



Memorandum of Understanding

Between the Care Inspectorate (Social Care and Social Work Improvement Scotland) and the Scottish Housing Regulator

November 2017

INTRODUCTION

1. The purpose of this Memorandum of Understanding (MOU) is to set out how the Care Inspectorate and the Scottish Housing Regulator (SHR) will work together within their respective policy and legislative frameworks in a co-operative and collaborative manner.

CONTEXT

2. The Scottish Housing Regulator (SHR) is an independent regulator and registrar of social landlords in Scotland. The Housing (Scotland) Act 2010 sets out SHR's statutory objective to safeguard and promote the interests of current and future tenants, homeless people and other people who use services provided by social landlords.
3. The Care Inspectorate is the official body responsible for inspecting standards of care in Scotland. It regulates and inspects care services to make sure they meet the right standards. The Care Inspectorate also carries out joint inspections with other regulators to check how well different organisations in local areas are working to support adults and children. It helps to ensure that social work, including criminal justice social work, meets high standards. The Care Inspectorate provides independent assurance and protection for people who use services, their families and carers and the wider public. It also plays a significant role in supporting improvements in the quality of services for people in Scotland. The powers and duties of the Care Inspectorate are fully set out in the Public Services Reform (Scotland) Act 2010 ("The PSR Act")
4. While the SHR and the Care Inspectorate have distinct statutory responsibilities regarding the housing and care services provided by local authorities and Registered Social Landlords ("RSLs"), there are areas where their duties overlap.
5. This Memorandum sets out the working arrangements between the Care Inspectorate and the SHR by:
 - a. Establishing the legal basis for the partner organisations' regulatory responsibilities;
 - b. Explaining how the partner organisations carry out these responsibilities; and
 - c. Setting out the areas of responsibility where the partner organisations will co-operate.
6. This MOU aims to support joint working arrangements between the SHR and the Care Inspectorate, which satisfy the statutory responsibilities of each body. It does not affect the statutory responsibilities of SHR and the Care Inspectorate. It does not imply any transfer of responsibility from one organisation to the other, nor does it imply sharing of statutory responsibilities. This MOU is not a contract and is not legally enforceable. However, SHR and the Care Inspectorate agree to adhere to its principles and show proper regard for each other's activities.

7. Each organisation will take steps to ensure that staff are aware of this MOU. They will keep staff updated about it and the responsibilities it places on each individual member of staff.

STATUTORY ROLES

SHR

8. SHR is a Non-Ministerial Department, directly accountable to the Scottish Parliament. The SHR Board of non-executive members lead the organisation by setting its strategic direction and ensuring that it achieves and carries out its functions effectively and efficiently.
9. Section 2 of the Housing (Scotland) Act 2010 ("the 2010 Act") sets out the SHR's statutory objective; to safeguard and promote the interests of current and future tenants, homeless people and other service users. The 2010 Act requires SHR to monitor, assess and report regularly on social landlords' performance of housing activities and RSLs' financial well-being and standards of governance, and to intervene where appropriate. SHR must also keep a publicly available register of social landlords.
10. The 2010 Act gives SHR a range of regulatory powers to deliver its statutory objective. It can:
 - a. Use its inquiry powers to obtain the information and assurance it needs from landlords, assess risks and investigate problems;
 - b. Set standards of governance and financial management for RSLs;
 - c. Monitor and report on landlords' performance in achieving the outcomes and standards in the Scottish Social Housing Charter;
 - d. Use its intervention powers to secure landlord improvement and protect the interests of tenants, homeless people and other service users;
 - e. Require RSLs to seek its consent to certain types of organisational change and disposals; and
 - f. Set registration and de-registration criteria for RSLs.
11. SHR's approach to risk based regulation is set out in its Regulatory Framework for social housing in Scotland. Registered subsidiaries of an RSL parent are also expected to comply with the standards set out in the Framework. SHR also expects that a parent RSL of a non-registered subsidiary will ensure that the organisation is well governed and managing risks. SHR's powers to carry out inquiries and obtain information relating to a social landlord extend to bodies connected with a social landlord, such as a subsidiary organisation.
12. SHR's level of engagement with an RSL will depend on the level of assurance it needs, taking account of the impact, probability and manageability of potential or actual risks. SHR will publish regulation plans based on its assessment of risk. SHR participates in the Shared Risk Assessment process for the assessment of local authorities' housing and homelessness services. SHR's assessment and

proposed engagement is reflected in individual local authorities' local scrutiny plans.

The Care Inspectorate

13. The role and functions of the Care Inspectorate are set out in the PSR Act, the Adults with Incapacity (Scotland) Act 2000 (Part 4 only) and the Mental Health (Care and Treatment) (Scotland) Act 2003.
14. The Care Inspectorate is the independent regulator of social care and social work services across Scotland, as set out in the PSR Act. It regulates, inspects and supports improvement of care, social work and child protection services for the benefit of the people who use them.
15. The system of regulation adopted by the Care Inspectorate takes account of the National Care Standards and the Health and Social Care Standards (which will replace the National Care Standards from April 2018) and the Codes of Practice for Employers and Employees as developed by the Scottish Social Services Council. Care service providers should comply with all relevant legislation, whether regulated or enforced by the Care Inspectorate or elsewhere.
16. The Care Inspectorate has the statutory responsibility for ensuring that providers of care services are fit to provide that service and that they continue to comply with legislative requirements taking into account the National Care Standards and the Health and Social Care Standards (which will replace the National Care Standards from April 2018) and the Scottish Social Services Council Codes of Practice for Employers and Employees. The Care Inspectorate has a range of powers to enable it to carry out these regulatory responsibilities.
17. The Care Inspectorate has a statutory responsibility to investigate complaints about registered services. Under the Care Inspectorate'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 Inspectorate. However, the Care Inspectorate will encourage individuals, in the first instance, to pursue a complaint through the local service provider's complaints procedure wherever possible.

Risk-based regulation

18. The SHR sets out its approach to risk-based regulation in its Regulatory Framework for social housing in Scotland. It publishes regulation plans, based on its assessment of RSLs. This involves a review of the financial and performance information collected from RSLs to decide the level and type of engagement the SHR will have with each RSL over the following year.
19. The SHR's level of engagement will depend on the level of assurance it needs, taking account of the impact, probability and manageability of potential or actual risks. The SHR will categorise these levels of engagement as low, medium or

high and it will focus more of its resources on those RSLs in the medium and high engagement categories. The SHR will communicate the level of engagement to the regulated body.

20. SHR publishes all Regulation Plans and Local Scrutiny Plans on its website. SHR will update the Care Inspectorate with details of the annual programme and timescales for publishing Regulation Plans. SHR will highlight to the Care Inspectorate when it publishes a Regulation Plan that contains issues or concerns relating to housing support services.
21. For councils, the SHR will work with its partner scrutiny bodies to produce a Local Scrutiny Plan to set out the full range of scrutiny activity that will happen in each council. More information on this is set out in the Joint Code of Practice.

OBJECTIVES OF THE MEMORANDUM

22. The primary objectives of this MOU are to:
 - a. Provide a seamless and co-ordinated approach to the regulation, inspection and scrutiny activity of RSLs and local authority housing and homelessness services to avoid over-regulation and duplication of effort.
 - b. Ensure that the SHR and the Care Inspectorate 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 scrutiny activity resources in ensuring standards are achieved and the quality of services is improved.
23. The MOU covers areas where the SHR and the Care Inspectorate consider that collaborative working would achieve these objectives.

AREAS FOR CO-OPERATION

24. Examples of some of the areas of responsibility where co-operation is needed, include:
 - The Care Inspectorate requires that housing support services are managed by "fit persons" as defined by regulation 7 of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/210). Regulation 6 also requires registered housing support service providers to be fit. 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 SHR will have to take account of this requirement when making appointments to RSL governing bodies or appointing Managers.
 - The Care Inspectorate deals with any complaints that relate to a housing support service. The SHR has no role in dealing with service related

complaints from individuals about an RSL or council. This is the role of the RSL or council in the first place, and then the Scottish Public Services Ombudsman (SPSO). The SHR does deal with issues that are Significant Performance Failures. This is a serious concern that significantly affects a number of the landlord's tenants.

- The SHR has an interest in ensuring that social landlords deliver the Scottish Social Housing Charter (the Charter) standards and outcomes in relation to complaints. The Charter states that landlords should make it easy for tenants and others to make complaints and provide feedback on services and they should let people know what they have done in relation to complaints.
- The SHR regulates the housing services provided by RSLs and local authorities, and the financial well-being and standards of governance of RSLs. The Care Inspectorate will inspect housing support services; some of these will be provided by RSLs.

THE FRAMEWORK FOR JOINT WORKING

25. To ensure effective collaborative working, the SHR and the Care Inspectorate 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. Share information on our risk-based approaches to regulation; SHR will publish all RSL Regulation Plans on its website and will liaise on the Shared Risk Assessment process for Local Authorities;
- d. Work together to ensure our respective inquiry and scrutiny processes complement each other;
- e. Ensure our respective intervention strategies take account of our different powers and duties, and liaise when statutory intervention is proposed for a registered organisation;
- f. Maintain effective consultation and liaison between the SHR and the Care Inspectorate;
- g. Hold periodic awareness raising / training sessions for the staff of the other organisation;
- h. Hold regular liaison meetings to discuss areas of mutual interest. These meetings will take place at intervals of approximately 6 months or at such other intervals as may from time to time be agreed;
- i. Review this MOU periodically in accordance with para. 56 hereof, to ensure its continuing relevance.

JOINT WORKING

Exchange of Information

26. Underpinning any exchange of information, the Care Inspectorate and the SHR:

- a. Fully endorse and adhere to the Data Protection Principles, as set out in the Data Protection Act 1998. 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.

27. Information provided by either party to the other under this MOU is not a disclosure under the Freedom of Information (Scotland) Act 2002.

28. The Care Inspectorate and the SHR will share information about trends, concerns, data, approaches and initiatives, which are relevant to the shared aim of protecting the safety and wellbeing 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 SHR will notify the Care Inspectorate of any relevant changes to the Register of Social Landlords, including registrations and de-registrations;
- c. The SHR and Care Inspectorate will liaise in regard to scrutiny activity in local authorities and RSLs providing registered housing support services to ensure that scrutiny is appropriate and proportionate. This includes the potential for joint scrutiny to take place where appropriate.
- d. 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/inquiry report;
 - publishing or otherwise disseminating case study material;
 - including the information in thematic reports.

Shared Risk Assessment process for Local Authorities

29. The SHR and the Care Inspectorate are both involved in the Shared Risk Assessment (SRA) of Local Authorities. This is designed to ensure proportionate

and focused scrutiny and reduce the overall amount of external scrutiny activity in local government, while continuing to provide public assurance and help Local Authorities to improve. The Joint Code of Practice sets out the arrangements for co-operation between all scrutiny bodies including the SHR and the Care Inspectorate.

Mutual Concerns and Complaints

30. In situations where the work of the Care Inspectorate and the SHR give rise to issues of mutual concern, the bodies will act co-operatively to ensure that their functions can be fulfilled effectively and efficiently.
31. The Care Inspectorate and the SHR will inform each other of any issues emerging from inquiries and scrutiny activity, regulatory engagement or investigations which each conducts, or specific concerns within a housing support service (including financial concerns), which raise significant issues about the fitness to practise of individuals, and/or the quality and/or safety of housing support services provided or purchased by social landlords.
32. 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 holding the information considers it should notify the other organisation.
33. The Care Inspectorate has a statutory duty to investigate complaints about housing support services. Where the SHR receives a complaint about the standard of support provided to persons using a housing support service it will refer this to the Care Inspectorate.
34. The SHR does not have a role in dealing with individual service related complaints about an RSL or council. This is the role of the RSL or council in the first place, and then the SPSO. The SPSO can raise with the SHR any concerns he may have about a social landlord, or the sector as a whole and the SHR will consider what action it may need to take.
35. If the SHR is notified of a very serious allegation against a regulated body, it may gather information to help it determine whether it needs to take any action. The SHR may refer any relevant issues, for example relating to housing support services, to the Care Inspectorate.
36. The SHR will make arrangements to enable and assist tenants to tell it about significant performance failures (SPF) by their landlord (this is not for individual service related complaints). A significant performance failure is where a landlord's action(s), or failure to take action, puts tenants' interests at risk and this will significantly affect a number of the landlord's tenants.
37. The SHR has set out in a factsheet on its website how tenants can report a significant performance failure. In most cases the SHR will need to gather more

information to establish the facts before it decides whether the concern is a significant performance failure.

38. The organisations will share details of their procedures for dealing with complaints and significant performance failures.
39. The organisations will, where appropriate, share information about the outcome of complaints and significant performance failure.

Inquiries

40. SHR and the Care Inspectorate both have statutory responsibilities to investigate issues of regulatory concern and to take appropriate action to protect the rights and interests of tenants and service users. Concerns about the administration, governance or financial management of an RSL may come to light in a number of different ways such as through a complaint by a tenant or other service users, by a whistleblower, through a Notifiable Event, disclosure under section 72 of the 2010 Act or through routine regulatory engagement. Where the information of concern is raised with, or identified by the Care Inspectorate in the first instance, the Care Inspectorate will pass the information to the SHR within 5 working days of receipt to the point of contact named in Annex 1 and provide any relevant information to allow the SHR to undertake an inquiry.
41. The SHR's Regulatory Framework for social housing in Scotland sets out how SHR will use its powers to obtain information and carry out inquiries. Prior to an RSL inquiry, the SHR will tell the Care Inspectorate of the proposed inquiry, its date and request any relevant information which the Care Inspectorate can provide. The SHR will alert the Care Inspectorate when inquiry reports are published on the SHR website. SHR will also carry out inquiries in accordance with the Joint Code of Practice for local authority scrutiny.
42. Where issues or concerns arise during scrutiny activity relating to a registered housing support service, the SHR will draw these to the Care Inspectorate's attention and liaise about how these issues are best addressed. Such issues will include, but not be limited to, situations where the SHR considers that continued operation of a housing support service provided by a RSL is likely to cease due to financial failure.
43. The Care Inspectorate will request relevant information from the SHR where the care service it inspects is linked to an RSL or a local authority housing or homelessness service.
44. Where issues or concerns, including financial concerns, arise during an inspection of housing support services, the Care Inspectorate will draw these to the SHR's attention and liaise about how these issues are best addressed during the Care Inspectorate's inspection process.

Statutory Intervention

45. The SHR's Regulatory Framework for social housing in Scotland sets out how the SHR will act where it is required to intervene in an RSL or local authority. SHR will take account of the Care Inspectorate's interests in care services provided by an RSL or local authority. The SHR will inform the Care Inspectorate 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.
46. The Care Inspectorate will, where appropriate, notify the SHR of any prosecution, enforcement activity (including the issue of an Improvement Notice), or decision to refuse or cancel the registration of any applicant for registration or registered provider who is also a RSL.
47. Where either organisation considers it necessary, a case conference will be arranged for both organisations to discuss possible action or intervention in relation to a service regulated by both bodies.
48. The SHR will liaise with the Care Inspectorate when it requires to exercise its statutory powers to make appointments to the governing body of an RSL or to appoint a manager where the regulated body provides housing support services.
49. The Care Inspectorate requires that housing support services are managed by "fit persons" as defined by regulation 7 and are registered with providers who are "fit" as defined in regulation 6 of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/210). The SHR will ensure that this requirement is met when making statutory appointments to an RSL governing body or appointing a Special Manager. The SHR will liaise with the Care Inspectorate 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 Inspectorate will make all service providers aware of these requirements.

Criminal Offence

50. Where it appears that a criminal offence may have occurred SHR and the Care Inspectorate will liaise with the police and Crown Office and Procurator Fiscal Service both jointly and separately in relation to their own regulatory responsibilities.

Consultation and Communication Issues

51. The Care Inspectorate and the SHR 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. Respecting and, as appropriate, taking steps to protect, the confidential nature of documents and information that the other may provide.

52. As resources allow, the Care Inspectorate and the SHR 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.

53. Each organisation will collaborate over how any media interest is to be handled where appropriate.

54. Each organisation will endeavour to ensure its staff are aware of the content of this MOU and the responsibilities it places on each individual member of staff.

55. Annex 1 provides details of contact officers in each organisation.

Dispute Resolution

Both organisations are committed to joint working to enable better regulation of RSLs and Councils and disagreements will normally be resolved by discussions between operational staff. Where this is not possible, the issue may be escalated initially to the contact points for each organisation detailed at Annex 1 who will aim to resolve the issue. Thereafter, it may be escalated to the Chief Executive Officers of both organisations who will be jointly responsible for reaching a mutually satisfactory resolution.

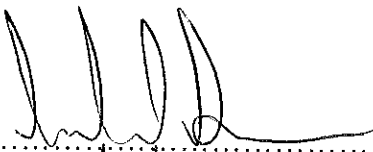
Review of this Memorandum

56. This MOU came into effect in November 2017. Both organisations will meet at least annually to review its operation. In addition the, MOU will be reviewed:

- In the event of any significant changes to the legislative and regulatory framework of guidance for each organisation
- At the request of either organisation

Signature..... *Karen Reid*
Date..... 20/11/17

Karen Reid Chief Executive of the Care Inspectorate

Signature..... 
Date..... 21/12/17

Michael Cameron Chief Executive of the Scottish Housing Regulator

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