

Citizen Participation and Public Petitions Committee
Wednesday 13 November 2024
17th Meeting, 2024 (Session 6)

PE2114: Ensure effective regulation and oversight of social care services in Scotland

Introduction

Petitioner Bill McCabe on behalf of BetterCareScotland

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to ensure the effective regulation and oversight of social care services by replacing the Care Inspectorate with a new, independent oversight body that:

- has a specific focus on risk management
- uses regulatory and analytical expertise to identify and eradicate poor practice
- meaningfully engages with service operators and those with lay expertise to help deliver better, more transparent social care outcomes for people in Scotland.

Webpage <https://petitions.parliament.scot/petitions/PE2114>

1. This is a new petition that was lodged on 6 August 2024.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 19 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received submissions from the Scottish Government and the Petitioner, which are set out in **Annexe C** of this paper.

Action

7. The Committee is invited to consider what action it wishes to take on this petition.

Clerks to the Committee
November 2024

Annexe A: Summary of petition

PE2114: Ensure effective regulation and oversight of social care services in Scotland

Petitioner

Bill McCabe on behalf of BetterCareScotland

Date Lodged

6 August 2024

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ensure the effective regulation and oversight of social care services by replacing the Care Inspectorate with a new, independent oversight body that:

- has a specific focus on risk management
- uses regulatory and analytical expertise to identify and eradicate poor practice
- meaningfully engages with service operators and those with lay expertise to help deliver better, more transparent social care outcomes for people in Scotland.

Background information

BetterCareScotland's data, based on the experiences of our over 3,000 members, together with publicly available information, indicate that the Care Inspectorate, and the bodies they regulate lack formal risk management, regulatory and analytical expertise to challenge when things go wrong for the vulnerable people in whose interest they have a statutory duty to act; and are not held to account for failing to identify risks to residents in poorly-resourced, commercially unviable independent care homes for older people that operate as 'closed cultures'.

This enables bad practice and encourages risk-taking by owners who are kept in business by their local council, leading to an inevitable decline in the quality of care. It also deters openness and candour when things go wrong.

We envisage an independent oversight body of social care regulation operating in real time to address the country's record of poor social care outcomes. This would also help reduce complaints to the SPSO, allowing the Ombudsman to more closely focus on its own extensive remit.

Annexe B: SPICe briefing on petition PE2114



Brief overview of issues raised by the petition

[PE2114](#) calls on the Scottish Parliament to urge the Scottish Government to ensure the effective regulation and oversight of social care services by replacing the Care Inspectorate with a new, independent oversight body. The petitioner states that this oversight body should:

- have a specific focus on risk management,
- use regulatory and analytical expertise to identify and eradicate poor practice,
- meaningfully engage with service operators and those with lay expertise to help deliver better, more transparent social care outcomes for people in Scotland.

[The petitioner represents BetterCareScotland](#), a group self-described as “an evidence-based campaign for a social care system which works in the interests of people in Scotland.”

Social care regulation and inspection in Scotland

[The Care Inspectorate is Scotland’s national regulator for care services](#). It regulates care settings including care homes for adults and children, care at home services, and nurseries and playgroups. Care services in Scotland must be registered with the Care Inspectorate.

The petitioner argues that the Care Inspectorate does not currently ensure that its inspectors have sufficient risk management, regulatory, and analytical skills to thoroughly assess care settings, and challenge inappropriate practices and care environments. The BetterCareScotland website states that the organisation holds data suggesting that “soft skills” are prioritised by the Care Inspectorate when training its inspectors. This data is not in the public domain, and therefore could not be verified when preparing this briefing.

The Care Inspectorate’s [website details its qualification requirements for prospective inspectors](#). Inspectors must be registered with their relevant professional body, e.g. an inspector with a social care background must be registered with the [Scottish Social Services Council](#) (SSSC). Inspectors were also previously required to hold or gain a Regulation of Care Award (ROCA). However, the [Care Inspectorate is now working with SQA to develop a new regulator qualification](#), as the ROCA was no longer considered appropriate for the changing regulation landscape. While the new qualification is being developed, [new inspectors are offered the opportunity to](#)

[complete either European Foundation for Quality Management \(EFQM\) or Public Services Improvement Framework \(PSIF\) training.](#)

New inspectors also [receive specialist training as part of the Care Inspectorate's induction process](#). The Care Inspectorate's website states that this training covers learning about "regulation, scrutiny and improvement and an understanding of the different functions of our work: registration complaints, inspection and enforcement." It does not make specific reference to risk management or analytical skills, two of the areas highlighted by the petitioner.

In [its written response to the petition, the Scottish Government stated](#) that the Care Inspectorate agreed with Ministers in 2019 that it would take a risk-based, intelligence-led approach to its regulatory activities. This approach, the Government noted, involves prioritising resources and efforts based on the level of risk to the safety and well-being of individuals using care services.

The letter also stated that "the Care Inspectorate evaluates various factors that could pose risks to individuals receiving care. This includes reviewing past performance data, complaints, notifications they receive from care services, incident reports, and other relevant intelligence, including information from other bodies. Services that are deemed higher risk, due to factors like poor past performance or concerns raised by service users or other stakeholders, are more likely to receive close scrutiny."

How is the Care Inspectorate held to account?

Both the petition and the [BetterCareScotland website](#) state that in their view, the Care Inspectorate is not currently adequately held to account for failing to identify risks during its inspections.

BetterCareScotland was founded in response to a female care home resident's experience of abuse in a care home, and [her story is detailed on the organisation's website](#). Both the person who experienced the abuse and her family felt that the Care Inspectorate had not fulfilled its duty to assess risks and protect residents from harm, particularly as the person who allegedly conducted the abuse remained employed by the care home, and retained his SSSC registration.

Currently, complaints regarding the Care Inspectorate itself are made directly to the organisation in the first instance, and investigated according to [the Care Inspectorate's complaints policy](#). If a complainant is dissatisfied with the outcome of the Care Inspectorate's investigation, [they may make a complaint to the Scottish Public Services Ombudsman](#) (SPSO). The petitioner suggests that the introduction of an independent oversight body for social care in Scotland could therefore positively impact upon the workload of the SPSO.

The Scottish Government's written response to the petition highlights that the Care Inspectorate is an independent non-departmental body, which operates at arm's length from Government. The Care Inspectorate's Board sets the organisation's strategic direction. However, Scottish Ministers are kept informed of any significant concerns that the regulator may have about quality of care or safety, welfare, and health of those using services.

Scottish Government actions

In September 2022, the Scottish Government announced an [Independent Review of Inspection, Scrutiny, and Regulation of Social Care](#) (IRISR) in Scotland. The findings of this review were published in September 2023, and [38 recommendations were made](#), many of which are pertinent to the issues raised in the petition. In particular, the petitioner expresses a wish for meaningful engagement between regulators and service operators and lay people. Several of the report's recommendations discuss reforming the inspection and regulation process to create a culture of trust, and involve providers and people with lay experience, including the establishment of a formal paid role for lay inspectors.

The review also recommended that “the Scottish Government should make arrangements to ensure appropriate oversight of regulatory provision of social care support and consider whether there should be separate arrangements put in place for Scotland, in this respect.”

“In addition to these views, the Review also considers a mechanism which ensures the independence of regulators and inspectors from Scottish Government in their operational function as essential, as is the achievement of consistency through regulation of regulators in a cost-effective way.”

The [Scottish Government accepted all the recommendations of the review](#) in March 2024.

Scottish Parliament actions

There has been no Scottish Parliament action concerning this issue to date.

Sarah Swift
Researcher

12 September 2024

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C: Written submissions

Scottish Government written submission, 6 September 2024

PE2114/A: Ensure effective regulation and oversight of social care services in Scotland

Thank you for your email of 6 August seeking a view on Better Care Scotland's petition which calls on the Scottish Parliament to urge the Scottish Government to ensure the effective regulation and oversight of social care services by replacing the Care Inspectorate with a new, independent oversight body that:

- has a specific focus on risk management
- uses regulatory and analytical expertise to identify and eradicate poor practice
- meaningfully engages with service operators and those with lay expertise to help deliver better, more transparent social care outcomes for people in Scotland.

Firstly, I thought it would be helpful for me to set out how the Care Inspectorate was established. The Public Services Reform (Scotland) Act 2010 ("the Act") aimed to streamline public bodies in Scotland to deliver improved public services and better outcomes for the people of Scotland. During the Act's development phase, there was thorough consideration and extensive public consultation conducted to determine the appropriate powers and oversight for the Care Inspectorate. [The Act, Part 5 and Schedule 11 in particular, sets out the general provisions for the establishment and operation of the Care Inspectorate](#) (or its formal name, Social Care and Social Work Improvement Scotland (SCSWIS)). This includes scrutiny functions in relation to care services and social work services.

As the regulator of care services in Scotland, the Care Inspectorate is an independent non-departmental body and therefore operates at arm's length from Government. The Care Inspectorate's Board sets the strategic direction of the Care Inspectorate. While Scottish Ministers approve the annual scrutiny and assurance plan, it is extremely important that the Care Inspectorate's independent role is respected. Scottish Ministers are however kept informed of any significant concerns that the regulator may have about quality of care or safety, welfare, and health of those using services.

Care Inspectorate's Approach to Regulation

In 2019 the Care Inspectorate agreed with Ministers that it would take a risk-based, intelligence-led approach to its regulatory activities. This approach involves prioritising resources and efforts based on the level of risk to the safety and well-being of individuals using care services.

The Care Inspectorate evaluates various factors that could pose risks to individuals receiving care. This includes reviewing past performance data, complaints, notifications they receive from care services, incident reports, and other relevant intelligence, including information from other bodies. Services that are deemed

higher risk, due to factors like poor past performance or concerns raised by service users or other stakeholders, are more likely to receive close scrutiny.

The Care Inspectorate gathers information from multiple sources, including those who experience care, families, care providers, partner bodies, and staff. This helps identify trends, emerging issues, and specific concerns that may affect the quality of care.

By using data and intelligence to identify where risks are highest, the Care Inspectorate can be more proactive in its regulatory activities. For instance, they might prioritise inspections or interventions in services where there is evidence of declining standards or significant risks to service users. By prioritising resources, they can more efficiently and effectively focus on preventing harm, improving care quality, and safeguarding vulnerable individuals.

I would also like to note that the Scottish Government is investing significant funding for the Care Inspectorate's digital transformation project which will provide a new digital platform, supporting a modern, flexible, and efficient way of working. This will enable the Care Inspectorate to develop the necessary digital applications to undertake modern forms of scrutiny and improvement activities.

Significant progress has already been made on this project and, upon completion, it will provide additional evidence to aid the Care Inspectorate's strategic oversight of integrated health and social care, services for children, and criminal justice within integration joint boards and community planning partnerships.

Care Inspectorate's Engagement

The Care Inspectorate's Corporate Plan 2022-2025, Quality Improvement and Involvement Strategy 2022-2025, and Equality, Diversity, and Inclusion (EDI) Strategy 2022-2025 set out their commitments to enhancing care services and effectively engaging stakeholders. These strategies focus on continuous improvement in the quality of care and to ensure people's voices are heard.

Commitments within the strategies include the involvement of young volunteers, who play a vital role in incorporating the voices and experiences of young people into the inspection process.

Additionally, adult volunteers contribute their insights and experiences, ensuring that the perspectives of people experiencing care are represented in inspections. These volunteers will bring a wealth of knowledge that enhances the evaluation of care services, promoting transparency and accountability.

The EDI Strategy aims to ensure that equality, diversity, and inclusion are integral to the care services provided in Scotland. One of its primary outcomes is to develop the diversity of stakeholders and meaningful participation of people engaged in the Care Inspectorate's work.

The Care Inspectorate has a Board that sets the strategic direction of their work. Board members bring a diverse range of care and lived experiences, which is invaluable in advancing the Care Inspectorate's work.

Independent Review of Inspection, Scrutiny and Regulation of Social Care (IRISR)

The Scottish Government recognises that there is always potential for improvement in the social care sector. Therefore, in September 2022 the Scottish Government announced an Independent Review of Inspection, Scrutiny and Regulation of Social Care in Scotland (IRISR). The IRISR was initiated to ensure that inspection, scrutiny, and regulatory systems remain fit for purpose and are firmly focused on human-rights and person-centred approaches.

[The IRISR Recommendation Report](#) was published on 27 September 2023 and made 38 high level strategic recommendations.

We have heard a strong desire for change across the social care landscape from those who use, work, and deliver services. [The Scottish Government response to the IRISR Recommendation Report](#) was published on 6 March 2024, accepting all 38 recommendations, recognising that significant amounts of work are already underway that will in part or fully address a large number of the recommendations. The implementation of the recommendations will be phased to build on work already underway and provide a solid basis to deliver the aspirations set out in the IRISR more broadly.

In accepting these recommendations, and by taking a phased approach to their implementation, we are confident that we can work in partnership to deliver continuous improvement that addresses the key challenges highlighted by the Review and support better outcomes for the people of Scotland.

Further information about the IRISR can be found at [Social care: Independent Review of Inspection, Scrutiny and Regulation - gov.scot \(www.gov.scot\)](#)

The Scottish Government will continue to work closely and collaboratively with regulators, providers, partners (including the Care Inspectorate) and with those who have lived and living experience of social care support and linked services in implementing these recommendations.

Kind regards,

Maree Todd MSP
Minister for Social Care, Mental Wellbeing and Sport

Petitioner written submission, 1 October 2024

PE2114/B: Ensure effective regulation and oversight of social care services in Scotland

We are grateful to the Minister for responding to BetterCareScotland's call to replace the Care Inspectorate's ill-disciplined approach to social care regulation with a scientific model which embodies 21st century analytical, risk management, regulatory and compliance expertise to meet the needs of vulnerable service users and future-proofs Scotland's ability to meet the growing and pressing need for good social care outcomes.

We are grateful that the Minister acknowledges the need for radical reform of social care regulation in Scotland. However, it is unrealistic to believe that the retrofitting of 38 high level strategic recommendations which the Independent Review of Inspection, Scrutiny and Regulation of Social Care in Scotland (IRISR) makes and the Government accepts in full, could possibly transform a social care regulator which depends for credibility on deterring complaints.

Instead, Scotland needs a model of social care regulation which is designed to work in the interests of service users by enabling them to make well-informed decisions and receive the best possible care while protecting them from risk.

The antithesis of the Care Inspectorate approach to social care regulation, this would require the sweeping away of a regulatory culture which fails to identify and manage the risks of Scotland's social care system: the information asymmetries, a system bearing all the hallmarks of a protection racket, gaping regulatory loopholes, whistleblowing issues which hold service users and care staff to ransom – a system where no public good is served since everyone loses.

In designing such a model, we need to start with an understanding of

- (1) what good social care regulation should look like if end users are to experience good care outcomes; and
- (2) how this can be engineered and organised to manage the risks of bad outcomes, given the incentives of the parties involved.

This requires an understanding of how the incentives of the bodies which procure, commission, deliver and provide care can be aligned and be seen to be aligned with the interests of service users.

A system which empowers service users so that dependency is not stigmatised will require openness, transparency and candour and enable oversight by the Scottish Parliament which the Care Inspectorate's operations render impossible. Currently, the Scottish Parliament presides over a social care system which successfully deters scrutiny. The legal and reputational risks cannot be overstated.

Poor regulation comes at a cost

Our analysis in February 2021 for the then Health & Sport Committee draws attention to the Care Inspectorate's unverifiable data and high fail rate in identifying service providers to target for inspection.

Consequently, in Scotland today, the poorly resourced closed culture care provider which delivers bad outcomes operates in the commercial interests of its owner, while service providers which record and self-report operational events are punished. However perverse, the message from a social care regulator which deters complaints is clear. Equally clear is that this drives down the quality of care and renders the Care Inspectorate unaccountable to the Scottish Parliament.

Since oversight bodies like Audit Scotland and Health Improvement Scotland, despite their reservations, are required to take on trust the Care Inspectorate as a competent regulator, Council demands for increased, and emergency social care

funding are met even when raw data show that Councils are spending more on social services staff to deliver social care to fewer people, while transferring the cost of social care whenever possible to the DWP and the NHS.

The full economic cost of poor regulation of social care is incalculable without data but will include inevitable funding trade-offs for the Scottish Government between services with known value, like education or health, and social care, the benefits of which cannot be determined with any confidence since meaningful data are neither generated nor held by Councils or the Care Inspectorate.

Instead of being a key safeguard, a critical check on social care delivery and provision, the Care Inspectorate facilitates bad practice which, over time, has created 32 unfathomable information black holes, leaving the Scottish Government operating in the dark.

When did the rot set in at the Care Inspectorate

With five Chief Executives in ten years, there is no evidence that the Care Inspectorate has helped to raise care outcomes, its professed mission. The Independent Review of Adult Social Care reported in Feb 2021 that social care outcomes in Scotland are typically poor and that those who experience good care outcomes believe they had luck on their side – all of which is attributable to poor social care regulation.

Our research shows ill-discipline becoming apparent at the Care Inspectorate within 3 years of its formation in 2011. Unlike the 50% of commercial firms which fail within their first 4 years, the Care Inspectorate's increasingly poor performance cannot be attributed to the financial and economic climate but to internal issues of leadership, governance, and lack of accountability.

Good regulation is in everyone's interest

In the context of the current funding crisis for essential services in Scotland and the lack of support for a National Care Service in Scotland from COSLA and Unison, reform of social care regulation, as we propose, is more urgent than ever, whatever the eventual shape of social care in Scotland.

An analytical approach to social care regulation will transform every aspect of social care, identify issues in procurement and delivery by Councils and provide the Government with the data it needs to make well-informed funding decisions and Parliament with the information it needs to hold the social care regulator to account. It will bring social care and the country's finances out of the dark ages.