

JUSTICE COMMITTEE

PROSECUTION OF ELDER ABUSE

SUBMISSION FROM THE CARE INSPECTORATE

Introduction

The Care Inspectorate is the official national body responsible for inspecting standards of care in Scotland. That means we regulate and inspect care services to make sure they meet the right standards and that we help them improve if needed. We also carry out joint inspections with other scrutiny bodies to check how well different organisations in local areas are working to support adults and children. We help ensure social work, including criminal justice social work, meets high standards.

Across all our work, we provide independent assurance and protection for people who experience care, their families and carers and the wider public. In addition, we play a significant role in supporting improvements in the quality of care, and we contribute to reducing health and social inequalities, in Scotland. As the scrutiny and improvement body for social care and social work, we have a strong interest in this area and are happy to provide a professional perspective drawn on evidence we hold. We regulate, inspect and support improvement in a wide range of care services for children, adults and older people, and also work with all local authorities, community planning partnerships, health and social care partnerships, and with community justice partners.

Protecting people is at the heart of this work so we take significant interest in proposals to provide assurance regarding the wellbeing of older people in Scotland. Matters of prosecution and conviction are out with our remit and we feel it would not be appropriate to comment on this area of the Committee's inquiries. However, in this response we set out our role in helping to protect older people in Scotland and any relevant findings that may inform the work of the Committee.

How we protect people

We endeavour to make sure that people experience safe, high-quality, compassionate care, and that care services are making a positive impact on people's lives, based on their needs, rights and choices.

We register around 14,000 registered care services in Scotland and our inspectors visit every one. Higher-risk services are inspected more often. Our inspectors talk to people using the service, staff and managers and if we find that care isn't good enough, we take action. We can make recommendations for improvement and issue requirements for change and check these have happened. If a care service doesn't improve, we can carry out enforcement action including, as a last resort, closing it down subject to the decision of a sheriff.

We have a statutory duty to deal with complaints made to us about registered care services. Anyone can complain to us about a care service, whoever they are. People who experience care services, care staff, and members of the public all have a right

to complain about the performance of the services we regulate. We also expect services to notify us of specific accidents, incidents and other matters.

The Care Inspectorate does not have a statutory duty or remit to carry out child or adult protection investigations. The statutory duty to enquire, and then to undertake, investigations, lies with the local authority, the Health and Social Care Partnership or NHS Board (in Highland), as well as with Police Scotland. Where a crime is being alleged, we must report this directly to Police Scotland. Where we receive child and adult protection concerns we report these directly to the local authority. Within local authorities, responsibility normally lies with social work; however, investigations are, in the main, carried out on a multi-disciplinary basis, within well-established interagency child or adult protection procedures.

We can, and do, take action against providers who are not providing good care, and we recognise that poor care can result in harm and that some aspects of poor care may constitute a criminal offence. However, we recognise that in some cases there is not always sufficient evidence of criminal intent or harm to prove (beyond reasonable doubt) that a crime has been committed and to identify who is responsible. We do, however, have a duty to ensure we act on any and all protection issues which come to our attention, referring these on for investigation, and sharing information appropriately in order to keep people safe.

On 1 April 2018, Scotland's [Health and Social Care Standards](#) came into effect, replacing the National Care Standards. The Standards set out what we should expect when using any health, social care or social work services in Scotland. They seek to provide better outcomes for everyone and to ensure that individuals are treated with respect and dignity and that the basic human rights we are all entitled to are upheld. The Standards are designed to empower people to know and claim their rights and to increase the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights. The Standards are underpinned by five principles: dignity and respect, compassion, be included, responsive care, and support and wellbeing.

Statements within the Standards include: 'I am protected from harm, neglect, abuse, bullying and exploitation by people who have a clear understanding of their responsibilities'; 'I am protected from harm because people are alert and respond to signs of significant deterioration in my health and wellbeing, that I may be unhappy or may be at risk of harm'; and 'I am listened to and taken seriously if I have a concern about the protection and safety of myself or others, with appropriate assessments and referrals made'. We are required, by law, to consider the Health and Social Care Standards when making decisions during our inspections and other scrutiny and improvement work.

Our perspective

As noted previously, we do not wish to comment on matters of the judiciary, but can provide a perspective as a body committed to the protection of vulnerable people.

The [Adult Support and Protection \(Scotland\) Act 2007](#) includes a range of measures to identify and protect adults who may be at risk of harm or neglect, and who may

not be able to protect themselves. The Act places a duty on local authorities to make the necessary enquiries and undertake the necessary investigations to assess the appropriate action needed to stop or prevent harm happening. It also requires specific organisations, including the Care Inspectorate, to co-operate with local authorities and each other about adult protection investigations. We also draw attention to the [Health \(Tobacco, Nicotine, etc. and Care\) \(Scotland\) Act 2016](#), which establishes a duty of candour on health and social care organisations (Part 2) and a criminal offence of ill-treatment or wilful neglect (Part 3) which applies to individual health and social care workers, including managers and supervisors, as well as care providers.

We recognise there are some potential vulnerabilities among older people in relation to issues such as health, consent and social isolation. However, we would ordinarily be wary of an arbitrary approach, based on age, that could have the effect of perpetuating a perception of older people as members of a demographic distinctly lacking the ability to protect themselves from harm or abuse.

In carrying out our statutory duties, we are not aware of any evidence to suggest that the current legislative framework is inadequate in this regard; if adult protection procedures are carried out consistently through a collaborative, multi-agency response then we consider this offers effective protection for older people.

In 2018, we published an [overview report](#) of adult support and protection arrangements, based on inspections carried out in six health and social care partnership areas with partners from HM Inspectorate of Constabulary in Scotland and Healthcare Improvement Scotland. Scotland has made considerable progress in the 10 years since commencement of the Adult Support and Protection (Scotland) Act 2007 but we identified several areas where improvements are needed, both nationally and locally.

The key findings from our thematic review of adult support and protection arrangements were:

- Scotland has made good progress in 10 years to develop awareness of adult protection, create and train the workforce and put effective governance systems in place. The results of this are that many adults at risk of harm are safe, protected, and supported. Their wellbeing and quality of life has improved.
- Staff across adult protection partnerships are knowledgeable, skilled and highly motivated to carry out adult support and protection work.
- Adult protection work is complex and challenging. It is all about marginality and balance –The rights of adults at risk of harm to self-determination and choice must be balanced with the need to keep them safe and protect them from harm. Staff working in adult support and protection skilfully walk a tightrope between risk mitigation and positive risk enablement.
- The development of Police Concern Hubs has provided a central point for knowledge, information and skills about adult support and protection and fostered good relationships and integrated working. They also enable frontline police officers to spend more time working with vulnerable individuals.

- NHS colleagues are now making more adult support and protection referrals in some areas, albeit from a low baseline of referral numbers. Senior managers from the NHS are more involved in planning and development for adult support and protection and were showing heightened leadership for adult support and protection.
- Adults at risk of harm gave powerful testaments about how adult protection made them safe, took away their fear, and enhanced their overall wellbeing and quality of life. Some reported how their confidence and quality of life had improved because they were no longer constantly afraid.
- A significant and positive development since the commencement of the Adult Support and Protection Act was the increasing involvement of the Scottish Fire and Rescue Service as a key adult protection operational and strategic partner.
- Social workers exercise a pivotal role in supporting partners to work cohesively, consistently and effectively. They identify adults at risk of harm and investigate the risk. They chair well-balanced adult protection case conferences that analyse risks and introduce protective measures. They engage sensitively with adults at risk of harm and their unpaid carers. They also working alongside police colleagues to disrupt the activities of perpetrators of harm to vulnerable individuals, and report alleged criminal offences to the Crown Office and Procurator Fiscal Service.
- Independent advocates support adults at risk of harm to articulate their views and make sure they are taken on board by adult protection partners. Adults at risk of harm and unpaid carers were unanimous about the positive support they received from independent advocates to guide them successfully through their adult protection journey.

In light of the findings of the thematic review, the Scottish Government has established an adult support and protection improvement programme coordinated by the Office of the Chief Social Work Advisor. This builds on the good practice of the national child protection improvement programme. Scrutiny and quality assurance of adult support and protection is an identified workstream of the national improvement programme. The Care Inspectorate will work collaboratively with scrutiny partners and other stakeholders to develop a plan for further scrutiny of adult support and protection arrangements going forward.

Conclusion

We are happy to further explore with the Committee any of the issues raised in our response, albeit we recognise that our contribution is limited by the parameters of our role.