

REPORT TO: DUNDEE CITY COUNCIL SOCIAL WORK COMMITTEE

REPORT ON: THE RESPONSE TO THE CONSULTATION DOCUMENT
"REGULATING CARE AND THE SOCIAL SERVICES WORKFORCE"

REPORT BY: DIRECTOR OF SOCIAL WORK

REPORT NO: 287-2000

1.0 PURPOSE OF REPORT

The report is submitted for information. The attached appendix outlines the reply submitted to the Scottish Executive in response to the consultation document "Regulating Care and the Social Services".

2.0 RECOMMENDATIONS

It is recommended that the Social Work Committee note and agree the contents of the response submitted to the Scottish Executive as detailed in Appendix 1.

3.0 FINANCIAL IMPLICATIONS

3.1 There are no financial implications arising from this report.

4.0 ENVIRONMENTAL IMPLICATIONS

4.1 None.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 None.

6.0 MAIN TEXT

- 6.1 The Scottish Executive indicated their intention to develop the Scottish Commission for the Regulation of Care and the Scottish Social Services Council in the White Paper Aiming for Excellence: Modernising Social Work Services.
- 6.2 The initial proposals for consultation were set out in the document Regulating Care and the Social Services Workforce. Dundee City Council was asked to respond to the document by the 10 March 2000.
- 6.3 In order to meet the tight timescale for consultation the report was submitted after consultation with the leader of the Council, the Advisory Committee (Social Work) and the spokespersons for the opposition groups.

7.0 CONSULTATIONS

- 7.1 The consultation document was distributed to the relevant trade unions for their information.
- 7.2 The Director of Support Services, Director of Personnel & Management Services, Director of Neighbourhood Resources, Director of Education, Director of Finance and the Director of Corporate Planning have been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

- 8.1 Aiming for Excellence : Modernising Social Work Services in Scotland, Regulating Care and Social Services Workforce : A Consultation Documentation

9.0 SIGNATURE

Director of Social Work

Date

DUNDEE CITY COUNCIL**REGULATING CARE AND THE SOCIAL SERVICES WORKFORCE****General Comments**

Dundee City Council welcomes the opportunity to respond to the consultation document and to contribute to the general discussion regarding the regulation of care. The development of an independent regulatory system of care providers and staff working within social care settings, will ensure local people are protected when accessing a wide range of care services. As a city that has achieved a robust and effective system of registration and inspection of residential and daycare services for adults and children, we particularly welcome the regulation of additional care services such as care at home and foster care.

The document highlights some of the important aspects to be determined through the creation of the Scottish Commission for the Regulation of Care. However, some fundamental issues relating to staffing, setting and the structure of the commission are yet to be addressed. Staff currently working within registration and inspection teams are committed to the principles and values promoted within the White Paper – Aiming for Excellence. In order to retain this workforce, early indications of both transfer and working arrangements would help ease current concerns and enable clear, future planning to take place.

The Scottish Executive have set a tight timescale for the introduction of the Commission indicating that the initial staff moves into the shadow Commission will take place in April 2001, with the regulatory function moving entirely from the Local Authority in September 2001. Dundee City Council is concerned that the time differences between the two moves would lead to confusion in accountability and responsibility for the regulation of current services. Consideration should be given to ensuring that a smooth, single transaction takes place.

Dundee City Council would also support the view that the regulation and inspection of Early Years services move into the Commission in the first instance. While it is acknowledged that there are still details to be resolved surrounding the future regulation of early years services, it would make sense to bring all services which are currently regulated to the Commission simultaneously.

Paragraph 30 makes reference to the work of local Advisory Committees and the links to local needs and interests. Dundee City Council would reinforce the premise that the Commission must take into consideration the need for local accountability. We would suggest that sub-committees, carrying on the principles of the Advisory Committee but representing geographical areas similar to Health Board boundaries or regional areas, be established.

The criteria to determine the geographical settings for the main teams of regulators are not detailed in the consultation document. Dundee City Council recognises the economical advantages of reducing the numbers of individual teams but would strongly advise that a degree of local response be retained. Team boundaries in line with local Health Boards could provide regulators with a degree of local contact and knowledge.

The local market will influence the development of new services. The establishment of clear links to local contracting and commissioning departments both during the pre-registration process and as a means of monitoring quality performance should be developed.

The commitment to meet the cost of regulation and inspection through the collection of registration fees is not seen as a financially viable one. While economies of scale will partly address the current imbalance, Dundee City Council strongly advocate that the remaining shortfall is not solely passed on to providers or recouped through a reduction in the number or quality of inspections.

CONSULTATION QUESTIONS

Q1. What are the problematic aspects of current legislation (paragraphs 20-23)? In particular would welcome views on:

- a) **the adequacy of the current definition in Section 61 (1) of the 1968 Act that registration applies to any residential or other establishment the whole or substantial part of whose function is to provide personal care or support, whether or not combined with board etc; and**
- b) **the adequacy of the definitions in Section 61(1A) of personal care and support.**

The term 'substantial' can lead to inconsistencies in definition as to whether a service should be registered or not. The Commission should establish clear criteria for registration of care services which eliminates ambiguity for both regulators and providers.

The definitions of personal care and support must be clearly stated, but in addition should be given some "weighting". For example, 5 hours of personal care, such as assisting to bathe, could be more intrusive to a client, than 15 hours of care which is of a supervisory or supportive nature, such as observing meal preparation. An apparently high level of 'support' only may not require registration. In contrast, services providing interventions which involve care of a highly personal nature must always require registration.

The changing nature of care services and developments in practice will lead to innovations in service provision. The question of whether or not to register should not be based on whether a new model fits a current category of service. Flexibility should be given as to the suitability and level of standards compliance which is imposed on new developments and applied in a manner which enables the service to function in an innovative way.

2. What should the size and format of the Commission be, particularly in terms of the balance of members (paragraphs 24-26)?

The proposal that a designated percentage of the Commission should comprise of service users, carers or representatives was welcomed, as was the acknowledgement that care services are used by a diverse group of people in terms of age, gender and ethnicity. Dundee City Council would wish to stress that due consideration should be given to ensuring that the location and timing of Commission meetings take in to account the needs of service users, ensuring that attendance is facilitated for all.

The quality of the Commission will be determined by the calibre of its members and careful consideration should be given to achieving the best overall balance of carer, stakeholder and professional representation. The management of the executive committee will require a dedicated membership, able to comprehend and address the many issues that will arise in the early stages of Commission's development.

Effort must be made to ensure that representatives of stakeholders are truly portraying the views of the whole sector they are appointed to represent. In addition Dundee City Council would request that a number of places within the Commission be reserved for Elected Members.

A review of the size and membership of the Commission should be undertaken at a set date to determine its efficiency, effectiveness and its true representation of stakeholders and users.

3. What staffing issues should be considered and what should the future role of lay or public interest members of inspection teams be (paragraphs 31-34)?

Staffing

The secondment of specialist staffing into the Commission is viewed as a positive step and should cover expertise in all client groups and some knowledge and experience of being a provider. This should not deter the establishment of a core group of experienced and committed staff who fully comprehend the complexities of the registration and inspection task.

It was re-assuring to note that TUPE conditions will apply for those staff moving to the Commission, however this will not address the differences in salary and conditions between both individual Local Authorities and Health Boards. If staff are expected to move to the new Commission, there will need to be relocation expenses and clarity about travel allowances.

The recent survey of Registration and Inspection Units will have identified the wide range of support staff currently called on to assist in the function of registration and inspection. This includes accountancy, legal and architectural services. In addition external agencies such as environmental health and fire services contribute to the overall assessment of the establishment. How these services will be linked both locally and nationally to the Commission requires thought.

Future role of lay or public interest members of inspection teams.

Although not widely used within Scotland, Local Authorities using Lay Inspection Officers have benefited from the varied views which lay inspection brings to the assessment of the quality of care. Lay inspection does however carry significant resource implications, both in terms of staff support and training. Consideration should also be given to the method of recruitment to this role, ensuring that impartiality and independence is maintained.

4. How should we define care services (paragraphs 39-40)?

We would agree with the broad terms of the definition for care services for adults but have some concerns about the non-registration of domestic services especially where they are integrated with personal care and support. The definition should also include registration of services which provide support to vulnerable people, particularly where this applies to interventions such as the management of personal finances, medication or counselling.

The current legislation does not provide guidance for care received from supported landlords or supported by wardens within sheltered housing. In addition it does not help clarify the ambiguities surrounding supported accommodation, with or without tenancies, and the difficulties in clearly determining whether this resource should be registered or not. This could helpfully be resolved through the definition of care services and agreed assessment tool.

Within children's services, the development and range of childcare services has increased in order to meet the policy demands of the new childcare strategy. Definition of care should include those innovative services such as sitter services, out of school provision and linked childminding.

5. What should requirements for registration be (paragraphs 42-45)?

We would agree that the current practice of registering both the fit person and the establishment, where applicable, continues. Where a company or organisation owns an establishment or care service, the fitness of the company must be determined. Safe guards must also be built in to examine fitness of the manager and other key staff.

The relationship between Manager and Owner of a service cannot be underestimated, particularly where owners are unqualified but retain the overall responsibility for financing developments and improvements in care. Registration requirements must ensure that this role is clearly defined and the respective aspects of responsibilities and accountability clarified from the onset.

The link between the Commission and the Council will be crucial during this pre-registration period. The role the Council will play in fitness checking staff should be clarified. The link between the revised SCRO checking proposals from the Police Bill and the consultancy index which will provide data on individuals considered unsuitable for working with children, should also be clarified.

6. How best can we ensure quality of care through inspection (paragraphs 46-48)?

As a minimum the Commission must be committed to ensuring two inspections per year to registered establishments and services. The unannounced inspection is a very powerful method of ensuring that the quality of care is monitored effectively and in many instances a short unannounced visit will illicit a degree of information which can surpass the level of information gained at a longer announced visit.

Inspection methods must continue to include the confidential interviewing of residents, relatives, advocates and staff. Consideration should be given to ensuring that staff and residents who 'whistleblow' about poor care practice are protected and supported by the Commission.

Inspection findings should be based on more than one evidence base and take account of inputs, processes and outcomes for service users.

Self evaluation forms were viewed with some trepidation by provider representatives and the prospect of two such forms per year were considered excessive. Where committees are the registered 'person', such as with children's playgroups, it was questioned as to who would hold responsibility to complete and return these forms. This was also felt to be an area which may lead to dispute between providers and regulators with differences in opinion occurring.

There is some concern surrounding the need to submit and access this information electronically. The uptake of inspection reports by prospective residents and relatives has always been poor, and at this stage it is not considered that the siting of these reports on the Internet will necessarily facilitate increased access.

Current providers of residential and day care services are asked to submit an annual update prior to the annual announced inspection in Dundee. This information includes staffing details, both training and duty rotas, current resident details, accident records, complaints details and any policies and procedures that have changed since the last inspection. In addition, providers are asked to indicate how they will address unmet standards after an inspection. This information, while valuable, forms only a part of the inspection process. Self-evaluation forms cannot replace actual inspections.

It is also advocated that quality services begin with the setting of quality standards. National standards should not just set a minimum registration requirement but be based on quality expectations which recognise and encourage improvements in service and practice and which set out aims for best practice. Set standards should be clear, enforceable and measurable.

7. How should enforcement of standards be dealt with (paragraphs 49-50)?

Clarification is sought as to the definition of 'suspension' of registration and to the difference between 'urgent cancellation of registration' and 'emergency de-registration'. We would also suggest that the Commission give consideration to introducing other powers prior to de-registration such as enforcement notices and the application of additional conditions for registration. The application of effective conditions for registration, at the onset of registration, will strengthen the position of regulators. There may be a need to define a range of specific penalties to be applied as a result of breached conditions.

Strong links with other regulators should be made to identify current providers who are subject to enforcement procedures. Consideration should be given to developing an 'alerts' notice between regulators. The Commission should develop policy guidance which determines when users and purchasers of services are notified of significant concerns within an establishment or service.

Different regulators have different policies and codes of confidentiality when entering into enforcement action. Opportunity should be taken to establish arrangements which will enable a degree of openness when enforcement action by one regulator may impinge on the continued trading of a registered care service provider. This should include knowledge of approved providers' accreditation within Local Authorities and Health Boards.

8. How should appeals be treated in the future (paragraphs 51-52)?

Dundee City Council welcomes the opportunity to speed up the process of appeals and the suggestion that independent arbitration will be considered. Should the application for appeal allow the provider to continue to practise and provide services for vulnerable people, the Commission must build in appropriate safeguards for service users continuing to receive this service until such time as the appeal process has reached its conclusion.

9. How should the Commission deal with both complaints against providers and about its own operations (paragraphs 53-55)?

Dundee City Council agrees that, in the first instance, complaints be referred to the service provider. Exceptions to this would occur where the complainant has been unable to reach a resolution with the provider, where the complainant has no faith in the provider's integrity or where the complainant is concerned about the consequences of complaining.

Providers must continue to have a comprehensive complaints system, which takes in to account the right to refer complaints to the Commission.

Complaints against the Commission should be responded to in a clear and transparent manner. What can be the subject of a complaint must be clearly defined from the onset of the Commission. As with Local Authorities, complaints not resolved through the normal procedures should be referred to the ombudsman.

10. What should the role of the Commission be in pre-registration work and development advice (paragraphs 56-57)?

Most development work undertaken by the local Registration and Inspection Units takes place during the pre-registration process. This is particularly relevant when considering the Early Years team's work with childminders.

We would also advocate that where standards are initially applied, inspection and registration staff should continue with a degree of development work and advice to promote common understanding and application of standards.

11. Comments are sought on the care types to be regulated and those excluded (paragraphs 58-77). In particular we would welcome comments on:

a) priorities for initial regulation by the Commission?

The responsibility for the regulation and inspection of all services currently registered or inspected by Local Authorities or Health Boards should be moved to the commission in the first instance. This should include the registration and inspection of all the services for Early Years Child Care.

All current exceptions from registration must be reconsidered and in most circumstances, the exceptions removed. We await the Scottish Executives response to the consultation on the regulation of Early Years and Child Care services, particularly regarding the registration of current exemptions in this category i.e. sports camps, youth clubs etc.

b) the proposal to introduce a single regulatory framework for care homes (paragraphs 58-62)?

The introduction of a single care home will be beneficial to service users and welcomed by the purchasers of services. To fit the criteria for a single home model, establishments will be required to introduce a flexible approach to the provision of care, bring in to the establishment the qualified staffing and specialist care resources, and be seen to be working to the most relevant standards for each individual resident. The development of one-care homes in all care sectors will take considerable planning and consultation to ensure that the model is safe and maximises the quality of life for each resident.

c) how care in supported housing (including very sheltered housing) should be regulated (paragraph 63)?

The registration of supported housing continues to be a grey area despite additional guidance. The proposal to register only the care services, will go some way to ease this situation but fails to take into account the basic health and safety issues relating to the 'bricks and mortar' of the residence. The links between registered accommodation and housing and other benefits, has long complicated the question of registration. It is anticipated that the work undertaken in preparation for "Supporting People" would be extremely helpful in resolving this issue.

While it would not be sensible to register sheltered and very sheltered housing in the traditional sense, there remains a 'loophole' in the current range of legislation that must be addressed. Tenants of private sheltered and very sheltered housing can be open to abuse: physical, emotional and financial from staff working within these settings in the absence of any regulation. Other tenants are in fear of losing their house should they attempt to complain. With the onset of community care, some of our most vulnerable people pay to live in these environments and should be afforded a means of protection. One suggestion would be to 'fit person' relevant staff working within sheltered housing complexes.

d) how best we can regulate home care (paragraphs 71-73)?

The development of a comprehensive quality assurance system, which incorporates service users, carer and purchasers' consultation/ feedback, would be essential. Dundee City Council notes the statement that self-employed individuals will be covered 'in due course'. Given the rapid development of independent Home Care providers, it is recommended that these providers are included sooner rather than later.

e) whether care provided in boarding schools and hostels should be regulated by the Commission (paragraph 75)?

Care provided within boarding schools and hostels should be regulated by the Commission and close working links with HMI developed. The report on the Tribunal Enquiry into the abuse of children in care in Gwynedd and Clwyd (Waterhouse Report) gives strong supporting evidence for this requirement.

f) whether nursing agencies should be regulated by the Commission (paragraph 76)?

Nursing agencies should be regulated. This is particularly important if residential establishments are to increase the level of augmented care for residents requiring nursing care and following the single care home model.

12. We would welcome views on the proposal that the Commission would fulfil the role envisaged by the Royal Commission report for a National Care commission in Scotland (paragraphs 87-89)?

The envisaged roles for the Commission and the National Care Commission are not the same. If incorporated into one body, this may have resource implications. There may be an argument for the National Care Commission to be a sub-division of the Commission drawing on information collated as part of the regulation function.

13. What should the membership of the Council be (paragraphs 96-99)?

Dundee City Council agrees that the membership of the Council be drawn from a wide base representing the interests of users, providers and employers. Points raised in response to question 2 concerning service user representation and the balance of representation should also be taken into account.

14. What approach should be adopted to regulating staff currently registered by existing regulatory bodies (paragraph 109)?

Dundee City Council does not agree that staff registered with one regulatory body be excluded from registering with the Council. It is recognised that the member of staff working within a care setting should work to the code of conduct determined for that setting and as such should comply with the relevant regulatory body. Close communication between regulatory bodies should be developed to reduce both the bureaucracy of registration with multiple regulatory bodies and agreements reached as to the most effective way to monitor unsuitable staff.

Current multidisciplinary working must not be restricted by the introduction of registration. The awaited conclusions of the "early years" consultation, may give rise to a wider range of regulated services, particularly if the age range of children receiving services to be registered is to be increased. This may result in additional staff, who do not work with Social Work Departments or hold social work qualifications, requiring to be registered. The recognition of professional qualifications such as Community Education must be taken into account when registering staff who predominantly work with older children in community settings.

It is Dundee City Council's view that the register should be inclusive, with realistic timescales for achieving the appropriate qualifications and that the criteria for this 'conditional' status of registration are explicit. The first wave of full registrations should include all staff holding key positions within adult and children services, who do or do not, hold social work qualifications.

Concluding Comments

Dundee City Council strongly supports the new legislation establishing regular independent inspections, setting out national care standards and identifying a well-trained and regulated workforce.

The recent newsletter issued by the Scottish Executive was extremely helpful in keeping staff informed about both the Commission and the Council. It is recommended that this exercise is repeated as the new development will affect the whole workforce and there is still much detailed work to be done to clarify the arrangements and to prepare for the transition.