HEALTH & SPORT COMMITTEE: HOW WELL IS THE CARE INSPECTORATE FULFILLING ITS STATUTORY ROLES?

SCOTTISH CARE INQUIRY SUBMISSION – AUGUST 2020

Considering the pandemic, and its impact on social care services, what role should the Care Inspectorate have in ensuring those receiving adult care and support services are better protected?

As with many aspects of learning and reflection in relation to the COVID-19 pandemic, hindsight is a wonderful thing and particularly within the social care sector there have been decisions and developing understanding which have impacted all elements of care planning, delivery, regulation and experience.

Throughout the pandemic, what has also been clear is the ways in which pre-Covid challenges within the social care sector have been highlighted and exacerbated by the circumstances. Though there have been ways of working throughout the pandemic that have proven either positive or negative, there are a number of improvements that can be taken forward by all organisations including the Care Inspectorate. It is in this spirit that this response is provided. What must be borne in mind too, however, is that change and continuous improvement to ensure people who access social care support can live safely and live well must be informed by real experiences, in-depth knowledge of the complexities of the sector and a co-created vision for the future. Significant learnings and failings must be addressed robustly, but knee jerk and short-term action will not achieve this aim and may instead have counter-productive consequences for social care in Scotland.

Guidance & expertise

Some of the key lessons from COVID-19, especially for keeping people safe within social care settings, have included the importance of:

- reliable and accessible communication of information and updates related to Coronavirus;
- clear lines of accountability, and
- consistent leadership and decision making informed by social care expertise.

The experience of the pandemic for social care providers has highlighted that these areas have presented real challenge not least in terms of the regulatory landscape.

In what has been a climate of constantly developing international knowledge and evidence, it is inevitable that this will create some difficulty in staying abreast of changes and implications for those who require to continuously support some of the most vulnerable populations in ways that uphold their safety, health and wellbeing. However, the social care experience in Scotland in terms of the pace of change, the nature of how this has been managed and the ways in which particular social care complexities and sensitivities have been accounted for and communicated require careful consideration and review.

Above all, it has demonstrated that the plethora of guidance and expertise 'imposed on' the sector by the pandemic circumstances has resulted in the perceived diminishment of the role of the Care Inspectorate, leading to confusion and practical challenge for social care providers in seeking to protect those in their care.

Providers have consistently highlighted the positive communication they have had with many local Care Inspectorate colleagues throughout the pandemic, with regular contact and more opportunities for relationship building based on support, openness and honest sharing of difficulties, all of which have supported the continuation of high quality care delivery. In terms of direct support during the pandemic, the regular direct (sometimes daily and sometimes weekly) contact by telephone and virtual calls between local inspectors and care providers was considered to be very supportive and enabling of wider assurance. This was especially the case in the early stages of the pandemic when the feeling of many providers was that they were being 'abandoned' by other professionals, especially local general practice. In particular, the establishment of the RAG system to determine the risk of staffing shortages and challenges (which was co-produced with the sector) was a singular success in preventing the risk of abandonment which had been seen in other jurisdictions and in adding stability to workforce resilience. The Care Inspectorate was also closely involved in local incident management, in advancing palliative and end of life and pharmacy changes and innovation - all of which played a critical role in the pandemic response. Senior Care Inspectorate staff have also engaged positively and supportively with social care providers through Scottish Care's support mechanisms and communications channels.

However, it is the position of the Care Inspectorate within the wider social care landscape which has been questioned, particularly in the ways this has changed or limited the meaningful support and direction that has been able to be provided over the course of COVID-19 thus far. This diminishing of the role of the service regulator has been exemplified in various examples shared with Scottish Care by our members.

In terms of the communication of COVID-19 updates, providers have raised the issue of having to seek information from various sources and portals throughout the pandemic including but not limited to the Scottish Government, Health Protection Scotland, Public Health Scotland, NHS Inform and regulatory bodies. When each of these sources also changes its guidance and information regularly, this becomes difficult to track whilst seeking to deliver high quality care in a new and changing health crisis. As one of the main bodies whom social care services would contact or monitor for direction in relation to care safety, quality and best practice, it would appear that an opportunity has been missed for the Care Inspectorate to provide a reliable and accessible main point of access for routing of information to services. Whilst providers have informed Scottish Care of positive examples of the Care Inspectorate working effectively with other bodies such as the Scottish Social Services Council to provide support in instances such as staffing shortage alerts, this has also raised questions as to how the two social care regulators could work even more closely together in the future, especially to ensure the guidance and information they communicate is more joined up and easily accessed.

This multitude of information sources and guidance documents has also served to create a degree of uncertainty as to who is informed and accountable for particular guidance relating to social care. A number of instances have been shared whereby providers have been made aware of a change in information and associated requirements, but when they have reached out to inspectors or those in positions of authority across the sector there has been some confusion as to what the most accurate or up to date status is or who to contact. This has also led to some significant delays in determining and communicating decisions at a time when the

sector requires clarity and urgency in order to adapt to required changes in a safe and planned way. Whilst the unprecedented nature of the pandemic means that a degree of communication delays is perhaps inescapable - particularly in national to local and service-specific comprehension - the Care Inspectorate could have been given a far more central role as a key information body.

Finally, the obfuscation of the Care Inspectorate's key role as the social service regulator, with its associated knowledge of the sector and its distinctive contribution, has had a direct impact on how services have been monitored, scrutinised, supported and experienced during the pandemic. As Scottish Care has highlighted throughout, the understandable focus on health and infection control has come at a real and damaging price to the wellbeing of individuals supported in social care settings and has led to an often overly medicalised and clinical approach to these environments, which are ultimately people's homes. This is especially true in some providers' experiences of the wrap around support mechanisms and assurance visits that have been implemented in care home settings. Whilst the Care Inspectorate have been part of providing oversight of services, it does not appear that their knowledge and expertise has been the key driver for understanding what is required and that at times, this has created multiple forms of inspection and duplication of reporting. Providers have reported visits taking place from officials in Social Work departments, Health Protection Scotland and the Care Inspectorate simultaneously with each resulting in different findings, at the same time and within the same setting. This is not compatible with assuring high quality care and consistency of approach at any time and certainly not during a pandemic.

Therefore recognition of the role of the Care Inspectorate could and should have been more prominent throughout the pandemic. This would have likely resulted in clearer location of information, better accountability, enhanced support to services and a more consistent approach to ensuring the continuation of high quality care rather than the perceived 'all or nothing' regulatory experience of many in the social care sector.

Dual role of inspection & improvement

The Care Inspectorate have been on a considerable journey in recent years, developing and enhancing the model of service regulation towards one based on human rights and collaborative working to understand the social care experience from a range of perspectives, rather than purely compliance-based, 'tick box' inspection processes. This does not represent a diminution in the importance and effectiveness of regulation and inspection or of being 'softer' on services or particular areas of concern. Instead, it demonstrates an ability to monitor and assess service provision in a way that is more grounded in the experiences of those who access support and is better contextualised in terms of the many other factors which impact on care and support, enabling a service's journey of continuous improvement to be better acknowledged.

This dual role of the Care Inspectorate in both inspection and improvement has been valued by stakeholders across social care and is, in Scottish Care's view, an essential component of ongoing social care reform. However, this important duality and balance has been obscured in a range of ways across the course of the pandemic.

In terms of inspection, the early decision of the Care Inspectorate to step back from routine inspection visits was understood by many in the sector to be a response, at a time of great uncertainty, predicated on limiting footfall and potential sources of infection. However, it is a decision that has potentially created a degree of suspicion and distrust by wider parties in terms of ensuring protection, safety and quality. With hindsight, it is easier to reflect on alternatives but what could have better addressed both important aims would have been stronger public communication from the Care Inspectorate in terms of what interim measures were in place. This could have better demonstrated how critical regulation and inspection was continuing, albeit differently, particularly in terms of services with ongoing challenges that pre-dated Coronavirus and alleviated the sense of 'invisibility' of the Care Inspectorate in the early days of the pandemic.

An example of how this messaging could have been far stronger is in the communication around the handling of complaints during the pandemic. Whilst the Care Inspectorate has continued to investigate ongoing concerns and to prioritise instances where individuals are at risk of harm, this has not necessarily been clear. Instead there has been a perception amongst some providers and wider stakeholders that the regulator's handling of complaints has been significantly reduced, altered or stopped completely, which is not the case. This demonstrates how many of the Care Inspectorate's duties have not ceased and therefore measures have remained in place to protect people supported, yet comprehension of this has not been widespread.

However, it is in the improvement component of the Care Inspectorate that even greater learning can be identified. At a time when services and staff were constantly trying to adapt and innovate to meet the very different conditions created by Coronavirus guidance and restrictions, there was a significant need to learn from other services. Through their regular contact with social care services, the Care Inspectorate could have played a key role in collating and sharing best practice which could support a wide range of services to identify and adopt new ways of working that protected people's health and wellbeing. This was partly achieved in relation to dementia support but could have been more widespread.

This is not an 'optional extra' or less important element of regulation than inspection and scrutiny. It is in fact a critical component of quality care provision and strategically across the social care sector, there is insufficient attention and importance placed on the role of improvement and the factors which support this, such as investment, mentoring and learning.

Not only is this crucial to services and the people they support but it would also have played a role in providing assurance to families and the general public in terms of positive ongoing practice within social care settings at a time of great uncertainty, angst and distress. Whilst the very real challenges and tragedies experienced in the social care sector during the pandemic are important to highlight and address, it is essential that a balanced and realistic representation is achieved in order not to compound negative impacts on people's wellbeing and understanding of the contribution of social care.

Finally, this improvement role of the Care Inspectorate is a crucial element of learning and planning for the ongoing pandemic response, including preparation for any future waves or additional impacts. The experience has shown the potential for the regulator to positively contribute to comprehensive understanding of how the pandemic has affected social care and to support and share good practice. There is a need to really

learn about what has worked well, how people and services have collaborated and innovated, and how resilience has been demonstrated, all of which can enable the sector and the country to be better prepared for the future. Unfortunately, however, the experience of providers in terms of politicians, the media and increasingly regulation now appears to be one of finding fault and a 'blame culture' mentality.

What role should the Care Inspectorate have in creating a more resilient and sustainable adult social care sector?

1.

The resilience and sustainability of the adult social care sector is premised on it being appropriately recognised and valued for the critical role it plays, not only in ensuring individuals can live and die well but in supporting families and communities and its criticality in protecting the NHS. Without social care, health services would be unable to cope and ultimately to survive.

In the same manner as much has been made about changing public expectations through 'realistic medicine', there needs to be an honest, non-partisan debate with the general public about what are realistic expectations of a resource-stretched social care sector, what care and support is required for the future and what investment and support will be put in place to ensure that everyone who requires care will experience a high quality, personalised service that meets their needs and enables their wellbeing aspirations.

The Care Inspectorate's model of scrutiny, inspection and improvement offers real potential to embed the principles of the human rights-based National Health & Social Care Standards consistently in practice. This is a time of real fragility, fiscal and resource challenge for the social care sector in Scotland. It will be critically important that future regulation is more fully appreciative of the contextual and resource pressures under which the sector is working. A one size fits all approach is outdated and incompatible with current care and workforce needs, as is any form of clinical regulation.

It is also essential that the improvement arm of regulation is prioritised and that the Care Inspectorate play a much more central role in supporting the positive profile of the social care sector, not only in facilitating engagement and learning between sectors and services but in enabling wider understanding of what social care is, what it contributes and why these services play such a vital role in caring for people and providing developmental career pathways. The pressure the regulator is undoubtedly under to – rightly – identify and address the thankfully rare instances of poor quality care fails to acknowledge and value the need to promote the abundant and everyday instances of compassion, leadership, innovation and commitment in social care.

2.

A sustainable and resilient sector will not be possible without a robust model to adequately plan and resource the social care sector into the future. The pandemic

experience, political rhetoric and anecdotal evidence from Scottish Care members have highlighted real risks that further savings, cuts and 'nationalisation' will be sought within social care, all of which are short sighted and dangerous and will compound already significant inadequacies. They fail to appreciate the invaluable role of social care services, act against citizen choice, and are likely to be costlier (in fiscal and human terms) as individuals require more expensive acute services but at a later stage in their life. It is incumbent upon us all to seriously and urgently address the extent to which the public purse is willing and able to resource high quality care provision and review the ways in which existing models of planning and commissioning care limit and detract from its potential to deliver high quality care.

In the future, the Care Inspectorate must be able to take a whole systems approach and highlight where failures within the 'system' lead to poor outcomes for people who access care and support. At present, the regulator can only effectively challenge poor outcomes if they are a result of poor practice in service provision. If the poor practice is a consequence of how the system is designed or operated by public bodies, the Care Inspectorate is poorly placed to identify and force correction as its powers are extremely limited. For example, they must be enabled to take a clearer view on the commissioning of services and how this impacts on a service's ability to deliver care. Other contextual factors must also be better recognised and addressed strongly, such as geographical challenges, issues and trends in particular types or areas of service, and critical workforce shortages. The Care Inspectorate must have mechanisms through which they can identify and raise concerns across any part of the social care sector without bias, influence or compromise if they are to play a meaningful role in driving change and improvement for Scotland's citizens.

3

Additional consideration must also be given to how data and intelligence can be better used to inform both service provision and inspection methodology and improvement.

The pandemic experience has again exacerbated the significant existing data gaps within the social care sector and this is equally applicable to regulation. At the same time, reporting and monitoring requirements have dramatically increased. Measures which have been introduced or been highlighted as necessary during Coronavirus must be evaluated, in collaboration with the sector and the Care Inspectorate, to determine what is useful and necessary for the future.

The unprecedented pace of change and take-up of technology within the social care sector during 2020 must also be considered in the context of its future role in inspection and regulation. It presents new opportunity to gather intelligence, enable capturing of experiences and collect feedback which can provide new ways of working. At a time when bold and innovative decisions will be required in terms of how care is planned and delivered, the role of technology in enhancing and even replacing some elements of traditional regulation should be considered also.

Finally, Scottish Care has long highlighted the need for a more effective regulatory feedback loop whereby the quality and consistency of inspection practices can be measured alongside assuring the quality and consistency of care provision.

Organisations such as Scottish Care should play a part in intelligence gathering, not least because the current system suppresses sources of intelligence which could be beneficial to the Care Inspectorate. In particular, the regulator has no current way to

measure the performance of their inspectors or methodology for ensuring consistency. New ways of gathering data and intelligence, in collaboration with partner organisations, could help to redress this balance.