

Guidance and checklist for health and social care partnerships: when serious risks to people's life, health or wellbeing are identified in regulated care services

Publication date: June 2023

Publication code OPS-0423-470

Introduction

The Care Inspectorate is Scotland's independent scrutiny, assurance and support body for social care and social work. We help ensure the quality of people's care is high and always improving. We support improvement where care is not good enough and take action when outcomes for people are poor.

Everyone has the right to experience high-quality care that meets Scotland's Health and Social Care Standards. The Care Inspectorate is committed to working collaboratively with the service provider and health and social care partnerships to support improvement. We will, when necessary, take enforcement action to require improvements over a specific timescale that will protect people's health, safety or wellbeing. However, in the most serious situations, it will not be in people's best interests to use this approach, and more urgent enforcement action may be needed.

Where the Care Inspectorate believes a care service poses a serious risk to the life, health or wellbeing of people experiencing care, we may make an application for the emergency cancellation of the registration of a care service under section 65(c) of The Public Services Reform (Scotland) Act 2010.

In this situation, the health and social care partnerships have a duty of care for people experiencing care who will require urgent support to protect them from harm. The time available to act will vary depending on the specific risks to people's life, health or wellbeing. Court proceedings can be slower than the term 'emergency cancellation' suggests. We recognise that this is highly challenging work that can place stress on the local health and care community, particularly if people need to urgently move to a new care home that can safely meet their needs.

This guide will help health and social care partnerships and the Care Inspectorate work well together and fulfil their differing statutory duties in a way that upholds people's rights and the Health and Social Care Standards. It defines the different bodies' responsibilities and underpinning legislation. It is intended to complement any existing health and social care partnership procedures for care home closure.

The emergency cancellation process

We will consider making an application under Section 65(c) of the Public Services Reform (Scotland) Act when an urgent response is needed to address serious risk. We will only make an application where no alternative action can address the risks and there is proof of ongoing serious risk if the registration is not cancelled. The Act sets out that the application **may** but will not necessarily be granted:

“... if it appears to the sheriff that, unless the order is made, there will be a serious risk to the life, health or well-being of persons.”

The emergency cancellation application is likely to include a formal request for an interim order to suspend the care service registration until the sheriff makes their final decision following a full court hearing. The request for an interim suspension order will be made on the basis that the Care Inspectorate has evidence to prove that there is a serious risk to life, health or wellbeing of persons and that an interim order is required to protect against that risk.

If the sheriff grants the interim order, the service cannot operate while it is in place. The Care Inspectorate can ask for this to take effect immediately or from a future date. The timing will depend on the circumstances of the case and the type of care service.

Given the level of risk, it is likely that the Care Inspectorate will seek a short timeframe for the interim order to come into effect. It is essential that the health and social care partnership has a robust contingency plan for this eventuality.

There may be situations where the Care Inspectorate requests, or the sheriff decides to make some other type of interim order, for example an interim order imposing or varying conditions of registration. The sheriff may also revoke an interim order before making a final decision if circumstances change or they are persuaded the interim order is no longer necessary. In these situations, the Care Inspectorate will update the health and social care partnership.

What we mean by serious risk to life, health or wellbeing

Our experience of taking emergency enforcement action against services that pose a serious risk to life, health and wellbeing has shown that in these situations, the following are likely to be present.

- Serious accidents and incidents where service users were harmed and near misses.
- Significant concerns about people's experiences and outcomes, and unsatisfactory performance for most or all of the key questions in the quality improvement framework.
- Some people who are particularly at risk. For example, people living with dementia, at risk of malnourishment, at risk of developing a pressure sore, or with continence needs. Some people will be very vulnerable as more than one health and wellbeing need is not being met.
- Factors that increase the risk for everyone living in the home. For example, high staff turnover, inadequate staffing levels, poor-quality assessment and care planning, poor-quality staff training and support, poor-quality assurance, and a failure to identify, report and respond to incidents of harm or potential harm.

Confidence in the provider's capacity to improve is likely to be low. The service is unlikely to have the capability to meet the Health and Social Care Standards. For example, they are less likely to have the following in place.

- The necessary resources to provide high-quality care.
- A stable management and staff team so people experience consistency and continuity.
- Managers and staff who have a good understanding of relevant evidence, guidance and best practice and are trained, competent and skilled.

- Robust and transparent quality assurance processes that identify concerns at an early stage and trigger a response that results in an improvement in people's experiences and outcomes.
- Management and staff who clearly understand that they have a responsibility to protect people from harm.
- Management and staff who are alert and respond to signs of deterioration in people's health and wellbeing.
- Management and staff who work well with relevant organisations (including the health and social care partnership and the Care Inspectorate) for the benefit of people's health, safety and wellbeing.

Health and social care partnerships' statutory responsibilities and powers

Local authorities have a duty of care for all people living in care homes in Scotland, including those whose care is privately funded.

The chief officer and chief social work officer will play a significant role in ensuring statutory duties are met. Each situation will be different, and the partnership should urgently take legal advice on how it can and cannot intervene and the legal basis for that decision.

In accordance with the Adult Support and Protection (Scotland) Act 2007, local authorities have a statutory responsibility to identify, support and protect adults who may be at risk of harm. The local authority can provide continuing assistance with support and protection for those identified as being at ongoing risk. When there is no alternative, the local authority can apply for a protection order to move an adult at risk to a suitable available place if they are likely to be seriously harmed if not moved.

It is essential that adult support and protection colleagues are fully involved once a serious risk to life, health or wellbeing has been identified, and that investigation timescales and subsequent protection planning take account of the urgency of the situation and are proportionate to risk.

Under section 12 of the Social Work (Scotland) Act 1968, local authorities have a duty to provide or arrange the provision of residential facilities. COSLA's 'Good Practice Guidance on the Closure of a Care Home' advises:

“Subject to negotiation with the care home owner or administrator, local authorities can exercise this duty flexibly, and in circumstances where a care home closes, can assume responsibility for the management of the home, or can arrange to lease or buy it.” (2011, page 2)

Local authorities can also use the power to advance wellbeing contained in section 20 of the Local Government in Scotland Act 2003, which states:

“This power includes the power to incur expenditure, enter into arrangements or agreements with any persons and provide staff, goods, material, facilities, services or property to any person.” (2011, page 2)

Working together when there is evidence of unsatisfactory care that poses a risk to service users' life, health or wellbeing

Where there is evidence of unsatisfactory care that poses a risk to life, health or wellbeing, the Care Inspectorate will urgently inform the health and social care partnership, including the chief social work officer and director of nursing.

A meeting should be arranged urgently to share relevant information and plan initial assessment and protection activity. This could be arranged by the partnership or the Care Inspectorate, however the duty to protect people remains with the partnership. Both organisations should be represented by an officer who is well informed about the service and has the authority to make decisions and delegate resources. This approach encourages better information-sharing, improves understanding of the risks and makes it easier for each organisation to mitigate those risks individually and collectively in accordance with their respective roles in a coordinated way.

There is a helpful flowchart at the end of this guidance that health and social care partnerships can use.

The health and social care partnership should take account of the Care Inspectorate's findings along with any relevant information they hold about the service and identify urgent action that will be taken to protect people.

The Care Inspectorate will ask the partnership to share any relevant information and participate in their ongoing assessment of risk and the service's capacity to improve. The Care Inspectorate will advise the partnership of the enforcement action that may be taken and the enforcement process, and work collaboratively to support effective monitoring and contingency planning

There may be times when the health and social care partnership's and the Care Inspectorate's assessments of risk differ. All professionals involved in the process should be ready to explain the evidence that underpins their professional judgements. If any professional believes information has been misunderstood or that there are risks that have not been addressed, then they should say so.

Key activities for the health and social care partnership

Assessing and responding to evidence of a serious risk to the life, health or wellbeing of a group of people living in a care home is a critical and urgent task for the health and social care partnership.

Managing the process involves several separate but interconnected activities. A project management approach will be helpful. We have appended a helpful checklist to this guidance that health and social care partnerships can use. The partnership should urgently identify:

- a lead officer who will plan, coordinate and evaluate the process
- key partners, main points of contact and communications arrangement including out-of-hours arrangements
- a dedicated team of health, social work and social care professionals who will carry out assessments, provide advice, monitor quality and provide any other support required
- a media and internal communication strategy.

The process will include the following actions.

- Inform other placing authorities about concerns and agree coordinated approach to assessment and communication.
- Ongoing liaison with the service provider.
- Plan and carry out health assessments and care reviews, taking into account what is already known about potential and actual risk.
- Identify people experiencing care who require support and protection.
- Consider what support is needed to protect people and stabilise the service, including, if there is no alternative, the use of adult support and protection orders.
- Agree plans to communicate with people experiencing care, relatives and staff.
- Plan and carry out monitoring of the service.
- Review the care home contract.
- Make contingency arrangements for alternative care in the event of an interim suspension order or the cancellation of the service's registration.
- Assess and respond to new information from the service provider, the Care Inspectorate, other regulators and internal activity.
- Notify the Mental Welfare Commission.
- Make referrals to other statutory bodies when concerns are outwith the partnership's remit and respond to feedback on those referrals.

Large-scale adult support and protection investigation

A large-scale investigation is likely to be required where evidence indicates that the risk of harm is due to the way the service is provided. The investigation timescale should reflect the seriousness of the risks.

Informing other placing authorities

The partnership should urgently inform all other placing authorities that the Care Inspectorate has identified a serious risk to people's life, health or wellbeing, and agree a plan for working together and communicating with people experiencing care and their relatives.

Making referrals to other organisations when the risks identified are outwith the partnership's remit

The health and social care partnership should ensure that any information relating to risks that are outwith their remit are referred to the relevant organisation without delay. The following are examples.

- Allegations of potential criminality, including wilful harm and neglect, must be referred to Police Scotland without delay.
- Concerns relating to health and safety must be referred to the Health and Safety Executive or the relevant local authority environment health team.
- Concerns relating to fire safety must be referred to the Scottish Fire and Rescue Service.

If there is evidence that suggests a worker's practice has put the health, safety or wellbeing of people experiencing care at serious risk then they must be referred to the Scottish Social Services Council, NMC or relevant body.

If a service provider has not made a referral or there is a concern that the referral may be inaccurate, then the relevant professional should make a referral.

The partnership may identify concerns about workers' fitness to practise that the service provider is unaware of or has failed to respond to effectively. Providers should be informed about concerns relating to a worker's fitness to practise, unless there is an allegation of criminality, in which case the partnership should seek advice from Police Scotland.

Service providers should have a robust risk assessment process in place to protect people from potential harm while allegations relating to fitness to practise are investigated. The partnership should satisfy itself that the risk assessment offers adequate protection for people experiencing care.

Feedback from other statutory and regulatory organisations about referred matters will contribute to the Care Inspectorate's and the health and social care partnership's ongoing assessments of risk.

Monitoring the service

Effective monitoring arrangements are essential as they enable the partnership and the Care Inspectorate to identify and respond to any emerging or increasing risk to people experiencing care, and to assess the impact of any support measures on their health, safety and wellbeing.

Effective arrangements should be agreed and implemented to assess and monitor the quality of the service when unsatisfactory care that may pose a serious risk to life, health or wellbeing has been identified. A joint monitoring plan should be agreed between the partnership and the Care Inspectorate to coordinate monitoring interventions. The plan should do the following.

- Identify the methods that will be used to monitor the service. These may include visits, gathering information from other professionals and requests for information.
- Clarify what activities should be carried out during monitoring visits.
- Specify the frequency and timing of visits in response to service specific risks.
- Clarify feedback arrangements within and between organisations to ensure relevant information is shared in a timely manner.

- Specify how visits will be recorded and information shared between workers involved in monitoring activities to ensure a consistent approach.

Partnership staff working in or with the service

The partnership will need to deploy its own staff to assess people's needs, monitor care, provide support and guidance or work directly in the service, depending on the circumstances.

It is important that the service provider, people experiencing care, relatives, care staff and the Care Inspectorate are clear about the roles and responsibilities of the partnership staff. Roles and responsibilities should be clearly defined and kept under review. It may be helpful to confirm in writing the parameters of the partnership staff roles and the likely length of their involvement, particularly if they are deployed to work in the service.

If a number of health and social work professionals are planning to visit the service to carry out assessments and/or provide advice it is helpful to coordinate visits in advance to allow the care home staff and those they care for to make the most of the visits and ensure the service is not overwhelmed by having too many visitors at once.

Communication plan – people experiencing care and their relatives

The Health and Social Care Standards say that people experiencing care and their relatives have a right to be informed about and discuss events that are likely to lead to a significant change in their lives, such as an emergency cancellation application. Understandably, this will be a worrying time for them, and it is important that they are given clear information about what is happening and why.

People experiencing care and their relatives will have genuine fears about the situation, and they are likely to need ongoing support. The health and social care partnership must ensure there are enough staff with the time and caring capacity to listen and respond to their concerns. People experiencing care may also benefit from support from independent advocacy or other organisations that are already part of their wider support work, such as their faith organisation. Every effort should be made throughout the process to ensure that people are well informed and supported.

The partnership should develop a plan, in conjunction with the service provider where appropriate, that includes a range of appropriate methods for communicating with people and their relatives about what is happening. Inclusive plans that provide people with meaningful opportunities are likely to include a variety of approaches such as:

- large meetings
- small group meetings
- individual one-to-one discussions
- emails and postal letters
- nominated professionals being available for questions and discussions - this could be 'open door' or at planned times
- notice boards giving updates
- social media communications and networking such as Facebook and Twitter
- contact information for the partnership and the Care Inspectorate.

Health and social work staff who visit the home or are involved in carrying out assessments will frequently be asked questions by people who experience care, relatives and staff. It is essential that they are well informed. It may be helpful to have regular staff briefings and a FAQs document that all visiting professionals can use to inform their discussions. FAQs should be updated as the situation develops so that professionals are well informed and able to offer a consistent and current response.

Holding an early meeting with people who experience care, relatives and representatives should be a priority for the health and social care partnership as it can help avoid misinformation and speculation. The meeting should be proactive (sharing information to keep people informed) and reactive (responding to questions). The Care Inspectorate will wish to attend meetings to explain the action they are taking, hear from people and answer their questions.

Information that can be shared at a meeting is likely to be restricted for legal reasons, to protect people's right to confidentiality and potentially in response to ongoing police enquiries. The health and social care partnership and the Care Inspectorate should coordinate and prepare for the meeting by agreeing what information can and cannot be shared, as well as agreeing key messages that demonstrate how people's health and wellbeing is the priority.

The location and timing of meetings should be planned to make it easy for people to attend. A balance needs to be struck that enables people experiencing care to take part if they wish to, while also ensuring those who do not wish to attend are not inconvenienced or distressed by a meeting taking place in their home. It may be helpful to have a meeting in the home and in the local community depending on the local circumstances.

Writing to people experiencing care and their relatives to update them on the situation is another option. If a letter includes information provided by a key partner, the content should be agreed in advance.

Communication plan - media

Developing a media communication plan with key partners will help ensure factual reporting and demonstrate key partners' commitment to work together to protect people's life, health and wellbeing.

People experiencing care, relatives and staff may need additional support following a media release or media coverage about their care home. Ensuring adequate information and support is easily available should be integral to the planning process.

Any media-related activity carried out by or with the Care Inspectorate **MUST** be done in consultation and prior agreement with the Care Inspectorate media team. Email media@careinspectorate.gov.scot or telephone 01382 207171.

Communication plan - care home staff

The Health and Social Care Standards say that people experiencing care have a right to experience stability in their care and to be supported and cared for by people they know. However, there is often significant staff turnover and higher use of

agency staff when a care home is performing at an unsatisfactory level, and staff are likely to be experiencing higher levels of stress.

The health and social care partnership should work with the provider to ensure there is regular and open communication with staff about what is happening and to ensure they receive the support they need to practise safely and in a person-centred way. The Care Inspectorate will wish to take part in this process so that they can explain the action they are taking, hear from staff and answer their questions. It will be helpful to agree early on with the service provider and the Care Inspectorate the approach to staff communication.

Moving on

The Health and Social Care Standards say that people have a right to be involved in assessing their needs and that their care and support should be provided in a planned and safe way, including when there is an emergency or unexpected event.

- My care and support is provided in a planned and safe way, including if there is an emergency or unexpected event. (Standard 4.14)
- I am fully involved in assessing my emotional, psychological, social and physical needs at an early stage, regularly and when my needs change. (Standard 1.12)
- If I am supported and cared for by a team or more than one organisation, this is well coordinated so that I experience consistency and continuity. (Standard 4.16)

People are entitled to receive support to ensure their belongings, medication and any equipment are moved in a timely and dignified way, and to be well supported on the day they move. When a care service's registration is suspended or cancelled, the provider should work with the partnership and prepare contingency plans that take account of the Health and Social Care Standards. The implementation of the plan should be reviewed as part of joint monitoring arrangements.

Assessing risk in other services run by a provider

If the provider operates more than one service, the Care Inspectorate will assess whether the serious concerns that have been identified in relation to one care service pose a risk for people using the provider's other services. They may need to liaise with other health and social care partnerships if the services are provided in other areas in order to make that assessment.

Follow up – lessons learned

A final multi-agency meeting should be arranged to review the process and its effectiveness.

Placing authorities should formally follow up on outcomes for people if they move to a new home and share these outcomes with the Care Inspectorate and other partnerships.

Health and social care partnership serious risk response checklist

Initial response

- Inform chief social work officer and director of nursing that the Care Inspectorate has identified unsatisfactory care and/or serious risk to people's life, health or wellbeing.
- Convene urgent multi-agency meeting
- Identify serious issues and risks. Identify individuals in at-risk groups. For example, if Care Inspectorate information identified a serious risk for people living with dementia, people in this group will be an assessment priority.
- Identify initial response team from health, social work and social care staff, including adult protection colleagues and update on current situation. The response team should include professionals with specialist knowledge and skills relevant to the identified concerns.
- Identify any individuals who require urgent referral to health professional for assessment, advice, treatment or support, social work review or adult protection inquiry.
- Agree and initiate any initial assessment, protection or support actions.
 - Provide workers carrying out this work with relevant information about the current situation to inform their assessment.
 - Agree escalation and debrief arrangements for workers carrying out initial assessment, protection or support plans care reviews.
 - Provide relevant out-of-hours health and social work services with an update on the current situation. Share details of out-of-hours contacts.
- Assess whether it is necessary to deploy health and social work staff to provide care or oversight in the care home. If health and social care staff will be temporarily deployed to the service write to provider to confirm reason for deployment, define roles and responsibilities and the likely length of involvement.
- Initiate adult protection procedure. Check with the Care Inspectorate that all relevant protection referrals have been made.
- Agree initial internal and external communication plan including lines for media and the HSCP contact centre staff (if relevant).
- Consider care home contract review.
- Seek legal advice.
- Arrange first review meeting with the Care Inspectorate and any other relevant public or regulatory organisations.

First review

- Review feedback from initial assessment, protection and support activities, other information held by the HSCP, any new information from the Care Inspectorate and other regulatory or public bodies.
- Identify what further support is necessary to protect people, including deployment of health and social work staff to provide and/monitor care, and if there is no alternative, use of adult support and protection orders.
- Identify any information that should be escalated to the chief social work officer.
- Identify whether any additional referrals to other regulatory or public bodies are required.
- Agree future review meeting frequency (daily multiagency meetings are recommended when the Care Inspectorate has identified a serious risk to people's life, health or wellbeing), agenda and attendees.

Ongoing review

- Request update from Care Inspectorate and any other public or regulatory organisations.
- Review current protection and support measures and evaluate their effectiveness.
- Seek information and assess the provider's response to identified risks and efficacy of the actions they are taking terms of protecting people and improving their care.
- Continually assess all incoming information and make health, adult protection or other referrals as required.
- Identify any further actions that should be taken to protect people.
- Identify any information that should be escalated to the chief social work officer.
- Identify any communications that need to be made to the provider, people and their representatives.

Assessing people's needs

- Identify placing authorities and provide those authorities with update on current situation.
- Agree how host authority and placing authority will work together to assess people's needs and take action to protect and support. If necessary, agree national contingency planning arrangements.
- Identify placing authority contacts and link social worker for each person. Share contact details with the person and (if relevant) their active attorney/guardian.
- Identify people's capacity to make decisions about their care and where they live.

- Identify active welfare powers of attorney, guardianships and the specific powers they hold. Check accurate contact details.
- Identify people who may lack capacity to make decisions about their care and where they live, and who do not have active legal powers in place.
- If any concerns about capacity are raised, the person should be referred to an appropriate clinician for a formal assessment of capacity. The assessment should consider the person's ability to make decisions about where they live and the type of care they receive.
- Ensure active attorneys and guardians are informed about any concerns about the person's care and involved in decision-making.
- Consult with the person, family/carer and active attorney/guardians (if relevant) about current and future care needs. Identify and provide all relevant support and information that the person (and if relevant, their attorney/guardian) needs to make informed decisions.

Communication

External - Care Inspectorate

- Identify key contacts, including out-of-hours arrangement and media contact.

External – service provider

- Identify key contacts, including out-of-hours contact arrangements.
- Identify what information the service provider will be asked to provide in addition to ongoing contractual and ASP information-sharing responsibilities. This may include information about staffing levels/skill mix and unmet need.
- Identify how the provider intends to inform staff of concerns and action being taken to protect people.

External – people experiencing care and their relatives and representatives

- Develop communication plan for people and their relatives and representatives, selecting a range of methods that suit people's needs and preferences.
- Gather current contact details for service users, relatives and representatives and preferred contact methods.
- Provide each person experiencing care and/or their relative/representative with contact information for their social worker.

Your communication plan should consider the following.

- Group meeting with people and their relatives and representatives. Discuss and agree timing, agenda and attendees (including Care Inspectorate and provider) for meeting with people, relatives and representatives. Consider

- Writing to people and their relatives and representatives by post or email to advise of concerns and action being taken to protect people. Discuss content with the Care Inspectorate.
- Individual meetings with people and their relatives and representatives.
- Drop-in sessions in the care service, local community and online.

Information-sharing and referrals

- Identify any public or regulatory bodies who should be invited to participate in ongoing assessment and response to the identified risks.
- [Notify the Mental Welfare Commission](#) if relevant.
- Identify any other referrals that should be made to other public or regulatory bodies and allocate task to identified worker.

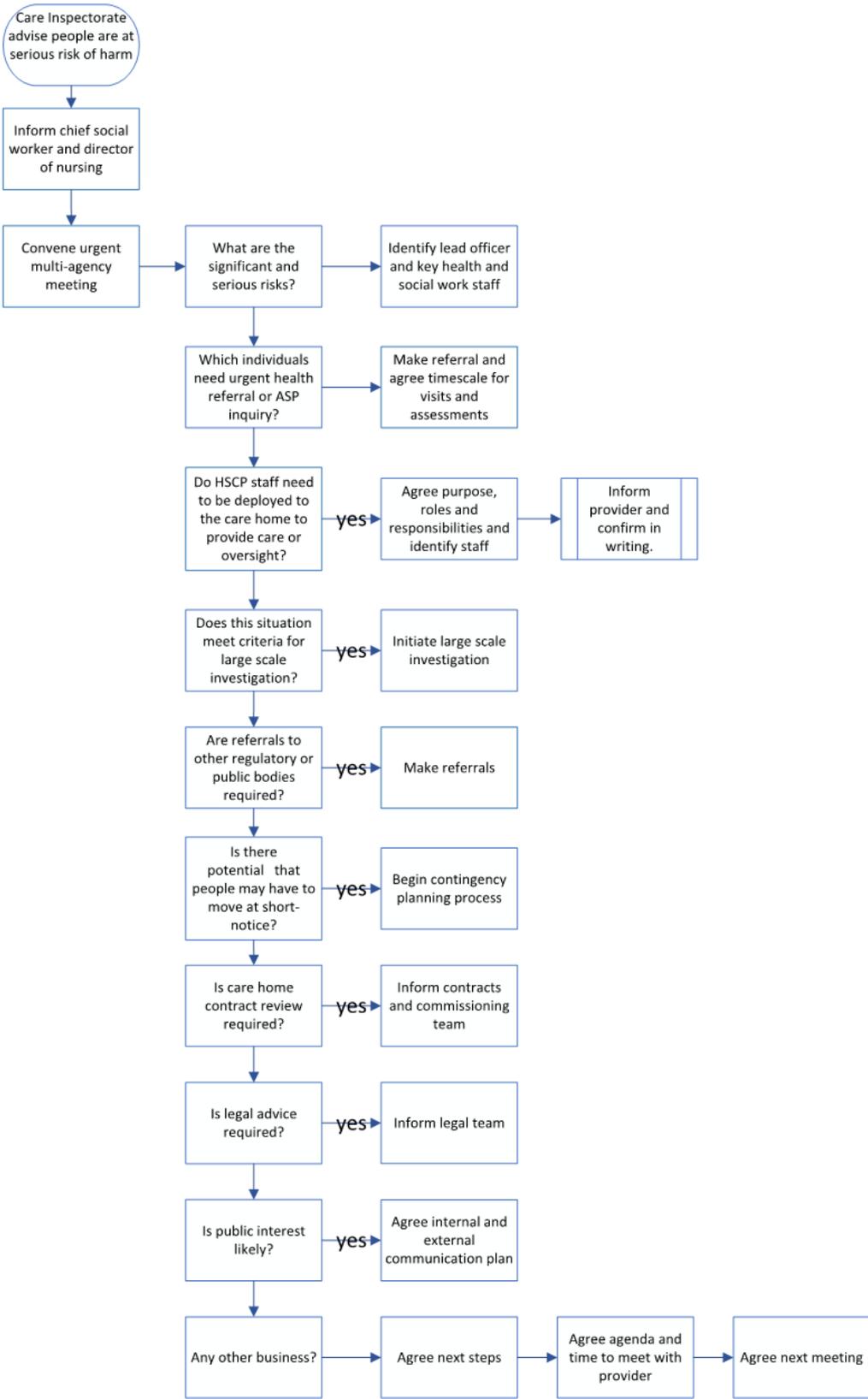
Monitoring risk

- Agree monitoring arrangements with the Care Inspectorate. This may include joint site visits, information-sharing following visits or joint meetings with the provider by health and social care partnership staff or other regulatory body.
- Ensure the provider is aware of its responsibility to inform the health and social care partnership of any change that may increase risk for supported people.

Contingency planning

- Develop contingency plans in response to the range of potential outcomes that can be anticipated. Include ongoing protection and improvement support and support for people to move at short notice in response to cancellation of care home contract, voluntary cancellation of service by the provider, an interim suspension order or the cancellation of the service's registration by the sheriff court.

Flowchart



Headquarters

Care Inspectorate
Compass House
11 Riverside Drive
Dundee
DD1 4NY

web: www.careinspectorate.com

email: enquiries@careinspectorate.com

telephone: 0345 600 9527



@careinspect