



Royal College
of Nursing
Scotland

**RCN Scotland's response to the
Scottish Government's consultation on**

**Social Care: Independent
Review of Inspection,
Scrutiny and Regulation in
Scotland - call for evidence**

January 2023

The Royal College of Nursing (RCN) is the world's largest professional organisation and trade union for nursing staff, with members in the NHS, independent and third sectors. RCN Scotland promotes patient and nursing interests by campaigning on issues that affect members, shaping national health policies, representing members on practice and employment issues and development opportunities.

Theme 1 - A person centred approach (1 question)

No comment

Theme 2 - What needs to be inspected, scrutinised and regulated (4 questions)

They are pitched at the service level not at the individual level i.e., which social care services should be inspected scrutinised and reviewed and by what organisation?

As this is not our area of expertise we would like to make the following points only

- National Care Service (NCS) services must be regulated
- NCS services must be made subject to the Health and Care (Staffing) Scotland Act 2019 and that legislation involves specific roles for specific regulators. This means that:
 - any function of the NHS redesignated as an NCS function or transferred to the NCS (as per clause 28 of the NCS Bill as it stands at Stage 1) continues to be subject to the relevant duties in the Health and Care (Staffing) Scotland Act 2019 to the extent that it was subject to them immediately prior to the redesignation or transfer. This would mean a continued regulatory role for Healthcare Improvement Scotland in respect of those services.
 - any 'care service' as currently defined by the Public Services Reform (Scotland) Act 2010 (or any service which may come to be defined as a 'care service' in future by means of that Act or of any other legislative provision) that becomes part of the NCS, must be made subject to the relevant duties in the Health and Care (Staffing) Scotland Act 2019 to the extent that it was subject to them immediately prior to becoming part of the NCS. This would mean a regulatory role for the Care Inspectorate.

Theme 3 - How should inspection scrutiny and regulation be carried out (9 questions)

They are pitched at the service level not at the individual level. Our brief points in relation to this are as follows:

Q3. Would a system work where the same regulator inspected all services?

We do not have view on the topic covered by this question. However, on a related point, we would ask the Review to consider whether, in a landscape of health and social care integration and national services for health and for care, the proposal in the Patient Safety Commissioner for Scotland Bill for a Patient Safety Commissioner who only covers health care is an appropriate approach.

Q4. Should there be different regulators for inspection (the organisation that looks at how things are working) and improvement (the organisation that supports things getting better)?

We are not convinced that this would be a good idea as per our response to the initial consultation on the NCS, in which we said the following:

The Care Inspectorate currently has responsibility for improvement in social care services. RCN Scotland members have asked that Scottish Government give careful consideration and assessment of available evidence before the decision is taken to de-link social care improvement from scrutiny and inspection, our members with experience in this area point out that scrutiny and assurance are improvement tools in themselves, and that varying in approaches to improvement will be appropriate in different circumstances and situations, of which Quality Improvement methodology is only one approach, with an evidence base in health, not social care services.

RCN Scotland members are concerned that the separation of regulation and improvement would lead to regulation focussed on compliance. Healthcare Improvement Scotland has responsibility for both improvement, and scrutiny and assurance of NHS healthcare services and states that their quality assurance “gives people confidence in the services and supports providers to improve.

Further, the consultation document itself says that “we have yet to see the impact of large-scale evidence-based improvement work in the integrated world of health and social care.” It also states that “we have not been able to consistently scale up good practice - partly due to lack of investment but also due to the many complexities of different professional governance and regulation structures, multi-agency working and the different cultures that underpin practice across the sectors.

RCN Scotland therefore suggests that any changes to improvement responsibilities, methodologies and structures must be evidence based and fully informed by people using services, people staffing and providing services, and people who currently scrutinise, inspect, and support services to improve. Improvement must be based on

what works, not what is administratively convenient.

You can find our answer to Q2 of that consultation on the RCN website at <https://www.rcn.org.uk/About-us/Our-Influencing-work/Policy-briefings/sco-pol-a-national-care-service-for-scotland>

Theme 4 - How will we know systems are working

Q12 appeared to offer an opportunity to make some useful, if peripheral, comments about data collection and sharing. However, in the consultation event on 14 November 2022, it became clear that this refers to data to do with services, not people. For example, data sharing between contractors (e.g., local authorities) and contracted parties therefore we have no comment.

Q14. How do we make sure regulation, inspection and scrutiny supports good practice for people working in care and support?

Regulation, inspection and scrutiny (RIS) will best support good practice on the part of people working in care and support if those people have:

- Clearly defined job roles linked to competencies, including competencies that require to be demonstrated by qualifications. This is so they know what practice is expected of them, can deliver on this, and know what is, or is likely to become, subject to RIS.
- Clear career pathways, which will allow them to develop professionally and personally. These should support recruitment and retention. Staff can thereby so that they can set RIS in the context of a meaningful career, as opposed to in the context of a short-term or temporary job. They will also be able to understand good practice as an investment in care (pars 110-113).
- Unequivocal employer support for continuing professional development (CPD) and learning. This should include appropriate paid time off to attend relevant opportunities, especially when those opportunities relate directly to job role, career pathways and regulatory requirements. Good contractual arrangements should provide for this already, but we would certainly expect contractual arrangements under the NCS to do so.
- Assuming these things are in place, the defining features of good RIS is that it is supportive and improvement focused, as opposed to being punitive, even inadvertently. A culture of learning is to be preferred to a culture of blame. This is not to suggest that where there is clear fault on the part of a regulated individual it should be ignored but a finding of fault is a step beyond the normal process of good RIS. Whilst fault may be found by that process, that discovery should not be what those undertaking RIS (i.e., regulators) are setting out to do in the first place.

Theme 5 - How will systems of inspection scrutiny and regulation support the workforce (2 questions)

Q16. How do we ensure there is compliance and consistency with workforce registration requirements?

The points that we make in response to Q14 apply equally to Q16. Compliance with, and consistency in relation to, workforce registration requirements are best supported when those requirements relate to employment of the type characterised in those four points: clear, competency-based roles; clear career pathways; appropriate pay and job security and employer support for continuing professional development (CPD) and learning.

The RCN has consistently, for many years, supported the regulation of health and social care support workers, of whom we have a significant number in membership, under the category of 'nursing support worker'. This has been our position across the different nations of the UK. The corollary of that position is that there must be a point at which it is possible to judge that a regulated individual has so egregiously failed to comply with, or to act consistently in relation to, workforce registration requirements that they must forfeit their registration and can no longer practice in roles where it is required. This is exactly the situation for Registered Nurses, and we see no reason why it should be any different for social care staff. That said, we consider that this is far less likely to happen if they are supported in the ways we outline above.

Q17. How can we ensure that people who work in care and support services are able to contribute to inspection, scrutiny and regulation processes?

There are many existing methods for securing contributions. For example, the Scottish Social Services Council's (SSSC's) leadership reference group 'meets four times a year and is open to people interested in developing leadership in their organisation'. Since the task of dealing with RIS in any given service rests primarily, if not only, with the leaders of that service, this forum would appear to be a simple and straightforward way of securing contributions from those subject, in the form of regulatory requirements for individuals, to RIS.

<https://www.sssc.uk.com/supporting-the-workforce/leadership-improvement-and-continuous-learning/>

The precise methods by which such contributions are secured come second to an emphatic commitment to ensuring that those contributions must be secured. Once that commitment is unequivocal it may be operationalised using a whole range of methods such as working groups, focus groups, conferences, staff engagement sessions, social media, surveys and so on.

However, as one might expect of the RCN, we would strongly encourage individuals to join a trade union and, where appropriate, a professional body, and contribute through their representatives, where it is appropriate to do so. We have referenced the policy memorandum to the NCS Bill on the matter of collective pay bargaining. The

Bill's 'Statement of Benefits' also supports it, for example on page 11: 'National pay bargaining that looks at terms and conditions and the Fair Work will be central to building a workforce that is fit for the future to deliver the best possible service for the people of Scotland'. The Scottish Government has made its position clearer still by way of its successful amendment to a Scottish Conservative motion on the NCS in the Scottish Parliament on 2 November 2022, where the following words (amongst others) were added:

- "the NCS... supports the creation, in line with the recommendation of the Independent Review of Adult Social Care, of a system of national collective bargaining on pay, terms and conditions within the social care sector and for workforce representatives, such as trade unions, to be involved in the governance of the service, including through full membership of Local Care Boards"

Collective pay bargaining necessitates the involvement of trade unions, and it is clear from the above that the Scottish Government envisages a wider role for them than that. It is a role that we welcome. We would hope to see the NCS develop in such a way that meant union memberships and representation was the norm for workers in NCS services all social care workers, which would go a long way to ensuring they could make a contribution to inspection, scrutiny and regulation processes both with their own employers and at the care board and Scottish Government levels.

In terms of Q17 and the Review's remit overall, we are clear that these ambitions, if realised, will embed the contributions of people who work in care and support services in inspection, scrutiny and regulation processes as well as inherently strengthening those processes. We hope that the Review will agree with us.



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