



Briefing Paper on National Care Standards Consultation August 2014

Background

The National Care Standards were originally developed in 2002 to support and shape the delivery of high quality care services in Scotland. Twenty three sets of Standards were developed covering a wide range of services for adults, children and young people and services for everybody. Care services covered by the Standards included care homes, short breaks and respite services, adoption agencies, care at home services, independent hospitals and dental services. A full list of the current National Care Standards can be found at www.nationalcarestandards.org.

The Standards are used by the Care Inspectorate and Healthcare Improvement Scotland when they are inspecting the quality of care and particular health services provided. Having Standards in place means that performance against the Standard can be measured. Standards provide a degree of safety and security for the individual and/or their families who are using the service and also ensure providers know what is expected from them in the delivery of care.

Impact on Carers

Carers have a vested interest in ensuring that the services provided to the people they look after are of a sufficiently high quality to ensure their ongoing health and wellbeing. Being treated as equal partners in care in the delivery of services to the cared for person helps to ensure that carers have confidence in the care and support provided. This can, in turn, support their own health and wellbeing. Standards also mean that carers can monitor the service being provided and to hold providers accountable if that service fails to meet the benchmark set.

Policy Context

The delivery of health and social care in Scotland is undergoing rapid change. New legislation as well as key policy and strategic developments are committed to ensuring:

- Health and social care services work more effectively together¹
- Individuals who need support have more choice and control over how that support is provided²
- Informal carers (including young carers) are identified, valued and supported³
- Individuals receive support to self-manage long term health conditions⁴
- Health treatment minimises the need for hospital admission and is provided within the community as much as possible⁵

Why Now?

In recent years there has been increasing recognition of a 'rights' based approach to the planning and delivery of services. This means recognising and respecting the basic human rights of all individuals irrespective of their nationality, sexuality, gender, race, faith, disability or age. The European Convention on Human Rights became part of Scots law in 1998 with the enactment of the Human Rights Act. This makes it unlawful for public authorities to act, or fail to act, in a way which is incompatible with the European Convention.

A Framework, known as PANEL⁶, has been developed to support a 'rights based' approach. The five components of PANEL are: Participation; Accountability; Non-discrimination; Empowerment; and Legality. It is about enabling people to know about and claim their rights.

To keep pace with all of these changes and to develop a more 'aspirational' set of Standards, the Scottish Government is now consulting on the National Care Standards Review.

Human Rights based approach

The Scottish Government is proposing that the new National Care Standards should be underpinned by a human rights based approach. This means:

- that the individual should be at the 'heart' of how services are planned and delivered;
- that services respect and uphold human rights;
- that services work better together based on a shared understanding of and commitment towards implementing human rights in service development and delivery

Consideration

Scotland's National Action Plan⁷ (SNAP) for Human Rights contains three key outcomes (Better culture, Better Lives and Better World) which are supported by a

¹ The Public Bodies (Joint Working) (Scotland) Act 2014

² The Social Care (Self Directed Support) (Scotland) Act 2013

³ 'Caring Together' and 'Getting it Right for Young Carers' 2010 - 2015

⁴ 'Gau Yersel' – The Self Management Strategy for Longterm Conditions in Scotland 2008

⁵ Achieving Sustainable Quality in Scotland's Healthcare – A 20:20 Vision

⁶ www.scottishhumanrights.com

⁷ www.scottishhumanrights.com/actionplan

number of priority actions. Under the 'Better Lives' outcome, the following priority action has been agreed: Enhance respect, protection and fulfilment of human rights to achieve high quality health and social care' (SNAP Priority 4). Adopting a human rights based approach to the National Care Standards would fit with this priority.

The Scottish Government has also adopted a human rights based approach with regard to other work streams such as the development of the Dementia and Carer's Rights Charter respectively.

NCO Position on this proposal

The National Carer Organisations broadly welcome this proposal. We believe that whilst the current overarching principles supporting the existing National Care Standards (dignity, privacy, choice, safety, realising potential and equality and diversity) are not incompatible with a human rights based approach, a more explicit commitment would support public services to move from a position of not breaching an individual's rights to one of active consideration where human rights are at the centre of decision making whether at an individual or service level. We think it important, however, to be absolutely clear that PANEL is a human rights framework which sets out principles and should not be confused with the actual standards themselves. Principles are, by their very nature, less tangible. They are what you achieve if standards are met.

The new care standards must also be developed in line with the delivery principles and national outcomes of the Public Bodies Act (2014) (section 25), the Healthcare Quality Strategy⁸ and the values and principles of the Self Directed Support (Scotland) Act (2013).

Standards must support the best outcomes for the individual and should be based on rights which are enforceable. We believe that lessons can be learnt from existing rights based 'charters' such as the Dementia Rights Charter, the Carers Rights Charter and the Patients' Rights Charter which explicitly set out tangible 'measures' of what an individual can rightly expect. We also believe it important to ensure that the new standards complement and 'dovetail' with the existing Charters.

For such an approach to be effective, we would argue that the following issues need to be considered. Through the review, the Scottish Government have themselves acknowledged that there are significant variations in both knowledge and application of the existing Standards across Scotland. We would strongly advocate that the revised standards need to be supported by a public awareness and information campaign as public perceptions of human rights may focus more on extreme situations such as degrading and inhumane treatment. The challenge will be to demonstrate the relevance of human rights in the development and delivery of services. Staff across all sectors will also require support to understand and implement a human rights based approach.

Empowering individuals to claim their rights will also require consideration of remedial actions and redress if rights are denied either in their entirety or in part.

⁸ <http://www.scotland.gov.uk/Resource/Doc/311667/0098354.pdf>

We think it is vital to be absolutely clear that the PANEL approach proposed will not confer any new rights on carers or those in receipt of care. Resolution for denial of rights would still need to be sought through the legal process. However, the focus on 'Dignity in Care' could be a very useful level for individuals using services BUT only if it is seen as a target to aim for and not a minimum standard to comply with.

We would argue strongly that the inclusion of quality outcomes such as dignity, respect and fairness would benefit from mutually agreed definitions. Abstract concepts are subject to individual interpretation which could lead to significant variations in practice across Scotland.

On a final note of caution, there is a danger that a human rights approach could promise much but deliver little meaningful change with providers 'cloaking' themselves in the language of human rights. We strongly advocate that robust mechanisms be developed to ensure accountability and enforcement.

Question:

Do you think that the new National Care Standards should be grounded in human rights?

New Structure for National Care Standards

The Scottish Government is proposing to develop a new structure for the Care Standards which would adopt a three tier approach:

- overarching quality standards based on human rights and applicable to all care and health services and across all age groups, based on the PANEL framework;
- set of general quality standards which would apply to all care and health services and which could include participation, quality assurance and improvement, personalisation and health and wellbeing;
- suite of specific standards for particular aspects of care, circumstances or need which could include nutrition for older people, people with learning difficulties and palliative care.

The overarching quality standards would set out the essential requirements of any care service and would reflect the **quality** of the service received. Examples of this would include themes such as dignity, equality, fairness, respect and the best interests of the child.

The proposed general quality standards would set out both the essential requirements which anyone can expect and aspirational elements to support improvement.

The proposed suite of specific standards would apply to specific groups of people or particular aspects of a service.

Consideration

The Scottish Government is seeking views on whether the existing care standards can be streamlined to make them easier to understand and navigate. Whilst this approach may prove beneficial, there is a danger that the detail contained in the existing standards may be lost making it more difficult for providers to 'pin down' their responsibilities. This could also make it potentially more difficult for providers to be held accountable for failing to meet the proposed new standards.

NCO Position on this proposal

The National Carer Organisations support the premise that overarching quality standards based on human rights should be applicable across all services and age groups. We are also in agreement that the existing overarching principles of dignity, privacy, choice, safety, realising potential and equality and diversity can form the basis and be incorporated into the new quality standards.

We welcome the inclusion on aspirational standards as part of an overall approach to continually improving the quality of services and how they are experienced by individuals. However, we are unclear as to how aspirational standards would be monitored. For example, would an expectation be placed on providers to reach this level within a set timeframe?

We are undecided as to the benefits of streamlining the existing standards. The current standards are robust specifically because of the level of detail included in them. If streamlining the new standards leads to a more generalised approach, this will impact both on the ability of providers to meet their responsibilities and to hold them accountable. We believe that this suggestion requires careful consideration by all stakeholders including service users, carers, regulators and providers. Engagement with carers on this issue must be conducted in line with the existing Carer Engagement Standards.

We are also unclear on what basis the choice will be made to develop specific standards for certain groups of people or particular aspects of a service. For example, the consultation document specifically mentions people with learning disabilities but not people with mental health problems and similarly, nutrition standards for older people but not children.

Question

Do you agree that overarching quality standards should be developed for all health and social care in Scotland?

Do you agree that the overarching quality standards should set out essential requirements based on human rights?

Do you agree that the current National Care Standards should be streamlined and a set of general standards developed that would sit below the overarching standards and apply to all services?

Do you think general standards should set out essential requirements and aspirational elements?

Do you agree that a suite of specific standards are developed for particular aspects of care, circumstances or need?

How should the National Care Standards be written?

In asking this question, the Scottish Government highlight several existing models which may provide a starting point for discussion. These include the Dementia Charter, the Scottish Human Rights Commission 'Care about Rights' framework and GIRFEC (Getting it Right for Every Child) framework. All of these models could potentially be adapted to apply across all service settings and age groups.

The Scottish Government recognises the challenge in striking a balance between language that is accessible and easy to understand but having to include sufficient detail to ensure providers and service users are able to identify when a standard has been breached. As to the content of the standards, views differ from setting out what services should provide to informing individuals of their rights and entitlements in using services.

The Scottish Government is of the opinion that it can accommodate all of these suggestions and provide a worked example in the full consultation document.

Consideration

The needs of different audiences in addition to individuals with a range of language and communication support needs must be considered in the production of the standards. The involvement of service users and carers and 'quality proofing' measures will help to ensure that the standards are relevant and accessible.

NCO Position on this proposal

The National Carer Organisations believe that absolute clarity is required when using the language of rights and entitlements. For example, how will the standards distinguish between legal rights whether at a domestic, UK or international level which can be enforced and 'moral' rights, ie. the right to be treated with respect, which may be subject to individual interpretation?

We agree that the new Standards should be written in plain English avoiding the use of jargon. To support this, we suggest that individual service users and carers are involved in the writing of the standards.

The role of 'social media' to support the widespread dissemination of the standards should also be considered. One specific suggestion would be the development of an

'app' which would 'filter' the standards relevant to an individual's situation. For example, which standards would apply to an older person in a care home setting?

Question

What are your views on how the standards should be written?

What are your views on the example of how rights and entitlements of people using services and the responsibilities of service providers could be set out?

Accountability and Enforcement – how will National Care Standards be used?

The Scottish Government is proposing that the overarching quality standards should sit above all other existing standards, principles and codes of practice for health and social care. Everyone using a health or social care service will be entitled to care that meets these standards. The Care Inspectorate and Healthcare Improvement Scotland, as existing regulation and inspection bodies, would be responsible for ensuring that the services they regulate are meeting the essential requirements and using the aspiration elements to drive forward improvement where needed.

However, not all services are currently regulated and inspected by either the Care Inspectorate of Healthcare Improvement Scotland. To address this gap, one option suggested by the Scottish Government is that the commissioning body – for example the new health and social care partnerships – take on this role. Alternatively, the role of the Care Inspectorate and Healthcare Improvement Scotland could be expanded over time to include non-regulated services.

The Scottish Government is also suggesting that the Care Inspectorate and Healthcare Improvement Scotland should take the lead role in developing the suite of specific standards. This would enable them to consult widely with partners, providers, stakeholders, service users and carers to ensure standards reflect best practice and focus on meeting the needs of individuals.

Consideration

The implementation of self directed support will see a significant change in the range of services which individuals may choose to purchase and increasingly, these services will be outwith the scope of the care standards. For example, an individual may choose to use a direct payment to purchase a gym membership or driving lessons. Lack of regulation must not be used to constrain choices that the individual makes.

NCO Position of this proposal

The National Carer Organisations are in agreement that the Care Inspectorate and Healthcare Improvement Scotland should retain responsibility for monitoring, accountability and enforcement of the new standards for services currently regulated. However, we believe value and a degree of external scrutiny could be

added by ensuring robust linkages with the Monitoring Group and Monitoring Framework set up to support the delivery of SNAP. We do not agree that bodies which commission services locally should have responsibility for monitoring, accountability and enforcement as we believe that this does not provide the necessary degree of separation to ensure independent scrutiny. We believe that such an approach does not support transparency and would undermine the ethos of independent regulation.

As previously stated, we reinforce the need for clarity of language with regard to rights and entitlements.

The consultation document itself provides no information on transitional arrangements for moving from the original National Care Standards to the new standards. This is something that would need to be clarified for services currently registered and inspected by one or more of the existing regulatory bodies.

More information is also required about the impact of health and social care integration on the new standards. For example, will GP Practices and acute services be regulated as part of the new integrated structures?

We are in agreement that the Care Inspectorate and Healthcare Improvement Scotland should have the lead role in developing, the suite of specific standards. We believe that the 'reach' of these two bodies, in partnership with a wide range of stakeholders, would support extensive consultation far in excess of what could be achieved by the Scottish Government alone.

Question

Do you think the Care Inspectorate and Healthcare Improvement Scotland should hold services they regulate to account for meeting the proposed overarching standards, the general standards and the suite of specific standards?

How should we ensure that services not regulated by the Care Inspectorate and Healthcare Improvement Scotland comply with the new standards?

We suggest that the Care Inspectorate and Healthcare Improvement Scotland, consulting with others, should develop the suite of specific standards. Do you agree with this?