

Inquiry into regulation of care for older people

Coalition of Care and Support Providers in Scotland

CCPS is grateful for the opportunity to comment further on the Scottish Government's response to the report of the committee's recent inquiry.

Our comments are set out below, in line with the numbering of the Scottish Government's own response.

Paragraph 45

We were very pleased to see the committee's recommendation regarding payment of the Living Wage to social care workers, and indeed we gave evidence recently to the Local Government and Regeneration Committee Inquiry on this very issue.

The Scottish Government refers to this inquiry in its response.

The Scottish Government also refers to the question of whether the introduction of a Living Wage can be extended to third and private sector providers of social care services through the procurement process: this is an absolutely crucial point, given that the majority of social care services are delivered by these providers, and we would encourage the committee to pursue this matter in particular in any further deliberations relating to the Living Wage.

Paragraph 57

The Scottish Government's response to this part of the committee's report suggests that CCPS is not correct in its contention that the Care Inspectorate has "far fewer teeth" in respect of challenging commissioning practice, compared with its powers of intervention in service delivery; in essence, the Scottish Government appears to suggest that apart from the lack of enforcement powers, the Care Inspectorate is able, under the legislation, to take the same approach to commissioning and procurement (and other local authority functions) as it takes to inspection of care services, including the investigation of complaints.

In fact, the provisions of the legislation are quite different in respect of each. In relation to care services, Chapter 3 of the Act sets out the duties and powers of the Care Inspectorate, including (in Section 79) the provision that it "must establish a procedure by which a person, or someone acting on a person's behalf, may make complaints (or other representations) in relation to the provision to the person of a care service or about the provision of a care service generally."

The Care Inspectorate's powers in relation to social work services functions within a local authority (which would include procurement and commissioning) are set out in Section 53 of the Act. Whilst the legislation states that "the purposes of an inspection under this section may include...investigating any incident, event or cause for concern" there is no specific reference to complaints and no provision made, nor duty imposed, relating to the establishment of a relevant complaints procedure. The Social Work Inspection Agency (SWIA), the functions of which were transferred to the Care

Inspectorate largely unchanged, operated no such complaints procedure and did not routinely invite or investigate complaints from members of the public¹.

During the passage of the legislation in 2009 there were a number of interesting debates (largely instigated by ourselves) on precisely this point: for example the debate at the (former) Health Committee meeting on 9 September 2009 recorded in the Official Report at:

<http://archive.scottish.parliament.uk/s3/committees/hs/or-09/he09-2202.htm#Col2125> (starting at column 2131).

During the discussion, the Interim Chief Executive of the (then) Care Commission stated (at Col 2132) that “members of the public hold dear the fact that they have an independent body that can investigate complaints. It is hard for them to understand that they can have a complaint investigated *only if it is against a registered care service*. It is important to sort out the complaints system so that we have an even playing field” (our emphasis).

At Col 2137, Ms Roberts further stated that “it is important that we connect the commissioning practice and systems delivery of social work services and care management to outcomes and to the experience of service users and their families. Once we make that connection, *it will be possible to make changes in the local authority*. That approach would be fairer than the current system *in which the only body on which we can enforce changes is the registered care service*” (our emphases).

We would advise that despite these (and other) strong representations, the point did not carry and the legislation reflects in effect the *status quo ante*. As the (then) Minister, Adam Ingram MSP, stated in his evidence to committee on 23 September 2009 (at Col 2215), “**we do not want to allow direct complaints to the new bodies on the issue of commissioning**”.

We are therefore having some difficulty in understanding the Scottish Government’s response to the committee, insofar as it says that “the Care Inspectorate has power to inspect [commissioning and procurement] and such an investigation can be triggered by a complaint *in the same way as any care service inspection can*” (our emphasis).

Further, and again in contrast to the situation regarding care services, there are no national standards for commissioning and procurement against which an authority’s performance can be assessed during an inspection by the Care Inspectorate; there are no minimum frequencies for inspection of these functions; there is no grading system relating to the quality of commissioning and procurement; there are no provisions under which the Care Inspectorate can issue improvement or condition notices in respect of poor practice in commissioning; nor, as the Scottish Government notes, are there any provisions that give the Care Inspectorate any other enforcement powers in relation to recommendations that it might make to an authority in respect of its commissioning policy or practice.

¹ The Scottish Government’s own review of social work complaints, which is currently the subject of consultation, makes it clear that whilst the Care Inspectorate “**looks at** the numbers, nature and annual reports on social work complaints in each local authority area as part of their Initial Scrutiny Level Assessment” it only “**deals with** complaints about regulated care services” (our emphases).

It is on the basis of these comparatively weaker powers that we offered our view to the committee that the Care Inspectorate has “far fewer teeth” in relation to commissioning: again, we are having difficulty understanding the Scottish Government’s response that “this is not in fact the case.”

We do not dispute the fact that the Care Inspectorate has the power to inspect commissioning and procurement practice: our contention is that this power, alone, is not adequate in enabling the Care Inspectorate to fulfil what the Scottish Government describes as its “important role in ensuring that qualitative aspects are considered by councils when commissioning services and decisions are not based purely on cost”. As the Scottish Government notes, councils are required by Section 100 of the legislation (which the committee may wish to note was an amendment again instigated by ourselves) to “take account of inspection information when making commissioning decisions”. The point we are trying to make is that in circumstances where the Care Inspectorate finds that a council is not acting within the legislation, it has no further powers of intervention.

We accept, in this regard, that the Care Inspectorate is able to report publicly on its findings: however we disagree with the Scottish Government’s contention that “public reporting...in itself drives up improvements”. This approach is certainly not deemed sufficient to improve care services, and we see no reason to suppose why it should be deemed sufficient for any other part of the social work services system. SWIA reported publicly on the shortcomings of social care commissioning and procurement on many occasions, however in our experience, this has not led to significant improvement. The Scottish Government notes in its response that Audit Scotland will shortly be publishing its performance audit of social care commissioning, which will provide a further report about the quality of current practice. Meanwhile it remains our view that the Care Inspectorate should have the power to halt (or indeed reverse) any commissioning or procurement exercise in circumstances where it identifies that either the legislation, or the Scottish Government guidance on social care procurement, has not been observed, with consequences for the quality of care and support.

We are pleased to note, in the Scottish Government’s response, that “commissioning will be an integral part of the inspection process in 2012-2013” and we look forward to hearing more about the relevant proposals. We continue, however, to advance the position that the Care Inspectorate’s powers should be further strengthened so that the findings of these inspections can be acted upon more appropriately, and that *all* those functions and systems that impact on the quality of care and support – not care services uniquely – are subject to an equally robust degree of scrutiny.

Paragraphs 58 - 61

We note that the Scottish Government is working with COSLA and others ‘to ensure that a plan is in place should another care provider fall into financial difficulty.’

Whilst we support this work, we think it is worth repeating the point we made in our original written evidence to the committee’s inquiry; that is, that care providers are increasingly likely to fall into financial difficulty precisely as a

result of poor commissioning and procurement practice; and that as well as planning for failure, both COSLA and individual authorities ought also to be planning for the avoidance of failure, specifically by recognising the consequences of poorly executed service re-tendering and the placing of unacceptable downward pressure on the cost of care services provided by third sector agencies.

Many thanks again for the opportunity to comment. We look forward to following the forthcoming parliamentary debate on these important matters.

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