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

Joint response on behalf of Care Inspectorate and Healthcare Improvement Scotland

Title **Mr** ☐ **Ms** ☐ **Mrs** ☐ **Miss** ☐ **Dr** ☐ **Please tick as appropriate**

Surname

Forename

2. Postal Address

Postcode	**Phone**	**Email**

3. Permissions - I am responding as…

Individual	/	**Group/Organisation**
☐	***Please tick as appropriate***	*x*

(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, ☐
name and address all

(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**

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**

CONSULTATION QUESTIONS

Question 1

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

We strongly agree that the National Care Standards (NCS) must be grounded in human rights. The Human Rights convention rights and equalities legislation[1] all support this approach and through our own work, especially on children using services and older people we know that significant number of upheld complaints (between two thirds and three quarters of those investigated) is an indication that people's right to safe, high quality, compassionate care is breached on too many occasions. We also know this from reports published about serious failures in services elsewhere[2].

Grounding the NCS more explicitly using a human rights based approach would ensure that there is common understanding of these rights and entitlements by people using services, their carers, regulators, providers and commissioners.

We think however there is not a wide spread understanding of a human rights based approach and there is confusion as to how this links with the Convention of Human Rights. We suggest that it is made clear that it is not intended to replicate/restate the Convention but to contextualising these fundamental rights in relation to health, support and care services.

Our current approach to scrutiny and regulation is rooted in a human rights based approach (the principles underpinning the current standards are essentially human rights) and we see this further emphasis in human rights as an opportunity to improve and strengthen our approach.

We suggest there is a need for additional training and support to ensure that people using services, staff working in services, providers, regulators and commissioners are involved in the development and later implementation of the new NCS and have a shared understanding, knowledge and language.

Question 2

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

In line with the integration agenda we believe that this is a positive proposal. However there needs to be greater clarity as to what is meant by 'all' and the scope of services that this is intended to cover. There are a wide number of regulated

[1] The European Convention on Human Rights; The Human Rights Act 1998, The Scotland Act 1998

[2] Mid Staffordshire NHS Foundation Trust Public Inquiry (February 2013); Serious Case Review: Winterbourne View Hospital (August 2012)

health and social services this would apply to, as well as those that are currently not regulated. This links to question 4b below.

In addition any development needs to consider existing frameworks (for example, the Health Care Principles set out in the Patient Rights (Scotland) Act 2011, Getting it Right for Every Child and other principles established in the Children and Young People (Scotland) Act 2014 (which enshrines the United Nations Commission for the Rights of Children), HEAT performance targets and the 2020 Vision: 12 priority areas for action), new National Outcomes arising from the Public Bodies (Joint Working) (Scotland) Act 2014, the principles of self-directed support, and how the overarching quality standards being proposed will align/interface with these. This alignment is essential for people using services, providing them and regulating them. The development needs to be future proofed to allow for developments in existing frameworks and new frameworks.

We also feel that the use of the term 'overarching standards' needs to be reconsidered. Are these a high level framework in which other frameworks sit within or are they specific standards, principles or rights? This will have an impact on expectations in terms of measuring performance and also links to question 4a below.

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

In principle we agree that the overarching standards should be rooted in human rights, and we agree that these should apply to health and social care; however, we recognise that mapping standards across different service types, while ensuring that they remain relevant and meaningful to all, will be challenging.

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?

Generally we welcome this proposal on the basis that this would provide clarity and consistency on what people can expect from services, however it would be important to have a tight focus and limit the number of core standards in order that they are not unwieldy whilst ensuring they remain meaningful and not too simplistic or too prescriptive

d. Do you think general standards should set out essential requirements and aspirational elements?

This is a challenging area. Standards should set out peoples' entitlements and expectations; they should also set out the minimum care they must have. Our consultation highlighted the tension between the aspirational approach favoured by people using services and the provider's need to know the essential requirements and one way to address this may be set out both. It is also important to be clear that standards are in addition to statutory responsibilities – rather than instead of.

We agree that the standards should promote continuous improvement in services. We are already using other mechanisms through our scrutiny and regulation that are influencing improvements, such as grading and the use of maturity matrices.

It would also be feasible to include under a general standard (for example management / leadership) that providers will be required to evidence a commitment to exceeding the 'essential' standards and continual improvement. In our responses to the Public Bodies (Joint Working) (Scotland) Act draft regulations, we propose that Integration Authority performance reports refer to scrutiny and improvement activity to support continuous improvement in relation to National health and wellbeing outcomes.

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

We currently do have, use or take into account specific standards as part of our scrutiny activities, for example dementia care standards, coronary heart disease, anaesthesia[3]. However these, unlike the NCS, are not always written for people using services.

The current NCS attempts through 23 sets to address not only the care service types as defined in legislation, but break this down to further service types. This has created a confused use of NCS with certain service types having more than one set of standards applying to them and in at least one case (Secure care accommodation) no standards published at all. We need to be careful not to replicate this position.

Our inspection evidence demonstrates the importance of clarity for staff about the standards they are expected to work to. Clarity of expectations supports staff in their work and is particularly helpful in supporting joint work where staff from different traditions and disciplines need to collaborate in meeting the needs of people who are using services. The challenge is to provide staff with clear standards while building a culture which places greater importance on the experience and outcomes of people who use services. This means it is not sufficient for staff to demonstrate simple compliance with standards without understanding and having due regard to the impact of services on people and the difference those services are making to their lives.

Therefore we perhaps need to look at the purpose and audience of these specific standards and the number required particularly for people with multiple conditions/needs. Feedback from the consultation on Healthcare Improvement Scotland's strategy, 'Driving Improvement', highlighted the growing need for the evidence base to address comorbidity, with the Academy of Medical Royal Colleges and Faculties in Scotland noting that 'the evidence/guideline process currently follows a strict disease based model, which fragments a patient's problems into a list of diseases rather than looking at common clinical scenarios such as older people in acute care'.

[3] Scottish Government Standards of Care for Dementia in Scotland (June 2011); Healthcare Improvement Scotland Heart Disease Standards (April 2010) and Anaesthesia Standards (July 2003)

We see standards as being an important improvement tool and we suggest that the Scottish Government considers which standards should focus on people using services (and their carers) and which are required to be followed by providers of services. For example the Care Inspectorate findings from joint inspections of services for children and young people support the usefulness of widespread adoption of the GIRFEC wellbeing indicators as a vehicle for focussing attention on outcomes for children and we would support the adoption of a similar set of wellbeing indicators for adults and older people. We would suggest that the development of service standards should complement the development of wellbeing indicators.

Question 3

a. What are your views on how standards should be written?

We recognise that the current (NCS) standards are written from the perspective of service users and that this is important. This should be developed further to ensure that they are evidence based, outcomes focused and available in various formats to ensure accessibility to all stakeholders. However as noted in the previous answer, we know from experience that some standards need to be explicitly aimed at those using services and others at those providing them.

b. 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 agree that the rights, responsibilities and entitlements of people providing and using services should be set out and widely available. The 'you said, we did' approach is being used in more services and the example provided is in keeping with this. However the example and its use of PANEL (Participation; Accountability; Non-discrimination and Equality; Empowerment; and Legality) as main headings could be simplified to make it more accessible. The PANEL approach could still be used but not necessarily in that structure / format.

We are aware of other means of stating the principles / rights, for example: in Scotland we have legislation which underpins the Charter of Patient Rights and Responsibilities[4]; in New Zealand[5] there is a Code of Rights for patients; and in NHS England and Wales a shared vision for nursing, midwifery and care staff has been established focusing on care, compassion, competence, communication, courage and commitment[6]

We also believe that the principles that underpin the current NCS are still relevant and appropriate and are essentially human rights. All Care Inspectorate requirements and recommendations are cross referenced to the NCS and refer to the key principles of dignity, privacy, choice and safety. The Public Sector Reform

[4] The Patients Rights (Scotland) Act 2011
[5] The Code of Health and Disability Services Consumers' Rights (updated 2009)
[6] NHS Commissioning Board for England, 'Compassion in Practice' (December 2012)

(Scotland) Act 2010 also sets out principles which are reflective of the NCS principles.

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?

We agree that it is essential that we, as scrutiny bodies have the responsibility/role of inspecting services and reporting on our findings; this applies to all the 3 tiers proposed. However, despite new legislation there are still differences in accountability models: NHS Boards are directly managed by Scottish Government; social care providers and independent health care services have more diverse accountability frameworks, with roles played, variously, by local authorities, commissioners, shareholders and trustees. There are challenges to explore, such as, the evidence base available/required for scrutinising whether rights are being upheld and how to hold services to account if the standards are not embedded in legislation.

The current NCS are now dated, and form only one part of our current scrutiny and improvement processes. We believe that new rights-based standards can help describe more clearly what quality, person-centred provision looks like and mean that they will again occupy a more central role during scrutiny. This was confirmed during consultation with our staff. Both organisations are reviewing their inspection methodology and we aim to align this with the development of the new NCS.

We also recognise that while we are the primary scrutiny agencies other bodies and mechanisms have an important role in holding providers to account for meeting the standards, such as health and social care partnerships, NHS Boards and Local Authorities through their commissioning and procurement functions. These bodies must also develop improvement/action plans to support delivery of quality services. In addition, under the Public Bodies (Joint Working) Act, Integration Authorities are required to produce annual performance reports against key indicators in relation to the national health and wellbeing outcomes.

The Public Services Reform (Scotland) Act 2010 and associated regulations sets out the responsibilities of registered care services. Where these responsibilities are breached the Care Inspectorate can take action, including formal enforcement, to ensure compliance. The NCS are used as a reference point in such circumstances. It is important that the proposed NCS themselves are not in themselves a vehicle to formal enforcement action.

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

We think it is important to clarify the scope of services that could currently or should be expected to adhere to the standards, whether this is simply the over arching principles/rights or all of the 3 tiers proposed. A risk based and proportionate approach needs to be taken to this. (see also question 2a).

We are aware that the Scottish Government is currently considering the scope of the regulation of independent healthcare services. We are taking this into account in terms of the joint strategic inspections of health and social care.

Local Authorities and the NHS, as part of their commissioning duties could expect providers of unregulated services, such as advocacy and SDS support services, to meet the standards as part of their contract and contract monitoring. However it would be important to test the effectiveness of such an approach, which could possibly be considered as part of our joint inspections of community planning partnerships.

Other options include a national framework for evaluation or voluntary codes of good practice.

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 would echo our response above (Q2), where we suggest that the purpose and key audience of the specific standards needs greater clarity. Are these, as the current NCS and some of the healthcare standards are, designed to inform people of their rights and entitlements where they have a unique need or medical condition or are these more for providers to ensure they follow up to date good practice? The detail and content would vary depending on the intended audience.

We agree that as scrutiny and improvement bodies we are well placed to develop, measure, review and update standards in accordance with changing legislation, research and good practice. We would also want to state our commitment to doing this is conjunction with people who use services, providers and other professionals/experts in current practice in a co-produced way.

We would also anticipate participating in the development of the overarching principles/rights and the core standards.

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.

Overall we agree the development of standards using a human rights based approach, in conjunction with a comprehensive on-going promotion campaign to inform people using services of their rights and entitlements, can only enhance the quality of peoples experience of using services and their personal outcomes.

The emphasis on non-discrimination within the PANEL approach supports those and protects the rights of all people including those with 'protected characteristics'.

It is suggested that when developing the new standards a greater emphasis is placed on equalities and an explanation of the equalities legislation.

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.

We have already identified that there will be a need to develop a shared understanding of human rights between providers, service staff, people using services, and the scrutiny partners, perhaps building on the Scottish Human Rights Commission 'Care about rights?' work. This may have cost implications and we can build on existing work on Equality and Diversity and Person-Centred approaches.

Aligning the inspection methodology with the new standards is being built into our current financial and work programme planning. There may be resource implications for providers in order that they can ensure their own quality assurance and evidence gathering systems reflect the emphasis on human rights. However setting up QA systems to mirror the National Care Standards will also fit with the new scrutiny methodologies being developed and the provider's self evaluation will also mirror any future scrutiny regime. Further we will sequence the development of our new methodology to link to the new NCS and will share our "inspection toolbox" with providers so there can be a golden thread between the NCS, what the provider does in terms of QA and what we do on inspection.

It is also important to note that staffing levels and allocation of time for care can result in poor practice and breaches in human rights. We have identified cases where services do not provide sufficiently person-centred care, and financial pressures, whether rightly or wrongly, are sometimes suggested as a reason. In order to ensure high standards of care in Scotland, wider issues such as the commissioning and procurement of services need to be considered.

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.

We have taken the opportunity to submit a joint response to this consultation as we believe it is essential we work together on future standards development and

implementation of the NCS approach. We welcome the proposal for standards to apply to health and social care services and the opportunity for greater collaborative working across the scrutiny bodies. As regulatory and scrutiny bodies, a number of organisations are asking us about the potential impact of the NCS review. An early indication of the timetable of key milestones would be welcomed.

Currently the NCS do not align with the legal definitions of care services categories and this can be problematic when registering services and regulating them. (Specifically offender accommodation, school care accommodation, secure care, respite care for children, support services and care at home). The use of core and specialist standards based on particular aspects of care rather than service types may minimise this current issue, but a smaller, more technical review of care services registration categories in conjunction with the current review would be apposite.

We suggest that a phased introduction of the standards would allow for providers to become familiar with what is expected from them and for them to develop their systems to evidence their practice and the outcomes for people using services.

We would support the development of specialist standards for commissioning and procurement using a human rights based approach and would like to see these used in the scrutiny of community care partnerships and local authorities.

The use of the term ‘National Care Standards’ should be reviewed, to ensure it reflects not only the integration of health and social care but also that some registered services may not consider themselves as providers of care (e.g. housing support services).

Clarity will be required about the relationship between the new standards and nascent changes to community justice structures in Scotland, including the scrutiny and improvement mechanisms to support them.

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
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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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