

Inquiry into regulation of care for older people

Scottish Human Rights Commission

The Scottish Human Rights Commission was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is a public body and is entirely independent in the exercise of our functions. The Commission mandate is to promote and protect human rights for everyone in Scotland. The Commission is one of three national human rights institutions in the UK, along with the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission.

The Scottish Human Rights Commission welcomes the Inquiry Report of the Health and Sport Committee into the Regulation of Care for Older People and the Scottish Government's response.

The Committee makes a number of recommendations for areas of improvement which will enhance the accountability of services for older people as well as the empowerment of both staff and service users through increased participation in assessments and improved whistle blowing and complaints procedures. Of particular importance to the Commission is that the Committee recognises that a human rights framework is essential for the delivery of quality care and recommends that a review of the National Care Standards embeds equality and human rights for service users.

The Commission would like to make the following observations based upon the Committee's report and Government response:

Social service workers skills and knowledge

The Committee notes that "the requirement for social care staff to complete appropriate vocational training prior to registration with the SSSC should act as a catalyst for increasing staff confidence and morale."¹ and the Government's response reiterates that all social service workers should have the skills and knowledge required to carry out their roles.

The Commission believes that human rights should underpin the knowledge and the value base of all social service workers and that the National Occupational Standards, Codes of Practice and vocational qualifications should explicitly reflect this.

The Commission's work relating to the care and support of older people has strongly demonstrated the value in improving human rights knowledge and awareness. Independent evaluation research carried out by social research organisation GEN, the University of Bedfordshire and Queen Margaret University² has demonstrated how a human rights based approach to care

¹ Para 46, Health & Sport Committee 3rd Report 2011 - Report on Inquiry into the Regulation of Care for Older People

² Evaluation of Care about Rights, Phase 2 Report, GEN, The University of Bedfordshire and Queen Margaret University, October 2011,

delivery has assisted care services to provide improved quality person centered care, balance risk based and quality of life considerations in decision making (e.g. this could underpin clinical guidance in relation to the prescribing of psychoactive medication where issues of risks and rights may be at stake- para 51 of Inquiry report), and develop positive relationships with service users and their families.

The Commission would like to see the findings of this research built upon and embedded into the standards that apply to the sector and the development of the workforce.

Care at home services

The Commission notes the Government's comments in relation to care at home and self-directed support that appropriate levels of support, assurance and protections will be required.

Additionally the Commission would like to draw attention to an amendment which has been tabled to the Health and Social Care Bill, currently at Report stage before the House of Lords. The amendment would clarify beyond doubt that a service commissioned to provide home based care or healthcare is performing a public function within the meaning of the Human Rights Act 1998 (S6(3)(b)) and the Equality Act 2010 (s150(5)).

The Health and Social Care Act 2008, s145, clarified that the Human Rights Act extends to publicly funded residential care services but legal uncertainty exists as to the application of the Human Rights Act to home care or private healthcare services. It is for this reason that the Commission is supporting a proposed amendment to the current Health and Social Care Bill to close this legal loophole and would support the Scottish Parliament in giving legislative consent to this amendment should it be passed.

Self Directed Support and personalisation

The Commission would also like to see the implementation of the self-directed support (SDS) Bill and Strategy take account of human rights. While implementing a model of service delivery and systems change, it must also be ensured that the personalisation agenda and SDS Bill are a vehicle for cultural change, based on its founding human rights principles with choice, dignity and control at its core.

There is a risk that by focussing on the system and process changes required to implement the mechanisms of self-directed support that the core values of personalisation and human rights are lost and existing clinical and managerial models of service delivery persist. The Commission would like to see training and guidance and models of leadership created around the implementation of the SDS Bill to include a strong human rights focus.

National Care Standards

The Commission welcomes the Committee's recommendation that a review of the National Care Standards embeds equality and human rights for service users³ and hopes that the Scottish Government will announce such a review to be undertaken in due course.

While the National Care Standards are underpinned by human rights principles of dignity, privacy, choice, safety, realising potential and equality and diversity, a shared understanding of what this means in practice cannot be assumed and must be fostered through collaborative engagement in the issues.

The Commission believes that applying the Standards in practice in a way which meets the rights of the individual and is person centred requires a deeper understanding of the human rights framework and would encourage the Care Inspectorate and others in the sector to develop their understanding of human rights standards as they apply in care settings.

Commissioning and Procurement

The Commission welcomes the indication in the Government's response that the Care Inspectorate intends to work with COSLA and local authorities to support them in commissioning and procurement processes which improve outcomes. The Commission believes that the incorporation of human rights standards into the procurement process through, for example, specifications, selection and award criteria would assist in this process.

The Commission contributed its views on the commissioning and procurement of social care to the Scottish Procurement Directorate Joint Improvement Team Guidance on Social Care Procurement in 2010⁴. In particular our concerns centred around the participation of service users and the potential that prioritisation of cost considerations over quality considerations which may drive down standards. We welcomed inclusion of human rights criteria in defining quality of services in the final guidance produced by the Government⁵ but hope that this will be implemented in practice by those commissioning services.

The Commission also notes the development that the EU Directives on public procurement are currently under review and the EU Commission has released proposals which, if implemented, will apply a lighter touch regime to the

³ Para 54, Health & Sport Committee 3rd Report 2011 - Report on Inquiry into the Regulation of Care for Older People

⁴ Submission to Scottish Procurement Directorate- Joint Improvement Team Social Care Procurement Scotland Guidance, <http://www.scottishhumanrights.com/application/resources/documents/SocialCareProcurementConsultation.doc>

⁵ Social Procurement Guidance, September 2010- <http://www.jitscotland.org.uk/action-areas/commissioning/procurement/>

procurement of all health and social services.⁶ This may allow further flexibility for the consideration of quality, social and human rights considerations in the commissioning and procurement process.

The Commission hopes that these comments will be of assistance in the forthcoming debate on the Inquiry Report of the Committee on 7 March 2012.

The Scottish Human Rights Commission

⁶<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/931&format=HTML&aged=0&language=EN&guiLanguage=en>; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0896:EN:NOT>