

Council, 3 December 2014

Suitability scheme for adult social care workers in England

Executive summary and recommendations

Introduction

In late 2012 we first published a policy statement on our proposals for the regulation of adult social care workers in England. This statement used the working terms 'negative registration' and 'negative register' to refer to our proposals for a scheme whereby those found unsuitable to work in adult social care could be prohibited from doing so.

The Chair and Chief Executive have held a number of meetings with stakeholders this year to discuss these proposals. Following feedback at those meetings, the policy statement has been revised to refer to our proposals as a 'suitability scheme' for adult social care workers in England. This term was considered by stakeholders to better reflect the nature of our proposals.

The revised policy statement is appended.

Decision

This paper is to note; no decision is required.

Background information

None

Resource implications

None

Financial implications

None

Appendices

- Proposal for regulating adult social workers in England (revised November 2014)

Date of paper

19 November 2014

Proposal for regulating adult social care workers in England

1. Introduction

- 1.1 The 2011 Command Paper 'Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers' committed that the Department of Health would explore the scope for the HCPC 'to establish a voluntary register of [adult] social care workers [in England] by 2013'.¹
- 1.2 This paper sets out a proposal for how adult social care workers in England might be regulated. This paper focuses on a proposed 'suitability scheme' ('the Scheme') for adult social care workers in England.² The Scheme includes a statutory code of conduct which would apply to adult social care workers in England.
- 1.3 This paper includes proposals for a statutory scheme to regulate this workforce. However, it does not propose 'full statutory regulation', which might afford a higher level of public protection for the vulnerable people who use the services of this workforce (see paragraph 3.3). The final decision about whether or how this workforce should be regulated rests with the Government.
- 1.4 This proposal has been developed to achieve the following broad objectives.
 - To improve public protection through a proportionate, targeted and cost-effective approach to regulation of this workforce.
 - To support the delivery of high quality services in the care sector and the responsibility of individuals and organisations for those services.
 - To complement other sector-led initiatives aimed at assuring and improving quality.
- 1.5 Appendix 1 to this paper sets out in outline the legislation required to implement the proposals summarised in this paper. Appendix 2 examines the financial implications. These appendices are available by clicking [here](#) and choosing 'enclosure 10'.

¹ Department of Health (2011). Enabling excellence: Autonomy and accountability for healthcare workers, social workers and social care workers.

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_124359

² The terms 'suitability scheme' and 'suitability register' has replaced the previous working titles of 'negative registration scheme' and 'negative register'. This has been informed by stakeholder feedback.

- 1.6 This proposal has been written in light of specific Government policy regarding the regulation of adult social care workers in England. However, the proposed model outlined may potentially be appropriate and scale-able to other parts of the workforce (e.g. to other parts of the social care workforce or to healthcare support workers).
- 1.7 If the Government considered that these proposals would meet its policy objectives, further work would be required.

2. Limitations of voluntary registration

- 2.1 Our preliminary view is that there are significant shortcomings in a voluntary register being held by a statutory regulator which have the potential to affect their effectiveness and their ability to command public confidence. They include the following.
- Although an employer might make registration a condition of employment, there would be no legal compulsion for an individual to be registered.
 - The regulator would be unable to demand information or compel witnesses as part of fitness to practise proceedings.
 - A registrant removed from a voluntary register owing to serious concerns about their conduct or competence could remain in practise.
 - There is potential for public confusion generally around the status of voluntary and statutory registers being held by the same organisation.
- 2.2 In addition, we consider that there would be considerable costs involved in establishing a voluntary register and paying for its operating costs until a critical mass of registrants had been achieved and the register reached a self-financing position. We have concluded that we would not be minded to establish a voluntary register for adult social care workers in England at this stage.

3. Adult social care workers in England

- 3.1 The adult social care workforce in England has been estimated as numbering 1.63m individuals, with the majority working within the independent sector. 888,000 were estimated as working in locations regulated by the Care Quality Commission (CQC). The number of jobs in adult social care in England is projected to grow by between 24 per cent and 82 per cent between 2010 and 2025.³

³ Skills for Care (2012). The size and structure of the adult social care sector and workforce in England, 2012.
www.skillsforcare.org.uk/research/research_reports/Size_and_structure_2012.aspx

- 3.2 This is a large, often low paid and transient workforce with significant numbers of part time workers. This poses challenges for the proportionality and cost effectiveness of any approach to regulation. The diversity of this workforce is such that it may not be feasible to regulate it in the same way as single professions which have limited and well defined routes of entry and scopes of practice.
- 3.3 We have concluded that ‘full statutory regulation’ for the whole of this workforce, in line with existing models, is unlikely to be viewed as a proportionate or cost-effective regulatory response. We have instead explored other options which, although not offering the same level of protection as full statutory regulation, would nonetheless improve public protection.

4. Suitability scheme

- 4.1 A suitability scheme for adult social care workers in England, incorporating a statutory code of conduct, is proposed as a model of regulation which would enable the regulator to effectively deal with the small minority of individuals who are unsuitable to work in adult social care, but without placing a disproportionate regulatory burden on the remainder of the workforce.
- 4.2 This model draws upon a similar scheme in place in New South Wales, Australia.⁴ Further detail about the provisions of legislation required to implement such a scheme is set out in appendix 1.

Rationale for proposed model

- 4.3 The typical model for statutory professional regulation in the UK requires every practitioner within a relevant profession to be registered and for the right to practice to be linked to continuing registration and compliance with additional obligations, such as undertaking continuing professional development. Each registrant must periodically renew their registration and pay an annual registration fee.
- 4.4 At the heart of that regulatory process are proficiency standards which the regulator is required to establish for the profession in question. The regulator derives those standards from the established body of knowledge of the relevant profession. These standards are normally met through a significant period of education and training which is quality assured by the regulator.
- 4.5 Similarly, the regulator must operate a fitness to practise process to investigate and adjudicate on complaints about the conduct or competence of registrants.
- 4.6 That model is entirely dependent upon there being an established body of professional knowledge and skills which can be embedded within those standards by the regulator.

⁴ New South Wales Health Care Complaints Commission
www.hccc.nsw.gov.au/

- 4.7 As a regulatory model, the proposed suitability scheme sits on a continuum of regulation between voluntary registration and full statutory regulation but is more targeted, less restrictive and less costly than the latter. It provides the regulator with the ability to remove those whose conduct makes them unsuitable to remain in the workforce, but without imposing an undue burden on the honest, ethical and competent majority. A scheme of this kind does not restrict entry to practice, but allows effective action to be taken against a person who fails to comply with proper standards of conduct.

Summary of proposed model

4.8 In summary, the model would work as follows.

- **A statutory code of conduct** would be set for adult social care workers in England, based upon core principles such as respect for patients, confidentiality, infection control, honesty and integrity and so on. This code could draw upon the code of conduct for healthcare support workers and adult social care workers in England developed by Skills for Health and Skills for Care.⁵
- There would be no requirement for adult social care workers in England to be registered but **a register would be maintained of those who had been found unfit to practise as an adult social care worker in England.**
- **Employers would be expected to resolve low level complaints**, with an emphasis on re-training and remediation.
- Those cases involving **more serious complaints**, particularly where service users were placed at risk, would be reported to the regulator for investigation and, if appropriate, adjudication.
- The adjudication process would enable those unfit to practise as adult social care workers in England to be **prevented from doing so by being made subject to a ‘prohibition order’**. Their names would then be entered into the suitability scheme register. Public warnings could also be issued.
- It would be a **criminal offence** to engage in adult social care in England whilst being included in the suitability scheme register.

Scope of the proposed scheme

4.9 Appendix 1 sets out the legislation required to implement the Scheme and this would affect the number of groups of adult social care workers in England brought within its remit. It would be possible to introduce the Scheme on an incremental basis.

⁵ www.skillsforhealth.org.uk/about-us/press-releases/training-standards-and-code-of-conduct/

- 4.10 In developing this model further, it might be necessary to consider how any regulatory arrangements can be introduced so that they include the personal assistant workforce. Stakeholders have raised concern with us about the growing numbers of these workers, who are employed directly by service users in receipt of personal budgets to provide personal care. The absence of an employer or a managed environment might lead to the conclusion that this is potentially a higher risk part of the workforce.

Benefits and costs

- 4.11 The following describes some of the potential benefits of the proposed scheme.
- This approach would be proportionate and targeted by putting in place a statutory code of conduct for all, whilst avoiding the cost and burden of seeking to register all adult social care workers in England.
 - There would be an effective mechanism for considering serious complaints and taking effective action to prevent continuing harm to service users.
 - The Scheme would support rather than replace the responsibility of employers for the quality of their services.
 - The Scheme would increase confidence in these workers, helping to assuage the concerns sometimes expressed by registered professionals about delegation to unregulated workers.
- 4.12 Preliminary estimates are that establishing a suitability scheme will involve a one-off cost of approximately £3m, with on-going operating costs of approximately £5-6m per annum. Appendix 2 provides further information about these projections.

Statutory regulation of CQC registered managers

- 5.1 All providers registered by the CQC must have a registered manager for each of the 'regulated activities' they carry out.⁶ Although some registered managers may be statutory regulated professionals, others will not. There are 24,610 registered managers for the CQC regulated activities which are most directly related to social care.⁷
- 5.2 The CQC registration requirements ensure that individuals have the qualifications and experience necessary to manage the regulated activities but they do not put in place a binding code of conduct and ethics. The recent Winterbourne View Hospital serious case review acknowledged this, referring to establishing registered managers as a profession with a regulatory body to enforce standards.⁸

⁶ www.cqc.org.uk/organisations-we-regulate/registering-first-time/regulated-activities

⁷ Source: CQC, December 2012. Figure quoted comprises of the number of registered managers in the following regulated activities: 'Accommodation for persons who require nursing or personal care' and 'Personal care'.

⁸ Margaret Flynn (2012). South Gloucestershire Safeguarding Adults Board. Winterbourne View Hospital: A serious case review

5.3 In addition to a suitability scheme for the remainder of the workforce, we are proposing that CQC registered managers in adult social care in England should be statutory regulated. This would put them on the same footing as other regulated professions.

5.4 The potential benefits of this approach are as follows.

- The pivotal role that these particular managers play in influencing the standards, culture and behaviour of their employees would be recognised.
- This approach would build-on the existing arrangements, increasing accountability by putting in place a binding and enforceable code of conduct and ethics.
- This approach would be proportionate and targeted by registering those individuals with direct responsibility for CQC regulated activities, rather than all those with a managerial or supervisory role.

6. Links to other arrangements

6.1 A suitability scheme for adult social workers in England and statutory regulation of CQC registered managers would complement the important roles of the Disclosure and Barring Service (DBS) and the CQC.

6.2 The Scheme would complement the role of the DBS in barring individuals from working with vulnerable children and/or vulnerable adults. There are some key differences between the schemes.

- The Scheme entails a statutory code of conduct which would apply to the whole of the adult social care workforce in England.
- The decision for the DBS is about whether or not to bar. Under the Scheme public warnings could also be given.
- The Scheme would be about considering whether someone should be allowed to work in adult social care in England. The threshold for barring operated by the DBS is much higher because it is about whether an individual should be prevented from working with vulnerable children and/or vulnerable adults.
- The Scheme would allow conduct issues relating to social care such as appropriate care; treating service users with dignity and respect; and breaches of confidentiality to be dealt with effectively.

- 6.3 We make referrals to the DBS as part of our existing remit where we consider they meet the referral criteria and to date only 36 per cent of our referrals have resulted in a barring decision being made.⁹ Cases where a decision not to bar has been reached have included serious cases involving sexual assault of patients and inappropriate sexual relationships with vulnerable service users. This illustrates the differences in thresholds which would be applied and the necessity for an approach which would ensure that effective action was taken in relation to those who are unsuitable to work in adult social care in England.
- 6.4 The Scheme, which would apply to individuals in the workforce, would complement the CQC's role in ensuring quality of service provision in a similar way to statutory regulation of individuals in existing models. With reference to the statutory regulation of CQC registered managers, it is envisaged that the regulator would set a code of conduct; consider applications for registration; undertake health and character checks at entry to the Register and at renewal; and investigate cases of poor conduct and practice. These arrangements would work alongside an important continuing role for the CQC in ensuring that an individual has the qualifications and experience to be appropriate as the registered manager for a particular service provider / facility and the regulated activity or activities they perform.

7. Stakeholder engagement

- 7.1 We have met with a number of different stakeholders to begin to discuss the issues in this area and our initial proposals and this has informed the content of this paper. These have included professional associations; voluntary sector organisations; public bodies; and employers / service providers.

8. Conclusions

- 8.1 This paper has outlined a proposal for a proportionate and targeted approach to regulating adult social care workers in England to enhance public protection. We consider that this regulatory model might be more effective than relying on purely voluntary or self-regulatory arrangements alone. It provides an important 'safety net' whilst building on other initiatives focused on assuring and improving quality in this sector.

⁹ Figure includes referrals made by the General Social Care Council (GSCC) prior to the transfer of the regulation of social workers in England to the HCPC. Figure correct as of November 2012.