the regulation of mental health care
About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors’ clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC’s Chairman and Council members are appointed by the Secretary of State for Trade and Industry in consultation with the Secretary of State for Scotland. Future appointments will be in consultation with the First Minister. Martyn Evans, the SCC’s Director, leads the staff team.

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The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles. These are:

ACCESS
Can consumers actually get the goods or services they need or want?

CHOICE
Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION
Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS
If something goes wrong, can it be put right?

SAFETY
Are standards as high as they can reasonably be?

FAIRNESS
Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION
If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

We can often make our publications available in braille or large print, on audio tape or computer disk. Please contact us for details.

The views expressed in this report are not necessarily those of the Scottish Consumer Council unless specifically stated.
In late 2000, the Scottish Consumer Council decided to explore the way mental health services in Scotland were being regulated, and to consider in particular the extent to which the system of regulation protected and promoted the interests of a particularly vulnerable group of service users.

To take this forward, the Scottish Development Centre for Mental Health was commissioned to undertake a short piece of research. This research aimed to review the roles and responsibilities of the various national bodies involved in the regulation of mental health care and to consider the extent to which they protected the interests of those using services. It involved discussions with all the major stakeholders, including the regulatory bodies, users and carers and their organisations, and professional networks involved in mental health services in Scotland.

The research was used as the basis for a seminar in April 2001, attended by a wide range of stakeholders. Following the seminar a discussion paper was published, in October 2001, which was distributed widely with a questionnaire. We aimed to find out to what extent our findings were supported by those affected by the system of regulation. We sent the questionnaire to service providers, service users, those with the responsibility of commissioning services, the regulatory bodies themselves, and organisations which represent the interests of those who use services.

This policy paper outlines the Scottish Consumer Council's view on the way mental health services in Scotland are regulated, based on our research evidence, and outlines the major issues which need to be addressed to ensure the most effective protection of those who use these services.

1 Scottish Consumer Council and Scottish Development Centre for Mental Health, Regulation of Mental Health Care, Glasgow, 2001, SCC.
Regulation is intended to ensure that a system works in accordance with standards, in a way that is fit for purpose and that protects the interests of service users. Regulation tends to come into play when the operation of the free market to provide particular goods or services is not sufficient to assure the quality of service or the protection of consumer interests. It has come to have an increasing role in areas where, for various reasons, there may not be a well-developed, competitive market: for instance, where there is a monopoly provider (utility provision), where consumers may be particularly vulnerable (residential care homes), or where there is a public interest in the way a service is provided (safety of air travel, broadcasting). The National Consumer Council has described regulation as:

\[ A \text{ means of achieving defined goals, by adopting rules directed at shaping conduct or controlling behaviour in some way, and then putting machinery in place to enforce those rules.}\]

For service users to feel confident that regulatory bodies are acting in their interests, the regulatory body should incorporate the following features:

- participation – to ensure that account is taken of user views and experiences
- authority – its findings are taken account of; the body has powers to enforce change and effect redress
- independence from those providing services
- accountability - both to Parliament and to those who use services
- transparency – to ensure its role and work can be understood.


\[2\] the regulation of mental health care
The existing system of regulation in mental health care

The challenge in the field of mental health services is to devise a system of regulation that keeps pace with the evolving nature of provision and the increasing diversity of services. The health and social care divide is becoming increasingly blurred at the point of service delivery and also in service planning, commissioning and management.

The main bodies that play a role in regulating mental health services are:

- Clinical Standards Board for Scotland
- Social Work Services Inspectorate
- Scottish Health Advisory Service
- Mental Welfare Commission for Scotland
- Audit Scotland and
- Mental Health and Well-being Support Group.

In addition to these national bodies, at the time the research was carried out, local authority registration and inspection teams also played an important role in service regulation. Since the research was carried out, the Scottish Commission for the Regulation of Care and the Scottish Social Services Council have been set up. The Care Commission will take over the functions of the local authority teams.

One of the factors that led to the research was the increasing number of bodies contributing in different ways to regulation and quality monitoring. In view of the recent developments in mental health provision and proposed changes in how service performance and quality is to be monitored, it seemed timely to take stock and encourage debate on these issues.3

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3 see for example the consultation paper A Quality and Standards Board for Health in Scotland, Scottish Executive Health Department, March 2002
Different bodies use different terminology which sometimes appears to cloud the issue of who does what and for what purpose – for example, performance management, audit, quality monitoring and accreditation, review, good practice development, regulation and inspection. Each of these functions contributes, in different ways, to the overall aims of protecting vulnerable individuals who use services, promoting service quality and ensuring effective use of public resources. The following table shows the range of approaches, concerns and functions which exist in the area of mental health care regulation.4

**Role and scope of the organisation**
- financial - focus on audit, costs, value for money
- management - focus on planning and strategy, systems to support service delivery
- outcomes for users (and carers) - health gain, satisfaction, quality of life, protection of individual rights
- professional/service standards - service registration and accreditation, performance audit
- professional accreditation/validation/registration - individual practitioner standards.

**Focus**
- individual user experience of services
- discrete services - eg day services, home care, in patient services
- agency/organisation - eg NHS Trust, voluntary organisation
- sector - health, social work
- service system - eg within a defined geographic area.

**Function**
- advisory - to suggest good practice
- protective - as a ‘watchdog’ to draw attention to service or system failures
- developmental - to facilitate change, redesign or improvement audit - to assess performance with or without enforcement powers to require change
- inspectorial - to provide independent expert assessment of performance, with or without sanctions to require change or to proscribe practices or services
- registration or licensing - to give or withhold authorisation for the provision of a service
- performance monitoring and management - as part of commissioning responsibilities, with powers to sanction and enforce.

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4 for a detailed analysis of bodies involved in mental health regulation in Scotland, see the SCC discussion paper (2001), footnote 1 above
CHARACTERISTICS OF THE PATTERN OF REGULATION

The multiplicity of bodies involved in the process of regulation, and the fact that some individuals are involved in work for several different regulatory bodies, have contributed to confusion about roles and functions among users and carers, service providers and those commissioning services. There is commonly perceived to be overlap, duplication and fragmentation within the current regulatory system and a lack of clarity about roles, responsibilities and powers.

In our research, the main concerns of service providers were:

• the burden of regulation, which was perceived to outweigh its benefits
• having to work to varying standards, sometimes within same service
• standards which did not easily accommodate joint services or services developed outside the traditional domain of mental health
• lack of clarity about the status and powers of the regulatory bodies.

The concerns of those commissioning services were:

• overlap and duplication which were burdensome
• regulation which did not mirror the trend towards more joint working.

Those working in the Scottish Executive had concerns about:

• lack of linkages between differing regulatory bodies
• the relationship between democratic accountability and ongoing accountability to users of services.
For service users and carers the consequences of this complexity were:

- lack of clarity about where to take concerns
- lack of clarity about where responsibility lay for quality
- a concern that differing standards led to inequities in provision and access
- frustration at the limited powers of regulators to enforce change
- variable opportunities to be involved in the work of the regulatory bodies.

**EFFECTIVENESS OF THE PRESENT SYSTEM OF REGULATION**

In responses to our questionnaire, there was a general perception that the current system of regulation was fairly effective at ensuring services met acceptable standards. However, people did not have confidence in the current system's effectiveness with regard to achieving improvements in services, protecting the interests of service users or ensuring equity of provision throughout Scotland.

**THE NEED FOR CHANGE**

Stakeholders felt the need for a more coherent structure, with harmonisation and re-alignment of current roles and relationships. The increasingly multi-disciplinary and multi-agency characteristics of mental health services and the aspiration to make greater use of social inclusion opportunities for people with mental health problems also suggested the need for a rethinking of how regulation is carried out. Mental health provision could no longer be considered solely as NHS or social services based.
Respondents to the questionnaire also agreed that the current system of mental health regulation had become too complicated and that change was required. Some considered that there needed to be a radical approach, many were concerned that there should be separate arrangements for the regulation of mental health care, while many also supported a more integrated system of regulation.

EXCEPTIONALISM

It was considered important in exploring the future of mental health care regulation to be clear about the grounds for treating mental health as a special case. The three principal reasons are:

• people with mental health problems may not, for a variety of reasons, be well placed to protect their own interests, and are likely to be vulnerable when most reliant on services
• the mental health care system is complex and many aspects of care cut across agency, service and professional boundaries
• levels and standards of service have tended to be low and we are a long way from a uniformly acceptable standard of service across the country.

GRADUALIST APPROACH TO STRENGTHEN REGULATION

The view from the seminar was that there should be a gradual approach to developing the current system of regulation. Regulatory bodies recognise that the arena can seem congested. However, it was argued that the number of bodies could be seen as a mark of progress, as previously there were few protections for those who used mental health services.
In moving towards a more holistic approach to regulation, realism and caution were urged. The process should start with the development of better links between regulatory bodies in the health and social care fields, before widening the network out to other players. A great deal could be achieved by improving information sharing, communication and increased joint working among the existing regulatory bodies.

**STREAMLINING REGULATORY ACTIVITY**

It was agreed that there was much which could be done to ensure that the regulatory bodies worked more effectively together. For example they should improve communication about their work programme, on the outcomes of visits and inspections, and make better use of the information collected. The current system imposed considerable demands on services.

**MAKING SENSE TO SERVICE USERS**

Concerns were raised about how the system of regulation and inspection, which has become increasingly complex, could be understood by service users, their carers and families, who may need to be able to contact the agencies involved. If there continue to be several bodies involved in ensuring that services meet the quality standards expected, then there was an argument for a one-door approach for service users and carers seeking information about the services available, the standards they could expect, and the ways of complaining about what they consider to be services which fall below the standards expected.
MAXIMISING IMPACT

The impact of regulation and inspection on service improvement and in achieving better outcomes for users and carers was considered to remain unclear. Regulators should be more explicit about findings, and disseminate information on what has been done and improvements that have been achieved.

There was seen to be a need to move beyond the current practice of taking a series of snapshots of services, in order to track developments and persisting problems over time. This might involve shorter visits, with a sharper focus on particular issues.

The review of the performance management and accountability arrangements for NHS bodies is timely. Both the Scottish Health Advisory Service (SHAS) and Clinical Standards Board for Scotland (CSBS) are expected to make a significant contribution to the Scottish Executive's performance reviews of local health services. Ensuring that the work of bodies like CSBS and SHAS play a part in performance management will be an important development, and should encourage the implementation of their findings and recommendations.
SCC policy position

The SCC believes that there is an urgent need to rationalise the regulation of mental health services. Moves must be made towards improving the communication and liaison between the various agencies in this field. Any developments must ensure that the particular circumstances of mental health services and those who use them, as well as their families and carers, are recognised.

In the short term there is much which different agencies can do to improve information sharing, communication and joint working. All agencies should improve the way they communicate about their activities, and outcomes. They should be more explicit about findings, and provide information on improvements which have been achieved as a result of their activity.

All agencies involved should consider how to make information available about services, the standards which users can expect and what to do if they consider that service falls short of those standards.
PARTICIPATION: INVOLVING PEOPLE

There was a general acknowledgement among those involved in the research that involving users and carers was an effective way to ensure that services were better attuned to needs, and to reinforce the accountability of those providing services to those who use them. This principle extends to the regulation of service provision. People who have had experience of services themselves are much more able to describe the standards of service which are relevant to them than either the general public or professionals.

There was clear agreement with the principle that service users should be actively involved in the process of mental health care regulation, but there was a split in opinion over whether this was currently the case.

A large majority of respondents to our questionnaire believed that inspection teams should contain service users. The use of collective advocacy was also viewed as important in the continuous monitoring and evaluation of services. The following principles were considered important to the effective involvement of service users, their carers and families:

• being clear about the purpose and expectations of involvement
• being clear about the status and authority of the user and the extent to which they could or should liaise with wider user networks
• being explicit about how people are selected to take part
• ensuring that appropriate support, including funding, is provided to facilitate participation.
INFORMATION

Respondents to the questionnaire were unanimous in their belief that service users, their carers and families should understand the way in which service provision was regulated. Professional groups and users and carers indicated some difficulties with the ways in which different regulatory bodies provided information about themselves and the processes they used. It was also reported that although organisations are making efforts to publicise their work, information was not always reaching all the places it should. There was an assumption that all organisations and individuals have access to the Internet.

There was a lack of confidence about service users having access to information about

- service standards
- the outcomes of regulation
- regulatory agencies' roles in exploring failures to meet standards.

SCC policy position

Commitment to involvement needs to be translated into practice. This requires greater investment in building capacity locally and nationally to facilitate involvement and make it meaningful. It also requires the development of an appropriate infrastructure to support public involvement as an integral part of the regulatory system.

Accountability processes should require health and social services to demonstrate the steps taken to promote involvement. This could include showing how they are supporting advocacy (individual and collective) in their area and how they are acting on issues raised through advocacy.
ACCOUNTABILITY

Enhancing accountability for the quality of mental health services was viewed as imperative. Regulatory organisations are public bodies, and as such are responsible through Ministers to Parliament. The expectation that services and their regulators might also be accountable to service users and carers was perceived to be difficult to achieve in practice. The responsiveness of the regulatory system to service users and carers and the extent to which users, carers and their representatives are included in the processes of regulation are of key importance in this regard.

There was broad agreement that regulatory bodies should be accountable to the Scottish Parliament and not the Scottish Executive.

TRANSPARENCY

Transparency is required to promote clarity and openness in a number of areas:

- to provide information about how the regulation of both professionals and services is undertaken
- to publicise the standards used by regulatory bodies
- to make available the findings and outcomes of regulatory activities.
While the regulatory bodies were clear about their role and place in the system of regulation and inspection, consumers and providers of services remained confused and unclear.

**SCC policy position**

Current arrangements for regulation must be made more open and more readily understandable.

Standards should be in clear, plain English, and assistance should be given to people in accessing complaints systems.

**INDEPENDENCE**

Agencies involved in the regulation of services should be independent of government, and also of those who provide services, and there was support for the principle that independence should be safeguarded. However, it was also believed that these agencies had to achieve credibility and win confidence among service providers and users, by demonstrating their awareness of service and practice issues and the wishes and expectations of those who use services. It was argued that the regulatory system should also have sufficient links with service providers to be able to carry out bench-marking, peer review, and encourage working to standards as a learning process.

**AUTHORITY**

Opinions differed on the authority of current regulatory bodies. Some are seen to have teeth, with capacity to use legal powers and to make constructive recommendations. Others are believed to lack teeth or to be reluctant to use the powers that they have.
A number of stakeholders stated that it might not be appropriate for some of the regulatory bodies to wield undue power. There was concern that over-reliance on regulation that required compliance might have a detrimental effect on the drive and enthusiasm of service providers.

Paradoxically, in order to be effective, regulatory bodies need to be able to ‘stalk the corridors of power’, but also have to be seen to be in touch, with, and gain the acceptance of, professionals and users. In this regard some concern was expressed about the extent to which the Scottish Executive made best use of the intelligence acquired by the various regulatory bodies in a systematic way. It appears that professionals and users and carers are often unclear about how (or whether) these linkages happened and to what effect.

**SCC policy position**

The authority of regulators needs to be supported by a credible evidence base, and by ways of gathering information and conducting reviews that are respected, to ensure their judgements will be respected in turn.