



Protecting Vulnerable Groups

Guidance for Care Inspectorate staff and service providers

Publication date: May 2015

Publication code: OPS-0515-372

Protecting Vulnerable Groups - Guidance for Care Inspectorate staff and service providers

The Care Inspectorate as a scrutiny and improvement body has the following responsibilities in respect of the care services it regulates

1. Ensure that we are satisfied about the fitness of providers and managers of registered services.
2. Ensure that providers of services implement the PVG scheme appropriately as part of the safe recruitment of the managers and staff of care services
3. Ensure that we use our power to refer providers and supply information required by Disclosure Scotland appropriately.

This guidance sets out how the Care Inspectorate will fulfil these responsibilities and what we expect from providers of care services. This guidance relates to the Care Inspectorate's statutory functions in regulating care services rather than its role as an employer of its own staff.

1. Ensure that we are satisfied about the fitness and suitability of providers and managers of registered services.

Section 73(d) of The Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") provides that PVG membership can be sought for those who are "to provide or manage a care service" for the purposes of Part 5 of the 2010 Act" (that is, the Public Services Reform (Scotland) Act 2010 ("the PSR Act")).

Regulation 13 of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011, SSI 2011/210 stipulates that a person listed under the PVG Act cannot provide, manage (or be employed) in a children's or adults' care service if included in the relevant list (of those barred from such work) .

The Care Inspectorate therefore in addition to other fitness checks needs to be satisfied that providers and managers of care services are members of the PVG Scheme and hold a PVG Scheme Record for the appropriate type of regulated work (children or adults) when considering applications for registration to provide a care service.

Where an applicant is applying for registration to provide a care service, consideration should be given to the range of services the applicant intends to provide. If they seek to provide services to both children and protected adults it will be necessary to apply for PVG membership of both schemes.

In order that that we are notified of any consideration for listing, the Care Inspectorate requires to be the counter signatory to any PVG Scheme application for a provider, or where the individual is already a Scheme member through another organisation e.g. Volunteer Scotland, to be counter signatory to an application for a Scheme Record Update.

1.1 Registration - provider fitness

When considering applications by individuals to register, the Care Inspectorate (Registration Team) will assess the suitability of the applicant to be a provider of a care service, which will include PVG membership.

Where the provider is an organisation and not an individual, the Registration Team will need to be satisfied that a representative of the Committee/Board is assessed. The Care Inspectorate therefore conducts these checks on the Chairperson.

Where an individual already is a PVG Scheme member progressed via an organisation other than the Care Inspectorate, then if the individual is willing to share their PVG Scheme Record we would only require a PVG Scheme Update to be undertaken. If, however they do not wish to share or have lost their Scheme Record a new application for a Scheme Record is required.

1.2 Registration – manager fitness

Where the provider appoints a manager, the provider will be asked to confirm the suitability of the individual including that they are a member of the PVG scheme

The Care Inspectorate would expect that normally managers of registered services due to their role and responsibilities for the day to day management and leadership of the service will carry out regulated work under the PVG Act. Managers would also normally be responsible for directly line managing staff carrying out regulated work under the PVG Act and as such would be eligible for PVG membership.

Providers would therefore be expected to seek PVG membership of managers of registered services And evidence this to the Care Inspectorate.

Where the provider as the employing organisation and/or Disclosure Scotland determines that a registered manager is not eligible for PVG membership the Care Inspectorate will consider its approach on a case by case basis but may exercise its power under section 73(d) of the PVG Act referred to above and countersign applications on behalf of the Provider.

1.3 Change to provider including changes of Chairperson, office bearers or other committee/board members

Where there are changes to the identity of the provider of a registered care service which require the care service registration to be cancelled and the new provider to apply for registration, we will need to be satisfied about the suitability and fitness of the new individual

provider or partnership or the new provider organisation's representative (normally Chair of the Committee or Board). This will include requirement for PVG Scheme membership as appropriate and as noted in 1.1 above.

For other committee/board members including other office bearers the provider organisation has a responsibility for ensuring that they complete self declaration checks

1.4 Change of manager

Where a provider appoints a new manager, the provider is required to notify the Care Inspectorate. We will then seek confirmation from the provider that the manager is fit and suitable to undertake the duties including that they are a member of the PVG Scheme (please also refer to paragraph 1.2). This will be carried out by the Inspector case holder.

1.5 Childminders, childminding assistants and persons 16yrs and over residing in a childminder's house

When considering applications to register as a childminder, the Care Inspectorate will assess the suitability of the applicant to be the provider of a care service, which will include processing and assessing their PVG membership/Scheme Record under s 73(d).

Childminding assistants are undertaking 'PVG regulated work' and are eligible to join the PVG Scheme. S73(a) of the PVG Act entitles employers to seek PVG membership when they intend to employ someone to do PVG regulated work. The Care Inspectorate, on behalf of the childminder/childminding applicant, will undertake the processing of the assistant's PVG application for PVG membership. On subsequent receipt of the PVG Scheme Record, the Care Inspectorate will forward this to the childminder in order that the childminder may consider the suitability of the proposed assistant. Childminders in receipt of such disclosure information must make sure they comply with the Code of Practice in connection with the use of disclosure information published by the Scottish Ministers available from Disclosure Scotland on www.disclosurescotland.co.uk

If someone is not working in the childminding service but simply lives at the childminding premises, they are not eligible to join the PVG Scheme but an Enhanced Disclosure can be requested (see the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010, SSI 2010/168, regulation 10(2)(h)). Where there are individuals aged 16 years and over and whose permanent place of residence is in the childminder's home, the Care Inspectorate will undertake the Enhanced Disclosure Checks. The childminding premises must be the individual's usual place of residence otherwise it is unlawful to request this check. However, where the individual will also be an assistant in the childminding service, the childminder will require to seek a PVG check. Under SSI 2011/210, regulation 12, a childminder "must not permit any person who is unfit to be in the proximity of children to live at the premises which are used for the provision of the service". Therefore if an individual is spending a considerable amount of time at the childminding premises and may be living at the childminder's home on a temporary or part time

basis we may advise the childminder that they can seek a Basic Disclosure check. This only reveals a limited range of convictions (those which are unspent) and does not show any other police information held. Childminders should also assess whether any other measures are necessary if such an individual is present in the home when the childminding service is operating. In particular, this should always include ensuring that minded children are not left unsupervised when any other individuals who are not working in the childminding service are present in the home.

1.6 Retrospective PVG checking of existing childminders and childminder assistants

The Care Inspectorate, as counter signatory, has been processing PVG membership applications for all existing registered childminders and their assistants who have not previously been eligible to apply for membership of the PVG scheme. All such applications must be made by the 29 October 2015. A Retrospective Project team based in the Paisley office and accountable to the Fitness Policy Group is coordinating this process.

Where the project team identify that a childminder is not willing to apply for PVG Scheme membership, or to seek such applications for membership from any assistant(s), the Care Inspectorate will consider taking formal enforcement action, which may potentially include a decision to cancel a registration. Any formal enforcement action will be the responsibility of the case holder inspector for the service and their manager. However, the Project Team and Legal Services will be able to provide support and the Project Team will monitor the progress of the case for audit purposes.

Retrospective checking is being progressed on a phased basis, starting with childminders registered for the longest period.

2. Ensure that providers of services implement the PVG scheme appropriately as part of safe recruitment

The Care Inspectorate expects providers of services to ensure that all individuals engaged in the provision of the care service have had appropriate PVG or disclosure checks. These should be carried out before the individual takes up their position and has any unsupervised access to people using the service. Where necessary, the provider organisation should seek advice (from Disclosure Scotland, Volunteer Scotland¹ or independent legal advice) and be able to demonstrate on inspection that it has carried out appropriate checks to ensure that staff are fit to be engaged in the provision of the care service.

2.1 Care Inspectorate's expectations of providers of registered services.

The Care Inspectorate expects that providers will have developed policies and procedures necessary to comply with safe recruitment including the PVG scheme. (refer Appendix 1)

<h3>3. Care Inspectorate role to refer providers for consideration of listing and to supply required information</h3>
--

3.1 Providing information to Disclosure Scotland

Disclosure Scotland when considering an individual for listing can gather information from relevant organisations. The Care Inspectorate may be required to supply information under section 19 of the PVG Act. Where the Care Inspectorate is so required and provides referral information in good faith, it will be protected from actions for damages under section 41 of the PVG Act.

In these circumstances the request for information will be processed by the Information Governance Team in conjunction with Legal Services in order to submit the required information. Inspector case holders will be notified of the information request.

3.2 Referring individuals providing care services to Disclosure Scotland

The Care Inspectorate will make referrals to Disclosure Scotland where it obtains information which we consider, having taken legal advice, meets the referral grounds and a referral has not been or will not be made to DS by a provider.

This would primarily relate to individual providers of services but the Care Inspectorate would in exceptional circumstances refer managers or staff where the provider was unable or unwilling to carry out this responsibility.

Separate guidance is available to Care Inspectorate staff on the process of referral. See 'Protecting Vulnerable Groups (PVG) Part 2: Referrals. Consideration for listing, risk assessment and determination. OPS-0413-231.

Role of the Care Inspectorate's Fitness Expert Group

This internal Care Inspectorate group has been formed to lead on the development of policies, procedures and guidance relating to all fitness checks on individual applicants and care providers.

The Care Inspectorate will continue to give feedback and report any concerns to the Scottish Government and Disclosure Scotland where we consider that the PVG scheme and available Disclosure checks may not provide sufficient safeguards to protect vulnerable adults and children.

Where Care Inspectorate staff identify any issues themselves, these should be referred to the Fitness Expert Group (Henry Mathias - Chair of Fitness Expert Group or Heather Dall - Development Officer).

Copies of the notes of meeting of this group are available for Care Inspectorate staff on the intranet.

Appendix 1

Protecting Vulnerable Groups

Care Inspectorate's expectations of providers

The Care Inspectorate expects providers of services to ensure that all individuals engaged in the provision of the care service have had appropriate disclosure checks.

Where necessary, the organisation should seek advice (from Disclosure Scotland, Volunteer Scotland or independent legal advice) and be able to demonstrate on inspection that it has carried out appropriate checks to ensure that staff are fit to be engaged in the provision of the care service.

1. Care Inspectorate's expectations of provider of registered services.

The provider must have clear safe recruitment policies and procedures including the use of PVGs for paid staff and volunteers. By November 2015 all staff eligible for PVG scheme membership must be on the scheme as this is the date set by Disclosure Scotland to close the joining the Scheme for staff and volunteers already in regulated work. Policies and procedures must show:

- How the provider will seek updates to staff's memberships regularly (or that this will be done by another agency or Volunteer Scotland). In line with the previous Enhanced Disclosure system, it is recommended that this takes place every 3 years.;
- Arrangements for referring individual staff to Disclosure Scotland for consideration for listing if a referral ground is met
- Arrangements on how they will handle the practicalities of being notified that a member of their staff is under consideration for listing or is barred from doing regulated work with children/adults
- Be familiar with the codes of practice produced by Disclosure Scotland which can be found at www.disclosurescotland.co.uk

2. Monitoring compliance

Care Inspectorate's approach

Providers will be asked to give basic details of PVG membership in the Care Inspectorate's annual return submissions (this will include for example, whether staff and manager are scheme

members, frequency of updates). The Care Inspectorate may consider focusing on PVG implementation as a corporate themed inspection, linked possibly with safer recruitment, in the future.

Whilst the Care Inspectorate will not be routinely examining safe recruitment there may be situations, as a result of a complaint or through a specific issue identified at inspection, that this is considered. In these situations where the Care Inspectorate identifies concerns regarding the use of the PVG scheme, this may lead to a recommendation or requirement being made.

Inspector Managers must to seek legal advice regarding the specific care service before making requirements.

CONTACT FOR PROVIDERS:

Disclosure Scotland

0870 609 6006

This number is available Monday to Friday from 8:00am to 6:00pm.

info@disclosurescotland.co.uk

Volunteer Scotland (formerly CRBS)

**Jubilee House
Forthside Way
Stirling
FK8 1QZ**

Tel: 01786 479 593

email: hello@volunteerscotland.org.uk

www.volunteerscotland.net

Headquarters

Care Inspectorate
Compass House
11 Riverside Drive
Dundee
DD1 4NY

web: www.careinspectorate.com

email: enquiries@careinspectorate.com

telephone: 0845 600 9527



@careinspect

Other languages and formats

This publication is available in other formats and other languages on request.

Tha am foillseachadh seo ri fhaighinn ann an cruthannan is cànan eile ma nithear iarrrtas.

অনুরোধসাপেক্ষে এই প্রকাশনাটি অন্য ফরম্যাট এবং অন্যান্য ভাষায় পাওয়া যায়।

یہ اشاعت درخواست کرنے پر دیگر شکلوں اور دیگر زبانوں میں فراہم کی جاسکتی ہے۔

ਬੇਨਤੀ 'ਤੇ ਇਹ ਪ੍ਰਕਾਸ਼ਨ ਹੋਰ ਰੂਪਾਂ ਅਤੇ ਹੋਰਨਾਂ ਭਾਸ਼ਾਵਾਂ ਵਿਚ ਉਪਲਬਧ ਹੈ।

هذه الوثيقة متوفرة بلغات ونماذج أخرى عند الطلب

本出版品有其他格式和其他語言備索。

Na życzenie niniejsza publikacja dostępna jest także w innych formatach oraz językach.