responsibilities. This might include anonymous and unsubstantiated reports or reports of unregistered services operating illegally, where the organisation with the information considers it should notify the other organisation.

23. The Care Commission has a statutory duty to investigate complaints about housing support services and will take responsibility for first line investigation of all such complaints. Where the Scottish Housing Regulator receives a complaint about a housing support service it will refer this to the Care Commission.

24. The Scottish Housing Regulator will be responsible for first line investigation of complaints about housing management, homelessness and factoring services in local authorities and RSLs, and of governance and financial issues in RSLs. Where the Care Commission receives a complaint about any of these areas it will refer this to the Scottish Housing Regulator.
25. The organisations will share details of their procedures for dealing with complaints and guiding principles for initiating an investigation or for enforcement action.
26. The organisations will, where appropriate, share information about the outcome of complaints.

## **Regulation**

27. The Scottish Housing Regulator publishes regulation plans, based on its assessment of RSL in Scotland. This reflects its risk-based approach to regulation and a move away from routine cycles of inspection for all landlords. This approach involves a review of the financial and performance information collected from each landlord to decide the level and type of engagement the Scottish Housing Regulator will have with each RSL over the following year.
28. Each RSL is categorised into one of three broad types of engagement: high, medium or low. Where an organisation requires high or medium engagement the Scottish Housing Regulator develops and publishes a plan about how that engagement will work. This may be through an inspection, but often it will be through the provision of further information, the development of improvement plans, meetings with senior staff or board members, or a financial review.
29. Where an RSL is classed as low engagement the Regulator will have a routine regulatory relationship with it. Organisations in the low engagement category may be included in the Scottish Housing Regulator's thematic inspection work.

## **Inspections**

30. The Scottish Housing Regulator inspects all new RSLs and carries out baseline inspections of all local authorities. The Scottish Housing Regulator will also carry out other responsive or thematic inspections of RSLs. Prior to an inspection the Scottish Housing Regulator will advise the Care Commission of the proposed inspection and its date and request any relevant information which the Care Commission can provide. The Scottish Housing Regulator will provide the Care Commission with a copy of the published inspection report.
31. Where issues or concerns arise during an inspection relating to a housing support service, the Scottish Housing Regulator will draw these to the Care Commission's attention and liaise about how these issues are best addressed during the inspection process.
32. The Care Commission's inspection programme commenced in April 2004. The Care Commission will request relevant information from the Scottish Housing Regulator where

the care service it inspects is linked to an RSL or a local authority housing or homelessness service.

33. Where issues or concerns, including financial concerns, arise during an inspection of housing support services, the Care Commission will draw these to the Scottish Housing Regulator's attention and liaise about how these issues are best addressed during the inspection process.

## **Statutory Intervention**

34. The Scottish Housing Regulator's published "Guide to how we intervene" sets out how the organisation will act where it requires to intervene in an RSL or local authority. The guide makes reference to the powers and responsibilities of the Care Commission and the specific areas where the two organisations will liaise when intervention action is proposed.
35. The Scottish Housing Regulator will inform the Care Commission of any investigations it conducts which raise significant issues about a housing provider which affect a care service and when it proposes to use statutory powers to intervene.
36. The Care Commission will, where appropriate, notify the Scottish Housing Regulator of any prosecution, enforcement activity (including the issue of a S10 improvement notice), or decision to refuse or cancel the registration of any applicant or registered provider.
37. Where either organisation considers it necessary, a case conference will be arranged for both organisations to discuss possible action or intervention in a regulated body.
38. The Scottish Housing Regulator will liaise with the Care Commission when it requires to exercise its statutory powers to make appointments to the governing body of an RSL or to appoint a special manager where the regulated body provides housing support services. The Care Commission requires that housing support services are managed by "fit persons" (as defined under the Regulation of Care Act 2001). The Scottish Housing Regulator will have to ensure that this requirement is met when making statutory appointments to an RSL governing body or appointing a Special Manager. The Scottish Housing Regulator will liaise with the Care Commission when such statutory action is proposed to ensure that both the day-to-day managers of services and, for RSLs, their office bearers, have been approved under this designation. The Care Commission will make all service providers aware of these requirements.

## **Consultation and Communication Issues**

39. The Care Commission and the Scottish Housing Regulator will also collaborate on external communications. This will include, for example:
  - a. Involving each other, as appropriate, in conferences and other public discussion; in consultation exercises on draft reports or organisational developments; in sharing good practice guidance; in working groups, meetings and discussions on matters of mutual interest;
  - b. Each organisation will respect and, as appropriate, take steps to protect the confidential nature of documents and information that the other may provide.

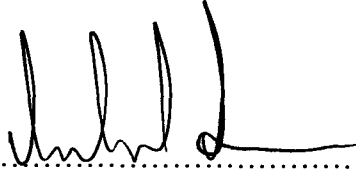
40. As resources allow, the Care Commission and the Scottish Housing Regulator will collaborate in activities where their collaboration would contribute to quality improvement in the relevant sectors. These might include: reports on aspects of provision within sectors; the dissemination of good practice; mutual access to training; access to specific expertise; advice.
41. Each organisation will collaborate over how any media interest is to be handled where appropriate.
42. Each organisation will endeavour to ensure their staff are aware of the content of this Memorandum and the responsibilities it places on each individual member of staff.
43. Annex 1 provides a list of contact officers in each organisation.
44. Should there be disagreement over any issue of joint working then the dispute will be referred to David Wiseman, Director of Strategic Development of the Care Commission and Michael Cameron, Acting Chief Executive of the Scottish Housing Regulator for resolution.

### **Review of this Memorandum**

45. This MOU was first agreed in November 2004 and has been reviewed and updated. It will be kept under review to ensure that it is achieving its objectives and that both parties are upholding the spirit and terms of the agreement. It will be reviewed again in 2011 or if necessary there will be an interim review if there are significant policy changes or new legislation, which require the Memorandum to be updated before then.

Signature.....  
**Jacquie Roberts**  
**Chief Executive of the Care Commission**

Date.....19/5/2010.

Signature.....  
**Michael Cameron**  
**Acting Chief Executive of the Scottish Housing Regulator**

Date.....11/05/2010