Inquiry into regulation of care for older people

Coalition of care and support providers in Scotland (CCPS)

CCPS is the Coalition of care and support providers in Scotland. Its membership comprises more than 70 of the most substantial providers of care and support in Scotland's third sector, supporting approximately 270,000 people and their families, employing around 45,000 staff and managing a combined total income of over £1.2bn, of which an average of 73% per member organisation relates to publicly funded service provision.

CCPS members provide services right across the spectrum of care and support, including services for older people as well as for children and families, adults with physical and learning disabilities and people facing a range of challenges in their lives, including mental health problems, addictions and involvement in the criminal justice system.

All of our members have significant involvement with the key regulatory body for care services in Scotland, SCSWIS, and CCPS itself was active in influencing the legislation that created it.

Introduction

We would wish to preface our comments by noting that although the relevant legislation was passed in March 2010, SCSWIS itself has only been in operation since April this year, that is, for less than five months.

Our experience of the effectiveness or otherwise of SCSWIS is therefore necessarily limited, and so the general thrust of this submission is largely based on our members’ experience of those pre-existing bodies whose functions were transferred to SCSWIS, namely the Care Commission, SWIA and (albeit with less relevance to older people’s services) HMIE. We do nevertheless have some comments to offer on the potential of the new body to address the issues that we raise.

We would also wish to point out that our comments come from the perspective of providers of care and support for all care groups, not uniquely for older people.

We have organised our comments in line with the four questions posed by the committee in its call for written views.

Can we be confident that the regulatory system is picking up on care services where the quality of care is poor?

CCPS has consistently maintained that although inspection has a central and crucial role to play in identifying poor quality care, it cannot on its own provide complete public assurance that all services are performing well at all times.
In our view, the primary responsibility for the quality of care rests with the service provider. The comparatively high gradings consistently achieved by third sector providers\(^1\) are, we believe, a reflection of the robust quality assurance systems adopted in this sector, together with a strong commitment to service user involvement and person-centred planning.

We are therefore supportive of the adoption by SCSWIS of a more proportionate approach to inspection, enabling it to concentrate its efforts on those services where there are concerns and reduce the frequency of inspections where gradings have been consistently positive\(^2\), complaints appropriately dealt with, improvements made and maintained, and so forth. We believe that this approach will improve the ability of SCSWIS to pick up on services where quality is poor and either to ensure that improvements are made or indeed to close services where necessary.

CCPS also believes that commissioning authorities have a significant responsibility to ensure that the services they purchase are of good quality. We therefore believe that in order for the regulatory system to pick up more effectively on poor quality, it must have jurisdiction in the areas of commissioning, procurement and funding, as well as service delivery.

A welcome development within the new regulatory regime in this regard is the potential for SCSWIS to bring together intelligence both about the quality of services, and about the quality of the commissioning process(es) related to them. In our view, a key test for the new body will be the appetite that it has for challenging those authorities that continue to spend public money on services provided by organisations that have consistently failed to meet national care standards or attain positive gradings, and whose record shows multiple serious complaints upheld, improvement notices issued and/or enforcement measures taken.

During the passage of the relevant legislation, we worked with committee members to introduce an amendment to the effect that commissioning authorities must take account of information held by SCSWIS when making arrangements for service provision. We are pleased that in accordance with this new duty, some authorities are now in the process of agreeing commissioning strategies which stipulate that they will no longer fund or purchase care that does not achieve a positive grading from SCSWIS; these authorities are conscious that such strategies are likely to have cost implications. They are, however, in a minority.

Similarly, the regulator must in our view challenge those authorities whose commissioning, procurement and funding arrangements are inadequate either to stimulate a local market of good quality providers or to enable those providers to attract and retain a sufficiently skilled and qualified workforce, which is arguably the most crucial enabling factor for good quality care. We

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\(^1\) Figures published by the Care Commission have shown that the voluntary or third sector achieves higher proportions of ‘very good’ and ‘excellent’ gradings in a range of adult care and support services than its counterparts in the private or public sectors.

\(^2\) By ‘positive’ gradings we refer to gradings 4, 5 and 6 (‘good’, ‘very good’ and ‘excellent’)
are extremely concerned that some authorities are now capping the price they are prepared to pay for care at a level which is in our view entirely inadequate in these respects, and we believe that the regulator has a major role to play in challenging such practice.

In this respect, we are also interested to see whether SCSWIS will have an appetite for examining not only the quality of service provided by an organisation, but also the longer-term stability of the pricing model it adopts. As committee members will be well aware, it is entirely possible for very substantial care providers to run into financial difficulties, with major consequences for the people they support, and we would anticipate that in the context of the severe downward pressure now being placed on care costs, such instances may become more frequent.

We have serious reservations about the extent to which commissioning authorities are either willing or able to consider such matters: we have also observed that the new regulations for SCSWIS appear to have dropped without explanation the requirement for providers to demonstrate their credentials to the regulator in this respect. We believe however that there may now be a greater need than ever for an independent body to help prevent collapses or indeed to be able to identify potential risks in the market, resulting from poor pricing strategies driven by inadequate funding for care.

**Are there any particular weaknesses in the current system?**

As noted above, our experience of the current (ie. post-April 2011) system is too limited to be able to offer detailed comments. Certainly some of the weaknesses we identified in the previous system, as noted above, can now potentially be addressed: however we would once again wish to make a point that we raised during the passage of the legislation, namely, that although SCSWIS has the potential to take a ‘whole systems’ approach by linking service quality to commissioning practice, it still has far fewer ‘teeth’ in respect of its ability to challenge such practice compared with its very significant powers of intervention in relation to service delivery.

For SCSWIS, like SWIA before it, has no power to investigate complaints about any of the relevant processes of an authority (assessment, care management, commissioning) that impact on quality of care; neither does it have any power to issue improvement notices or take enforcement measures where it identifies poor practice in these areas. In our view this was a very

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3 We recently challenged, for example, the hourly rate for care at home for older people set by one Scottish local authority, on the grounds that our members generally considered that rate to be wholly inadequate to offer a quality service. The reply from the authority states “we recognise that providers are in the best position to decide their own business strategy, and we therefore do not prescribe how they should plan their costs.” The same authority told us that its comparable in-house service costs were double that of the cap imposed on external providers.

4 See CCPS response to the Scottish Government consultation on regulations relating to the establishment of SCSWIS and HIS, November 2010: “We note that the new draft regulations do not refer to any role on the part of SCSWIS in examining the financial position of care providers...this seems to us to be a significant departure from existing regulations, yet it is not referenced in any way in the introductory material to the consultation document.”
significant weakness of the previous system which regrettably has been carried forward into the new body.

A further weakness in the system is the level at which the bar is set for an organisation’s entry to the care ‘market’. As committee members will be aware, it is unlawful for any organisation to provide a care service that is not registered with SCSWIS: however we would argue that registering a service with SCSWIS is not a test of the capacity of that service, far less of that provider, to deliver quality, whereas in our view it ought to be.

During the passage of the legislation therefore, we expressed interest in the potential for SCSWIS not to register services but to licence providers. In our view, this would enable the regulator to play a much more significant role in relation to an organisation’s suitability to enter the market for care and indeed to remain in it. We appreciate that such matters are currently handled principally by commissioning authorities; however we believe that many authorities’ procurement processes have been shown to be wholly inadequate in this regard. Moreover, such processes vary considerably across the 32 authorities in Scotland and SW-SWIS would be in a strong position to provide a more consistent approach nationally.

Does the system adequately take into account the views of service users?

As noted above, there is strong commitment to user involvement and person-centred planning in the third sector, and this is borne out by the high proportion of ‘very good’ and ‘excellent’ services to be found within it. By and large, these gradings can only be achieved by evidencing both the mechanisms for user involvement and the positive views generated through such mechanisms: in this sense, service users’ views, and the means of seeking them, are ‘built in’ to the inspection system.

The views of users on other aspects of the system – for example, assessment, care management and commissioning – were certainly sought by SWIA in its performance inspections of local authority social work services, and we have no doubt that SCSWIS will continue to do this, particularly in the light of the ‘user focus’ duty brought in by the new legislation.

As noted above however, SCSWIS has no powers to investigate specific complaints made by service users about these matters; to ‘downgrade’ an authority (as it might downgrade a service) if such complaints are widespread or repeated; or otherwise to take action. In that sense, the system is not as sensitive to users’ views as it might be if SCSWIS were to be given more ‘teeth’ in these areas.

On a similar point, committee members who previously served on the Local Government and Communities Committee will be aware of our views on social care procurement, where, despite the issuing of clear government guidance and some improvements in practice, service users’ views on an authority’s
decision to put their existing support services out to tender are still either not being routinely sought or are being ignored when they are expressed.

We would hope to see SCSWIS take advantage of its new duty of ‘user focus’ by adopting a much more robust approach to authorities in such circumstances, not least by monitoring levels of compliance with government guidance in relation to specific procurement exercises: however again, it has no power to investigate complaints in this area.

**Does the registration and regulatory system provide an appropriate basis for the regulation, inspection and enforcement of integrated social and NHS care in the community?**

Given that the government’s plans in respect of the integration of health and social care are still in development, we consider it to be too early to offer detailed comments on this question at this time.

We would however offer our view that HIS, like its sister body SCSWIS, ought to take an even-handed approach to the regulation and inspection of health services, regardless of whether they are provided by the public, private or voluntary sectors. As committee members will be aware, NHS services are regulated and inspected on an entirely different footing compared to private and third sector services; we believe, in common with the Christie Commission and others, that there is potentially a much greater role for the third sector in the provision of public services, and this anomaly in the regulatory regime may become increasingly difficult to justify as public service reform develops.

We would like to close by thanking the committee for the opportunity to comment on these important matters. We shall be following your deliberations with great interest.

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Director  
CCPS - Coalition of Care and Support Providers in Scotland  
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