



The law and social work in Scotland

Maintaining standards of care

Nick Balneaves:

Hello and welcome. For today's interview I've come to Paisley to meet Annabell Fowles. Annabell is the head of Legal Services with the Scottish Commission for the Regulation of Care, commonly known as the Care Commission. It's a relatively new body and Annabell started by telling me what their role is.

Annabell Fowles:

The Care Commission was set up in April 2002 to regulate care services in Scotland. We inherited that responsibility from 42 previous regulatory bodies, mainly local authorities and health boards, and we basically regulate all care services from nurses and child minders right up to private hospitals.

Nick Balneaves:

And why is there a need to regulate care?

Annabell Fowles:

Well clearly users of care services can be a vulnerable population, and they are entitled to a certain standard of quality of service, and of course regulation is the main way in which we can protect their interest and ensure that the quality of care service meets their needs.

Nick Balneaves:

Are there any areas of care these days that are not regulated?

Annabell Fowles:

People who are in receipt of direct payments in Scotland, and that's allowing them to purchase their own care, and where they contract with another individual of their choice, they don't have to use a registered individual. But people who are in the business of providing care at home services, what used to be called domiciliary day care in old social work speak, those services are registered by us. So there is a very very broad capture of care services under the regulation of the Care Scotland Act.

Nick Balneaves:

Can you tell me on a day to day basis what your job involves, Annabell?

Annabell Fowles:

Well, I would say that an awful lot of my job at the moment is still 'fire-fighting'. By that I mean responding to requests from operational staff in relation to perhaps an inspection visit where they've discovered something of, of very serious concern to them. So often they're coming to look to the legal service for advice on whether or not they have sufficient evidence to serve an Improvement Notice, for example. So it can be very much an emergency situation where an Inspector has perhaps received a phone call, possibly about a complaint about a care home, there is only one member of staff on today and we have 22 vulnerable residents, that sort of thing. And they would be coming to me for advice, because cancellation of registration again is a very big step. And again, before we would do that we have to pay particular regard to the needs of service users.

And clearly if you have a very vulnerable elderly population, closure overnight is not every going to be a practical option. So there can be a need to consult lots of different professionals in deciding what's the best way forward. But we mustn't lose sight of the situation where we must act and we do have emergency powers. In some respects some lawyers have commented they're quite Draconian emergency powers in that we can... if we can establish that there is a significant risk to the life, safety, well being of any person, and

because of a lack of quality in a care home, we can go straight to the Sheriff Court and attempt to close it down that day without notice.

Nick Balneaves:

That would be your ultimate sanction. Do you have any lesser sanctions you can use?

Annabell Fowles:

Yes indeed. We impose what we call 'Condition Notices'. Now a Condition Notice, we can attach conditions that we think fit. The conditions are designed to ensure compliance with the Act, the regulations or conditions of registration. So the sort of thing that is I would say almost a daily occurrence, would be the imposition of a condition on staffing, for example, in elderly care homes, where the... on inspection, we have said well, we're not really happy with the standards of care that are being delivered and we perceive there is a lack of staffing and that's the root cause of that.

Annabell Fowles:

We can also impose a condition saying, well you're not going to admit any more service users until you've put various improvements in place. So an Improvement Notice itself is probably the last gasp if you like. In the serving and Improvement Notice we actually say in the Notice, you must carry out this requirement by a certain date and if you don't we may well cancel your registration.

Nick Balneaves:

Talk me through how often an inspection takes place and how it works?

Annabell Fowles:

Yes. At the moment we have to inspect all care services at least once a year, and for certain care services, mostly those that provide 24 hour residential accommodation such as care homes and hospitals, that sort of thing, we have to inspect those twice a year. And at least one of those inspections has to be unannounced. And at inspection again, we have quite Draconian powers. We can remove anything that we, anything that we may need as evidence, we can insist on copying documents. All records have to be available, premises have to be fit, people have to be fit; there has to be an auditory for all of these circumstances. The National Care Standards in themselves are the focus of our inspection, and National Care Standards set out what a service user is entitled to expect as an outcome. So they're not written in the normal language of the regulator, but very much outcome based from a service user's perspective. And it's against those standards that we inspect the service.

Nick Balneaves:

For people in all walks of life, increasing accountability can sometimes be seen as a burden and it can sometimes be perceived as just another layer of bureaucracy. How would you respond to care workers who have concerns in that regard?

Annabell Fowles:

I will probably upset them mightily by saying it's well overdue that there was far greater regulation in quality control over not only the quality of care services as they're delivered, but also the quality of the Care Service workforce. Again, it's not particularly responsibility of the Care Commission of Scotland, but our sister body set up under the same statute, The Scottish Social Services Council, is responsible for registering the workforce. And I am fully in favour of a professional care workforce and I do feel that for many years care has been the Cinderella service, poorly paid, poorly rewarded. And I really hope that that's changing. I think the Scottish Social Services Council's Registration Scheme and National Care Standards should act as a kind of catalyst for greater quality and greater job satisfaction as well.

I can appreciate that people that work in a care service may find it may interrupt with their daily regime, I mean, particularly in care homes, people tend to work very hard just in meeting the resident's needs and keeping things ticking over, and of course in comes an Inspector from the Care Commission and disrupts their day. We try very hard not to do that and we try and encourage Inspectors to spend as much time as possible with service users and their representatives.

Certainly there must be some discussion with staff and time is made for that, but the focus of our inspection activity is not really what the staff think about the service but what the service users and their carers think about the service, and hopefully we can feed that back to the staff and certainly involve them in trying to improve the service that's delivered.

Nick Balneaves:

Yet even the best care providers must still find an inspection quite daunting. What advice would you give to them about how best to prepare for that?

Annabell Fowles:

I think our local staff have a specific workload and we try and build a critical friend relationship between the Inspector and the service provider, so that it's not seen as a threat, but it's much more geared towards partnership working, let's work together and try and improve the service.

Nick Balneaves:

How can people complain?

Annabell Fowles:

They can complain via our website; they can complain by phone; they can complain by letter; and they can also complain in a confidential basis.

Nick Balneaves:

If it's a service user complaining do they get to see the report after it's produced?

Annabell Fowles:

The complainant always gets a copy, a resolution letter that sets out the nature of the complaint; the way in which we've investigated it; the facts that we've managed to establish; whether in our judgement the complaint is upheld, not upheld or partially upheld; and the action that we expect to be taken. And exactly the same report goes to the complained-against with the deletion, obviously, of any personal third party identifiers. We have to abide by data protection like everyone else.

Nick Balneaves:

How do you publicise your role to service users?

Annabell Fowles:

Our inspectors are encouraged as part of a fundamental part of their inspection duty is to speak to as many service users and their relatives as they can. In addition to that, we have a website, we make inspection reports publicly available; we have our newsletter, Care News. We have a Care Commission forum which is a statutory requirement to have at least two national meetings a year where the public can come along, and indeed they can set the agenda. So there is quite a number of ways in which you know, service users and carers can get involved with the Care Commission.

Nick Balneaves:

Do you think it's useful for service users to know their rights and to know about the care standards?

Annabell Fowles:

I think it's absolutely fundamental. I think the National Care Standards in particular are very accessible documents, unlike perhaps the legislation and statutory instruments that support it and they cover dignity, choice, realising potential, privacy, equality and diversity issues, but they do it in a way that gives real meaning to those broad concepts in terms of setting out what you as a service user are entitled to expect as an individual. And unless people are aware of the National Care Standards, very very very difficult for them to be empowered to make sure that they're receiving what they're entitled to. An example of that might when we did a review into care homes. We found out that there was quite an unusual kind of statistical anomaly, in that when we did our review of elderly care homes, we had a significant majority of people expressing that they were very happy with their care. And yet at the same time this

was by far the biggest sector where we had had a number of complaints, serious complaints about the quality of care upheld. And what that told us was that this is indeed a bit of a captive population here, who by definition almost find it very difficult to complain.

And when we did some further analysis, it was very clear that service users and elderly care homes were really unwilling to complain. So that, that told us very clearly that we have to be, make even more effort to enable people to familiarise themselves with National Care Standards.

And I should say there that National Care Standards are not the tools of the Care Commission alone. They weren't drawn up by us, they were drawn up by the Scottish Executive, and indeed they apply ... in every situation, local authority Commissioning Services should be looking at National Care Standards as well as individual service users.

Nick Balneaves:

Are there different standards of care required from different types of care provider?

Annabell Fowles:

There are different National Care Standards but they're all around those five main themes of privacy, dignity, choice, realising potential equality and diversity. What an individual provider has to do really depends on the population that he's caring for. There are 21 National Care Standards, and there are specific National Care Standards for example, for earlier education and childcare. Specific National Care Standards for care homes for the elderly. It's not just that there is one generic set of standards, there is they have been written expressly for each of these service sectors.

Nick Balneaves:

How effective to you think the Care Commission's been in preventing tragedy when care, when care goes wrong?

Annabell Fowles:

Well that's too difficult to answer. I mean I can actually say we have prevented tragedy. We certainly have closed services in the last four years where standards were not sufficient to meet people's needs. We've certainly had a very high child protection agenda in terms of regulating child minders.

So in as far as we have removed bad providers from the market, then I think we have made a significant contribution. But our major contribution, again I would stress, is in providing regulation with an improvement focus. It's not about closing services down, it's about assisting providers to develop and improve their services. I personally feel that the Care Commission has made significant advances in terms of empowering people to have a voice in relation to their care.

Nick Balneaves:

What advice would you give to social workers and social care workers who are new to the job, who are coming in to care for the first time?

Annabell Fowles:

Oh, try and regard service users and the people that you're responsible for in the way you would your own mum or dad or child. And if you are involved in care planning for an individual, then I think you know, you should be (brave) and you should be looking at National Care Standards and you should be ready to question when that individual's needs are not being met.

And, and be aware of the Care Commission and Sea Sky and the Health Care Commission and the various other organisations that are around, and be ready to complain to them, but better regulation really means let's handle things and get things sorted out as close to the point of service delivery as possible. So be ready to complain to the provider also.

Nick Balneaves:

Annabell Fowles, thank you very much.