

Comments by the Relatives & Residents Association on KLORA (Key Lines of Regulatory Assessment) for care homes for older people – submitted to the Commission for Social Care Inspection



- 1.0 The Relatives & Residents Association (R&RA) was established to promote the rights and well-being of care home residents/prospective residents by providing advice and support to them and their relatives, by campaigning to raise standards and by undertaking project and development work.
- 1.0 Being the only national charity concentrating wholly on the specific and detailed needs of older people moving into, or already living in, residential care, it is therefore uniquely placed to comment on proposals which may affect the quality of residential care or the way in which it is regulated.
- 2.0 The R&RA has commented on several occasions during the past year about future plans for regulation. In particular, it has been critical of the government's decision to change the regulatory requirement to inspect care homes at least twice a year by reducing this to once every three years, with an unspecified number of unannounced and themed inspections. The R&RA is reflecting the fact (as shown by the results of the consultation) that the public and the relatives of people in care homes are worried that this gives less protection to an extremely vulnerable group of people who are therefore open to exploitation and ill-treatment.
- 3.0 We therefore approach the proposals from CSCI on the advice (or guidance – its status is not clear) being given to inspectors on how they conduct inspections from a viewpoint that is essentially concerned with the need to protect vulnerable people in residential care. Because of this, we believe that it is essential that inspectors have:
 - a clear knowledge and grasp of what is required of them in terms of ensuring that care homes comply with the provision of the Care Standards Act 2000 and its Regulations; and
 - an overwhelming commitment to ensuring the safety and wellbeing of the users of regulated services.

4.0 We have a number of *overarching* concerns with the KLORA proposals as well as a series of *detailed* criticisms:

Overarching

4.1 There is no indication as to what status the KLORA will have:

- are they to be used as part of the training for inspectors? or
- as direct guidance on how to conduct, and report on, inspections?

This is important for various reasons. If they are part of the training process, then we have no major objection to the KLORA. They are simply one of several ways of ensuring trainee inspectors think more widely about how to assess care home performance. If they constitute guidance as to how inspections should be carried out, then the KLORA are severely limited in their utility and indeed could even encourage inspectors to act unlawfully (see below).

4.2 The introduction (p2 line6) says that the KLORA are 'a benchmark' [sic]. This is not defined. Immediate questions arise:

- is a benchmark in this case a level of performance that is acceptable (i.e. reaches the threshold required by law, i.e. as laid down in the Regulations and illustrated by the NMS) and to which all providers must conform; or
- is it a level of performance assessed as good or best practice to be aspired to by all (but not necessarily met at this point)?
Pragmatically – in relation to the KLORA – is the benchmark the performance that is designated as excellent, or good, or adequate – or poor? Which of the four is the benchmark?

Whichever the definition, which needs to be explicit, it has major implications for the inspection process and its outcomes.

4.3 There is no indication as to how the fourfold categorisation will be applied. The primary purpose of inspection is to assess fitness (i.e. to retain a 'licence' to operate). It must seek to answer the following questions: does the service provider conform to the regulations and therefore can it lawfully continue to operate? If a care home is assessed on one (or more) of its outcome groups as poor, does it fail the test of fitness? How does the categorisation 'poor' contribute to the test of fitness? Many of the examples of 'poor' practice in the KLORA describe clear breaches of the regulations. So what do inspectors do if they find this to be the case? Worryingly, on p. 22, the KLORA document states

‘when balancing these pieces of evidence against other more positive parts of this outcome group, an overview of the environment may be seen as adequate’ (This just after it has described a situation where a radiator may be unguarded and water may be very hot because of the lack of a safety valve). This implies a condoning of both a breach of the regulations (Reg 23) which **require** registered providers to ensure the safety of their residents and an offence (Reg 36).

- 4.4 Other practices described as ‘poor’ also clearly breach regulations. It is worrying that a whole page is devoted to describing poor health care practice – some of which clearly breaches Reg 12 and potentially the Human Rights Act 1998 (e.g. lack of respect for dignity and privacy). The KLORA make no mention of next steps. What are inspectors to make of them? Surely, these breaches are cases for immediate enforcement action to be put in place.
- 4.5 While it is clear that the ‘poor’ category represents serious regulatory failures, the other three categories are more puzzling. Reading the KLORA for some of the outcome groups, it is hard to discriminate between each category in any hierarchical sense. What is the relevance of having a threefold hierarchy of quality when what is described in each case is substantively quite similar? More importantly, this raises the question: what is the role of the inspectors? Are they there to assess fitness, to ensure that providers are operating only if they are conforming to the law and regulations? Or are they acting as quality assessment officers to award a ‘kitemark’ of excellent, good or adequate? If the latter, from where in the legislation do they gain their authority?
- 4.6 The document stresses that the KLORA should not be used as a ‘tick box’ to approaching the judgement of outcomes. The view of the R&RA is that the ‘tick box’ approach is the outcome of a mentality rather than the product of a particular set of standards. Inspectors need to be trained to look analytically and comprehensively at the standards of service provision they are inspecting. In order to do this they need to be trained to interrogate the evidence that they see before them (in terms of what they gather themselves, what others provide and what documentation is available) against a background of a clear understanding of quality thresholds, the law and regulations, knowledge of good practice and acceptable standards, along with service user expectations.

This is the way to combat the tick box mentality. Unfortunately, the KLORA give a limited range of examples of practice but do not give any illustrations as to how to improve inspections. The danger will be that the laudable intention to avoid the tick box approach will be entirely subverted by a failure to recognise the need for experience and training for inspectors. The various other possible examples of acceptable standards that the document alludes to, but does not include, will be ignored if the training of inspectors is not improved. (The thinking that went into the development of the NMS was predicated on the overriding importance of developing an inspectorate that could assess evidence 'intelligently'). Indeed, the NMS themselves provide a good starting point for analytical and comprehensive inspection because they describe an acceptable, overall standard of residential care in detail. It is not clear why the KLORA have been developed – they provide a parallel but inferior (because they are not comprehensive and are sometimes implicitly contradictory) set of standards for inspection when the NMS already exist.

The NMS were designed to cover all the components of quality and to provide a comprehensive picture of what constitutes an adequate service at a level below which no provider should fall – to avoid the problem of inspectors using their subjective judgement inappropriately. Reliance on the KLORA will re-introduce the tendency for services to be judged subjectively and thus for unfairness to creep into the inspection process.

Detailed

- 5.0 The document sets out four levels of quality – excellent, good, adequate and poor – but they are often not comparable to each other. For example, in the case of the Environment, the excellent category mentions 'smells fresh', the good category mentions 'smells fresh', but the adequate and poor categories do not mention the smell of the home – is it important or not? How can a comparison be made when no continuum is described.
- 6.0 There is careless use of language: in the Staffing 'excellent' category, mention is made of qualifications 'beyond basic requirements' – what are these requirements? Laid down in the regulations, or the NMS or in professional practice? In the Choice of Home category – what does 'process driven but not particularly personalised' mean? By contrast, the

NMS are clear and precise in their use of language to avoid misinterpretation.

7.0 Some statements in the KLORA beg the question of evidence. In the Health and Personal Care outcome group, it states 'the home has a strong ethos of involving residents in all aspects of their life'. What evidence will the inspectors use to judge this? How will it be gathered and evaluated? Where do the NMS and the gathering of triangulated evidence come into the process?

There are many other examples.

8.0 Conclusion

The R&RA is concerned about the KLORA on the following grounds:

- The lack of clarity as to their status;
- Our worry about how they will be interpreted and used;
- The implication that some aspects of practice will be regarded as acceptable by inspectors when in fact they breach the regulations and constitute an offence;
- They represent a parallel, but inferior, set of standards by which services will be judged, thus displacing the NMS;
- Care homes will begin to slip behind other areas of service for older people in which there are clear commitments to promoting and protecting dignity;
- They ignore the real need which is for a radical change in the way inspectors are trained – to get away from a tick box mentality which does not come from the standards themselves – and which should be about interrogating and triangulating evidence intelligently.

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