

National Care Standards Review Public Consultation

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately



1. Name/Organisation

Organisation Name

Barnardo's Scotland & CHILDREN 1ST

Title Mr Ms Mrs Miss Dr Please tick as appropriate

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3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response,

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CHILDREN 1ST

For 130 years, as the RSSPCC and now as CHILDREN 1ST, we have campaigned for every child in Scotland to enjoy a better start in life and for no child to grow up in fear of abuse and violence. We will continue to be a strong public voice for vulnerable children and young people in Scotland, listening to them, to influence public policy and attitudes. Then, now and for another 130 years, as long as Scotland's children need us.

CHILDREN 1ST has 63 local services and five national services across Scotland, and we work closely with many local authorities as well as working in partnership with other organisations. All our services are child centred and the children, young people and families we support are key partners in all aspects of our work.

Barnardo's Scotland

Barnardo's Scotland is a national voluntary organisation providing over 122 services throughout Scotland, working in partnership with 30 out of 32 local authorities in Scotland. We provide a range of services to over 26,000 children and families across Scotland. Every Barnardo's project is different but each believes in the potential in every child and young person, no matter who they are, what they have done or what they have been through.

General remarks

We welcome the proposal for new Care Standards grounded in human rights. However, we are concerned about the complexity of the model currently proposed. It is not clear how the general standards would differ from the overarching standards. There is a danger that the proposed suite of specific standards would replicate the problems of the current system, and undermine the overreaching nature of the more general standards. It is not clear how any new standards would be firmly aligned to statutory outcomes frameworks, for example GIRFEC/SHANARRI.

Any new system must also be designed in partnership with, and based around the needs, of the people who use services, including children and young people. It is not clear how people who use services, including children and young people will be able to challenge services if they feel standards are not being met.

Question 1: Do you think that the new National Care Standards should be grounded in human rights?

Yes, the standards should be firmly embedded in human rights from the outset. A rights-based approach would ensure that the needs of those

using services are placed at the centre, that they are fully involved in decisions that affect them and that their voices are heard. It is essential that an understanding of wellbeing is also at the core of the standards. We welcome the approach to the review outlined in the consultation document and agree that a set of common core values, rooted in human rights, should form the basis of the standards. As part of this it is crucial that children and young people are directly involved in the design, development and delivery of the new standards.

However, we still have questions about how we will ensure these standards, and the rights based approach that underpins them, will be made a reality for children. How will children be supported to recognise and understand what kinds of behaviours and service design promotes rights?

It is also worth bearing in mind that the framework for children's rights (the UNCRC) is distinct from the universal framework of the ECHR, and this needs to be addressed in any discussion of rights-based approaches. The consultation document states that a rights-based approach to standards means "giving people greater opportunities to shape decisions". Any such participative approach must recognise the distinct needs and approaches required for work of this kind with children.

The rights principles that underpin the standards should also clearly link to outcomes so that they can facilitate outcome focused support planning and provision as well as outcome focused inspection processes; and be accompanied by strong guidance and specific examples that will address concerns about consistency of interpretation in inspection. These outcomes need to be firmly aligned to SHANARRI outcomes, which now have legal status under the Children And Young People (Scotland) Act 2014, and to the national outcomes for Health and Wellbeing which will cover children as well as adults (contrary to the statement on page 15 of the consultation document).

The SHANARRI wellbeing outcomes are themselves based on the UNCRC and a guide to the relationship between them can be found here <http://www.scotland.gov.uk/Resource/0041/00417256.pdf>.

We would also be interested to know, given the growing role of personalisation and personal budget holders in deciding on service delivery, how inspectors will ensure consistency of inspection and clarity on how adherence to the human rights principles will be identified and measured?

Finally, the PANEL principles in practice depend on the establishment of a relationship between the service user and the person providing support. Developing these kinds of relationships takes time, so there is a danger

without an underlying commitment to properly resource quality care and support, ensuring time can be spent developing relationships, little progress will be made in delivering rights respecting services.

Question 2 a: Do you agree that overarching quality standards should be developed for all health and social care in Scotland?

While in principle we support a set of overarching standards to cover both health and social care to ensure consistency, we are concerned that in practice our services face a growing proliferation of different standards and outcomes frameworks. It is important that we have clarity about how the three tiers of these standards, and other frameworks such as those for children's wellbeing, will relate to each other and which ones should take precedence or are most effective at supporting the best possible end result for service users. In particular, it is not always clear at the moment what the relationship between the current standards and the inspection regime should be, and this needs to be addressed going forward.

Therefore we believe any overarching standards need to be developed in consideration of the parallel development of shared health and wellbeing outcomes under the Public Bodies (Joint Working) (Scotland) Act 2014, the existing outcomes and indicators under GIRFEC (including SHANARRI) which have now been brought into law through the Children And Young People (Scotland) Act 2014, the SDS monitoring and evaluation outcomes framework, the Standards of Care for Dementia, and other related initiatives.

Where new standards are currently in the process of development, for example the Minimum Operating Requirements for Scottish Governing Bodies of Sport being reviewed by the CHILDREN 1ST's Safeguarding in Sport service, the National Care Standards should be written in conjunction with these in order to avoid unnecessary duplication.

We are also concerned that shared health and social care standards may be too strongly influenced by the medical model as a result of the very different targets and outcomes the NHS works toward, as compared to the national care standards that currently apply to social care.

Question 2 b: Do you agree that the overarching quality standards should set out essential requirements based on human rights?

We agree that this is appropriate, but it is not clear what would happen if these essential requirements were not being met. How will individuals, especially children and young people, address the failure of others to respect their rights? Equally, would personal budget holders under SDS be compelled to not choose services that were deemed not to meet essential requirements?

For children and young people any approach based on compliance with minimum rights standards must form part of wider children's rights and participation work.

Question 2 c: Do you agree that the current National Care Standards should be streamlined and a set of general standards developed that would sit below the overarching standards and apply to all services?

We agree that it would be a positive move to streamline the care standards, and that the standards should be based in human rights. It is essential that people using services are able to understand what care they are entitled to. We are, however, concerned that those using services could be confused by the difference between overarching standards, general standards and specific standards. There is a real danger that, in the pursuit of streamlining the system, too many tiers are created which could be confusing for those who use services.

For us, the most fundamental requirement of any new system has to be that make sense to the child or young person using the service. Great care has to be taken to make sure that any system of standards is transparent and accessible. There is a real danger that any structure that has been designed only by agencies will be designed around the needs of agencies, and therefore will not fulfil this basic requirement.

In addition, it is not clear how general standards, sitting below the overarching standards, will be able to accommodate and encourage the wide range of circumstances and personal aspirations, without ending up very similar to the overarching standards. Given the very specific needs and vulnerabilities of children in care settings, we would need to ensure that any general standards were compatible with the specific vulnerabilities and interests of both adults and children and young people.

Question 2 d: Do you think general standards should set out essential requirements and aspirational elements?

It is important that standards deliver certainty to those using services about the level of service they should expect and to clarify their expectations on the extent of what can be provided. Clearly, setting out both essential and desirable elements will be useful in this.

However, we do have some concerns about how this will work in practice without making aspirational elements seem like an 'optional extra'. There is also a tension between the regulator's enforcement and improvement roles. Improvement support requires the development of trust through building good relationships and 'getting alongside' the organisation looking to improve.

Question 2 e: Do you agree that a suite of specific standards are developed for particular aspects of care, circumstances or need?

Although we appreciate that it will be necessary to have specific standards, for specific circumstances there is a risk that we will end up with more sets of standards than we started with. The current 23 sets of standards are clearly not ideal and it would be a shame to spend time, money and resources on reviewing the system only to end up with a more cumbersome one.

It is important to reflect that our understanding was the original intention was to have common high-level standards for all services. The impact and importance of the overarching rights-based standards could be undermined if the actual focus of inspection and ass is always on the specific standards.

Many people use more than one service at any one time, and the example categories on page 14 of the consultation document include age related categories (children and young people) service user need based categories (people with learning difficulties) and service specific categories (infection control in community settings. If the aim of the review is to ensure people understand the care they are entitled to it would be best too avoid too many separate, unconnected types of service standards being devolved, both to ensure that the overarching standards are recognised as the most important standards, and to avoid a very confusing picture from a service user point of view.

In any suite of specific standards it is important to ensure the needs of any children and young people are considered throughout all the standards, not just the set of standards that are specifically about children and young people. If suites of specific standards are developed, it will be important to illustrate these in a way that avoids being overly prescriptive. We do not want to create an inflexible regime that risks limiting innovation.

It is also important to highlight our experience of the current regime including the problems of registration categories which make it very difficult to fit support services into the system. There is often no consistent application of care standards in the inspection regime. Inspection reports may make reference to a care standard in a recommendation, but this may be the only reference to the standards in an entire report. Having the inspection bodies actively use the new standards would be welcome in terms of helping to foster a greater consistency in inspections. It would certainly compel care providers to seek to observe and meet standards.

Question 3 a: What are your views on how standards should be written?

Standards should be written and designed around the needs of the user of the service, in order to fulfil the intention to ground the standards in rights. Therefore all standards should be written as simply as possible so everyone can understand them. This means using simple language laid out in an accessible way, for example with greater use of bullet points and everyday language. The use of photographs, pictures and symbols to accompany each section and help show what each section deals with could also greatly enhance the accessibility of the standards.

Thought should also be given to format. As well as leaflet form, the standards need to be produced in other formats such as online, mobile app, video or audio.

Standards should also be supported by a robust and measurable indicator set. This is important because you can't often 'see' or evidence a social care outcome directly - indicators make outcomes visible and measurable and give a basis for measuring impact. The set of indicators should be developed collaboratively with providers and users, and include examples of practice to illustrate each indicator

Question 3b: What are your views on the example of how the rights and entitlements of people using services and the responsibilities of service providers could be set out?

We welcome the approach of setting out rights and responsibilities alongside each other. The language used in the current examples is, however, too complex.

The statement sitting above the example, that 'rights, entitlements and responsibilities will take into account the capacity, age and legal status of children and adults using services', is confusing. If these are overarching standards based in human rights, they should be available to everyone equally.

Question 4 a: Do you think the Care Inspectorate and Healthcare Improvement Scotland should hold services they regulate to account for meeting the proposed overarching standards, the general standards and the suite of specific standards?

While services should be held accountable for meeting the standards, CI and HIS should also hold accountable the commissioning process, alongside services.

It is also difficult, however, to see how it would be possible to hold services to account for complying with overarching standards as these are unlikely to involve tangible, measurable outcomes.

Question 4 b: How should we ensure that services not regulated by the Care Inspectorate and Health Improvement Scotland comply with the new standards?

Self-directed Support (SDS), where people who use service can take a greater degree of control of the budget for their support may bring in increased use of unregulated services as part of someone's wider support package. An example of this might be a person purchasing a gym membership to help them increase their mobility. It is not clear how the Care Inspectorate and Health Improvement Scotland could compel personalised budget holders, or facilitated budget holders under option 2 of SDS to comply with the new standards.

Question 4 c: We suggest that the Care Inspectorate and Healthcare Improvement Scotland, consulting with others, should develop the suite of specific standards. Do you agree with this?

We have reservations about the care standards being developed and drafted by the same bodies whose job it is to inspect against them. We think that the principle on which the Regulation of Care Act 2001 National Care Standards were based is a sound one, i.e. that it is the Scottish Ministers who prepare and issue the standards. This ensures a clear line of political responsibility for the standards and a clear separation between the government and the independent administrative body responsible for upholding the standards.

However, whoever is leading on the development of the standards and the suite of specific guidance, in order to ensure that the rights-based approach is followed, the process for development of the specific standards must be based on co-produced principles: including providers, supported people, their representatives, carers and other regulators, rather than a process whereby one body develops a draft set of standards and then 'consults' on them.

Question 5 a: Please tell us about any potential impacts, either positive or negative, you feel any of the proposals set out in this consultation paper may have on particular groups of people, with reference to the 'protected characteristics' listed above.

While we welcome the proposal for new Care Standards grounded in rights, and recognise the potential benefits they could bring, as set out the rest of this response, the ability of the new standards to deliver on

this potential benefit for children and young people will depend on the way they are designed and implemented.

Question 5 b: Please tell us about any potential costs or savings that may occur as a result of the proposals set out in this consultation paper and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

There will be costs associated with training staff about the new care standards and implications for inspection. The application of standards across services not regulated by CI nor HIS must take into account the way other regulators are involved such as Education Scotland.

Question 6: Please tell us if there is anything else you wish us to consider in the review of the National Care Standards that is not covered elsewhere in the consultation paper.

The National Care Standards need to be much more closely linked with the registration process for Social Work and Social Care staff. At present the link between the National Care Standards and the requirements for worker registration managed by the Scottish Social Services Council is unclear and confusing at best. This is an opportunity to much more clearly link worker qualifications and competencies to the National Care Standards. This would enable the creation of a simpler approach which would support greater workforce flexibility, promote innovation in the social care sector and provide the flexibility required to support the effective implementation of SDS.

How to respond

We are inviting responses to this consultation paper by 17th September 2014. Please send your response with the completed Respondent Information Form to nationalcarestandardsreview@scotland.gsi.gov.uk

or to:

Carly Nimmo
Mental Health and Protection of Rights Division
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We would be grateful if you would **use the consultation questionnaire provided in the consultation document or clearly indicate in your response which questions or parts of the consultation paper you are responding to** as this will aid analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Alternative formats and languages

If you require a copy of this paper in an alternative format or different language please contact us at the address above.

Next steps in the process

If you tell us we can make your response public we will put it in the Scottish Government Library and on the Scottish Government consultation web pages. We will check all responses where agreement to publish has been given for any wording that might be harmful to others before putting them in the library or on the website. If you would like to see the responses please contact the Scottish Government Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision about how to proceed with the review of National Care Standards. We will issue a report on this consultation process which will be published on the Scottish Government's website at:

<http://www.scotland.gov.uk/Publications/Recent>

Further consultation on the detailed content of the new standards will take place during 2014-15.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

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