Scrutiny and the consumer
November 2006
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The consumer perspective on the Independent Review of Regulation, Inspection, Audit and Complaints Handling of Public Services in Scotland

Introduction

The purpose of the Scottish Consumer Council (SCC) is to make all consumers matter. SCC has a long history of conducting research and policy development in relation to the regulation, inspection, auditing and complaints handling arrangements for the public services. We want users to be at the heart of public services and we have a specific remit to ensure that disadvantaged and vulnerable consumers get a fair deal.

We use the term ‘consumer’ rather than ‘service user’ as it includes those who do not use a service at present but could or should have access to it (see box 1). This allows us to examine services not just from the point of view and experience of current users but also to see if there are barriers that unfairly exclude some from those services.¹

<table>
<thead>
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<th>Box 1: Who is a consumer of public services?</th>
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<tr>
<td>• A current service user;</td>
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<td>• Someone who is waiting to use a service;</td>
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<td>• Someone who is eligible to use a service but is unable to;</td>
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<tr>
<td>• Someone who could reasonably be expected to use the service in the future.</td>
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The Independent Review of Regulation, Inspection, Audit and Complaints Handling of Public Services in Scotland was announced in June 2006. The Independent Review provides an opportunity to develop a system of scrutiny that works for, and with, the consumers of public services. For the purposes of this paper, we define public services as “all organisations and partnerships that work for the public, using public money”. This definition includes private and voluntary organisations as well as traditional public services such as schools and hospitals and therefore the Independent Review has the potential to impact on a wide range of organisations in Scotland.

¹ SCC (forthcoming) What’s in a name? Glasgow: SCC
What is scrutiny?

Scrutiny means ‘examining something closely’. The term ‘scrutiny’ is used as shorthand for a number of different activities: regulation, inspection and auditing (see box 2).

Box 2: Definitions of scrutiny activity

**Inspection** is the periodic, targeted scrutiny of specific services, to check whether they are meeting national and local performance standards, legislative and professional requirements, and the needs of service users.

**Regulation** focuses on providing a licence to operate, and monitoring the quality of services provided. Regulation many also include elements of service inspection, and can be designed to drive up quality as well as to enforce standards.

**Public audit** is the scrutiny of public bodies covering their corporate governance and management, the financial statements and underlying financial systems; and performance, performance management and reporting.


Confusion arises as the terms inspection, regulation and auditing are often used interchangeably, though some organisations argue there are important differences. Regardless of the substance of these differences, there is a clear lack of consistency in the language used to describe ‘scrutiny’ and in the remits of the organisations charged with scrutiny activity (called ‘scrutiny bodies’ in this paper).

Some scrutiny bodies in Scotland are involved in both regulation and inspection (such as Communities Scotland), others are inspection bodies only (HM Inspectorate of Education), some combine inspection, regulation and complaints handling (Care Commission). Others avoid this language altogether and speak of their role in terms of ‘review’ and service improvement (NHS QIS).

The fact that some inspectors, regulators and auditors also handle complaints adds a level of complexity for consumers: it is not always clear to consumers where they should take their complaint.\(^3\)

There are advantages and disadvantages to providing scrutiny bodies with a role in complaints about services. The clear link between service complaints and regulation provides an opportunity for the information gathered through complaints activity to be used in the assessment of service quality and the measurement of service improvement.\(^4\) On the other hand, there is a potential conflict of interest as the scrutiny body may have established the standard the complainant is aggrieved about.

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Complaints handling is also known to be resource-intensive\(^5\) and the nature of investigating cases where services have allegedly failed consumers is different from the emerging model of regulation, audit and inspection activity that should focus on developing service improvement. **On balance, we believe that service providers should have the primary responsibility to deal with complaints, with independent review provided by ombudsman bodies.** It is better for inspectorates, regulators and audit bodies not to be directly involved in the handling of service complaints. However, regardless of the approach taken, it should be applied consistently and strong links between those who regulate and those who handle complaints should be developed.

The review, in considering the relationship between complaints handling and inspection, regulation and audit activities, must also consider the need to ensure that there is a clear and consistent pathway through a complaints system and that internal complaints mechanisms are strengthened and supported by good practice.

**What is scrutiny for?**

In the public sector, scrutiny is primarily used by government to ensure that standards are met and that resources are used effectively and responsibly. There are clearly significant benefits to consumers in having services inspected, regulated and audited by independent organisations\(^6\). Scrutiny bodies often have a particularly important role in areas of public service provision where consumers are vulnerable, for example the regulation and inspection of care homes; to ensure that consumers are not taken advantage of by monopoly providers, for example in relation to the utilities, or to ensure safety in areas where consumers might otherwise be at risk, for example in hospitals, or in their workplaces.

In addition to this primary role, scrutiny bodies also provide information to members of the public, whether in their capacity as consumers or as citizens. We have argued elsewhere that direct accountability of scrutiny bodies to consumers is poorly developed, funded and supported.\(^7\) In addition, scrutiny bodies do not always place their work within the context of a consumer approach to public services: consumers are not always referred to in the organisational aims of scrutiny bodies; nor are they routinely involved in the governance of scrutiny bodies. Scrutiny bodies should be encouraged to be more outward facing and focused on the consumer benefit of their activities.

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For this reason, we argue that all organisations involved in the scrutiny of public services should have clear statutory duties in relation to consumers. In some cases, these already exist, for example:

- The main objective of the Food Standards Agency is ‘to protect public health from risks which may arise in connection with the consumption of food and otherwise to protect the interests of consumers in relation to food’.  
- Ofcom, has the principal duty to further the interests of citizens and consumers in relevant markets.  
- Communities Scotland Regulation Board has a specific role in:

  Ensuring that we act in the best interests of tenants, future tenants and other housing and related service consumers.

While we recognise that scrutiny bodies will have important additional duties and responsibilities to carry out, we believe that the duties to consumers should be paramount and used to drive the activities of the scrutiny bodies.

What are the problems with the current system?

The scrutiny of public services has increased in recent years. In Scotland, this has included more regulations for public services and more organisations charged with making sure those regulations are adhered to. With an increase in scrutiny activity, concerns have been raised about the efficiency and complexity of the current system.

These concerns are often expressed in terms of the burdens which regulation places on organisations. However, if there are inefficiencies in the current system, it is consumers and citizens, not the service providers, who will ultimately ‘foot the bill’. The costs to consumers include both the amount of staff time diverted from meeting their needs before and during an inspection, and the impact of additional staffing requirements on service costs, and ultimately on taxation levels. It is important to ensure that the costs of scrutiny (including the consequent costs for the frontline delivery organisations) are proportionate to the value it brings.

Because of the financial impact which regulation can have on consumers, we support moves towards a risk-based approach to scrutiny activity, whereby activity is more focused on services or areas where there are known to be (or suspected) problems with service delivery.

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8 Food Standards Agency Act 1999  
9 Communications Act 2003  
10 http://www.communityscotland.gov.uk/stellent/groups/public/documents/webpages/cs_005887.hcsp  
12 SCC (2004) Layman’s Terms? The Involvement of Lay People in the Inspection of Public Services Glasgow: SCC  
In addition, the creation of bodies with remits that are often focused within professional boundaries (such as social work or education), may affect consumers by setting up or reinforcing artificial or unnecessary boundaries and barriers to integrated working.

Consumers themselves share concerns about the complexity of the current arrangements for scrutiny. For example, users of mental health services identified the following concerns about regulation:

- Lack of clarity about where to take concerns;
- Lack of clarity about where responsibility lies for quality;
- The impact of differing standards on inequities in provision and access;
- Variable opportunity for participation and influence;
- Frustration at the limited powers of regulators to enforce change.\(^{15}\)

We believe that there are three key areas where changes could be made to the current approach to scrutiny that would benefit consumers of public services:

1. Consumer involvement in scrutiny bodies and their activities;
2. Assessing services from the consumer perspective; and
3. Investing in visibility.

\(^{15}\) SCC (2001) *Regulation of mental health care: discussion paper*, Glasgow: SCC / Scottish Development Centre for Mental Health
Change 1: Assessing services from the consumer perspective

AIM:
- To focus service activity and improvement on the needs of consumers.

METHODS:
- Developing good practice within public services on gathering consumers’ views.
- Establishing a national framework to allow comparability of data.

Too often, performance indicators focus on processes or outputs, for example the number of repairs carried out, rather than measuring the impact on, outcome for or cost to consumers of services. They have been criticised for ‘hitting the target but missing the point’. These process and output measurements have a role in relation to financial and managerial accountability, but it is questionable whether they are helpful to consumers.

Performance management information must be more focused on what is of meaning and interest to consumers. It should measure how consumers experience services and the impact services have on their lives. By doing so, impact measurements can direct attention towards consumers, encourage long-term strategies and encourage innovation.

A consumer-focused approach to assessing service impact can help to ensure that the measurements used are meaningful to the consumers of those specific services. The primary responsibility for gathering information on the impact on consumers must therefore be placed firmly on service providers themselves, and the role of such information in day-to-day management strengthened.

While this approach is, by necessity, bottom-up rather than top-down, scrutiny bodies can add value by encouraging services to improve the quality of the information they collect internally and by putting in place frameworks to ensure a level of consistency. An example of this approach is the recent guidance on Gathering Service Users’ Views published by Communities Scotland. This guidance provides a framework to improve the involvement of, and consultation with, consumers at local level while dovetailing into the draft regulatory statement recently published by Communities Scotland which includes performance indicators on gathering the views of tenants. This approach is to be welcomed but with different regulatory bodies developing different approaches, and different service providers even within sectors carrying out

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16 Sue Richards, National School of Government, speaking at the Public Services Reform Expo 2006, London, 26th October 2006.
19 Communities Scotland (2006) How to gather views on service quality: Guidance for social landlords
Communities Scotland/Scottish Executive

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different types of consumer surveys, there is difficulty in ensuring consistency and a limit to the comparability of the data produced.

A clear national direction on the development of consumer-focused performance management would help to achieve consistency. One such example is the Canadian Common Measurements Tool that provides a model for collecting data on consumer satisfaction with public services.\(^\text{20}\) The Tool allows services to customise the client satisfaction survey to their needs while also collecting a core of data that can be reliably compared between services and geographical areas.

\(^{20}\) http://www.iccs-isac.org/eng/cmt-about.htm
Change 2: Consumer involvement in scrutiny bodies and their activities

**AIM:**
- To ensure all scrutiny bodies have a clear consumer focus.

**METHODS:**
- Clarity in the principles of lay people in governance and scrutiny activity.
- Establishing the principle of consumer involvement in scrutiny activity.
- Developing good practice in consumer involvement in scrutiny activity.

The involvement of people who are not themselves professionals in the areas under scrutiny, or not employed in that sector, is often referred to as 'lay involvement'. We would like to make it clear that there are three main reasons for lay involvement:
- ensuring openness in the governance and operation of scrutiny bodies;
- ensuring that the public interest is represented; and
- ensuring that the voice of consumers is heard.

Perhaps because of the conflation of these three aspects of lay involvement in scrutiny activity, the practice of scrutiny bodies varies in terms of who they involve, and how they involve them.

There are a range of different ways of involving lay people in the governance and activities of scrutiny bodies (see table 1).

### Table 1: Lay involvement in scrutiny bodies

<table>
<thead>
<tr>
<th>Aim</th>
<th>Methods</th>
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<tr>
<td><strong>Governance</strong> 21</td>
<td>To ensure openness and transparency in the governance of scrutiny bodies and balance the provider interest with the public interest.</td>
</tr>
<tr>
<td><strong>Inspection and review activity</strong></td>
<td>To ensure openness and transparency in scrutiny activity and balance the provider interest with the public or consumer interest.</td>
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<tr>
<td><strong>Consultation with, or direct involvement of consumers</strong></td>
<td>To ensure that the consumer voice is heard in the process of scrutiny.</td>
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21 In relation to governance, it should be noted that not all scrutiny bodies have governing bodies. For example, HM Inspectorate of Education exists as an ‘Executive Agency’ under the management of the Scottish Executive.
In relation to governance, some scrutiny bodies have a duty to include service users within the governing body, while others do not. The direct involvement of service users on governing bodies may be possible in some sectors. However, in other areas (for example, schools or prisons), this involvement may be more difficult and it may be more appropriate to include lay people who can represent the interests of service users and the wider public. It promotes transparency and accountability to have public interest representatives on governance bodies and, ideally, for them to be in a majority.

We would also like to draw attention to the variable practice of involving ‘lay people’ as inspectors or reviewers. In addition to the different definitions used, the role of the lay member within the inspection team ranges from being charged solely with exploring consumer views (Communities Scotland) to carrying out the same tasks as professional reviewers (NHS QIS). Because of the complexity and lack of clarity in the current use of lay people, we believe that the Independent Review should include within its remit the need to clarify the principles of ‘lay’ involvement in inspection and review.

Consultation with, or direct involvement of consumers in scrutiny activity could also be strengthened. There are three levels at which this kind of involvement can take place in scrutiny activity:

- Involvement of consumers or their representatives in the setting of standards and objectives which services are inspected or audited against, as was done very effectively with the National Care Standards.
- Direct involvement in reviews of services, either as members of the review team, or through giving their views on existing services to those carrying out the scrutiny activity.
- Consultation with service users who are not directly involved in the scrutiny process to ensure that there is sufficient evidence of consumers’ experience of the service.

We would like to see the principle of consumer involvement in scrutiny activity established via the Independent Review and mechanisms developed to ensure that scrutiny bodies can share best practice in the involvement of consumers within their activities.

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22 For example, the Care Commission must, by law, include two non-executive members who are either users of services, or carers to service users.
23 For discussion, see SCC (2004) Layman’s Terms Glasgow: SCC
Change 3: Investing in visibility

**AIM:**
- Improving the accessibility of inspection and audit reports for consumers.

**METHODS:**
- Consumer-friendly, accessible reporting of findings through consistent grading and critical assessment summaries.
- Consumer consultation on mechanisms for disseminating findings.

Investing in visibility means being open and using publicity as an effective way of increasing the impact of the scrutiny body. For example, well-communicated findings can support service improvement by stimulating debate and sharing good practice. There is also evidence that suggests providing consumers with performance information on services increases their satisfaction with those services.

In addition to the benefits to service providers, consumers also benefit from transparency in the reporting of scrutiny activity. Publishing information in a way that is accessible to consumers and their representative bodies empowers them in their dealings with service providers, for example by demanding changes in services to bring them in line with acceptable standards, or by exercising informed choice where it is available (for example in the case of early years services or care homes).

This openness and transparency also contributes to the process of making scrutiny bodies more accountable to consumers. However, we know that scrutiny bodies struggle to communicate their findings clearly to consumers. At present some inspectorates use grades to indicate service quality, but these scales are all different. For example:
- HM Inspectorate of Education uses a six-point scale (from Excellent to Unsatisfactory) to measure 19 different topic areas. This six-point scale is likely to be adopted by the Care Commission.
- Communities Scotland currently uses a four-point scale (A-D) to measure two general areas for registered social landlords (property maintenance and housing management).
- HM Inspector of Constabulary does not use grading, though comparative information is provided through statistics.

From a consumer perspective, grades clearly tell us something about the quality of a service. Grading helps consumers to understand the quality of service they are using, or are considering accessing, and allows them to make simple comparisons between services. While professionals may be adept at picking out the evaluative words from an inspection report, consumers may not be able to pick their way through the jargon and establish the overall quality of service provided. In addition to grading, scrutiny reports should also include critical assessment summaries in plain English to aid...

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consumer understanding and ensure consistency of reporting across services. We are supportive of grading and would welcome a consistent approach to grading across the public services.

We are also aware that reports, once published, do not always tell consumers what they want to know in a way that they find accessible. We would welcome more consumer involvement in the development of performance reports and in decisions made as to what aspects of performance should be reported.²⁷