

PE2114/B: Ensure effective regulation and oversight of social care services in Scotland

Petitioner written submission of 1 October 2024

We are grateful to the Minister for responding to BetterCareScotland's call to replace the Care Inspectorate's ill-disciplined approach to social care regulation with a scientific model which embodies 21st century analytical, risk management, regulatory and compliance expertise to meet the needs of vulnerable service users and future-proofs Scotland's ability to meet the growing and pressing need for good social care outcomes.

We are grateful that the Minister acknowledges the need for radical reform of social care regulation in Scotland. However, it is unrealistic to believe that the retrofitting of 38 high level strategic recommendations which the Independent Review of Inspection, Scrutiny and Regulation of Social Care in Scotland (IRISR) makes and the Government accepts in full, could possibly transform a social care regulator which depends for credibility on deterring complaints.

Instead, Scotland needs a model of social care regulation which is designed to work in the interests of service users by enabling them to make well-informed decisions and receive the best possible care while protecting them from risk.

The antithesis of the Care Inspectorate approach to social care regulation, this would require the sweeping away of a regulatory culture which fails to identify and manage the risks of Scotland's social care system: the information asymmetries, a system bearing all the hallmarks of a protection racket, gaping regulatory loopholes, whistleblowing issues which hold service users and care staff to ransom – a system where no public good is served since everyone loses.

In designing such a model, we need to start with an understanding of

- (1) what good social care regulation should look like if end users are to experience good care outcomes; and
- (2) how this can be engineered and organised to manage the risks of bad outcomes, given the incentives of the parties involved.

This requires an understanding of how the incentives of the bodies which procure, commission, deliver and provide care can be aligned and be seen to be aligned with the interests of service users.

A system which empowers service users so that dependency is not stigmatised will require openness, transparency and candour and enable oversight by the Scottish Parliament which the Care Inspectorate's operations render impossible. Currently, the Scottish Parliament presides over a social care system which successfully deters scrutiny. The legal and reputational risks cannot be overstated.

Poor regulation comes at a cost

Our analysis in February 2021 for the then Health & Sport Committee draws attention to the Care Inspectorate's unverifiable data and high fail rate in identifying service providers to target for inspection.

Consequently, in Scotland today, the poorly resourced closed culture care provider which delivers bad outcomes operates in the commercial interests of its owner, while service providers which record and self-report operational events are punished. However perverse, the message from a social care regulator which deters complaints is clear. Equally clear is that this drives down the quality of care and renders the Care Inspectorate unaccountable to the Scottish Parliament.

Since oversight bodies like Audit Scotland and Health Improvement Scotland, despite their reservations, are required to take on trust the Care Inspectorate as a competent regulator, Council demands for increased, and emergency social care funding are met even when raw data show that Councils are spending more on social services staff to deliver social care to fewer people, while transferring the cost of social care whenever possible to the DWP and the NHS.

The full economic cost of poor regulation of social care is incalculable without data but will include inevitable funding trade-offs for the Scottish Government between services with known value, like education or health, and social care, the benefits of which cannot be determined with any confidence since meaningful data are neither generated nor held by Councils or the Care Inspectorate.

Instead of being a key safeguard, a critical check on social care delivery and provision, the Care Inspectorate facilitates bad practice which, over time, has created 32 unfathomable information black holes, leaving the Scottish Government operating in the dark.

When did the rot set in at the Care Inspectorate

With five Chief Executives in ten years, there is no evidence that the Care Inspectorate has helped to raise care outcomes, its professed mission. The Independent Review of Adult Social Care reported in Feb 2021 that social care outcomes in Scotland are typically poor and that those who experience good care outcomes believe they had luck on their side – all of which is attributable to poor social care regulation.

Our research shows ill-discipline becoming apparent at the Care Inspectorate within 3 years of its formation in 2011. Unlike the 50% of commercial firms which fail within their first 4 years, the Care Inspectorate's increasingly poor performance cannot be attributed to the financial and economic climate but to internal issues of leadership, governance, and lack of accountability.

Good regulation is in everyone's interest

In the context of the current funding crisis for essential services in Scotland and the lack of support for a National Care Service in Scotland from COSLA and Unison,

reform of social care regulation, as we propose, is more urgent than ever, whatever the eventual shape of social care in Scotland.

An analytical approach to social care regulation will transform every aspect of social care, identify issues in procurement and delivery by Councils and provide the Government with the data it needs to make well-informed funding decisions and Parliament with the information it needs to hold the social care regulator to account. It will bring social care and the country's finances out of the dark ages.