Inquiry into regulation of care for older people

Royal College of Nursing (RCN) Scotland

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

The Royal College of Nursing (RCN) Scotland is the trade union and professional organisation for nursing. We have 39,000 members in Scotland, including nurses, nursing students and nursing and healthcare assistants.

We are grateful for the opportunity to submit evidence to this inquiry. We understand the focus of the inquiry to be on care services for older people as defined in the Public Services Reform Act (Scotland) 2010; more specifically care home services that are regulated by Social Care and Social Work Improvement Scotland (SCSWIS). The regulatory approach as carried out by SCSWIS is based on a scrutiny and improvement system of registration; inspections; and complaints investigation. Various organisations provide the services regulated by SCSWIS including local authorities, private providers and third sector organisations.

The demographic profile of Scotland is set to change dramatically in the coming decades, as the population ages and people live longer. By 2033 the number of people over 75 is projected to expand by 84%\(^1\). This fact alone means that the care sector is facing a potentially huge rise in demand. Furthermore, as people live longer, their needs generally become increasingly complex, often due to a growing range of co-morbidities and long-term and life-limiting conditions. This means that the duty on care homes to provide good quality healthcare to their residents is ever-more important.

Adding to the scale of the challenge is the fact that up to 70% of the current care home population in Scotland may have dementia\(^2\). This will undoubtedly increase as the number of people who have dementia is expected to double over the next 25 years. This serves to emphasise the fact that older people living in care homes are some of the most vulnerable people in society. They depend on the staff that look after them to ensure that they receive the best possible care to meet their needs.

It is clear that the regulatory system presiding over this complex and crowded sector, which is set to be challenged further by mounting demand and complexity of service user need, must be robust and responsive.

\(^1\) Scotland's Population 2010 - The Registrar General's Annual Review of Demographic Trends
\(^2\) The Scottish Dementia Strategy
Can we be confident that the regulatory system is picking up on care services where the quality of care is poor?

The system that regulates care services in Scotland cannot and does not work in isolation from the bodies that regulate the workforce e.g. the Scottish Social Services Council (SSSC) and the Nursing and Midwifery Council (NMC). The combined efforts of these regulatory functions are to protect and enhance the safety and welfare of those people using these services, and this does provide confidence that underperforming care services will be identified. However, as we address further on, the RCN believes that the regulatory system is not infallible and there are limits to its capacity as a means of ensuring good quality of care.

SCSWIS inspects care services in Scotland using a framework of quality themes and statements, aligned with the National Care Standards, on which a six-point grading system is based. These themes and statements have been in operation since April 2008 and were used by the Care Commission, the predecessor to SCSWIS. The primary changes to the regulatory system since the establishment of SCSWIS in April 2011 are: the introduction of unannounced inspections as the main inspection method; a greater maximum period between inspections for better performing and lower risk services; and a greater focus on poorly performing and riskier services.

The RCN supports the move within the new SCSWIS regulatory regime to increase the use of unannounced inspections which enable scrutiny of care as it is delivered every day therefore may represent a more accurate picture of standards of care. The RCN also considers that the links SCSWIS is required to make with other regulatory bodies, systems and legislation – such as the Mental Welfare Commission, the Protection of Vulnerable Groups (Scotland) Act 2007 and the Adults Support and Protection (Scotland) Act 2007 – are essential to strengthening the overall regulatory system.

SCSWIS determines the new frequency between inspections on a risk assessment guided by: feedback received from online self-assessment whereby service providers grade themselves against the quality themes and statements; previous grades achieved from inspections; an annual return submitted by providers; and on other data sources such as complaints received and staff turnover. The new system means that a service that is deemed to be performing well could be inspected once in 24 months.

The RCN agrees that regulation needs to be proportionate but is clear that the reduced burden of scrutiny and inspection has to be without compromise to service user safety. Despite the variety of factors informing the risk assessment approach, the RCN is concerned that with the greater reliance on self-assessment, which is subjective and honesty-dependent, the approach may be lacking as an early warning system able to pick up on ‘hot spots’ in services whose standards may be slowly slipping. Other potential concerns are set out in the sections below.

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3 http://www.nationalcarestandards.org/
Are there any particular weaknesses in the current system?

Picking up on healthcare needs

‘Health and wellbeing’ is the focus of only one quality statement (1.3) within the framework SCSWIS uses to inspect care services. It states “We ensure that service users’ health and wellbeing are met”. Although providers are required to self-assess the quality of their service against all quality themes and statements, it is not mandatory for the inspector to inspect the service against this statement (inspectors are guided by the self-assessment as to what statements to focus on).

The RCN is concerned that there is a risk that unmet healthcare needs may not be picked up by the regulator given the low prominence of health within the quality themes and statements.

The National Care Standards for Care Homes for Older People⁴ state that every 6 months care home residents should receive a full assessment to determine any healthcare needs. However, the Mental Welfare Commission and the (then) Care Commission, in their 2009 report Remember I’m Still Me⁵, found that although most people with dementia had a good health assessment on or before admission to a care home, very few had a planned health check (even annually) by their GP.

Given the complexity of healthcare needs that many care home residents will increasingly have, the RCN questions who has the role in safeguarding against unmet healthcare needs of older people using care services?

Registration/regulation of staff

As outlined previously SCSWIS regulate care services, whereas staff delivering the services are regulated by their own regulatory bodies (SSSC, NMC). As such, these workers have to adhere to the codes of practice, conduct and standards (including education and training) as laid down by these bodies in order to remain on their respective registers. The SSSC is currently in a transition phase of registering all those who work within social care services in Scotland over the next few years. Until this is complete this could represent a possible weakness in the regulatory system as it means that the scrutiny of the staff delivering services is only as good as the checks and processes put in place by employers. However, for registered nurses who are working within care services for older people there is a reciprocal agreement between the SSSC and the NMC that the former will recognise NMC registration as equivalent. It is the position of the RCN that care workers who are delegated their duties by a nurse should also be regulated by the NMC, and that robust supervision processes should be in place in order to assure the quality of the care delivered.

⁵ http://www.mwcscot.org.uk/web/FILES/Publications/CC__MWC_joint_report.pdf
Whistleblowing

The National Care Standards stipulate that care services must have a whistleblowing policy in place. However, with the reduction in frequency of visits and greater reliance on self-assessment within the regulatory system it becomes even more essential that whistleblowing is an effective avenue for staff to alert authorities to poor standards of care. It is essential that staff not only have the current legal protection for whistleblowing but also that external channels to raise concerns are explicit. Currently SCSWIS does not provide explicit advice about whistleblowing to staff within services it regulates. The RCN would welcome SCSWIS developing a clear confidential avenue for staff to raise concerns, which would be particularly prudent for staff members who may feel unable to raise their concerns directly with their employer.

Limitations of the regulatory system

It is the RCN’s view that the regulatory system can and does put in many checks and balances to ensure the quality of care services for older people. However, it cannot impact on every facet of service provision – the culture of an organisation, the recruitment of staff, organisational leadership, the relationships that are formed, the ongoing training and development of staff – can all lie outside of its directive influence but substantially impact on standards of care.

Poor standards of care are often accompanied by an underlying failure to ensure safe staffing levels and the right level of skills and knowledge\(^6\). There have been recent headlines regarding poor care of older people in care homes which is greatly concerning. The RCN is clear that there is no excuse for failing to treat older people with the respect and dignity they deserve. Whilst poor practice brought about by the conduct of individual professionals is wholly unacceptable, systemic pressures brought about by, for example, under-staffing must be addressed.

Currently, there is no nationally agreed standardised approach for determining staffing levels to meet demand in care homes. The RCN understands that a substantial amount of work has been carried out in developing different tools and we would encourage this work to continue to be progressed and a national approach to be agreed.

Linked to this is the importance of an appropriate staffing skill mix in care homes. An inappropriate balance between registered and unregistered nursing staff can reduce the quality of care, put patient safety at risk and can have a significant impact on staff morale. An RCN employment survey carried out in 2009 showed that there has been a reduction in skill mix in care homes – Registered Nurses (RNs) made up 25% of staff in 2009 compared with 34% in 2007\(^4\). This corresponded with an increase in the number of patients per RN on duty (from 15.5 on average to 18.3). A more recent survey undertaken

\(^6\) Guidance on safe staff nursing levels in the UK, RCN 2010
by the RCN in 2010\(^7\), covering care homes in England, reported that 29% of respondents considered that there were not enough permanent RNs employed to meet the needs of residents.

The National Care Home Contract, agreed between the Confederation of Scottish Local Authorities (CoSLA) and the independent care sector, sets out terms and conditions for the provision of care services for older people which a local authority has an obligation to commission for state-funded residents. Currently if a care home needs to increase its staffing levels – perhaps due to the increasing complexity of healthcare needs of its residents – reimbursement has to be negotiated through the National Care Home Contract with the local authority. However, care homes often find it difficult to recoup these costs from the local authority, leaving a gap in their finances to meet additional staffing costs. This could have the perverse effect of acting as a disincentive for care homes to drive up standards through increasing staffing levels. The demands on care service provision are only set to increase, which will inevitably lead to a requirement for more skilled and competent staff if standards in care quality are not to diminish. In the current financial context there is a real danger that care providers will look to both reduce staffing and dilute skill mix as a means of short-term savings but without appreciation of the long terms costs or risk to care. It is currently outwith the authority of the regulatory system to ensure this does not happen.

Equally, the importance of ongoing investment in the training and development of staff cannot be overstated. It is vital that every nurse and support worker delivering services to older people is trained and equipped with the relevant knowledge and skills to fulfil the responsibilities of their role. As well as ensuring a highly trained and motivated workforce this is essential for the delivery of high quality, safe, person-centred care.

Recent events related to Southern Cross also point to the need for tighter regulation of the business model parameters of private companies which directly provide care services.

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

Feedback from our members suggests that the SCSWIS system is well-designed to ensure the views of services users are adequately taken into account. Care service providers are not able to achieve a higher grading if they cannot demonstrate how they have involved service users in assessing the quality and development of the service. Furthermore, it is mandatory for SCSWIS inspectors to assess service performance against quality statements that are about involving service users.

Members have told us that more innovative ways could be developed to seek the views of service users with communication issues.

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 RCN is in favour of better integration of services as we believe improvements can be made to the way that the NHS and local authorities work together. The ageing population, the perceived lack of progress in shifting the balance of care to the community and the reduction in budgets both within the NHS and local authorities are all shaping the integration agenda. There is broad consensus that there is a need for closer working between health and social care to help deal with these challenges, and this is mirrored in current government policy. However, discussions at a national level about how best to move towards a more integrated system are at a relatively early stage.

We stated in our submission to the Health and Sport Committee’s call for evidence to the Public Services Reform Bill that having separate health and social care regulatory systems would appear to contradict the emphasis on integration of health and social care. We argued that a split in the scrutiny of health and social care does not reflect the continuum and intricacies of individual patient/service user needs. The Crerar Review recommended that there could be one scrutiny body for health and social care. The RCN would welcome further discussion as to the strengths and weaknesses of such an approach, particularly given our concerns about the low prominence of health in the current system.

We hope that the Committee finds this submission useful. If you would like any further information from the RCN, please do get in touch.

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