



Escalation, Enforcement and Review Policy

**Setting out the approach that the
Commission will take when
investigating and responding to alleged
or confirmed breaches of Regulations
or Standards**

July 2020

SECTION 1

1. Introduction

The Jersey Commission (“the Commission”), is the independent regulator of health and social care in Jersey, established under Part 7 of the Regulation of Care (Jersey) Law 2014. It has a range of powers which are borne out of the legislation, legislative instruments, policy and Standards which are referenced in Appendix 1.

The role of the Commission is to regulate and inspect health and social care services for both adults and children, provided by the Government of Jersey, parishes, private providers and the voluntary sector in order to make sure that people receive high quality and safe care.

The services which the Commission regulates include care homes providing nursing and personal care or personal support for people of all ages with a range of health and social care needs, care provided to people in their own homes, adult day care services and residential care services.

The Commission’s work is based upon five core values:

- **A person-centred approach** – we put the needs and the voices of people using health and social care services at the heart of everything we do
- **Integrity** – we will be objective and impartial in our dealings with people and organisations
- **Openness and accountability** – we will act fairly and transparently, and will be responsible for our actions
- **Efficiency and excellence** – we strive to continually improve and provide the best possible quality and value from our work
- **Engagement** – we will work together with, and seek the views of, those using, providing, funding and planning health and social care services in developing all aspects of our work.

In applying these core values, the Commission makes sure that health and social care services provide people with safe, effective, compassionate, high-quality care. When there are occasions where this is not fully evidenced, the intention of the Commission is to encourage care services to make necessary improvements; to provide guidance about

how to improve and to seek the necessary assurances from the responsible person or registered manager that the required change has occurred.

Whenever poor Standards of care are identified, or where registered providers and managers do not meet the Standards required in the Regulations, the Commission has a range of powers which enable it to intervene to protect the public and to hold registered activities, including responsible individuals and registered managers to account.

Typically, the Commission will adopt a **stepped or graduated approach** to escalation and enforcement.

The Commission is committed to upholding the best regulatory practice principles adopted by the Organisation for Economic Cooperation and Development (OECD). Such principles include those of evidence-based enforcement, risk focus and proportionality, transparent governance, responsive Regulation, compliance promotion and professionalism.

This policy sets out the approach that the Commission will take when investigating and responding to alleged or confirmed breaches of Regulations or Standards.

This policy is divided into distinct sections. These are:

- Escalation (section 2)
- Enforcement (section 3)
- Review (section 4)
- Notifying Others of Enforcement Action / Communications (section 5).

1.1 Definitions

Escalation

This is the process which the Commission will follow when Regulations and/or the Standards are being breached. The Commission may choose to meet with a care provider, state clearly what the concerns are giving rise to the escalation and direct the provider to undertake corrective or preventative action.

Enforcement

The Commission will consider taking enforcement action where there are concerns about actual or potential risks to the safety of care receivers and/or when there are concerns that

the Regulations are being breached or when Standards are not being met. The purpose of enforcement action will be to take formal and robust intervention in order to support the regulated activity to achieve full compliance with the Regulations or Standards.

The Commission will normally only take enforcement action when interventions undertaken as part of escalation have failed to achieve the desired outcome. However, some breaches of Regulations or Standards are of such significance that enforcement may be progressed immediately when and where this is warranted.

Review

This refers to the process which the Commission will follow after actions relating to either escalation or enforcement have been taken. The Commission may increase inspection or other activities following escalation or enforcement action in order to obtain assurances that improvements have been sustained.

In addition, there is a process of representation or appeal which is available to a regulated activity in respect of some enforcement actions proposed or taken by the Commission.

1.2 Scope

This policy applies to all regulated activities.

1.3 Policy Statement

The Commission is responsible for the promotion of best practice and for the improvement of health and social care outcomes for the people of Jersey. In seeking to achieve this, the Commission is required to provide independent assurance about the quality, safety and effectiveness of health and social care services. This requires the setting of high Standards and the challenging of poor performance and practice.

Typically, the Commission will work to facilitate the cooperation of service providers in achieving these objectives. However, where necessity dictates, the Commission is required in law to intervene in order to make sure that improvements take place. When escalation and enforcement become necessary, the Commission will adopt a stepped approach to make sure that service users are kept safe and that their needs are consistently met.

The Commission will act in a way which is both fair and transparent when applying escalation and enforcement action.

1.4 The Commission's Responsibilities

The Commission is responsible for registering, inspecting and encouraging improvement amongst a range of health and social care services delivered by statutory and independent providers. These services are provided in accordance with the Regulation of Care (Jersey) Law 2014 and the Commission's Standards.

Regulated activities include care homes (children and adults), home care and adult day care services.

In line with the Scheme of Delegation for the Commission's policies, the Board of the Commission has responsibility for the approval of this policy.

1.5 The Chief Inspector's Responsibilities

The Chief Inspector has responsibility for ensuring that the policy is applied within the legislative framework and in a consistent manner.

The Chief Inspector will inform the Board of any enforcement at the earliest available opportunity.

The Chief Inspector has operational responsibility for ensuring that the policy and procedure is applied appropriately, and that escalation and enforcement activities are managed in accordance with this policy.

The Chief Inspector will take the necessary steps to minimise risk of further harm by informing external organisations of formal enforcement action, as appropriate.

The Chief Inspector has overall responsibility for maintaining a record of all escalated concerns, direct allegations and/or disclosures. He/she is responsible for the dissemination of learning on behalf of the Commission.

The Chief Inspector will make sure that, where appropriate, issues are brought to the attention of the Board in order to identify trends.

The Chief Inspector has responsibility for ensuring that external reviewers working on behalf of the Commission also adhere to this policy.

1.6 Regulation Officers' Responsibilities

Regulation Officers are responsible for adhering to the policy and ensuring that they raise any concerns, direct allegations and /or disclosures and respond to them appropriately. They are responsible for bringing any concerns to the attention of the Chief Inspector promptly.

1.7 Policy Review

This policy will be reviewed in July 2021 or at the Commission's discretion, should matters arise which need earlier consideration.

SECTION 2

2. Escalation

Should any staff member within the Commission become aware of a matter which presents a real or potential risk of harm to a service user and which has the potential to cause harm, they should inform the Chief Inspector (or in his/her absence the relevant deputy), immediately.

The Commission will adopt a stepped approach to intervention based upon an assessment of the seriousness of the impact which any particular concern has upon service users. As such, the approach taken to determining the appropriate form and level of intervention will be a risk-based one.

2.1 Risk Management

The Commission will adopt a risk-based approach where there are concerns about Regulations or Standards not being met. By employing risk management, the Commission will proactively and systematically safeguard the safety of people who use services.

The purpose in employing a risk management methodology is to avoid an approach which is purely reactive and to instead maintain and develop an approach which identifies and understands risk within a broader contextual framework.

The response which the Commission will adopt will vary depending upon the specific facts of each case. The Commission reserves the right to seek legal advice when making decision regarding regulatory actions.

There will be instances where intervention must take place immediately in order to protect service users from harm. However, there will also be instances where risk is assessed as being low and as such it may be possible for a 'lighter touch' approach to be adopted. As such, risk can be measured and assessed on a continuum whereby the relative probability and severity of harm will denote the appropriate response which the Commission should take.

The Chief Inspector or their nominated deputy will always be required to be involved in the making of decisions pertaining to intervention. Decision-making will be undertaken in partnership with other agencies where this is required (including statutory agencies with

responsibility for safeguarding and child protection, social services, social security, GP's, the general hospital and the police). A record of such decisions will be made and retained in the service provider's file.

The Commission will use intelligence gathered in the course of inspection visits and through correspondence received from service users, staff members, family members and members of the public, in informing its decision-making relating to escalation and enforcement.

2.2 Concerns which fall outside of the scope of the policy

Some issues will fall outside of the escalation and enforcement policy on the basis that they should be addressed routinely by the registered manager.

If such a concern is identified from the findings of an inspection, the registered person and/or registered manager (as is most appropriate depending upon the circumstances), should be informed of the nature of the concern and a record will be kept by the Commission.

2.3 Concerns which fall within the scope of the policy

Where the Commission has determined that matters of concern require some escalation, the service provider will be required to provide assurances to the Commission of compliance with Regulations and Standards. This may involve a meeting with the service provider and the submission of a written action plan for the Commission's approval.

Where there are concerns that require an immediate response, a meeting may be held at short notice.

Where the service is directly managed by the Health and Community Services Department, the Chief Inspector will notify the Director General of the Strategic Policy, Planning and Performance Department (SPPP), and the Director General of the Health and Community Services Department at the earliest opportunity.

Letters of escalation may be copied to the Director General of the SPPP and other appropriate external organisations, for example, the Safeguarding Partnership Board, the Adult Safeguarding team, the Minister for Health and Social Services and/or Minister for Children's Services and Housing.

2.4 Role of Regulation Officers

Regulation Officers are required to use professional judgement, based on evidence and current best practice guidance, to assess concerns and to determine the degree to which a risk presents an immediate and continuing threat to the safety of care receivers.

Regulation Officers and any external reviewers involved with the Commission will discuss the nature and extent of the perceived risk with the Chief Inspector as part of the escalation process.

The initial assessment may need to be carried out quickly, even when all relevant facts may not be immediately available.

The decision whether to initiate escalation measures will be taken on the basis of the degree of risk and the likelihood of significant harm being experienced by service users.

SECTION 3

3 Enforcement

Enforcement is a necessary component of Regulation.

The Commission's purpose is to protect people who use health and care services and to bring about improvement in the quality of care services where there is evidence of a confirmed breach of Regulations or Standards.

Ultimately, responsibility for the quality of services lies with those who provide them.

Where there is evidence of systemic failings and where, despite escalation, services are not improving, or where people who use regulated activities are placed at risk of serious harm, the Commission will revert to the powers of enforcement under the Regulation of Care (Jersey) Law 2014. This Law empowers to Commission to intervene directly to make sure that services improve and that people who use regulated activities are protected from harm.

3.1 Graduated Approach to Enforcement

In line with the principles set out above, a graduated approach to enforcement is the preferred approach whereby the Commission will take the action which is necessary to address the identified issues and bring about the desired improvement/outcomes.

However, wherever possible it will seek to bring about change by working with providers of services in a way which is supportive rather than punitive.

The first step will usually be in the form of a documented conversation with the registered manager and responsible individual(s) in order to secure an early resolution.

Whilst embracing a stepped approach, there will be occasions when the Commission determines that it is necessary to move directly to formal enforcement action, for example where there is an allegation of criminal activity on the part of a regulated activity or any of its employees.

3.2 Improvement Plans

This section should be read alongside the Inspection Policy.

Areas for improvement identified during an inspection will be set out in inspection reports with the identified actions and timescales for compliance. These can be in relation to the Regulation or the Standards.

There may be circumstances when providers are notified of breaches of Regulations or Standards by letter, such as when an urgent matter cannot wait until the inspection report is issued or in circumstances where a breach of Regulations has been detected outside of the inspection process.

Areas for improvement identified during the inspection process will be set out in the Improvement Plan alongside the relevant Regulation or Standard.

The wording of Improvement Plans will follow the 'SMART' principles and the Commission will aim to make sure that they are:

- Specific
- Measurable
- Achievable
- Relevant
- Time framed.

The Commission will require a service provider to complete and return the Improvement Plan, outlining the actions taken and planned to address the areas for improvement within the given timescale.

The response will be used by the Commission to assess the level of progress and to determine whether any follow-up regulatory activity is needed. The Improvement Plan will be reviewed at each inspection and as appropriate, between inspections at the request of the Commission.

A Regulation Officer will assess the plan to determine whether the provider has identified suitable measures and controls to facilitate the necessary improvements/changes.

Where the provider seeks to adjust the timescales set, the Chief Inspector has the authority to either agree or reject the request. This will depend upon the specific circumstances of the case.

Where the expected improvement has not been made, and poor or unsatisfactory outcomes for people experiencing care continue to be evidenced, consideration should be given to moving to enforcement. It is important to recognise that failure to meet a requirement will, of itself, not necessarily lead to formal enforcement action.

In each case, consideration will be made of the particular circumstances and the efforts being made by the provider to meet the required Standards.

3.3 Improvement Notices

An Improvement Notice may be issued to the provider by the Chief Inspector in line with Regulation 34.

An Improvement Notice:

- Informs the registered person that the Regulations have been contravened.
- Specifies a timeframe within which remedial action must be taken.
- Explains the consequences of a failure to take such remedial action.

The Commission is required in law to publish that an Improvement Notice has been issued.

It is an offence for a person to fail to comply with an Improvement Notice.

3.4 Conditions of Registration; Suspension and Cancellation of Registration

The Law requires that mandatory conditions of registration are applied in respect of all providers of regulated activities. The Law also allows the Commission to apply additional discretionary conditions.

A discretionary condition sets out the actions a regulated activity must take to improve outcomes for people who use services.

Discretionary conditions are associated with an actual or potential breach in either the Law, associated Regulations or any orders made under the Law.

Where a stepped approach to escalation has not succeeded in bringing about the necessary improvement, or where the seriousness of the circumstances determine that enforcement is necessary, the following options may be considered:

- Suspend the registration of a manager (Article 19)
- Cancel registration (Article 20 and Article 21).

Prior to taking enforcement action, the Commission may invite the registered manager and responsible individual(s) to an Enforcement Meeting.

A meeting may be convened in the event that there is insufficient evidence of remedial measures being taken by the provider following the issuing of an Improvement Notice.

A meeting may also be convened in circumstances where the Commission decides to move directly to enforcement.

The purpose of the meeting is to identify the alleged breaches of Regulations and/or Standards and to provide an opportunity for the registered manager and / or the responsible individual to provide assurances of their actions and commitment to securing the necessary improvements.

The meeting will identify specific risks, measures which need to be taken to minimise risks and any immediate action which needs to be taken to safeguard care receivers. (Involvement of other agencies such as Child Protection or Adult Safeguarding teams must be considered at this meeting, as should any need to notify the police).

An enforcement meeting is a formal meeting which will require an agenda and the taking of minutes which are to be distributed promptly upon completion.

The provider must be made aware of any possible or likely formal action by the Commission which can take place following the conclusion of the meeting.

Where there are breaches of the legislation or conditions of registration which lead to actual or potential unsatisfactory outcomes for people who use services, the Commission may ultimately suspend or cancel the registration of the registered manager.

3.5 Article 19: Suspension of registration of manager

The Commission is able to suspend the registration of a manager in relation to a regulated activity for a period of up to 3 months.

This can happen in circumstances where the Commission has reason to believe that:

- The manager is not a fit person; or
- Any condition imposed upon the registration of the manager or provider in respect of a regulated activity has not been complied with; or
- The manager has not complied with any requirement relating to the regulated activity that he or she is required to comply with.

The Commission may decide to extend the period of suspension by up to a further 3 months.

Before deciding to suspend the registration of a manager or to extend any such suspension, the Commission must notify both the manager and registered provider of the proposal and the reasons for it, in writing. This notice must give the reasons for the decision; state when the decision takes effect; and explain the provider or manager's right to appeal.

Any person notified of suspension of registration may make representation to the Commission in writing. Such representation must be made no later than 14 days after the notice is given.

3.6 Article 20: Cancellation of registration

The Commission is able to cancel the registration of a registered person in relation to a regulated activity. This can happen in circumstances where the Commission has reason to believe that:

- The person has failed to comply with any mandatory or discretionary condition imposed upon his or her registration in relation to the activity; or
- The person is not a fit person; or
- The person has failed to comply with any requirement in the Regulations; or
- The person has been convicted of an offence under this Law or Regulations; or
- The person has failed to pay an annual fee.

Before deciding to cancel the registration of a registered person, the Commission must notify both the manager and registered provider of the proposal and the reasons for it, in writing. This notice must give the reasons for the decision; state when the decision takes effect; and explain the provider or manager's right to appeal.

Any person so notified may make representation to the Commission in writing. Such representation must be made no later than 14 days after the notice is given.

3.7 Representation and appeals

When the Commission is proposing to impose, remove or vary conditions on registration, suspend or cancel registration, the Commission will advise the registered person of their right to make representation and appeal.

Once representation is received, this will be reviewed by a subcommittee of the Commission. A subcommittee will normally consist of the Chief Inspector, the Head of Governance, Policy and Standards and one Commissioner. The subcommittee will consider the representation and will provide a decision in writing to the person who made the representation, within 14 working days. The subcommittee may determine to proceed with the cancellation or may determine to instigate alternative measures such as to undertake a further review of the circumstances which have led to the consideration to cancel registration.

An appeal may also be made to the Royal Court in line with Article 44 of the Law. The Royal Court has the power to either confirm or quash the decision of the Commission.

3.8 Article 21: Immediate cancellation of registration

The Commission may apply to the Bailiff for a provisional order for the immediate cancellation of the registration of a registered person in relation to a regulated activity.

The Bailiff may grant an application if he or she is satisfied that the grounds for cancellation under Article 20 are met and there is evidence that there will be serious risk to the life, health or well-being of an individual if such cancellation does not take place immediately.

If such an order is granted by the Bailiff, the matter will be referred to the Royal Court.

SECTION 4

4.1 Review

In respect of minor concerns which are identified through the process of an inspection, there will not normally be a requirement for review outside of the usual inspection schedule for regulated services.

However, the Commission has, at its discretion, the power to inspect services outside of the usual schedule and to request updates in relation to progress towards compliance with the standards and regulations.

4.2 Review Meeting

In respect of more concerning matters, a review meeting will be the opportunity to set out any representation the regulated activity wishes to be taken into consideration and the process of formal review of any enforcement action taken by the Commission.

Each circumstance will be different and should be considered on its own merits.

The more significant a concern and the more pressing the associated risks, the more likely it will be that subsequent review meetings will need to be held.

The purpose of a review meeting is to consider the steps taken by the regulated activity to address the breaches of Regulations or Standards, to reassess risk to service users and to determine whether new or alternative measures and controls should be introduced.

In most cases it is envisaged that concerns will be addressed promptly with the need for further review meetings diminishing as the regulated activity returns to full compliance with Regulations and Standards.

The usual schedule of inspections will be resumed once the review process is concluded.

4.3 Complaints

A provider has the right to make a complaint in line with the Commission's complaints policy.

A complaint made under the Complaint's policy and procedure will not delay any enforcement notice.

SECTION 5

5.1 Notifying Others of Enforcement Action / Communications.

Notice of any formal enforcement action will be given to other agencies as appropriate. This will be done in accordance with statutory reporting obligations set out in the Law and Regulations, and within any memoranda of understanding that exists between these organisations and the Commission, or otherwise as may be set out within Commission policy.

Details of formal enforcement action taken will be posted on the Commission website.

Inspection reports are publicly available and will contain information on areas for improvement and any formal enforcement action taken.

Improvement Notices will also be published under the enforcement section of the care service entry.

The Commission has an expectation that providers will inform people who use services of any enforcement action taken. The Commission will make this information publicly accessible as set out above. In addition, the Commission may, where there is an actual or potential risk of significant harm to people who use services, inform people who are experiencing care and/or their carers directly of formal enforcement action being taken.

Where there is a possibility of a crime having been committed the Commission will liaise with all relevant stakeholders as part of the decision-making process in order to determine the appropriate intervention.

In accordance with the Commission's Framework Agreement with the Government of Jersey, the Commission will notify the Director General of the Strategic Policy, Planning and Performance Department (SPPP), of any enforcement actions taken on a six-monthly basis.

APPENDIX 1

List of legislation, legislative instruments, policy and Standards underpinning from the work of the Jersey Care Commission.

- Nursing Homes (General Provisions) (Jersey) Order 1995
- Nursing Homes (Jersey) Law 1994
- Regulation of Care (Fees) (Jersey) Order 2018
- Regulation of Care (Jersey) Law 2014
- Regulation of Care (Regulated Activities) (Jersey) Regulations 2018
- Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018
- Regulation of Care (Transfer of Functions) (Jersey) Regulations 2018
- Regulation of Care (Transitional and Transfer) (Jersey) Regulations 2018
- Nursing Homes (General Provisions) (Jersey) Order 1995
- Jersey Care Commission Standards: Children and Young People's Residential Care
- Jersey Care Commission Standards: Day Care Standards
- Jersey Care Commission Standards: Care Homes Standards
- Jersey Care Commission Standards: Home Care Standards