

REPORT

To: SOCIAL WORK COMMITTEE		Subject: REGISTRATION OF RESIDENTIAL ESTABLISHMENTS FOR ADULTS AND CHILDREN - DRAFT SCOTTISH OFFICE GUIDANCE
From: DIRECTOR OF ADMINISTRATION		
Date: 7 August 1997	Ref: CA/SW/26/1 LD/KM	

The Social Work Committee, at its meeting on 10 June 1997, gave consideration to a report dated June 1997 by the Director of Social Work (1) summarising and commenting on draft guidance from the Scottish Office relating to the registration of residential establishments for adults and children, taking account of recommendations of the National Working Group which had been set up to examine registration procedures, and (2) advising that, in addition to comments on the Draft Guidance, the Scottish Office had also invited specific comments on the Working Group's recommendations (a) that a National Consultative Committee, comprising representatives of local authorities, providers and users, be set up with the primary task of devising and promoting nationally recommended guidelines and quality of care standards, and (b) that a National List be formulated comprising details of people who had been refused registration or had registration cancelled.

The Committee noted the publication of the draft guidance from the Scottish Office and agreed that the Director of Social Work should, in consultation with the Chief Executive, prepare a detailed response thereon for submission to the Scottish Office within the timescale for consultation.

The response to the Scottish Office on the draft guidance and on the recommendations of the National Working Group is set out in the Appendix to this report.

Recommendation

The Committee is asked to endorse the response set out in the Appendix to this report as the Council's formal response to the draft guidance relating to the registration of residential establishments for adults and children.


Director of Administration

DRAFT CIRCULAR: Community Care: Registration of Residential Establishments for Adults and Children.

COMMENTS OF NORTH LANARKSHIRE COUNCIL

Introduction:

The following comments reflect the views of North Lanarkshire Council on the above draft circular and its accompanying letters. The first letter seeks comment on proposals to establish a working group to devise national standards and to devise a national listing of those persons refused registration or who have had registration cancelled; the second sets out the context of the draft and forecasts further changes proposed arising from future legislative change.

Establishment of group to develop national standards:

This proposal is broadly to be supported but should be subject to more detailed consultation in its own right. The remit, membership and lifespan would require close scrutiny, in particular an overly bureaucratic structure should be avoided. The remit of such a group would need to consider standards across all settings, including those for jointly registered establishments.

Extensive standards material is available for such a group to draw on, most recently the Residential Forum's document "Creating a Home from Home". The proliferation of standards material available would indicate that timescales for such a group to operate within need not be lengthy. Published standards in relation to staffing levels, qualification targets and fitness criteria would be particularly relevant on a national basis, but only if commensurate with resourcing to achieve these.

The setting of national standards is welcomed within a context where local authorities retain discretion to develop these further at a local level.

Establishment of a National Register of those whom registration has been refused or cancelled:

This proposal is broadly supported. It is suggested that: any such register should include information UK wide and link to the existing system covering England and Wales; distinctions must be made in listings to differentiate between those cancelled because of mistreatment of clients, from those where cancellation has arisen from viability issues or unsuitability at a particular time. In the context of Lord Cullen's recent findings and with the likelihood of increased scope for regulation, such a register must also link to those already in existence for other professions, such as the nursing, medical, teaching and legal professions to help ensure the integrity of those applying for registration.

General Comments

This sets out three themes: a) the Glenglova background; (b) the forecast that local authorities will at some point in the future be subject to registration and that meantime application of registration standards to their own establishments should be introduced, and; c) increased links to be established with health boards in establishing shared standards and working arrangements.

This Council would wish to comment on these areas as follows:

- a) Despite the concerns raised as a result of Glenglova, the guidance continues to weigh heavily in favour of applicants rather than residents where enforcement or cancellation of registration is under consideration. It would be improved by an unequivocal statement that at all times the over-riding concern ought to be the protection and care of vulnerable residents.

Timescales and conduct of Hearings are not prescribed and relevance of evidence beyond the point of issuing notice of intention to cancel remain unclear. In this area, where appeals are liable to arise, a clearer definition of the legal processes involved is essential if enforcement is to be effective and drift in timescales avoided.

- b) The desirability of applying registrable standards to local authority services is acknowledged, but the guidance takes no account of the resource issues, arising from this. In North Lanarkshire, on the basis of past inspection reports both capital and revenue implications would arise.

The thrust of the draft points to future expansion of the regulatory and inspection functions. The development of joint units with Health Boards would have less relevance in an expanding registration field which would include domiciliary care, supported accommodation and childcare. This area requires urgent detailed consultation in its own right.

- c) Co-ordinated action in relation to registration, regulation and inspection of nursing homes and residential homes should be a first priority. The separate systems within which local authorities and Health Boards currently operate is unhelpful, and may be perpetuated by the different processes and timescales for review being applied by respective Scottish Office Departments.

The draft guidance offers little in progressing the scope for joint registration work, particularly in the elderly care field, beyond that produced some 8 years previously, nor takes account of the different levels of resource allocated to the registration and inspection processes by Health Boards and the local authority respectively, which serves to impede such arrangements. Comments at (b) above illustrate a major impediment to joint units.

Detailed Comments

Definition of a registrable establishment:

The guidance does not build on definitions previously available and as those borderline services which are the subject of the registered/unregistered debate are primarily providing support, the guidance advocates an expansion of registrable services.

Implications for local authority funding arrangements for future expansion of registered services, which otherwise would have substantively been met through housing benefits, is not addressed within the scope of the draft, but has significant funding implications. Specific amendments are as follows:

Paragraph 1

Replace final paragraph with

There are four tests that should be applied:

is the establishment exempt from registration as specified in the 1968 Act and associated legislation and guidance?

is the accommodation an establishment providing either personal care or support for the purposes of the 1968 Act?

is the provision of accommodation and care interdependent in such a way as to constitute an establishment?

is the provision of personal care or support a substantial part of its function?"

Supported Accommodation

In its current form, the guidance as it relates to supported accommodation would present registering authorities with serious difficulties of interpretation and implementation.

This Council believes that there is a need to provide greater safeguards for people receiving personal care and support in their own homes, and welcomes the intention to bring forward legislation to regulate standards in domiciliary care. As an interim measure, the Council would welcome the early introduction of a voluntary code of practice and/or voluntary registration of home care, and also the production of good practice guidelines in this area.

Blurring of the distinction between an establishment which is registrable and care provided in someone's own home would have far reaching implications and would rapidly prove to be unworkable. The legal and practical implications of treating an individual's own home as an establishment would prove insurmountable. Registration conditions could not be enforced without the consent and active co-operation of the individual owner or tenant, and other members of his or her household.

It would be helpful if the guidance were to acknowledge the positive nature of the growth in intensive home care, floating support, and supported living arrangements. These relatively recent developments offer people the opportunity to enjoy in their own homes individually tailored packages of care, providing greater flexibility and choice whilst ensuring that care is responsive to assessed and changing needs. They also reinforce the principle of normalisation by giving the person the same housing and benefit rights as other members of the community.

The frequency or intensity of care received may therefore not in itself be the critical factor. Intensive home care schemes and supported living initiatives in various parts of the country have been successful in demonstrating that care within people's own homes can be provided to individuals with very high support needs, up to and including offering in some instances an alternative to NHS continuing care. At this level, the care received will be far more intensive than programmes of care provided within some registrable establishments.

The draft guidance uses as a benchmark the total number of hours care or support received. On its own, this is a flawed and potentially misleading indicator.

It is therefore suggested that in arriving at a judgement as to whether supported accommodation constitutes a registrable establishment for the purposes of the 1968 Act, authorities should take into account a number of factors which include:

whether occupants are free to reside in the accommodation as their own home, and to make their own individual choices regarding living arrangements and care

whether a high degree of communal living, such as shared living and dining arrangements, is required or optional

whether shared care arrangements from a single care provider are a prerequisite of residence or

whether the individual has the option of personal care arrangements with a care provider selected to meet that person's assessed needs in terms of the nature and quantity of care provided.

Where the arrangement is the provision of services in someone's home, and pending the formal regulation of home care, it would be appropriate for the guidance to remind authorities of their responsibility to ensure that appropriate safeguards are put in place to ensure the protection of vulnerable individuals receiving care. Protective mechanisms would include Scottish Homes' regulatory framework, planning and building control, tenancy agreements, regular monitoring and review of care received, seeking regular feedback from people receiving care and their carers, and contract compliance.

Arrangements where the accommodation and care are independent of one another are likely to constitute the provision of services to someone in their own home rather than a registrable establishment.

Specific amendments to the draft guidance are suggested as follows. In addition, paragraphs 26, 27, 51 and 52 also require consequent amendment.

Paragraph 7

amend last two sentences to read

"There are several types of supported accommodation offering varying levels of care and/or housing support as well as special design features in some instances. This can result in uncertainty in the provider as to whether there is a need to register. It is therefore important that supported accommodation which is registrable be more clearly defined."

Paragraph 8

Amend opening to begin

"One definition of Supported Accommodation in common usage is".

and

Delete final section from "This definition is based on 3 principles".

Paragraph 9, Paragraph 10 and Paragraph 11

Delete and replace with;

Authorities must first address the question of whether accommodation is an establishment providing personal care or support for the purposes of the 1968 Act, or whether the accommodation provides individuals with their own homes, within which they receive individual packages of care. Authorities should ensure that this initial judgement is made with care.

The frequency or intensity of care provided may not in itself be a deciding factor in determining whether the accommodation is an individual's own home or an establishment for the purposes of the Act.

Authorities should therefore give careful consideration to the following factors:

Whether housing and support (in the form of a planned programme of care) are interdependent or whether they are capable of operating separately.

If the tenant or resident has the right to continue to occupy the house without a particular type of support or care provider as a prerequisite, this would indicate the accommodation is the person's own home, rather than an establishment.

A high level of sharing of communal facilities, such as living and dining arrangements may be seen as indicative of an establishment. Where individuals have the choice and facilities to live as separate households, and have their own tenancy and associated housing rights, they may be viewed as living in their own home even if they opt to use any communal facilities provided.

It will also be appropriate to take into account the nature of the care arrangements. Care as part of a group without the option of withdrawing or changing the care arrangement or provider may be viewed as an indication that it may be an establishment for the purposes of the Act.

This guidance will apply where authorities are satisfied on the basis of the indicators above that the accommodation is an establishment providing personal care or support for the purposes of the 1968 Act. It is however important to ensure that measures for safeguarding vulnerable people do not unnecessarily obviate the promotion of ordinary living arrangements. The discretion to apply guidelines with sensitivity to take account of the needs of users and promote a homely environment already exists.

Where an Authority is satisfied that the accommodation provides one or more individuals with their own home, which they occupy as separate households whilst receiving individually designed and deliver package of care, there is no establishment to register."

Paragraph 12

Delete and replace with

"There is some evidence that in order to enable residents to qualify for non residential DSS benefits or housing benefit, some organisations try to keep their residents classed as tenants whilst in effect operating an establishment which is not registered. The registering authority shall be alert to this possibility and in these circumstances consideration should be given to registration. Financial pressures should not supersede legislative requirements that are in place to protect the well-being of vulnerable people. Differences in the benefits systems as it applies to registered and non registered services must not be a deciding factor in the decision by the authority as to whether these services constitute a registrable establishment within the Act."

Paragraph 14

delete and replace with

"In the longer term, such arrangements will be covered by the regulation of domiciliary care. Pending such legislative change, authorities are reminded of their responsibilities and obligations to ensure high standards of care through regular monitoring and evaluation systems, including:-

- Contract compliance;
- Care management and individual review;
- Service review arrangements;
- Complaints procedures;
- Independent advocacy;
- Mechanisms for measuring individual service user satisfaction.

The development of a voluntary code of practice for voluntary registration of domiciliary care providers as an interim measure to safeguard the welfare of vulnerable service users should be considered."

Pre Registration**Paragraph 15**

The inference that pre registration work should be seen as more than an administrative exercise is supported.

Paragraph 16

Fees payable take no account of the extensive work undertaken pre-registration which may include planning application comment, site visits and discussions. It is suggested that at the stage where formal indication is given that the registration will proceed, fees should be levied. This may dissuade those with notional or speculative interests from wasting officers' time and ensure where registration is not concluded, that fees are paid.

The draft fails to address wider issues of fee levels (para 19) and anomalies which arise in relation to fees for day care and childcare establishments.

The Registration Process

The need for local authorities to promote written standards which promote "quality of life" is welcomed.

Paragraph 20

The wording of the final sentence should reflect that the process of registration is easily understood but not necessarily easy to achieve. The inference in its present form is that the process is lengthy and unnecessarily bureaucratic. It is contended that checks and balances are necessary and that

timescales for registration to be concluded should reflect the level of work undertaken by social work and other agencies.

The Fit Person

Paragraphs 21 and 22

It is suggested that the statement "the person who intends to carry on the establishment" is replaced with "the person who intends to have overall control over the establishment". This is considered to better reflect the purpose of the owners' or applicants' role.

Paragraph 25: (d) and (h)

Selection of referees fails to take account of the need to identify whether referees have an interest in the organisation or company seeking registration, which may constitute a less obvious but nevertheless important conflict of interest. Reference requests might better serve to identify this. Also, the final sentence of (h) indicates these conflicts of interest apply only in the private sector when in fact these may equally arise in the voluntary sector.

Paragraph 26

It is suggested that "ideally " be removed from the beginning of sentence (i) as this is considered an essential requirement.

Paragraph 26 (k)

It is suggested that the area of manager qualification is one in which there is wide differential at present and where more detailed guidance would be beneficial in moving towards consistency.

Paragraph 27

In sentence 1 an error is identified in that a member of the board should be named as "applicant" - not manager as suggested.

In its present form this entire paragraph is difficult to understand. It attempts to define distinctions between private and voluntary sector applicants/duties and powers but it fails to deliver on practical issues of present concern such as responsibilities to assess the fitness of applicant or applicants where this is a limited company, a partnership or the board of a voluntary organisation. Reference in the final sentence to circumstance where criteria "may not be of paramount importance" is considered unhelpful in establishing critical standards. It is suggested that this section is reconsidered.

It is disappointing that no reference is made in the draft to desirability of fit persons interviews, as a qualitative examination and assessment of any managers' suitability.

Change of named manager

Generally this section is welcomed particularly in relation to the requirements to inform the local authority in writing of any changes. Legislative change to address issues where management gaps arise regularly or where timescales for gaps extend beyond the acceptable is urgently needed.

Fit Establishment; Conduct of Establishment; Staff

Comments on all three sections generally reflect changes taken/taking place across local authorities and there may be merit in all 3 sections being constituted as appendices for consistency. Reference to SVQs levels 2 and 3 is welcomed. Expansion into areas of targets for qualifications and skill mix would be welcomed.

Enforcement, Local Authority Hearings (paras 37-49)

It is acknowledged that the lack of specification in this section in certain aspects is due to the requirement for legislative change, but in effect this will mean that situations will continue indefinitely where residents are likely to continue to live in unsatisfactory conditions, whilst timescales remain open-ended for the various stages of enforcement. This is considered a fundamental weakness of the draft guidance. As described in the document, the process of enforcement will continue to favour the interests of the proprietor as opposed to the service user, in the presumed desire to ensure proprietors a fair hearing. Despite the experience of Glenglova, the protection of extremely dependent and very vulnerable people is still not located where it should be, as the criterion by which all enforcement measures should be judged.

Paragraph 37

It is not helpful to refer to 'prospective owners and managers' within the enforcement context. Cancellation and enforcement apply to the owner, not the manager.

Paragraph 41

The final paragraph currently infers that HM Schools Inspectorate could influence a local authority's decision to cancel the registration of supported accommodation. It is suggested that the final sentence could read 'Where the establishment is a school, the authorities should always advise HM Schools Inspectorate.....'

Paragraph 42

Clarification is required regarding the powers of the Director of Social Work. At present, the power to cancel may be delegated or not, depending on local interpretation. The proposal that the decision to refuse or cancel registration cannot be taken by a delegated officer fails to recognise the function and purpose of schemes of delegation, which give rights of appeal to the elected body. Without this there is no mechanism between refusal, hearing and appeal.

Paragraph 44

More guidance is required on the conduct of Hearings, timescales, and the issue of sharing of evidence. It is not all helpful that it is left to the local authority to decide whether the function of the hearing is for review or comprehensive reassessment. The legitimacy of admitting evidence which has been obtained from conduct of the establishment after the date when notice of intention to cancel is issued needs to be clarified.

Paragraph 46

It should be emphasised that the purpose of a tribunal should be to review the validity of the original decision and not to review progress made since the Committee Hearing decided to cancel the registration.

Paragraph 48

It should be noted that the two options given can only be pursued with the consent of owners. Putting such alternative arrangements in place is potentially a complex procedure, which could require the local authority to hold additional powers as well as having additional resource implications.

Dual and Joint Registration of Establishments and Joint Working between Social Work and Health Inspectorates

The guidance should better distinguish between the terms "dual" and "joint", the terminology in Scotland being that of "joint integrated registration" or "joint segregated registration". The guidance does not significantly add to past guidance in this area and fails to acknowledge that reference to "inspectorates" implies a separation of the registration and inspection functions that is still fairly uncommon in Scotland.

Clearer guidance as to the resourcing, management and key areas of joint work would be helpful in planning joint units.

This section of the document makes no reference to current national standards for nursing homes and the disincentives for many Home owners in having to meet the "highest" standards to jointly register. In North Lanarkshire it would appear that the catalyst for joint registration interest is predominantly unfilled nursing home beds.

Paragraph 54

Highlights the critical issue at present, which is that irrespective of the level of movement towards joint registration there is a need for joint inspection of nursing and residential care homes, particularly in the field of elderly care, to ensure effective regulation and that information about service quality is widely available. The desirability of this should be more prominent in the draft guidance and stronger encouragement given to make progress on this at local level.

In summary:

The need for further consultation on how future regulation of domiciliary services will be undertaken, on the funding implications of registering all supported accommodation as well as preparing local authorities for themselves being subject to registration, is identified from the draft guidance. The locus of registration in the future is undecided, but more pertinent with the issue of the draft guidance.

Fitness assessment of applicants, managers, buildings and practice have been progressed since 1988 and much of the draft guidance reflects current practice in these areas. However, issues to deal with the variety of external ownership and management structures remain unclear; fees issues are not addressed and it remains clear that resourcing of regulation cannot be sourced from registration income. The desirability of joint registration is re-emphasised but should not replace the greater need for joint inspection work and access to information between Health Boards and Social Work Departments.