Introduction

The City of Edinburgh Council welcomes the opportunity to participate in the inquiry into the regulation of care for older people and sees this as an excellent opportunity to explore a range of related issues that have serious implications for the provision of care and support, including:

- the true definition of quality grades and the level of scrutiny on which these grades are based
- consistency across the country in the application of quality grades
- whether there should be a universally accepted minimum level of quality, below which services will not be purchased
- the implications of all these issues in terms of:
  a) capacity within the system to meet the needs of rising volumes of very vulnerable citizens; and
  b) affordability
- the relative responsibilities of Social Care and Social Work Improvement Scotland (SCSWIS), local authorities and the NHS in terms of assessing, funding and assuring quality

Councils hold primary responsibility for the care and protection of individual service users, and therefore it is imperative that both councils and SCSWIS work together well. Both organisations are subject to the constant drive for efficiency and effectiveness, and improvement is an important part of the management of public services. The demographic profile of our population forecasts much higher levels of dependency in care and nursing home residents, requiring higher levels of skilled and experienced care staff to achieve the quality and outcomes we all expect. A national workforce development strategy, designed to support a shift in the balance of care would assist the workforce in making the necessary transition from the current position to one where care home staff are able to meet the complex care needs of residents. Particular areas of skills to be developed include:

- medical treatment and interventions to promote and maintain physical well being
- psycho-social interventions to promote and maintain psychological well being
- behaviour management approaches to environmental and pharmacological restraint
- adult protection awareness to prevent or monitor effectively issues relating to harm

The City of Edinburgh Council believes that a separate regulatory system should be retained and can see the benefits that this provides. However, there are substantial concerns over the way regulation has worked until now, its remit and the legal framework in which it operates. All of which leads the
Council to question the capacity of the regulatory system in its current form to ensure that care services for older people are providing good quality and appropriate care.

Both purchasers and users of regulated care and support rely heavily on SCSWIS quality grades to inform placement decisions. However, the system currently in operation for grading services, coupled with some inconsistencies in its application, make it difficult to gauge the true quality of any given service. This issue was brought into sharp focus with a recent high profile adult protection inquiry into the care provided by a private nursing home for older people in Edinburgh. An establishment, which at its most recent inspection had been awarded a positive grade for the quality of care and support provided to residents.

**Key points**

The Council has identified specific weaknesses in the current regulatory system. These are listed below, with examples where possible.

**Inconsistency in grades/confidence in the system**

There is evidence of inconsistency in grades across the country. What is meant or can be interpreted by a grade 4, may be different depending on the individual inspector. This is a key issue for both providers and councils as it undermines confidence in the system. At a time of limited resources for both SCSWIS and local authorities, complete confidence in the meaning of a given grade is essential.

The system of themes and indicators, which is the basis of the current quality assurance framework operated by SCSWIS appears to have vulnerabilities embedded within it. The award of a particular grade for the theme “Care and Support” may in fact be based on very little contact with residents, little assessment of their day to day experience, their physical, emotional, spiritual care, moving and handling, nutrition, etc. This is because the chosen indicators for a particular inspection may not focus on these issues. It is difficult to reconcile the assignment of a positive grade for Care and Support with the lack of focus on these critical issues.

**Adequate resources**

SCSWIS may be hindered in its efforts by lack of adequate resourcing. There has been a reduction in the frequency of inspections, apparently due to a reduction in available funding, and a consequent reliance on risk assessments. If these risk assessments are based on an inaccurate or incomplete initial judgement regarding the quality of a service, a serious vulnerability in built in to the system.

Experience suggests that the quality of care in a care home can change very quickly, for example if a manager leaves or is absent for a period of time. This is not always easy to identify. In the recent large scale adult protection case
in Edinburgh, it was the external manager who was absent, rather than the unit manager. The impact of this absence appears to have been significant, but not immediately visible.

The regulator needs to be resourced to regulate the whole system of care and support – this should include:

- moving and handling
- nutrition
- tissue viability
- dementia
- mental health
- palliative care

A lack of availability of specialist advisors appears to problematic. Individual inspection officers are unlikely to cover all the skills required, as the remit is too wide. During the recent large scale adult protection inquiry, these issues were highlighted as critical to the quality of care.

**Legal framework**

The legal framework seems cumbersome and not sufficiently responsive. It does not enable a quick response in an emergency, with a long process of appeals at every stage. As a consequence, the regulatory system relies too much on councils taking pre-emptive action, avoiding action by the regulator.

The regulations could helpfully be amended and updated to address the following issues:

- the mismatch between legislation and policy with regard to definitions of residential and nursing homes – too open to interpretation by the sector and leading to confusion for local authority and health commissioners (e.g. confusion regarding the role of primary care and the boundaries of accountability between community nurses and care home nurses who do not require to be on site 24/7, but who may be presumed to be by community nursing services)
- improved consistency through an increased reference to National Care Standards
- clearly articulated service user rights and due process, with a strengthening of the protection of residents’ human rights
- named GPs to support care homes, with standards and targets associated with their contract
- a strengthening of the regulations relating to the management of personal finances, which are too weak in the current system, with SCSWIS having few meaningful powers
- the expectation of multi-agency collaboration with defined responsibilities could be formalised
Care homes for older people with learning disabilities

People with learning difficulties often have communication difficulties, sometimes severe. These must be addressed by care home and inspection staff to ensure full and meaningful involvement in the review/inspection process. This will require additional time and skill.

The role of advocacy for those who do not have families/friends should be strengthened.

Care homes for older people should be required to adopt National Care Standards for Learning Disabilities if they accommodate residents with learning disabilities.

Care homes for older people are not currently required to provide learning disability-related training for staff. This should be mandatory for staff working in older people’s residential care, where residents have a learning disabilities.

As part of their annual audit, SCSWIS should be required to collect information on numbers of individuals with learning disabilities in care homes for older people.

Dealing with poor practice

SCSWIS’ role in dealing with poor practice should be strengthened. For example, following up on improvement and enforcement. The regulations could stipulate when information must be passed to the council/commissioner and within what timescales. It is not consistent with councils’ duty of care to have to wait until information appears on the public website.

Needs of individuals

Standard SCSWIS inspections do not focus on the needs of individuals. It would be useful if the regulations could refer to partnership with councils to allow for closer alignment of inspections and care package reviews, which are the responsibility of the local authority.

Sharing of information is critical to the effective discharge of individual and joint responsibilities. It should not be limited to the formal requirements of a memorandum of understanding, but should be part of the expectations of joint working and shared responsibilities.

Complaints

There is no right of appeal by providers regarding complaints. These are published, irrespective of their validity. The fairness and objectivity of the complaints process is regularly questioned by providers. Complaints may remain on the regulator’s website for years, even though these may have been addressed immediately.
Equally, reliance on residents’, relatives’/carers’ or others’ complaints to highlight concerns between inspections (particularly if these inspections are carried out at lengthy intervals) is a weakness in the system. Residents may be reluctant to make a complaint for fear of reprisal (whether real or not) or residents may not think of making a complaint as they may be unaware of the standard of care they should expect.

**Views of residents, carers and relatives**

It is clear from published inspection reports that the engagement of and input from residents, carers and relatives is not as comprehensive as it might be. Often people refuse to be interviewed or may be reluctant to express their views. They may not have high enough expectations of quality to feel that they should question the service they receive. Clear articulation of standards, which people can expect should be a part of the day to day experience in care homes, together with the development of a much more customer service culture, which would shift the power in the relationship between recipient and provider/regulator to the recipient. Consideration could usefully be given to more effective and coordinated use of involvement from local communities in the life of care homes, better integration and ownership, leading to an additional voice to identify, raise and help to address concerns.

**Reporting**

Inspection reports are cumbersome and therefore make inefficient reading. The first 7 pages are general and should not need to appear in every report. This general information could be communicated separately.

It would be useful to have a list of requirements at the end of the report for ease of reference, together with timescales for their implementation. These timescales should be rigorously monitored and follow-up action taken by the regulator as necessary.

The interval between inspection and publication of the report is too long to be of assistance to commissioners or members of the public. Information should be available as quickly as possible after it is known. This is a problem for residents, relatives, commissioners and providers.

It would be helpful if the website were to include dates of complaints received and under investigation. Councils should also receive this information on a monthly basis, as they could then ask for further information where the care home is under scrutiny.

**Memorandum of understanding**

The memorandum of understanding is too vague regarding roles and responsibilities. It is not specific with regard to information that needs to be shared and with whom, therefore leaving it open to personal interpretation and limiting accountability.
Roles and responsibilities

There can on occasions be confusion regarding communication and responsibility between the regulator and councils where there are concerns over the performance of a care home. For example, a care home may be given what the council interprets as a bad report by the regulator, but the regulator will stop short of making a judgement on whether the care home should be closed to new admissions.

It would be more useful, consistent and safer if the regulatory body were to be more decisive regarding the impact of a negative report, given that they have assessed that particular establishment. Clarification regarding the relationship between the council’s contracting responsibilities and the regulator would assist with this.

Financial viability of services

The current financial climate leaves the market very volatile, as evidenced by Southern Cross. Closer monitoring of the financial viability of services should be developed. This should include close scrutiny when a care home is ‘taken over’ by another business, and regular monitoring of their financial position. Tighter controls would enable intervention at an earlier stage.

Care home fee levels are a weak point in the current system. Clarity regarding the regulation of charges by care home owners and how these charges may increase needs to be considered.

Quality Assurance and Resources

SCSWIS regulates care homes employing nursing staff, they also regulate the work of occupational therapists in social work settings. Therefore, subject to the inspection team having a relevant background, it should be able to adapt to the inspection of integrated services. This would be welcomed to reduce the burden of inspection on joint services. There may be issues with the number of specialist inspectors available for this work.

However, all of this assumes that the regulatory system can be improved in relation to the above issues, as the current system is not as effective as it needs to be for the services currently investigated. To extend the responsibilities of SCSWIS beyond those it currently holds depends on the development of a system that is accurate, responsive, comprehensive and consistent.

The City of Edinburgh Council is currently in the process of changing its quality assurance systems to address the weaknesses identified by the recent adult protection issue, and will discuss and share these with SCSWIS to ensure the most effective system is developed.

There will be significant resource implications to this work. In order to support the establishment of the then Care Commission, funding was removed from
local authorities’ GAE allocation. The weaknesses in the current inspection regime, combined with local authorities’ ultimate statutory duty of care, have compelled the City of Edinburgh Council to allocate additional resources to supplement the current system. This will have significant long-term implications for the availability of resources to provide services.

Improvements in external regulation and inspection are essential if the most efficient use of resources is to be guaranteed, providing a reliable, accurate and timely picture of the quality of a particular service, leaving the local authority to monitor the relevance and appropriateness of the service to the individual’s assessed needs and to monitor the provider’s compliance with the contract (contract compliance should remain the responsibility of the commissioner). The combination of external regulation and inspection, contract monitoring and care package reviews should provide the information required by all stakeholders to ensure the safety and well-being of service users. However, the system as currently configured and operated is not as effective in this regard as it needs to be.

The Council continues to be involved in discussions between ADSW, COSLA and the Scottish Government in relation to these critical issues.

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24 August 2011