

COMMUNITY CARE PROVIDERS SCOTLAND

SCOTTISH PARLIAMENT HEALTH COMMITTEE

CARE INQUIRY:

Community Care and Health (Scotland) Act 2002

Regulation of Care (Scotland) Act 2001

Call for evidence: response from CCPS

Community Care Providers Scotland (CCPS) is the association for social care service providers in the voluntary sector. Its membership comprises over fifty of Scotland's most substantial providers of services, supporting more than 50,000 people and their families and collectively managing more than £600M of public funding per annum. CCPS estimates that the voluntary sector now provides more than a third of Scotland's publicly-funded social care services.

CCPS gave written and oral evidence to the Health and Community Care Committee during the passage of both these pieces of legislation. Our members continue to work within the framework set by these Acts and have a continuing and significant interest in them.

In this short paper, we set out the key areas to which we believe the Health Committee might wish to have regard in reviewing these Acts.

COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

This Act contains three key elements of concern to service providers:

- **Free personal care.** During the passage of the legislation, CCPS expressed concern that under the terms of the Act, free personal care would only be available to those over 65 years of age. A probing amendment was lodged (by John McAllion MSP) on our behalf, aimed at clarifying the Scottish Executive's rationale for excluding those under 65 from the provision. The Deputy Minister (Hugh Henry MSP) replied as follows:

"I give the committee an assurance that work will be undertaken to improve our knowledge and understanding of the needs of younger people and the range and quantity of care services that are provided for them, with a view to informing our future policy decisions in this area. I am sure that Parliament wants that work to be done before it makes any decisions. We will attempt to obtain that information. We will be happy to work with local authorities and the voluntary sector in undertaking that work."

CCPS believes that a research project on this issue was indeed commissioned by the Executive but has received no details nor any report of its findings. We would encourage the committee to investigate.

- **Direct payments.** One of the Act's key policy objectives was to improve access to Direct Payments by giving local authorities a duty, rather than a power, to provide them; and by widening eligibility for Direct Payments beyond the existing legislation's definition of "disabled people" to include other community care groups.

As an association of service providers, CCPS supported this objective and did some preparatory work to brief providers who may, as a result of the Act, be approached by Direct Payment recipients seeking to purchase their services.

We would encourage the committee to assess how effective the Act has been in pursuing this policy objective, and to critically examine the remaining obstacles to greater uptake of Direct Payments.

- **Joint working.** CCPS has been concerned for some time that the Scottish Executive's view of "joint" working applies only to the statutory agencies and not to the voluntary sector. In our written and oral evidence to committee during the passage of the Act, we suggested that the committee might consider amending the legislation to the effect that new structures or other arrangements to facilitate local partnership working should be required to involve voluntary sector providers.

In the event, the Act remained unamended. A subsequent Act – the NHS Reform Act – introduced Community Health Partnerships (CHPs), new bodies intended to bring about similarly close joint working arrangements between agencies planning and providing health and social care. The statutory guidance on CHPs is explicit about the need to involve service providers from the voluntary sector, not just consultatively but as members of the CHP committee itself. CCPS is now exploring with the Scottish Executive how best the full and effective involvement of providers in CHPs might be facilitated.

CCPS would encourage the committee to review the Act in the light of this subsequent legislation, and to consider whether it needs to be strengthened to the effect that all joint working arrangements – not just CHPs – must include voluntary sector providers as partners.

REGULATION OF CARE (SCOTLAND) ACT 2001

CCPS has a significant number of concerns about this Act and the way in which the legislation is being implemented. Briefly, these are the key issues:

- **Consistency of regulation.** A key policy objective of the legislation was to remove responsibility for registration and inspection of care services from local authorities, health boards and others, and place it within a single, national body, thus ensuring consistency of approach and care standards that apply across the country. Further, the creation of a national regulator would remove the anomaly whereby local authorities were regulators of voluntary and private sector services, but local authority directly-provided services were not regulated at all; again, the intention was to ensure that the same standards apply equally across all services.

Whilst the Care Commission is striving to deliver on these objectives, CCPS would wish the committee to be aware that in many areas, local authorities have continued to set local standards and apply them to voluntary and private sector providers, monitoring performance and (in some cases) inspecting against them, through contract compliance procedures that duplicate the Care Commission's remit. Thus, rather than one single regulatory body replacing 32 councils' individual procedures, providers are continuing to be regulated by councils *and* by the Care Commission as well.

CCPS believes that this is entirely contrary to the policy objectives of the Act and indeed to the parliament's intention in passing it; it wastes resources that would be better spent on services, and we would urge the committee to take specific evidence on this point and consider how the situation might be remedied.

- **Resource and capacity issues.** A further policy objective was “to ensure that we have flexible services which recognise and respond to the needs of children, vulnerable adults and their families” (Policy Memorandum accompanying the Bill, page 4).

CCPS is concerned that the objective of flexible and responsive services may not be met within the resource constraints within which providers operate; moreover, it is concerned that the new regulatory system is itself contributing to those constraints.

The committee will be aware that there was significant debate during the passage of the legislation about Scottish Executive policy in relation to the financing of the Care Commission; specifically, that it would be self-financed by fees charged to regulated providers. CCPS, along with almost all other stakeholders, put forward strong objections to this and continues to do so. Providers are now paying very significant sums in fees to the Care Commission. These sums are rarely covered by local authority funding packages and generally have to be found from within service budgets. In some cases, the level of Care Commission fees is causing providers to question the viability of services; this would seem to be in direct opposition to the principles of the Act, in particular the principle of diversity and choice as articulated in Section 59 (4).

Most worrying perhaps, the Scottish Executive has stated in a recent regulatory impact assessment relating to the consequences of its policy on fees that ‘it is possible that some smaller providers may have to close...it was always accepted that this might happen...’ (*consultation document on maximum fees 2004-05*). CCPS has studied all the earlier impact assessments and related documents regarding registration fees and regulation more generally and cannot find a single reference to the possibility of service closures resulting from fee burdens, nor to the risk of such closures being ‘accepted’. Neither can we recall any public statement by Ministers or anyone else from the Executive to this effect.

CCPS would urge the committee to take specific evidence on this point.

- **Responsibility for the delivery of care standards.** The regulatory system as introduced by the legislation holds service providers uniquely responsible for the delivery of care standards. Yet, as CCPS pointed out during the passage of the Act, a provider can only deliver the quality of service that its funding package will allow.

Initially, CCPS encouraged the Scottish Executive to make service purchasers as well as providers responsible for the delivery of care standards, for example by setting standards for commissioning and contracting. This was not followed up. Consequently, CCPS worked with a former member of the committee (Dr Richard Simpson MSP) to amend the Bill at Stage 2, introducing a new provision to give the Care Commission the power to ensure that providers are adequately resourced in relation to the care standards and indeed to other requirements of registration, including compliance with relevant regulations and staff qualification standards set by the Scottish Social Services Council.

This amendment was deleted at Stage 3. Dr Simpson, a number of other MSPs and indeed CCPS itself were invited to withdraw their support for it on the basis that the Scottish Executive, having recognised the validity of the issue at stake, would address it in another way. CCPS would wish the committee to be aware that the Executive has not, in fact, addressed this problem, and it remains unresolved.

CCPS would therefore encourage the committee to consider reinstating this amendment, or otherwise ensuring that this issue is dealt with appropriately.

- **Legal issues.** Providers working with the Act and its associated regulations have identified one or two areas where the legislation seems to run counter to other legal instruments. For

example, providers have identified that the definition of a 'fit person' under the legislation clashes with the provisions of both the Police Act 1997 and Rehabilitation of Offenders legislation.

Other elements of the legislation run counter to natural justice and indeed, to common sense: CCPS would cite in the first regard the issue of care service staff who are the subject of a complaint to the Care Commission. Following investigation, the complainant may appeal against the findings, but we understand that the complained-against may not.

CCPS would further cite requirements in relation to Disclosure Scotland checks. The Care Commission must be satisfied that a check has been carried out on care service staff; and the Scottish Social Services Council, similarly, must ensure a check has been carried out on staff applying to the register. It is our understanding, however, that neither one of these bodies is able to accept a check carried out as a result of a requirement by the other, nor by the employer. Thus care service staff may have to be checked three times, with a fee paid to Disclosure Scotland each time. Again, these resources would be better spent on services.

CCPS would encourage the committee to investigate these difficulties and consider how they might be resolved.

- **The basis of regulatory activity.** When CCPS gave oral evidence to the committee during the passage of the legislation, it expressed its support for the overall intention of the Act to introduce a new regulatory system based principally on standards relating to the experience of the user of the service, rather than the fabric of the buildings in which the service is delivered, or the organisational policies that providers should have in place.

CCPS members have found, however, that the regulatory process often turns out to be 'business as usual', with inspectors chiefly interested in policies, procedures and compliance with regulations rather than the experience of the person using the service. Clearly there are exceptions to this, but on the whole providers cannot evidence the significant shift of emphasis that the new system was intended to usher in.

CCPS is aware that the Care Commission is still a relatively young organisation and is developing new approaches to quality assessment; however it would at the same time wish the committee to be aware that the 'brave new world' of user-focused regulation has not yet come about. The committee may wish to take specific evidence on this matter.