

Public Records (Scotland) Bill

Stage one written evidence from CCPS

November 2010



CCPS (Coalition of Care and Support Providers in Scotland) is the national association of voluntary organisations providing care and support services across Scotland. The combined membership of CCPS supports approximately 230,000 people and their families, and employs around 44,000 staff. In 2008-09, CCPS members managed a total annual income of over £1.1 billion, of which an average of 74% per organisation related to publicly funded service provision. As members operate primarily under contract to local authorities, aspects of the Public Records (Scotland) Bill relating to contractors are of particular interest to CCPS.

CCPS was involved in the Shaw review, and is supportive of the need for people to have access to records. We provide the following comments to assist the Committee in its thinking around the possible unintended consequences of the Bill, in particular its impact on an already overstretched voluntary sector and on the relationship between voluntary organisations and the people they support.

Scottish Government consultation

Like many other voluntary organisations, CCPS did not respond to the Scottish Government consultation on the Bill, as we were not aware of it. While the consultation was available on the Scottish Government website, it was not widely distributed to voluntary organisations, from whom we often receive intelligence about consultations, and was not open for the standard 12 week period. A consultation period of six weeks, particularly over the summer months, is not sufficient to ensure that all stakeholders have time to respond, and is, as we understand it, in breach of commitments given in the Scottish Compact.

Policy memorandum and explanatory notes

In getting up to speed with the Bill, we have found the policy memorandum and explanatory notes helpful in explaining what the Bill is *supposed* to achieve. We have some concerns, however, that the Bill itself is not drafted tightly enough to ensure that its intentions are implemented as intended.

In particular, we are concerned about the ways in which public bodies might interpret their obligations in relation to voluntary (and private) sector organisations which provide public services. The policy memorandum states that “the Bill covers these records in a way which does not impose new and unreasonable burdens on these [voluntary and private sector] organisations”. While we appreciate that the Bill team have consulted with a sample of voluntary and private sector organisations, and found that in most cases the staff and systems required to comply with the new obligations are already in place, we would raise the following concerns.

We understand that the Keeper has made clear that he intends that records management plans should clarify and simplify record keeping, but for some voluntary organisations it seems likely that, while expectations will be clarified, this will result in an increase in bureaucracy. Some voluntary organisations already provide records to public authorities, as specified in contracts. In this case, voluntary organisations would not want to see public authorities asking for more information, or expecting voluntary organisations to set up new systems, as a result of the Bill. Some voluntary organisations, however, have indicated in response to a CCPS briefing on the Bill that the records they keep are entirely separate to the local authority, and that they do not know what the local authorities’ expectations on them are, with regard to record keeping, suggesting that these organisations will almost certainly face

new or different obligations under the Bill. If new obligations are placed on voluntary organisations, these must be properly costed and funded.

Voluntary organisations are also concerned about consistency. Many CCPS members provide services in several local authority areas, and providing different information, or information in different formats, to different public bodies is/would be an administrative burden on them (particularly where people whose support is funded by different local authorities receive the same service). We understand that the Keeper hopes that records management plans will bring consistency between local authorities, and we share this hope. We are concerned, however, that authorities must only 'have regard' to the Keeper's guidance on this matter, and that this give significant potential for different authorities to ask for different information or information in different format. We would be keen for the most to be made of this opportunity to introduce consistency, and would like to see the voluntary sector, along with the private sector and public bodies, working with the Keeper to establish a 'gold standard' records management plan. The kinds of issues that we would like to see addressed in discussion/guidance around records management plans are:

- Public authorities should not duplicate requests for information made by other bodies, such as OSCR or the Care Commission. In the field of social care, this is particularly important as Regulations being consulted on around the Public Service Reform Act appear to give SCSWIS inspectors the right to ask providers to provide any information they see fit.
- Public bodies must only include records in their records management plan which relate directly to the running of public services. There must be clarity about what can/can't be included in terms of records kept by voluntary organisations, for example board meeting minutes.
- Voluntary organisations are concerned that information disclosed to them by the people they support is often provided on the basis that it is confidential; this crucial to developing and maintaining trusting relationships, which voluntary organisations often have with those who would not otherwise engage with statutory services. Voluntary organisations have some real concerns about the impact on confidentiality/trust of records becoming public property.
- Voluntary organisations would also like to discuss the issue of ownership of records: voluntary organisations holding confidential records have developed systems for archiving and protecting these records, while at the same time allowing appropriate access to them, and would have concerns about records becoming the property of the public body at the end of a contract period.

General principles – Freedom of Information

The final issue that we would raise is around Freedom of Information. The consultation on extending FOI earlier this year did *not* propose extending FOI to organisations providing services under contract to local authorities. We are concerned that the Public Records Bill could be a way to introduce FOI in these circumstances 'by the back door', and would seek clarification as to whether or not records covered by the records management plan will be automatically subject to FOI.