

# Independent Review of Inspection, Scrutiny and Regulation in Scotland

## SUBMISSION FROM SOCIAL WORK SCOTLAND, TO SCOTTISH GOVERNMENT'S CALL FOR EVIDENCE

*13 January 2023*

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to share our views on how we think inspection and regulation can enable effective and continued improvement for social services within Scotland, and see it as a chance to consider and contribute to the review of the structures that social work and social care professionals work within to deliver the support and protection that people, families and communities are calling for. Social Work Scotland agree with the intention of the Independent Review of Inspection Scrutiny and Regulation (IRISR), to support a high standard of quality within social services that reflects a human-rights and person centred core.

*“Social work and social care services are essential to the delivery of good outcomes, particularly but not exclusively, to the most vulnerable in our communities. Social work makes an important contribution to the public domain; working with people and helping them achieve change in their lives and helping them to contribute through the social relationship. This requires a particular balance of need, risk and rights.”<sup>1</sup>*

Social workers are uniquely placed to offer insight and contribution to this consultation, as they deliver on local authorities' legal duties, under the Social Work (Scotland) Act 1968<sup>2</sup>, to assess the needs of those in the local authority area. In delivering this, social work seeks to support the effective interaction and joint working of partner professionals in the process, delivering high quality services and interventions to adults and children. Social work services are subject to scrutiny and

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<sup>1</sup> The Role of the Chief Social Work Officer, [The Role of Chief Social Work Officer: Principles, Requirements and Guidance pursuant to Section 5\(1\) of the Social Work \(Scotland\) Act 1968 \(www.gov.scot\)](https://www.gov.scot)

<sup>2</sup> Social Work (Scotland) Act 1968, section 12, [https://www.legislation.gov.uk/ukpga/1968/49/section/12#:~:text=\(1\)It%20shall%20be%20the,the%20provision%20or%20arranging%20for](https://www.legislation.gov.uk/ukpga/1968/49/section/12#:~:text=(1)It%20shall%20be%20the,the%20provision%20or%20arranging%20for)

improvement as covered within the Public Services Reform (Scotland) Act 2010<sup>3</sup>, and social work itself is a regulated profession as per the Regulation of Care (Scotland) Act 2001<sup>4</sup>. Social workers have a vested interest in the quality themes and improvements that provide a structure through which services and support can enable individuals to achieve their best outcomes across the life span and through close working relationships with colleagues in other public services. Working within this multi-agency context, social workers hold a duty to offer a perspective to ensure that a human-rights enabling and strengths-based approach is delivered within what can often be a complex space, where intersections of poverty, social justice and inequality impact on the delivery of rights based services.

## **Theme 1 - A person centred approach**

### **1. How can we ensure that people with lived and living experience of care and support services are able/supported to contribute to inspection, scrutiny and regulation processes?**

Fundamentally, we must ensure that those with a living experience (i.e. those currently in receipt) of care and support services are aware of, and are encouraged and enabled to take advantage of, opportunities to articulate their views on the support they receive. For many supported people family and social workers play a critical role here, but a breadth and depth of services is required in every community to make this possible for all (e.g. advocacy). And it is a reality that social work teams need more capacity / time if they are to achieve this practice standard consistently; time in which they can establish the meaningful relationships through which effective cycles of feedback and action are based.

Meso- and macro-level scrutiny (i.e. that done by inspectorates) can never make up for an effective relationship between the supported person and those providing the support and care. It is in that person-centred space that change happens, and the focus of inspection and professional regulation should be on ensuring that those employed in delivering support and care are enabled (time, skills, etc.) to work in this way, and if they are not, explaining why (e.g. they have insufficient time, do not have necessary skills or competencies, etc.).

At the level of inspection, covering 'services' and 'settings', Social Work Scotland members agree that processes should be based on the Health and Social Care Standards (first published in 2017), and we wish to see continued progress in situating the views of those with living experience (supported people and front line

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<sup>3</sup> Public Services Reform (Scotland) Act 2010,  
<https://www.legislation.gov.uk/asp/2010/8/introduction/enacted>

<sup>4</sup> Regulation of Care (Scotland) Act 2001,  
<https://www.legislation.gov.uk/asp/2001/8/part/3/crossheading/registration/enacted>

staff) at the core of assessment. The Health and Social Care Standards are underpinned by the principles of dignity and respect, compassion, to be included, to responsive care and support and wellbeing<sup>5</sup>. The Standards themselves are taken into consideration when the Care Inspectorate undertake inspection and scrutiny and make recommendations for improvement. The Standards are guided by “I statement” questions, an approach that enables those using services, and their carers and family, a platform from which to contribute to a review of their service and support.

The Health and Social Care Standards, and preceding initiatives, are representative of inspectorates efforts to develop frameworks and systems to enable participation in inspection and scrutiny activity by people receiving support. And it is our understanding that progress has been made, with a greater ‘voice’ given to the perspectives of supported people in the scrutiny process. The impact of Covid-19 on inspectorate’s ability to implement this approach should be borne in mind; alongside the fact that implementation science tells us unambiguously that such innovation takes time. We may not have yet reached the level of lived experience involvement that we aspire to, but that is not evidence that the approach of inspectorate bodies is deficit in some way. Such things take time, and we should be realistic (i.e. evaluate on the basis of what we know about how change happens) when assessing the strength of the current system.

We would also highlight the need for clarity and proportionality in this area. Clarity over why the input of living experience is important, and how it will be used in constructing assessments of the quality of a service. Attending, for example, to the fact that those with a negative experience of a service are often more inclined to comment than those with positive experiences. Proportionality is important when considering the supported person themselves; a balance must be struck (and constantly monitored) between individuals having opportunities to input to inspection and their right to live a life free from continuous invitations to comment and evaluate. Many supported people will already be involved in processes of assessment and review, related to their package of care, which require them to reflect and comment.

Finally, in our answer above we have concentrated on the voice of living experience in inspection and service registration. The context and issues relating to professional regulation are different, and require much more nuanced consideration than this question allows. For regulated workers, structures of complaint and Fitness to Practice already exist, through which supported people can articulate their view about an individual worker.

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<sup>5</sup> Health and Social Care Standards: my support, my life, <https://www.gov.scot/publications/health-social-care-standards-support-life/>

## **Theme 2 - What needs to be inspected, scrutinised and regulated**

### **2. Do you feel there are services that are not currently subject to inspection, scrutiny and regulation that should be?**

Yes

No

**Not Sure**

#### **2b. Why do you think they should be inspected/scrutinised/regulated?**

Regulation of those providing services and support offers an element of protection and a lever for improvement. The access to training and education enhances the quality of support and services delivered, and the recognition 'regulation' gives to those in relevant roles can help acknowledge the value they bring into the workforce. However, the development of person-centred and led approaches, in the years since the Regulation of Care (Scotland) Act 2001 Act was introduced, requires us to pause and consider how the legislation can be best used, or amended, in the context of a growing and diversifying workforce. For example, the implementation of the Social Care (Self Directed Support) (Scotland) Act 2013<sup>6</sup> promotes choice and control in directing how social care is delivered, enabling the use of personal assistants through a direct payment. The focus on the individual's right to choose their care provider, combined with the local authorities duties to ensure services meet identified need with minimal risk, causes a tension in the consideration of whether this group of the workforce should be a regulated workforce. Social Work Scotland would support further discussion on the balance of this rights and responsibilities question, to ensure robust arrangements are in place to recognise and enable a human rights based approach whilst assuring risk is appropriately considered and enabled.

#### **2c. Who should be responsible for this?**

As noted above, the existing duties and functions set out in the Regulation of Care (Scotland) Act 2001 would be a mechanism through which the addition of other roles could be considered for registration and regulation and we would suggest any additions to the register should sit with the Scottish Social Services Council.

## **Theme 3 - How should inspection scrutiny and regulation be carried out**

### **3. Would a system work where the same regulator inspected all services?**

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<sup>6</sup> Social Care (Self Directed Support) (Scotland) Act 2013 Guidance, <https://www.gov.scot/publications/statutory-guidance-accompany-social-care-self-directed-support-scotland-act-2013/pages/11/>

Yes

**No**

Not Sure

### **3a. If yes, why? And if no, why not?**

Social Work Scotland recognises that structure supports function, and that in pursuit of a 'holistic' assessment of a service or provider the idea of a 'once-for-all' inspectorate / regulator can seem appealing. Services should be integrated on the ground around supported people, so why not the regulators that inspect those services? However, the idea, when projected onto the reality of service provision, breaks down. A monolithic regulator, spanning social work, social care and health would be unwieldy and incoherent, having to accommodate scrutiny methodologies that are necessarily distinct. There is of course significant overlap in the functions of many 'health' services and 'care' services, and consistency in how staff should treat and involve people. But there is also difference, with the primary purposes / objectives sometimes being distinct. Regulators need to hold the clinical and/or professional insight to interrogate and investigate relevant matters. A mega-regulator risks becoming either void of the nuance necessary to do good scrutiny (as it adopts a thin framework of outcomes relevant to all services) or it becomes captured by the priorities and approaches of one particular sector. We have experience of the challenges around the latter issue, in managing infection control in care homes, and balancing health needs / risk and social, emotional needs / risks. Maintaining distinct regulatory structures has helped ensure that both, legitimate interests are held in constructive tension.

,Furthermore, we have stated previously through other consultation responses that if roles and responsibilities are clearly set out, and a culture of collegiate joint working continuously encouraged, people can work very effectively across organisational boundaries.<sup>7</sup> Mergers are not necessary (nor always successful) in delivering good joint working.

The insights available from Implementation science, about how to effect change that sticks, also suggests an approach to improvement that is local and as close to the delivery of services as possible. A mega-regulator would likely make this less likely. We would instead support close working relationships across regulators relevant to social work practice, including the Care Inspectorate, the Scottish Social Services Council, and importantly, while not a regulator (but still holding duties to intervene where someone with a mental disorder requires care and treatment), the Mental Welfare Commission. Clear and explicit information about how these bodies will work together should build public confidence in the existing bodies identified through

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<sup>7</sup> National Care Service for Scotland Consultation Response, November 2021, <https://socialworkscotland.org/consultations/a-national-care-service-for-scotland/>

legislation to support people requiring support services. Currently there has been evidence of each undertaking their function, but not a significant amount of detail provided to show a joint approach to sharing information, inspection, regulation, and improvement, and this gap would benefit from being addressed to support future service delivery.

Inspection, scrutiny, and regulation would also be enhanced by a shared usage of language, definitions, and data capture, across the sector to support the meaningful communication necessary to effect change at the earliest point (through self-assessment activity for real time improvement). This shared use of language would make information accessible, support discussion across a multi-agency context and allow those responsible for assessing, providing, and receiving support, the ability to discuss important factors such as workforce pressures and the impact of social determinants of health to reflect the context within which services are provided.

**4. 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)?**

Yes

No

**Not Sure**

**4a. If yes, why? If no, why not?**

Firstly, we would take issue with the very concept of a 'regulator for improvement'. Indeed, the framing of the question illustrates for us one of the key problems in how Scotland thinks about regulation, scrutiny and improvement in general; namely, that meaningful improvement in social services can be generated by pointing to a desired improvement and then offering some assistance to make it happen. Support from the outside, however high-quality and sustained it is, cannot make up for the absence of sufficient resources and skills within the organisation required to (or desiring to) make change. Sustained improvement occurs when there is an enabling context locally for the necessary changes; for example, there being the required number of staff to deliver a certain practice model, or leadership that is adaptive, or data systems that assist with professional decision making (rather than simply governance and reporting).

Scotland already boasts a range of organisations (IRISS, CELCIS, the Alliance, etc.), independent of the regulators, who have a role to assist service providers to make improvements. They often do this off the back of inspection, effectively making real the kind of arrangement this question is interested in. In the view of Social Work Scotland members, the social work and social care sectors would be worse off

without these organisations. Moreover, there is a view among some in our membership that the valued support of these organisations is sometimes undermined by the 'improvement' function of the big regulators (due to clashes of methodology, etc.). It follows for some that regulators should concentrate on inspection and scrutiny (identifying the quality of services being provided, and explaining why they are as such) and that improvement support, which requires distinct skills and competencies, is left to separate, independent organisations. Another relevant observation shared with us is that meaningful improvement driven by inspectorates is really a non-starter, as the power dynamics and relationships between regulated service and regulator mean it is unlikely to encourage the open, honest partnership dynamic on which improvement must be built.

In respect of generating improvement, our preferred approach would be for national regulators / inspectorates to scrutinise and comment on the capacity of services and organisations to improve (e.g. does X have the sufficient administrative capacity to manage the data flows necessary for improved decision making, or does Y's staff have the skills to ascertain and incorporate the views of a supported person regarding their care). National regulators / inspectorates would also identify the areas of improvement necessary, in reference to the National Standards. In commenting explicitly on organisation's 'capacity' to improve (rather than just identifying what improvement is needed), we would, nationally, begin building a much more coherent picture of what regulatory, funding and commissioning changes are necessary to stimulate improvement, building up the 'enabling context' at scale.

Much greater investment in the independent bodies that already exist to support improvement, paired with a renewed emphasis from inspectorates that they expect services to seek out and secure the support of such 'intermediary organisations', should enable regulated services to access a diverse range of partners, with offers tailored to their needs.

Reflecting on the current context for social work, the Care Inspectorate provide a triple function of regulator, inspection and improvement, with the Mental Welfare Commission holding duties to inspect, and to report service concern to the Care Inspectorate. These activities can occur simultaneously, leading to reports and initiatives from the Mental Welfare Commission being offered alongside recommendations from inspection activity. There is an opportunity here for a more coordinated and streamlined approach,.

As noted previously, structures can certainly support function, however investment in the frontline of service delivery, and enabling local engagement, are key components of effective implementation and it could be argued that focus on supporting the enabling context for those delivering and receiving services and support would be a more useful focus of future development. There may also be an opportunity, with the development of the National Social Work Agency, to think about how improvement

recommendations could be streamlined and coordinated. The current approach of multiple agencies posing recommendations for service improvement, sometimes without knowledge or connection to another, leads to a cluttered, incoherent landscape.

Inspection and improvement offer the best opportunity for meaningful change when they are approached through collaboration, are enabled through good communication, training, and leadership, reflect a shared understanding of context, and engage the people receiving services in the process alongside those assessing for and delivering services. Approaching both through a learning mind-set, informed by self-assessment, with those delivering services able to access ongoing education and training, further cements an effective approach to improvement.

Social services require appropriate funding and a valued workforce, one which is well remunerated and has the capacity to meet the demands placed upon it, to enable the effective delivery of quality themes and indicators, all of which are necessary components of achieving best outcomes for those in receipt of their support.

## **5. How can we ensure that regulation and inspection processes are underpinned by a commitment to improving services?**

The current legislation that provides the basis from which inspection, scrutiny, and regulation are taken forward, offers the grounding from which this commitment to improvement should occur. The legislation is predicated on the commitment to improving people's experiences and outcomes. This includes the Mental Welfare Commission as a public body responsible for ensuring those with mental disorder subject to the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000, have their human rights upheld as the legislation intends.

Annual reporting by regulators on system pressures ('a state of the nation') would inform understanding of how local and national priorities are being progressed, and help illustrate the context in which improvement activity is being taken forward. A report such as this should be accessible, offer clear definitions and key messages, and be taken back into local and national government considerations when planning for future activity. The current legislative and policy landscape reflects a disjoin across improvement activities being carried forward by regulators and government, making the embedding of any recommendations made by either a challenge. The introduction of a National Social Work Agency would potentially offer a place to centralise the relevant recommendations from all regulators, pairing it with a wider knowledge of the workforce capacity.



## **6. Should regulation, inspection and scrutiny have an emphasis on services continually improving? What might that look like?**

If this Independent Review to consider this question in depth, we would make the plea again that terms are clearly defined and explained. What is 'continuous improvement'? And what, in the opinion of the Independent Review, would an organisation 'continually improving' look like in practice? Clarity on such points is needed before it is really possible to say whether regulation, inspection and scrutiny should have an emphasis on it.

That said, Social Work Scotland absolutely supports a learning organisation approach to improvement, where information and intelligence is accessible to support areas to evolve practice and services alongside evidence, policy and legislation. Our members are continuously striving to improve their services, aware that there are always opportunity to learn and evolve. Indeed, as the external environment changes, including the nature of peoples' and communities' needs, services have to evolve too.

Enabling conditions at local levels would be necessary to support improvement that kept up with learning and research, and we would suggest "continuous improvement" not be confused with thoughtful improvement, based on knowledge gained from research and best practice experiences, and feedback from service users, carers, and those delivering services. Improvement science has shown that effective implementation takes time, so a level of patience and commitment to supporting improvement should be baked into any consideration for cycles of improvement.

## **7. What should happen if something goes wrong in a service?**

Social Work Scotland would acknowledge the current processes in place through which scrutiny and learning occur when something goes wrong in a service. The aim of any complaint investigation or review of an incident is to achieve a resolution as close to the local level as possible, through open discussion with the dissatisfied individual, and through review of practice where learning has been identified.

Local Authorities and Health and Social Care Partnerships must have a complaints procedure in place to address the concerns and issues raised by those receiving services, with an escalation route to the Scottish Public Services Ombudsman where dissatisfaction with response is expressed. These offer opportunity to raise a concern about a service or someone delivering a service with the local area directly and for local review of events and learning to occur. Accountability for when something goes wrong in a service should align with the legislation and structures in place to support complaints investigations and reviews, for example the Duty of

Candour Procedure (Scotland) Regulations 2018<sup>8</sup> where significant harm or death occurs, sets out a clear pathway for addressing the duties within the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016<sup>9</sup>. In addition to this, both the Care Inspectorate and the Scottish Social Services Council offer avenues to raise concern where something has gone wrong in a service or with a registered individual. This information could be themed up to provide a national overview of areas of concern within the sector and could be used as an opportunity for oversight and intelligence gathering to support the planning of future inspections and scrutiny.

Considering all of the opportunities to raise concern at local and national level, the approach to how information received is acted upon and how learning can be taken from an incident to inform improvement in practice is another important component of instances where something goes wrong in a service. Learning from the outcome of an incident in a service can occur through Significant Case Reviews across all areas of social work practice, with a focus on multi-agency participation, fact finding, and learning, from significant events in practice. This is a useful process for the consideration of learning after an event and where local areas will need to address service improvements. Care Inspectorate colleagues are often involved in such discussions and they act as a central point of collection for all significant case reviews in Scotland. Similar processes exist within Police Scotland and the NHS, with the opportunity for sharing learning from these reviews across professionals.

The Mental Welfare Commission has duties under the Mental Health (Care & Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000 which relate to monitoring the acts to see how the law is being used. Their activity includes visiting people, undertaking investigations in line with the use of the acts, providing information and advice, and influencing and challenging. While the Mental Welfare Commission have not been considered within this Independent Review, it is important to highlight that their activity includes making local and national recommendations and expectations for improving services and practice and we would see this detail as important to coordinate with intelligence received through inspection and regulation activity undertaken by the Care Inspectorate and the Scottish Social Services Council.

## **8. Who should be responsible for making improvements to services?**

The current legislative context as outlined at the start of this document, through which inspection and scrutiny are taken forward, enables recommendations to be made for areas that require improvements through the quality themes it uses during inspection. This is an established expectation for those delivering services and

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<sup>8</sup> Duty of Candour (Scotland) Regulations 2018, <https://www.legislation.gov.uk/ssi/2018/57/made/data.pdf>

<sup>9</sup> Health (Tobacco, Nicotine etc and Care) Scotland Act 2016, <https://www.legislation.gov.uk/asp/2016/14/contents/enacted>

where inspection of practice is undertaken. The onus for making improvements based on recommendations made sits with the services who have been inspected. Notwithstanding, what is required to undertake improvement is that local authorities and other relevant bodies to have the resources and expertise to deliver on improvements to implementation, and that approaches are embedded in research and are demonstrably effective. In our experience and that of our members, this is no longer the case across local areas due to service cutbacks.

While improvement is an element of the Care Inspectorate's current remit, we would suggest more should be offered (in terms of investment and independent intermediary organisation support) to enable improvement at a local level. Given its national overview, the Care Inspectorate are well positioned to support the sharing of best practice and in identifying areas where learning in one area could be leveraged to assist in another. Social Work Scotland would support an improvement approach that embeds a learning culture in organisations, and one which appreciates the importance of space and time to create the enabling context through which best practice can be taken forward. We would suggest that the context in which services are inspected, and recommendations are made for improvements, takes a whole system approach, with consideration given to the workforce capacity to deliver on improvement recommendations, the remote and island context, etc..

## **9. How do we make sure regulatory bodies are doing a good job?**

The answer to this question depends on what job we give the regulatory bodies to do. And our view on whether the current regulatory bodies are doing a good job is, similarly, probably contingent on what we consider to be their role (with some likely variation among stakeholders on that).

Whatever the job(s) we ask regulators to do, however, we will really only know they are doing a good job if their primary users / customers say they are doing a good job. It is our contention that the most important perspectives in determining whether regulators (judged on their current portfolio of tasks) are doing a good job is the public, supported people and the workforces employed in the regulated / inspected services. Each uses and interacts with the regulators in different ways, and will be evaluating different aspects, but taken together the feedback of these groups should provide the basis of assessment. The inclusion of views from those using services, their families and carers, and those delivering services, in inspection activity is already established in the current methodology of inspection. Focus groups and visits to service users are among the ways this is realised. A platform is therefore in place to build a wider assessment of the regulatory landscape itself.

The perception, voiced by some of Social Work Scotland's members, that regulators are arms of government is perhaps something the Independent Review should

consider. This view holds that the function of these public bodies is to assist with delivering a political policy programme, rather than identifying and facilitating improvement in the services available to the people of Scotland. We have noted earlier our view that there is currently a gap in the regulator's output, in which in-depth, objective commentary is provided on the capacity of sectors to do the things law and standards require them to do. This gap perhaps exists because there is little appetite at national level for commentary which states that staff are overworked, under-resourced, and struggling under unrealistic expectations. But if staff are to feel that regulators are doing a good job, it is our view that regulators need to move more assiduously into this space, speaking up 'for' the people who use and deliver services, to Scottish Government and Parliament, as much as speaking 'to' the providers of those services.

Another gap that exists is theming up the feedback the Care Inspectorate receive on their scrutiny, inspection and regulation activity. A review of feedback, complaints, and compliments made to regulators such as the Care Inspectorate and the Scottish Social Services Council, with accompanying improvement activity being taken forward, would be of value in promoting public confidence in the work they take forward. This would benefit also from a collaboration with the Mental Welfare Commission to ensure learning is maximised through regulators across local areas.

#### **Theme 4 - How will we know systems are working**

##### **10. How can we ensure that people and their families who require care and support, have the information they need about how providers are performing to support their decisions about care and support?**

The current system in place, where inspection reports are held on the Care Inspectorate webpage, offer opportunity for people to review services against quality themes reviewed at inspection. Social workers, carer support agencies, and independent advocates, would all recommend that people look at these inspection reports ahead of making decisions regarding their care and support services. Making informed choices and understanding how that choice will give meaning and effect to an individual's desired outcome is a key principle within the Social Care (Self-Directed Support) (Scotland) Act 2013, section 1(3)(b)<sup>10</sup> and something social workers hold central to their work with individuals who may need support.

In addition to this duty in legislation, information should be made available in accessible formats and multiple languages, including BSL, as per the British Sign

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<sup>10</sup> Social Care (Self-Directed Support) (Scotland) Act 2013, section 1(3)(b), <https://www.legislation.gov.uk/asp/2013/1/section/1/enacted>

Language (Scotland) Act 2015, section 2(a)<sup>11</sup>, to ensure the functions undertaken by regulators are available to the public.

Given these current measures and routes to access information, it would be useful to understand if and where gaps exist for people in terms of accessing information to make informed choice to allow those with responsibilities in these areas to fully meet their duties.

## **11. What information might that be?**

The principles within the Social Care (Self-Directed Support) (Scotland) Act 2013 are clear that individuals should be provided with enough information to enable an informed choice. This could be details of the service provided, inspection activity and outcome, number of registered workers, engagement opportunities for those using services, and future plans for service development.

## **12. How we can make data collection and sharing better?**

A national workforce data capture that supports effective workforce planning to meet demand, and enables recruitment into the social work profession to support capacity to meet this demand, is essential. This is work that should be informed by the current data capture on workforce by the Scottish Social Services Council, and the Care Inspectorate on the registration of services. Annual reports are provided on each of these areas and will be a helpful basis from which future data indicators can be developed to support workforce planning. This information should be available to local areas developing and delivering services.

The proposal to develop a National Social Work Agency again presents opportunities to coordinate relevant data from these regulators, and to inform higher education institutes to ensure that sufficient workforce exist to meet the statutory duties that social workers undertake through legislation. In addition to the general duty to promote welfare undertaken on behalf of the local authority by social workers through section 12 of the Social Work (Scotland) Act 1968<sup>12</sup>, the duty to undertake functions through the Mental Health (Care and Treatment) (Act) 2003 and the Adults with Incapacity (Scotland) Act 2000, is designated to social workers, as Mental Health Officers, through section 32 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>13</sup>. Having the intelligence on the current workforce to predict the

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<sup>11</sup> British Sign Language (Scotland) Act 2015, section 2(a), October 2016, <https://www.legislation.gov.uk/asp/2015/11/section/2/enacted>

<sup>12</sup> Social Work (Scotland) Act 1968, section 12(1), <https://www.legislation.gov.uk/ukpga/1968/49/section/12>

<sup>13</sup> Appointment of Mental Health Officers, Mental Health (Care and Treatment) (Scotland) Act 2003, section 32, <https://www.legislation.gov.uk/asp/2003/13/section/32>

future capacity to meet these legislative duties would support quality experiences for those needing social services.

### **13. How do we make sure regulation, inspection and scrutiny supports good practice for people accessing care and support?**

Social Work Scotland would see this as a collaborative effort across regulators and with the National Social Work Agency, using the information gathered through scrutiny and inspection to highlight best practice and to promote joint working to achieve improvements alongside current research. The Mental Welfare Commissions should also contribute to the sharing of information to improve services and support for people with a mental disorder. As with their current role and remit, they have a duty to raise service concern to the Care Inspectorate<sup>14</sup>, and in future, could continue to provide such detail into the National Social Work Agency to support its Centre of Excellence for social workers.

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

If regulatory bodies can evidence that they are shifting the context towards one in which it is more possible (than the current context) to deliver good practice, then we will know they are making a positive contribution for those who work in relevant services. That includes taking swift, decisive action in circumstances where services and support are sub-standard.

Outwith specific, often tragic cases, it is difficult to draw direct lines of causation between an inspection / scrutiny and improvement. But we have rich evidence about what works to support good practice among those working in care and support. We would hope to see a direct line between this evidence and the commentary and recommendations of the inspectorate bodies.

Social Work Scotland support the development of a National Social Work Agency. We would value a professional organisation for the centralisation of research and improvement and other workforce considerations that worked in collaboration with regulators to draw in best practice and promote improvement across Scotland for all of social work practice.

A key area of concern for our members is the delay frequently occurring in processing Fitness to Practice cases, particularly those which arise as a consequence of a referral from a supported person or carer.

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<sup>14</sup> Duty to bring specific matters to the attention of Scottish Ministers and others, Mental Health (Care and Treatment) (Scotland) Act 2003, section 8, <https://www.legislation.gov.uk/asp/2003/13/part/2>

## **15. How do we make sure regulation, inspection and scrutiny supports good practice for providers delivering care and support?**

As noted in the previous answers, in respect to the delivery of social work services, we see a role for a National Social Work Agency, working collaboratively with regulators, to profile and support the implementation of good practice across the country (modified, as necessary, to take account of geographical, demographic, logistical, etc. differences). A National Social Work Agency could also provide a central point for detail on best practice and improvement, accessible to the local authorities, health and social care partnerships, and third and voluntary sector organisations who employ social work staff. .

## **Theme 5 - How will systems of inspection scrutiny and regulation support the workforce**

### **16. How do we ensure there is compliance and consistency with workforce registration requirements?**

Current legal requirement for both employers and employees around registration of the social work and social care workforce are captured within the Scottish Social Services Council register as per the Regulation of Care (Scotland) Act 2001<sup>15</sup> section 44. Further to this, a Code of Practice for Social Service Workers and Employers<sup>16</sup> must be upheld as part of continued registration. Adherence to the Code is an accepted part of registration by the professional social worker, and the commitment made to them, and the compliance and consistency with the legal requirement to register and the Code of Practice, should be an accepted fact of professional integrity.

An annual report is produced by the Council to illustrate the number and type of registered workers, and to assure public confidence, there is an accessible “check the register” tool on the Council website.

Social Work Scotland would deem these suitable and appropriate measures to ensure the compliance and consistency sought in relation to the registration of the social service workforce.

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

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<sup>15</sup> Regulation of Care (Scotland) Act 2001, Registration of social workers, section 44, <https://www.legislation.gov.uk/asp/2001/8/part/3/crossheading/registration/enacted>

<sup>16</sup> Codes of Practice for Social Service Workers and Employers, SSSC, 2016, <https://www.sssc.uk.com/knowledgebase/article/KA-02412/en-us>

Inspection and scrutiny activity involves those assessing for support, delivering support, and receiving support (including their family and carers). As legislation and frameworks exist to enable this inclusion already, Social Work Scotland suggest that few changes are needed to 'policy', with attention focused instead on 'implementation' of the existing frameworks; making real what regulators have already committed to doing. If this Independent Review can add value and improvement, it is in clearly articulating the practical barriers, in the current regime, that discourage or prevent workers from being able to contribute to the extent that (a) balanced, comprehensive scrutiny requires, and (b) they wish to. It is our assumption that simple but fundamental issues, such as lack of time, are a big barrier to staff engagement in regulatory processes; one part of the solution therefore being to ensure there are enough staff working in services that individuals feel they can take up such opportunities (e.g. contributing to inspection, etc.).

Improvement in current models could also be achieved through greater consideration of context, remote and island challenges, and workforce challenges. In recognising an areas ability to deliver services within its wider contextual lens (geography, workforce capacity, etc.), there will be opportunity to tailor opportunities for staff engagement more appropriately.

The national overview that the Care Inspectorate have of practice is invaluable to leverage across Scotland to support improved service delivery. The development of improvement teams (outwith the regulators) that work alongside local areas to address their unique needs, cogniscant of the workforce challenges they may be facing, would itself foster a different relationship between workers and the scrutiny / regulatory process, hopefully encouraging more engagement. If the likely outcome of their engagement with regulators is perceived to be meaningful support and assistance, the incentive to contribute increases.

For further detail on the content of this consultation response, please contact:

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