Inquiry into regulation of care for older people

East Lothian Council

East Lothian Council has worked closely in partnership with regulatory and other key stakeholder agencies in recent years to ensure improved care for older people within care homes. The good relationship formed with the regulators has supported effective intervention particularly at times of care home closure and also when responding by protecting vulnerable groups where care has been poor.

The Council looks forward to the benefits that the amalgamation of the previous regulatory bodies into the Social Care Improvement and Social Work Inspection Agency will bring.

The Council responds to the key questions as follows

Does the regulatory system ensure care services for older people are providing good quality and appropriate care?

The Council has noted the improvement in Care Services since the introduction of care inspection based upon National Care Standards. This has been assisted by using a framework of quality themes and quality statements. However gaps remain in the quality of care services. These gaps are linked to the changing ways in which care is delivered to older people and the regulatory system has clear shortcomings in the way it conducts regulatory activity, the scope of its remit in comparison to the services currently available to service users and the legal framework within which it operates.

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

Confidence in the regulator picking up on poor quality care commonly prevails where the regulator has successfully identified issues through intelligence from key stakeholders such as the local authority and other agencies and the relatives and service users’ complaints. This is supported by the use of unannounced inspections. However there are occasions when the regulator does not pick up on shortfalls in the quality of care. This has happened when the regulator has picked up on presenting quality issues but not identified more deep rooted care quality failures within the service.

Resources are limited and there have been occasions where the regulator has had too few resources to allow inspections to take place with immediacy, or where inspection visits have been brief and have not successfully identified care quality deficits.

The timescales for formal reporting of poor care standards has led to occasions where poor care has continued to be provided when actions by key stakeholders might have brought about more speedy remedy and
improvements for the service users. This situation has led to frustration that the regulator appears restricted by process, and unable to impose improvements or conditions in realistic timescales.

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

Based upon its own experience the Council has identified what it regards as a key area of weakness within the current regulatory system.

Experience of home closure in the last five years has identified a weakness within the system which can result in vulnerable older people losing basic rights to remain within the home of their choice should a provider fail to conduct the business of providing care properly.

Current regulation appears insufficient to address managerial failure other than to impose requirements which if left unmet result in closure of the home with acute disruption and loss of dignity and rights for service users. Legal advice during care home management failure has been that Scottish Councils have no obvious legal powers to intervene and manage a business in order to protect service users unless invited to do so by the care home owner.

Councils do enjoy legislative powers to intervene with private landlords to ensure appropriate management actions in other circumstances where individuals or groups of individuals are in tenancies as exampled in the Antisocial Behaviour etc (Scotland) Act 2004, Part 7.

It would be helpful to consider strengthening Scottish Councils legal powers to ensure that Care Home management is improved, ensuring that sustained and effective care can be established and maintained where the service users care and welfare are the primary concern.

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

The current system does take account of service user views; however the views given by service users are influenced by the service user’s relationship with the care provider and the service user may be reluctant to give feedback that, in their view, could upset the care provider.

Talking Points is not commonly used by the regulator to record service user views and this would be of greater benefit in that it has the ability to identify the outcomes for the service user and judge whether they are beneficial.

Views from groups of service users are sought by regulators but the composition and effectiveness of these groups is varied across services as this is commonly left to providers to initiate and support these groups. For the purposes of inspection, guidance could be provided to support the formation and running of user and relatives groups with closer links between the regulator and the group members resulting in quality improvement.
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?

The registration and regulatory system currently provides a reasonable basis for the provision of regulation of Social Care services. The system is not sufficiently developed to adopt inspection and enforcement of integrated health and social care until it has appropriately skilled inspection officers from the required professional backgrounds such as Nursing and Occupational Health. Additionally the National Care Standards may require revision to reflect the integration of health and social care services more clearly for services that are not residentially based.

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