Public Services Reform (Scotland) Bill

Care Commission

Introduction

It will be important to ensure that the changes proposed for the new scrutiny bodies in the Public Services Reform Bill result in added value and are not just seen as bringing together different scrutiny bodies which then continue to work in their own areas of interest. It would therefore be helpful if the Scottish Government set out its intentions about how it would evaluate the benefits of the new arrangements, particularly for people who use care services and their carers.

The Care Commission supports the Scottish Government’s overall policy objectives as long as:
- scrutiny continues to provide safeguards, especially for adults and children who do not have a strong voice
- scrutiny bodies remain independent from those being scrutinised and from Government.
- scrutiny is delivered in a way that delivers good value for money.

It is recognised that one of the Government’s intentions is that scrutiny burdens should be minimised. However, think that the slogan “burden of regulation” may have been accepted too readily. It should be recognised that what is perceived as a burden imposed by external scrutiny bodies, is in fact an (in the case of the Care Commission) independent risk based and proportionate examination of things that good service providers do anyway, and something that poor providers should be doing if they wish to improve.

Another intention behind the Bill is for delivery bodies to demonstrate that their self evaluation is leading to continuous improvement and for scrutiny bodies to introduce more proportionate and risk-based approaches to scrutiny using self evaluation as a starting point.

It is vital that the drive to more self evaluation should not be at the cost of protection of vulnerable children and adults. Therefore it is important to retain external validation of self evaluation by scrutiny bodies.

The Care Commission’s own grading system uses the care providers’ self-assessment as its starting point but also recognises the importance of external validation of the self-assessment with good evidence especially evidence directly from unbiased sources, including samples of service users and carers.

One specific area of concern is the fact that, there is little reference in the Bill to the Care Commission’s current collaborative work with the Scottish Social Services Council (SSSC). Currently, the Care Commission has a duty to take in to account the codes of practice issued by the SSSC, which is reflected in the draft Bill. However, we also understand that the SSSC has asked for a
specific duty to be placed on SCSWIS to enforce the code of practice for employers of social service workers. We would support this as the quality of care services is dependent on having good quality staff and the quality of staff is dependent on the manner in which workers are supported, developed and managed by employers.

The Care Commission also plays a significant part in supporting the SSSC’s functions through enforcement activities (for example in areas related to registration of the workforce). It will be important to ensure that SCSWIS is also able to carry on with this activity.

There appears to be no recognition within the Bill of the current arrangements the Care Commission and the SSSC have for shared service provision and co-location. We assume that the Scottish Government would want these arrangements to continue, in some form or other, and the implications of this need to be taken into account.

Another aspect of our relationship with SSSC is the fact that the Convener of the Care Commission is on the Board of SSSC and the SSSC Convener is on the Care Commission’s Board and this works to the mutual advantage of the two bodies. While the Bill has provision for the Convener of SSSC to be on the SCWIS Board there does not appear to be an obligation for the SCSWIS Convener to be on the Board of the SSSC. The current requirement is set out in secondary legislation (regulations) and it would be helpful if the Scottish Government could confirm whether it intended to retain this requirement in regulations.

**Comments on parts four and five of the Bill**

While we have, in the main, provided comments on parts four and five of the Bill, we have also referred to part six where we believe this has been necessary.

We would also wish to stress that, within the context of strategic priorities agreed by Ministers and Parliament, it is important to ensure that external scrutiny is independent and not constrained by any party in reaching conclusions and publishing findings. Scrutiny bodies must be free to make judgements about service delivery and report their findings into the public domain, and must be able to decide how they discharge their responsibilities.

**Part 4 - Section 35 – General Principles** - The Care Commission supports the general principles of the Bill as long as public assurance and public protection is maintained, if not enhanced, and service improvements continue to be driven upwards and that the proposed changes continue to constitute good value for public money.

**Part 4 – Section 37 and schedule 8 – Care Services Definitions** – There is a need for some changes/additions to the definitions of some care services. We have been advised that this will considered at stage 2 of the Bill.
Part 4 – Section 40 – Standards and outcomes – In all of its regulatory activity the Care Commission has a statutory duty to take account of the National Care Standards (NCS) and the Scottish Social Services Council’s (SSSC) Codes of Practice. In addition to NCS and the SSSC’s Codes of Practice we regulate against Regulations set out in SSIs, both at registration and at inspection. These Regulations are often vital inputs or processes which need to be in place to ensure good outcomes. It will be important to ensure that any standards are based on outcomes, kept up to date and relevant. Standards also need to be promoted and it is of continued concern to the Care Commission that some people using care services or their carers remain unaware of the current NCS. In our Stakeholder Survey conducted in May/June 2008, prompted awareness amongst the general public was 23%. Scottish Government commissioned research shows that this had increased to 32% after their summer 2008 television advertising campaign. Whilst this is encouraging it is essential that priority continues to be accorded to promoting better public awareness and understanding of all standards, including the National Care Standards.

Part 4 – Section 45 – Inspections: authorised persons – Currently Care Commission Officers (as authorised persons) are within the scope of the SSSC workforce register. It is not clear whether SCSWIS inspectors will also be required to register with the SSSC and, if so, whether the current qualification requirements will also apply to all of SCSWIS inspectors.

Part 4 – Section 53 – Cancellation of registration – The Bill does not currently include urgent cancellation procedures. These are necessary and we have been advised that they will be considered at stage 2 of the Bill.

Part 4 – Section 61 – Registration Fees - Para 549 of the Financial Memorandum notes that fee structures are due to be reviewed in 2010/11. We are concerned that there will not be enough knowledge about the new regulation regime for the review to encompass all SCSWIS’s activities. The additional dimension of the proposed holistic approach to regulation has the potential to significantly complicate the current Care Commission charging regime which is based on individual services.

Part 5 – Section 10B – Principles - The principles for HIS are different from those, outlined in Part 4 (35), for SCSWIS. We would suggest that the principles for SCSWIS should apply to both bodies.

Part 5 – Sections 10H – Standards and outcomes – The comments made earlier in respect of Part 4 Section 40 also apply here.

Part 5 – Section 10I – Inspections of services provided under the health service – The Care Commission welcomes the fact that HIS will be able to inspect any service provided under the health service.

Part 5 – Section 10K - Authorised persons – Whether authorised persons should hold a regulatory qualification, which is currently a requirement for Care Commission Officers, needs to be considered.
Part 5 – Section 10M – Inspections: reports – the Care Commission welcomes the fact that inspection reports of NHS and IHC services will be available to the public.

Part 5 – Sections 10Q, 10R, 10S, 10T and 10U – cover enforcement activity in respect of independent healthcare services - While the independent healthcare sector has demonstrated, in the main, that it is a high performing sector we have, on occasions, had to use enforcement powers. Therefore we welcome the fact that these will be retained. However, this may lead to questions being raised as to the reason why such powers are not formally available in respect of the NHS.

Part 5 – Section 10Z – Registration Fees - The comments made earlier in respect of Part 4 Section 61 also apply here.

Part 5 – Section 10Z3 – Complaints about independent healthcare services – We are aware of the current arrangements for dealing with complaints in respect of NHS services. However, questions may be raised as to the reason why complaints against the NHS are not also going to be handled by HIS.

Part 6 – Sections 92 and 93 - Scrutiny: user focus - The Care Commission’s Corporate Plan 2009-11 states that we will work in ways that ensure that everyone who uses care services, and their carers, are informed, consulted and involved in how care services in Scotland are developed, delivered, evaluated and regulated. Therefore, because user and carer focus is effectively embedded in the culture of the Care Commission, we fully support the proposed duty of “User Focus” as outlined. However, we also would like this to be extended, when it applies to services for vulnerable children and adults, to include carers as well as people who use care services.

We have recently written to the Cabinet Secretary for Finance and Sustainable Growth, outlining our progress on the recommendations made by the Scrutiny Improvement Team’s User Focus Action Group and a copy of this response has been included as an appendix. We believe that, the good practice reflected in our current arrangements and which we have outlined in this response should be extended across all scrutiny bodies and that the duty outlined will go a long way to facilitating this approach.

Part 6 – Section 94 – Scrutiny: duty of co-operation - and Section 95 - Joint inspections - These are both important foundations for collaborative working. However, it is suggested that the duty of cooperation should also apply to other organisations not currently listed in Schedule 14, including Her Majesty’s Chief Inspector of Prisons for Scotland, and Her Majesty’s Chief Inspector of Prosecution in Scotland. Similarly, the section on joint inspections should apply to Her Majesty’s Chief Inspector of Prosecution in Scotland, Audit Scotland and the Scottish Housing Regulator.
Significant work will be required in order to ensure the duty of co-operation is implemented, including the alignment of methodologies, procedures, processes and terminology and development of a shared culture of co-operative working across all scrutiny bodies.

Subsection (5) of Section 95 gives Ministers powers to require a joint inspection to be carried out. It is suggested that scrutiny bodies themselves may wish to initiate a joint inspection and that therefore they should also have the power to do so.

**Will the amalgamation of the Care Commission and the Social Work Inspection Agency create a more cohesive scrutiny system?**

The Care Commission believes that amalgamation of the Care Commission's regulation of care services at a service unit level, the inspection of integrated children's services and child protection, along with performance inspection of social work services will not only create a more cohesive scrutiny system but also has great potential for providing added value.

In particular there is huge potential for a more effective examination of the whole system, from assessment of individual need, through planning, commissioning, contracting and care management to delivery of social care and social work services for specific client groups and individual people who use care services and their carers.

Therefore, it is important that there is a proper alignment between HIS, SCSWIS and HMIE and the development of integrated working needs to extend beyond these three bodies to other scrutiny bodies.

In this respect, it will be important to build on the collaborative working already undertaken by the current scrutiny bodies (for example in the work on integrated inspections undertaken by the Care Commission and HMIE, the work on child protection and multi-agency inspections). It will also be important to build on the work being co-ordinated by Audit Scotland, on behalf of the Accounts Commission, on the development and implementation of shared corporate self-evaluation and scrutiny risk assessment and the joining up of scrutiny schedules.

It will be essential for SCSWIS to retain, or have adequate and flexible access to, health expertise as the Care Commission has been able to look at how care services are meeting the healthcare needs of their users as required by the National Care Standards and this function will continue with the new body.

**Will the establishment of Health Improvement Scotland lead to improvements in the registered independent healthcare services and the NHS in Scotland?**

We would hope that there is potential for creating a more level playing field in relation to quality standards across the NHS and independent sectors and the scrutiny of those services. However, as mentioned above, the principles for
HIS, outlined in Part 5 (90) (10b), are different from those, outlined in Part 4 (35), for SCSWIS.

It is also suggested that HIS and SCSWIS should have the same legal powers related to inspection, including the power to examine relevant records (including medical records), and appropriate enforcement powers.

David Wiseman
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Care Commission
14th August 2009
Appendix

CARE COMMISSION RESPONSE TO
USER FOCUS ACTION GROUP RECOMMENDATIONS

Recommendation 1: Scrutiny bodies should adopt the definition of 'user' and 'user focus' set out in the User Focus Action Group (UFAG) report.

The Care Commission's Corporate Plan 2009-11 states that we will work in ways that ensure that everyone who uses care services, and their carers, are informed, consulted and involved in how care services in Scotland are developed, delivered, evaluated and regulated. The Care Commission is happy to adopt the definition recommended by UFAG but has also decided to include carers as well as people who use care services in the definition and would recommend that Scottish Government also does this.

Recommendation 2: Scrutiny bodies should adopt the vision, underpinning principles and seven broad features of user focus set out in the UFAG report.

The seven features are that a scrutiny body should be able to demonstrate the following:

1. an organisational commitment to user involvement recognising the value added by overcoming barriers for the users and maximising involvement opportunities;

The Care Commission has established an Involving People Group - 50 members of the public, all people who use services or carers that get involved with the Care Commission at a national level on new projects and actively influence how they develop. Our Equalities Consultation Panel - a virtual network of more than 250 individuals and organisations that represent the interests of equalities groups in Scotland also contributes to demonstrating our commitment. We also have a statutory obligation to hold Care Commission Forums twice a year and this requirement has been met or exceeded each year. Applications have substantially increased and we usually have short waiting lists for most events. The introduction of digital voting has been very well received by participants and the percentage of participants who use services and their carers is steadily increasing.

Our website at www.carecommission.com meets the highest "triple A" accessibility standards and is an important source of information for people who are interested in the quality and delivery of care services in Scotland. It gets a million visitors a year and is a good source of information for an ever increasing number of website users. It lists all 15,000 regulated care services in Scotland as required by the Regulation of Care (Scotland) Act 2001. Each service has its own pages, where inspection reports, details of complaints and other useful information can be accessed. We will continue to improve the website to make sure that it is: (i) the reliable source of accurate information
about care services in Scotland and about the Care Commission (ii) accessible and appealing to the full range of people with an interest in care including children, young people, people with disabilities and those whose first language is not English -we have learned that these are the main groups for whom the website could be improved (iii) user friendly, easy to navigate, clear, fresh and up-to-date (iv) interactive and innovative.

These activities clearly demonstrate the Care Commission's commitment to the first principle.

2. user involvement in the scrutiny body governance structures;

There are specific places on the Care Commission's Board which are reserved for people who are or have been users of care services or carers and this demonstrates commitment to this principle.

3. user involvement in the design of scrutiny activity;

When introducing changes in the way we regulate, we work with a cross section of people who will be affected to design, develop, test, deliver and monitor effectiveness. We do equality impact assessments in accordance with the law. We act on what people tell us when we can. When we can't do what they ask - perhaps because it is beyond our powers -we will clearly explain why not. We respect everyone's contribution. We widely report the results of consultation and involvement. We adopt the principles and guidance in Scotland's Standards for Community Engagement. Representatives of the Involving People Group have been involved in a number of scrutiny activity developments, including the development of the new inspection report format.

4. user involvement in delivery of scrutiny;

The Care Commission's Involving People Plan states clearly that its overall objective is to inform, consult with and involve people by - (i) being open, accessible, accountable and responsive, (ii) using plain, clear and straightforward language, and (iii) adjusting our methods to meet the needs of many different groups. We actively encourage service providers to actively involve people who use their services and their carers in helping them to improve. We signpost to resources and best practice that help people who use services and their carers to get more involved. We help people who want to have their say on the quality of care to have their voice heard. We provide support to help people become actively involved with the Care Commission. During inspections -talking to people who use the care service, their families and carers and then reflecting their views in our reports. We also use questionnaires, surveys and focus groups.

5. user involvement as members of scrutiny teams (informing evaluations and judgements through first-hand activities);

The Care Commission's has a Lay Assessor scheme, which consists of some 70 members of the public, all people with some experience of using care
services, who participate in specific inspections. The Care Commission trains and supports Lay Assessors and their input to the inspection process complements that of the Care Commission Officer.

6. accessibility of their scrutiny findings in reports that are easy to read and understand;

If and when people need to use or choose a care service, Care Commission inspection reports provide reliable information to help them. All inspection reports are published on our website. These reports are also available in hard copy from the Care Commission or the service subject to the inspection and they are written in a way which will help people when using or choosing a care service to know what the quality of care of that service is at the time of the inspection.

7. When the scrutiny body has a direct role in helping service providers improve, that the scrutiny body is supporting user involvement in subsequent improvement action.

The involvement of people who use care services and their carers starts with the self-evaluation by the service provider. Service providers’ self evaluations are required to give evidence that they involve people who use care services and their carers not only in their care arrangements but also in assessing and improving all aspects of the service. This is very important if the service wants to achieve the best grades. Care Commission Officers (CCOs) check how well the service consults with and involves people who use care services and their carers (i) in the delivery of care, (ii) in assessing and improving all aspects of the quality of the service. CCOs will always assess service performance against quality statements that relate to involving people who use care services and their carers. So it is vital that service providers can show that they have involved people in planning and delivering their care and in assessing and improving the overall quality of the service. It is made clear that it is not sufficient to just ask people who use care services and their carers to grade the care service. We look for evidence that they have opportunities to have their say about the quality of their care and how this results in the service improving. The service can not get the better grades without such evidence.

Recommendation 3: Scrutiny bodies and public bodies should draw on the examples of good practice in user focus and involvement as a basis for further work.

The UFAG report actually refers to the Care Commission as being one of the sources of good practice. We are also continuing to seek out other examples of good practice so as to ensure that we continue to improve our methods of involving people who use care services and their carers in the work of the Care Commission.

Recommendation 4: Scrutiny bodies and public bodies should establish a mechanism for the sharing and disseminating of good practice and the
development of action learning.

The Care Commission already works with other scrutiny bodies on sharing and disseminating good practice across a wide range of scrutiny activities. Not only with other scrutiny bodies in Scotland but with similar bodies across the U.K.

Recommendation 5: Ministers should support the current work being undertaken by the Improvement Service and Customer Focus Scotland on a common approach to measuring user satisfaction and experience in Scottish local government. Ministers should review the work by April 2009 with a further expectation of a common approach being developed across local government by April 2010.

The Care Commission fully supports this proposal and would be willing to participate in this work.

Recommendation 6: Ministers should ask that all performance scrutiny reports from scrutiny bodies, for new programmes of work, are produced in "dual-format" format, with both an accessible summary and a full technical report, with effect from April 2009.

The new inspection report format being implemented during 2009-10 meets the terms of this recommendation and therefore we can report that we are fully implementing this recommendation.

Recommendation 7: Ministers should expect greater commonality across all scrutiny bodies in terms of the grading approaches they use and (i) direct that this is addressed within the developing work on Outcome Agreements and Best Value 2 (ii) review progress by April 2010 and (iii) have a firm expectation of roll-out within new programmes of service scrutiny by April 2011.

This work is already being taken forward through the work being co-ordinated by Audit Scotland, on behalf of the Accounts Commission and will also be considered by the relevant Scrutiny Bodies Task Teams.

Recommendation 8: Ministers, scrutiny bodies, service providers and the Scottish Parliament should accept that to bring about greater user focus within any scrutiny system both cultural and procedural change is required. Such change will involve challenges and opportunities for service providers, scrutiny bodies and crucially, the users themselves. The change will also require additional resources from the outset, in terms of both financial support and staff time for training etc. Best Value and the public sector equality duties already provide a helpful framework and organisations are encouraged to exercise leadership and effective use of resources to effect this change and to deliver on the recommendations contained in this report.

The Care Commission has already established a high level of user focus and
will wish to help maintain this level of activity in the new scrutiny bodies being established in 2011.

**Recommendation 9:** All scrutiny bodies should be required to report to Ministers by June 2009 on their approach to implementation of the recommendations in this report and plans to progress further. Each scrutiny body should be able to demonstrate that it is responding to issues of user focus by April 2010.

The above response to each of the recommendations hopefully demonstrates that the Care Commission's commitment to user focus is being sustained.

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20 July 2009