Inquiry into regulation of care for older people

Scottish Federation of Housing Associations

1 Introduction

1.1 As the national representative body for housing associations and co-operatives in Scotland, the SFHA welcomes the opportunity to respond to the Health & Sport Committee’s call for evidence for their Inquiry into the Regulation of Care for Older People.

1.2 The SFHA is the representative body for 120 housing bodies (excluding Glasgow’s local housing organisations). This represents over three quarters of housing associations and co-operatives in the country. Our members provide vital housing, housing support and care services throughout Scotland from the most densely urban to the most remote rural communities. They often operate in the poorest communities in our country. Housing associations and housing co-operatives in Scotland own, manage and maintain 47% of the country’s affordable rented housing stock and 11% of the total stock. This represents 279,144 homes across Scotland.

1.3 As well as being Registered Social Landlords regulated by the Scottish Housing Regulator, a considerable number of our members also have significant involvement with Social Care and Social Work Improvement Scotland (SCSWIS), in terms of its role as the key regulatory body for care and housing support services in Scotland.

1.4 Housing associations and co-operatives play a significant role in supporting vulnerable people in our communities, enabling them to lead fulfilling and independent lives. Our members provide services right across the spectrum of care and support, including services for older people, adults with physical and learning disabilities and people with challenging life circumstances such as mental health problems, substance misuse and addictions issues and those fleeing domestic violence. Some 62% of all housing support services registered with SCSWIS’s predecessor organisation, the Care Commission, in 2010 was provided by housing associations or voluntary sector agencies⁠¹ - many of whom in turn work in partnership with housing associations.

2 General Comments

2.1 Our first point is to note that although the relevant legislation was passed in March 2010, SCSWIS has only effectively been in operation since April 2011. Our experience of the effectiveness or otherwise of SCSWIS is therefore understandably limited. In light of this, our submission is largely based on our members’ reflections of their own experience of the Care Commission (as the predecessor body whose functions were

transferred to SCSWIS) as well as their experience of SCSWIS since April 2011. 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?
- Are there any particular weaknesses in the current system?
- Does the system adequately take into account the views of service users?
- 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?

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

3.1 Although it can play a vital role in identifying poor quality care, we believe that inspection 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. We believe the reason that third sector providers (including housing associations)² achieve relatively high gradings so consistently is because they are ethically-driven businesses with effective quality assurance systems in place. Their services are built upon the keystones of service quality, service user involvement and person-centred planning.

3.2 We support SCSWIS in taking a more proportionate approach to inspection, so they can concentrate their efforts on services where there are concerns and reduce the frequency of inspections where gradings have been consistently positive³, and where services are well-managed. To us, this approach makes perfect sense and we believe it should help SCSWIS concentrate their resources on poorer quality services, ensuring that where services are failing, services can either be improved or shut down.

3.3 Whilst it will be challenging given current budget constraints, we want to see commissioning authorities direct their commissioning activity towards procuring and retaining good quality services, not simply the cheapest. In common with the Coalition of Care and Support Providers in Scotland (CCPS), we believe that the regulatory system must have jurisdiction in the areas of commissioning, procurement and funding, as well as service delivery. This will allow the system to pick up more effectively on poor quality, wherever it arises.

3.4 A welcome development within the new regulatory regime is the potential for SCSWIS to bring together intelligence both about the quality

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² 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.

³ By ‘positive’ gradings we refer to gradings 4, 5 and 6 (‘good’, ‘very good’ and ‘excellent’).
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 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.

3.5 Similarly, the regulator needs to challenge authorities whose commissioning, procurement and funding arrangements are failing 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 (arguably the most crucial enabling factor for good quality care). We 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 want the regulator to have a major role in challenging such practice.

3.6 We want to see SCSWIS take a much more robust approach to poor service quality (e.g. by being prepared to de-register weak or unsatisfactory services and indeed providers).

4 Are there any particular weaknesses in the current system?

4.1 It is premature to provide detailed comments on the current system, as it came into place in April this year, i.e. only a few months ago. We hope that some of the weaknesses we identified in the previous system, as noted above, can now be addressed by the new regulatory system. However, we are concerned that, although SCSWIS has the potential to take a ‘whole systems’ approach by linking service quality to commissioning practice, it still lacks the ‘teeth’ in respect of its ability to challenge poor commissioning practice, compared with its very significant powers of intervention in relation to service delivery.

4.2 Some of our members have reported to us that, since April 2011, SCSWIS has not been as responsive or accessible to contact from service providers, compared to previous experience of the Care Commission. This has caused significant inconvenience and frustration to some service providers who need to discuss strategic issues such as their plans for restructuring of their services. Moreover, it has led to some speculation and concern amongst our members about whether SCSWIS is sufficiently well-resourced to carry out its statutory functions. We are concerned that, if well-motivated, high-graded service providers cannot get a response from SCSWIS, then is there scope for poor performing providers to be able to evade SCSWIS?

4.3 SCSWIS 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. It also does not 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 significant weakness of the previous system – which regrettably has been replicated in the new one.

4.4 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 the Committee 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 or of that provider to deliver quality: in our view, it really ought to be.

4.5 The fact that a particular care service is poor is only known after an inspection – as a result of a complaint or whistle-blowing investigation, a formal announced inspection or an unannounced inspection. What is essential is that SCSWIS must use the tools it has in the most effective way possible. By way of illustration, announced inspections are probably the least effective way of catching out bad practice and poor service quality, since service providers have advance warning and can ‘prep’ for them to hide issues. Unannounced inspections are far more likely to expose poor service quality and underperforming providers. Where poor practice comes to light, subsequent regulatory action must be continued until such times as the service provider reaches the satisfactory level of provision. Unannounced inspections can be a power tool at the disposal of the regulator, but we want SCSWIS to be circumspect in its application. Overusing it would be a poor use of a limited resource, especially when budgets are so tight and resources need to be focused into areas of higher risk activity.

4.6 Announced or scheduled inspections are more suitable approaches for those who are delivering inherently lower risk types of service provision (e.g. floating support). In those cases, scheduled inspections can allow service providers to programme and plan their business and resource management in the most efficient manner possible. An unannounced inspection on a sheltered housing complex is likely to be an unproductive, costly and uninformative exercise for the regulator.

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

5.1 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.

5.2 We know that the views of users on other aspects of the system – for example, assessment, care management and commissioning – were sought by Social Work Inspection Agency in its performance inspections of local authority social work services. We trust that SCSWIS will
continue to do this, particularly in the light of the ‘user focus’ duty brought in by the new legislation.4

5.3 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.

5.4 We want SCSWIS take full advantage of its new duty of ‘user focus’ by adopting a much more robust approach to authorities who routinely do not seek service users’ views on an authority’s decision to put their existing support services out to tender or who ignore such views when they are expressed.

6 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?

6.1 Given that the Scottish Government’s plans in respect of the integration of health and social care are still in development, we consider it premature to offer detailed comments on this question at this time.

6.2 We would urge Healthcare Improvement Scotland 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. Currently, NHS services are regulated and inspected on a different basis from private and third sector services. We believe, in common with the Christie Commission5 and others, that there is potentially a much greater role for the third sector in the provision of public services. This anomaly in the regulatory regime may become increasingly difficult to justify as public service reform evolves.

7 Concluding Remarks

7.1 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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4 http://www.scotland.gov.uk/Publications/2010/12/03093907/1 as checked on 24/08/2011