

AG/JP/613

20 February 2002

Jonathan Gordon
Regulation of Care Project
Scottish Executive
Room 38
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Dear Jonathan

**SCOTTISH COMMISSION FOR THE REGULATION OF CARE –
CONSULTATION ON ENFORCEMENT**

Many thanks for the invitation to comment on the above document. I am writing on behalf of Community Care Providers Scotland, the association of voluntary organisations providing care services, with some very brief comments. We have submitted more detailed comments on the document issued immediately prior to this one (the draft regulations).

Essentially the proposals are welcome; the flexibility between informal action and legal sanctions seems particularly sensible. CCPS would only have two major concerns about the document, as follows.

1. The relative status of regulations and standards

The document refers throughout to ‘regulations’ and ‘standards’ as if these have the same legal status. Our understanding is that they do not: regulations are, in effect, the law, and are thus legally enforceable, whilst the law requires the Commission only to ‘take [the standards] into account’.

We have commented elsewhere that in some respects, this comes as a disappointment to providers, who were hoping that the new system would be led by user-focused standards rather than by more input-based regulations. Nevertheless, we feel that the differing legal status of the standards and regulations must have implications for the type of enforcement action that the Commission is able to bring to bear in circumstances where a provider fails to

meet one or other of them; yet the paper reads as though the same action can be taken in respect both of standards and of regulations.

We would .../

We would be very grateful if the Executive could clarify this matter.

2. *Failure to meet standards or regulations as a result of inadequate funding*

The Executive will be aware that during the passage of the legislation through parliament, CCPS attempted (unsuccessfully) to introduce an amendment to the effect that the Commission would be able to comment upon the adequacy of a provider's funding package in circumstances where standards were not being met.

We are still very concerned about what will happen to providers who are unable to meet the standards – particularly the standards of physical accommodation for care homes and the qualification requirements for staff – purely as a result of purchasing authorities failing to resource that provider adequately. We believe that there must be a role for the Commission to draw purchasing authorities, if not into enforcement action as such, at least into some sort of three-way discussion about the consequences for the service of a continuing failure to meet standards.

Thanks again for the opportunity to comment.

Yours sincerely

ANNIE GUNNER

Development Co-ordinator