

WIDER REVIEW OF REGULATION IN HEALTH AND SOCIAL CARE : KEY ISSUES

Submission from The Residents & Relatives Association (R&RA)



1. What role can regulation play in achieving the Government's objectives for health and social care?

The Government's main objectives for health and social care centre on the principles of fairness, effectiveness and choice. This means that all citizens should have the same right to equitably accessible and good quality services that meet their needs and preferences. As part of current policy, the health and social care system is becoming more diversified with many different suppliers entering the market. In this changing environment, it is essential that mechanisms exist for ensuring the underlying principles for health and social care are preserved. Thus, in this increasingly mixed economy of health and social care, regulation is essential in ensuring that entrants to the mixed economy are fit to practice – in a sector that is principally concerned with providing services to ill and otherwise vulnerable people. It is also essential that once permitted entry to the market, they meet accepted standards and continue to meet them.

2. What are the key issues you believe need to be addressed through the review?

We understand that the review of health and social care is part of a wider review of regulation (as foreseen by the Chancellor in his budget announcement in March 2005). We believe that it is important to make a distinction between regulation as applied to health and social care and other sorts of regulation as applied to the business, industrial and commercial sectors. The users of health and social care services (as noted in para 1) are different from the customers of other sorts of regulated services. They are characterised by their vulnerability and, in many cases, lack of capacity and so are unlikely to be able to exercise choice in the way that ordinary customers in a free market can. They are not free agents and are thus at a disadvantage in

relation to service providers. It is essential that their interests are protected by a regulatory system that assures appropriate levels of market fitness and acceptable performance measured and maintained against a set of agreed standards.

3. In your view, what should be the main purposes of regulation and inspection.....

Regulation and inspection are essential mechanisms for ensuring that customers (in the broadest sense) receive services and/or goods that are fit for purpose and meet an accepted standard of quality and safety. All providers of services and goods who fall within the regulatory system should be required to meet requirements which demonstrate that providers have appropriate experience and qualifications with quality assurance mechanisms that are reliable.

The requirements for an adequate regulatory system must involve: controlling entry; maintaining standards; and having the capacity of take action where standards fall or are not good enough. This will range from changing registration conditions to reflect the competence of the provider to cancellation where necessary or appropriate. No system should be countenanced which allows 'learning on the job'. Requirements determine the baseline for performance. In health and social care, the requirement of safeguarding the welfare of patients and service users is particularly important because of the vulnerability of the clientele.

Systems of regulation as applied to health and social care services have evolved over the last 20 years. Generally, governments of all parties and persuasions have been motivated by the protection of those most at risk from abuse and exploitation as well as poor care and poor practice. Evidence from public enquiries as a result of the deaths or ill-treatment in different sectors (local authority, health authority and independent) has reinforced the need for more consistent regulatory regimes. As a result, successive governments have made efforts to try to protect vulnerable individuals by improving systems of registration and inspection. Due to the conflicts of interest which arose when health and local authorities were respectively in charge of health and social care regulation, the National Care Standards Commission (NCSC) was created by the Care Standards Act 2000. These changes followed a long period of

debate and consultation within the Department of Health from *The Review of Regulation* in 1991; *Moving Forward* in 1995, *The Burgner Report* in 1996, the *Longcare Report*, June 1998, *The Brief Case*, 1999, plus the evidence of many Registered Homes Tribunal Cases (plus local enquiries undertaken by health and local authorities over the same period). The concerns arising from the disparate practice of health and local authorities and the consequent lack of coherence and consistency in regulatory practice were extremely widespread. The creation of the NCSC was the first attempt to rationalise and reorganise the system in a more logical and acceptable manner. The Government's decision to change the system radically (again) in 2004 with the creation of the Commission for Social Care Inspection (CSCI) has not aided a smooth transition.

The requirements imposed by regulation should relate to the key, essential components of the service being regulated, be spare in their elaboration and be capable of being achieved by all registered providers. Where properly validated, the fulfilment of some requirements may stand as proxies for the fulfilment of other requirements (but validation is essential). Proportionality should be defined by taking account of service users' (rather than providers') interests. The first priority must be the safeguarding of patients/users/residents.

4. In your view, what are the strengths and weaknesses of the current systems of regulation in health and social care? Are there lessons to be learnt from

We think that the efforts to establish a regulatory system for social care that applies consistent regulations and standards across the country have been beneficial. For the first time, a level playing field between all sorts of providers has been established after a long period during which providers had complained about unfairness – related to the fact that in the past not all services (notably, local authority) were regulated under legislation existing then, that inspection systems were variable with different inspection units using different standards and with inspectors often applying subjective judgement in the assessment of services. The standards that were developed for the new system were the product of detailed and meticulous consultation and research consultation with all stakeholders, discussion and refinement. Although at the time some service providers voiced concern about the

introduction of national standards, even then the majority were supportive. It seems clear that over the past five years since they were first mooted, opposition has dwindled and there is very little opposition to them. While those subject to regulation often feel 'put upon', the care sector currently appears to be burgeoning and new entrants are not apparently deterred. We would argue that only the very poor providers still complain about them and these are just the providers who should be subject to regulation and the imposition of requirements to improve.

We believe that the inspection system could be improved. We do not think that the existing inspection methodology is working to good effect. We think that better training for inspectors would produce better inspection – especially in relation to the importance of obtaining triangulated evidence from a variety of sources to substantiate inspectors' overall assessment of a home's performance (as expected in the original vision for the new system). We would welcome more information about the methodology and training that inspectors receive being made public and we would welcome the involvement of a lay component in the inspection process.

5. What steps can the Department of Health and regulators

We do not accept that, particularly in the case of residential care (the service that as an Association we are most concerned with) the alleged burden of regulation needs to be reduced. We have seen no reliable evidence that this is the case and, if it exists, we would welcome its publication. It is in the nature of regulatory systems that those who are regulated will always argue they are over-burdened. It is also certainly the case that they have louder voices than those who are the customers of services that are regulated. We think that to reduce effective regulation would compromise the safety and well-being of service users. This is a particularly powerful argument when the increasing vulnerability of those receiving care from registered services. Older people in receipt of residential care are far older, confused and more isolated from mainstream services. Three out of four of those receiving residential care suffer from some level of dementia.

We think that before any decision to reduce any aspect of regulation is made, the question should be asked 'what impact will the withdrawal of a particular requirement have on the **service users** concerned?' As an example, what will

the intention to reduce the frequency of inspections have on service users? It is argued that good homes do not need twice yearly inspections and thus a three year interval is proposed. We know that a good home can turn bad in a very short period of time. How will residents be protected? How will prospective residents be able to choose a good home when no up-to-date validated information is available if the last inspection report is three years old?

As far as national minimum standards are concerned, their purpose is to describe an acceptable baseline level of service against which a service can be assessed. Is there any standard that can justifiably be said to be unnecessary? What aspect of the service can be allowed to fall below that baseline - which would be the effect of withdrawing a standard?

6. In the light of the anticipated changes in the health and care systems., which regulatory functions need to be undertaken?

One of the central features of the anticipated changes revolves round the diversification of the health and social care market. As noted above, regulation is especially important in regulating market entry. We believe that regulation must be at the core of any move towards greater diversification. It is essential that providers are subject to external controls in a market that is providing care for people who are in the later stages of their lives, who cannot manage for themselves, who may lack capacity, who are very old and often very frail. The need for protection (as evidenced by government's efforts to enforce POVA requirements, the implications of the Human Rights Act, disability discrimination and other prevention of abuse policies) must be paramount. The independent regulation of an independent market place, enforcing the will and expectations of Parliament, is the best means of doing this.

This does not mean that the independent market should exist independently of public accountability and flourish without taking account of public needs. We are concerned that, currently, the growth of social care provision (residential care in particular) goes largely unplanned, leading to patchy, uneven services across the country, to the detriment of older people who need services. While regulation should be independent, health and social care planning should be part of the wider public health function within in the public sector (local councils and local NHS bodies).

There is a need for a rigorous, independent, reliable system of inspection which includes out of hours and unpredictable visits (as demonstrated by the recent CSCI public consultation exercise). The public clearly wish to have an increased frequency of inspections and more unannounced inspections. The CSCI is offering neither.

6. Which organisational model

It is outside our Association's remit to have a view on most of these matters. However, we are concerned about the issue of public involvement. We firmly believe that patients, public and professionals have the right to be involved in the way services are designed, operated and regulated. We believe that in the residential care sector, there is an urgent need for lay involvement in inspection. This could be done in conjunction with official inspections, as in the past, or it could be done through separate lay activities (as proposed by the R&RA, see above, para 4).

Consultation and involvement – both concepts currently in vogue – are meaningless words unless some real and serious attention is paid to putting them into practice by decision-makers. We are concerned that the drivers for this current review of regulation have come from providers pushing their own concerns. Service users need champions who will stand up for them in this review. Service users are not calling for less regulation; indeed, the general public wants more. It is pointless to adopt a rhetoric that calls for public involvement, if what the public actually wants is ignored.

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