

COMMUNITY CARE PROVIDERS SCOTLAND

DRAFT REGULATIONS AND ORDER APPLYING TO CARE SERVICES AND TO THE PROCEDURES OF THE SCOTTISH COMMISSION FOR THE REGULATION OF CARE: CONSULTATION PAPER COMMENTS FROM CCPS

Introduction

CCPS, the association for voluntary sector organisations providing care services in Scottish communities, welcomes the opportunity to comment on this consultation paper.

The paper is of clear relevance to service providers in that it sets out the information providers must supply to the Commission when applying for registration, and the arrangements that providers must have in place in relation to staffing, management, accounts and so forth, if the application is to be successful. CCPS members have considerable experience of dealing with similar systems operated by local authority registration and inspection units; the comments set out in this document are based on that experience.

As a member of the Aiming for Excellence Reference Group, the CCPS Co-ordinator had sight of the pre-consultation draft of the Section 29 regulations and made some informal comments upon it. We are pleased that the Executive has acted upon a number of these comments; the new draft is a considerable improvement on the initial document, particularly in relation to its applicability to all care services and not just care homes.

General comments

1. Despite paragraphs 9–12 of the introduction to the paper, we feel that **confusion still exists as to the relationship between regulations and standards**. The paper states that ‘standards will be used to monitor the quality of care services and their compliance with the Act and the regulations’; how this will work in practice is not at all clear. The paper also appears to suggest that a breach of regulations is a much more serious matter than a failure to meet care standards, yet much of what is dealt with in regulations (such as the keeping of accounts) is less to do with the user’s experience of the service than are the care standards. This is disappointing given the emphasis placed on the importance of user-focused standards throughout the Regulation of Care Project, from the White Paper onwards.

CCPS members have consistently supported (and contributed to) the development of the care standards, largely on the basis that they are a significant improvement on the focus of much present regulatory activity (building fixtures and fittings, internal management arrangements, and so forth). It will therefore come as a considerable disappointment if

compliance with regulations is accorded more importance than the standards; rather than a new, user-focused regulatory system, we will instead have a system where most of the elements of ‘traditional’ registration procedure remain intact.

2. In the case of services commissioned and purchased from the voluntary sector by local authorities, the requirements contained in the draft regulations relating to the bona fides of a provider, staff ratios, fit persons and so forth are very closely related to the requirements that local authorities impose upon providers as part of their ‘approved provider’ systems and contract compliance arrangements.

Providers will therefore now be faced with the prospect of the Commission needing to check all these details when considering applications for registration, in addition to each local authority still wanting to do very much the same thing. In addition, CCPS members are aware that a number of local authorities are planning to step up their contract compliance monitoring – perhaps even involving inspections – when responsibility for registration and inspection is removed from them (at least one authority has already begun inspecting services in advance of the Commission becoming fully operational).

CCPS has pointed out on a number of occasions the considerable duplication of effort and resources that this represents and **we would urge the Executive to assist the Commission and local authorities to develop some sort of protocol about which body will check for which detail, and then share the information**; otherwise providers will be put in the position of constantly having to prove their credentials to a range of different bodies, each of which demands a slightly different set of information for the purpose. This will negate one of the stated benefits of the new system, as outlined in the draft regulatory impact assessment appended to the present paper (paragraph 14); a secondary inspection regime, more particularly, will use up resources which would be better spent on service provision.

Detailed comments

Schedule 1

3. Schedule 1, paragraph 7, states that applicants must state ‘the category, in terms of section 2 of the Act, into which the care service falls’.

Increasingly, the approach of voluntary sector providers is to offer a broad-based support service which could include elements of day support, support with housing, employment, holiday or respite support, and so on. Since all these fall under the category of ‘support service’, **we are assuming that only one registration fee and application process will be necessary**. The reason we bring this up is because unlike the legislation, the care standards have been divided up into quite specific categories, ‘day services’, ‘care at home’ and so on. We would anticipate some difficulty for inspectors trying to deal with such divisions in the type of integrated service referred to above; but we would certainly not expect each part of such a service to be registered separately. It would be helpful if this could be confirmed.

4. Schedule 1, paragraph 11, sets out the employee information to be supplied to the Commission. This level of detail (eg. age and sex) will be relevant when individuals register with the Scottish Social Services Council, but **it is not apparent why it is required at the point of application for registration**; surely the number of staff and some evidence that they are suitably qualified (and registered with the SSSC where applicable) should be sufficient. The introduction to the paper states that ‘we have intentionally kept the draft regulations and orders relatively light’ (paragraph 28) but in this instance we would beg to differ. If, for example, staff turnover means that the age and sex of staff change, or providers have to change full time posts to part time, the information will need to be updated, possibly very frequently, otherwise there is no point asking for that information at the outset. The bureaucracy that this will lead to, for providers and for the Commission, is likely to be considerable.
5. Schedule 1, paragraph 15, states that providers must supply a business plan, cash flow details and annual accounts relating to the service, ‘except where the applicant is a local authority’. Throughout the paper, local authorities are similarly exempted from providing financial information equivalent to that required from non-statutory providers.

We would want to object to this exemption in the strongest possible terms, for the following reasons.

First, if the purpose of the requirement relates to evidence of neglect or misuse of funds, then this is just as likely to happen in a local authority service as it is elsewhere.

Second, if it relates to a general concern that poor financial management may impact on care then we cannot see why any sector should be exempted.

Third, the principles of best value, which are shortly to be the subject of legislation, demand that local authorities measure the cost and quality of their directly-provided services and compare them with services provided by other organisations; authorities must therefore be able to identify costs for specific services and it is not at all clear to us why this information should not be submitted to the Commission if it is required from non-statutory providers.

Fourth, if the requirement relates to the need to ensure that there are sufficient funds to operate the service, we would not accept a rationale for the exemption of local authorities based on the notion that they are legally prevented from running at a deficit. What this implies, in effect, is that no matter how uneconomical a service becomes, an authority will always be able to plough more money into it regardless of best value principles as noted above. This may not be a matter for the Commission to deal with, but it will certainly be of great interest to Audit Scotland and other agencies charged with best value scrutiny.

On this last matter, we would also wish to repeat the point that we made on a number of occasions during the life of the Regulation of Care project: **voluntary sector providers are frequently under-funded by purchasing authorities, yet the regulations as drafted insist that providers must prove, in effect, that they are funded sufficiently, in order for an application for registration to be successful.** Cash flow details from

voluntary sector providers may, therefore, have to contain details as to how they will raid their reserves or use charitable income (which is frequently unreliable) to guarantee the quality of a service. Thus the Commission may be able to build up a body of evidence about funding shortages in public care services delivered by the voluntary sector, which we feel would be of great interest to the general public.

Section 29 regulations

6. Under the heading 'Fitness of persons', the regulations state that a person is not fit if they are 'not of integrity and good character.' Elsewhere, the regulations state that persons are not fit if they 'do not have the skills and experience necessary', and that premises are only fit if they are 'appropriate for the needs of service users'. Yet nowhere is there any clue as to what might constitute integrity, what skills might be necessary or what premises appropriate. A lot of this, we imagine, will be in the care standards and in the requirements laid down by the Scottish Social Services Council, but if this is the case then it should, we feel, be spelled out. If discretion on these matters is to be exercised by the Commission and its staff, then this too should be made clear.
7. Under the heading 'Financial position', the regulations require a provider to supply a number of documents including annual accounts for a service, certified by an accountant, and a reference from a bank. **The Executive should be aware that banks will not supply such references; and that the Inland Revenue requires charities to provide fully audited accounts for the organisation as a whole, not for individual services.** These accounts must be compiled according to set accounting standards (SORP). The costs to a major service provider of having an accountant certify individual service-based accounts would be impossibly high.

We would also, under this heading, refer the Executive once again to our comments on the exemption of local authorities from virtually all the financial information requirements of the regulations, as set out in (5) above).

8. Under the heading 'Notice of absence', the regulations require a provider to give notice to the Commission of any absence of a manager of more than 28 days duration. This length of time seems fairly arbitrary; besides, the management of staff absence is an employer issue and the regulations should reflect this. Surely, for example, it would be more effective, and much less bureaucratic, for the regulations to state that providers must ensure that where a designated manager is absent, for any length of time, effective deputies are put in place. After all, if an employer were intending to flout the 28-day regulation, they would be unlikely to inform the Commission of the absence in the first place.

Regulatory impact assessment

9. The regulatory impact assessment is, in our view, woefully inadequate and does not even begin to reflect the realities of the new system for voluntary sector providers. Providers have consistently objected to the increase in registration fees (and indeed the need for fees to be charged at all, rather than direct funding of the Commission by the Executive). It is particularly disappointing to see that the extra costs for local authorities have been

allowed for (paragraph 22) while it continues to be assumed that other providers can recover these costs through charges. This does not reflect the reality of local authority purchasing practice, where below inflation increases are common and substantial cuts in funding are still happening, regardless of how much extra the Executive puts into the system.

Elsewhere in the assessment we would take issue with the assertion, in paragraph 23, that ‘any extra costs for users and commissioners must be balanced against the substantial benefits users will receive under the new system in terms of improvement in the quality of life’. We are all hoping that users will indeed receive such benefits, but it seems somewhat premature not only to acclaim them, but to express them in monetary terms, before the system is even operational.

On a similar note, we would repeat our objection to the notion that providers can offset the increased cost of fees against the simpler, more unified regulatory system. Since nobody has ever inquired of providers how much the current system costs them, the Executive can have no idea whether fee increases can be offset against those costs or not.

Besides, whilst the unified national system is indeed preferable for national providers working in several local authority areas, (a) it won’t make any difference at all to providers working in one area only, (b) as long as local authorities are allowed to continue their own quasi-regulatory regimes in relation to approved provider systems and contract compliance, the new arrangements make things worse for providers rather than better, as pointed out under (2) above, and (c) since providers will still have to go through a registration process (and fee) for each service, financial savings may be negligible; the real benefit for providers is that they will be able to apply standards and practice consistently wherever services are delivered.

We hope these comments are useful.

CCPS represents 31 of Scotland’s most substantial service providers in the voluntary sector. It also links with local provider forums, which represent many smaller service providers as well as local branches of national charities, in Glasgow, Edinburgh, Aberdeen and the Highlands.

*CCPS
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