

## DRAFT

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Dear Ms Martin

### **Changes to the fitness requirements for Providers, Managers and Employees in care services regulated by the Care Commission - A Consultation Paper**

NCH Scotland welcomes the opportunity to respond to the Scottish Government's consultation paper, Changes to the fitness requirements for Providers, Managers and Employees in care services regulated by the Care Commission. NCH Scotland notes that the consultation paper proposes changes to certain regulations made under Section 29 of the Regulation of Care (Scotland) Act 2001. NCH Scotland's response draws upon our experience of providing services to some of the most vulnerable and difficult to reach children, families and young people in Scotland. For ease of reference we have outlined our comments below using the same paragraph headings as the consultation paper.

#### **Introduction**

Paragraph 10 of the consultation paper confirms that the intention behind the proposed changes to the Regulations is to align the fitness provisions in relation to providers, managers and employees. NCH Scotland is also aware from correspondence received by Community Care Providers Scotland ("CCPS") from the Scottish Government that the: "general intention of the proposals is to clarify and simplify what care service providers should do to ensure that people working in care services are recruited safely". While welcoming the Scottish Government's intentions in these key areas, we support CCPS' recommendation that the proposed changes to the regulations must be accompanied by detailed guidance. NCH Scotland suggests that the guidance highlights issues such as, for example, the respective duties and responsibilities of the Care Commission and other relevant agencies in determining the fitness of care providers, care managers and care staff under the regulations.

The guidance should also address the use of conviction information for the purpose of the regulations. In this respect, NCH Scotland shares CCPS' concern that conviction information should not be used in isolation to determine the fitness or otherwise of a care provider, manager or employee. We support CCPS' view that this could lead to discrimination against individuals with convictions, regardless of the length of time since the individual committed the offence, the completeness of their rehabilitation and the extent to which the individual meets the necessary requirements for the post.

Against this background, we welcome CCPS' recommendation that clear guidance must be provided in the regulations to help employers understand the interface between the regulations, and the Rehabilitation of Offenders Act 1974, the Police Act 1997 and Disclosure Scotland's Code of Conduct. These highlight the need for an individual's conviction information to be considered on its own merit, and for employers to avoid being discriminatory in relation to such information.

## **Regulation of Care (Requirements as to Care Services)(Scotland) Regulations 2002**

### **Regulation 6**

Paragraph 7 of the consultation paper states that, under the proposed amendment to Regulation 6(2)(b), the Care Commission will have greater flexibility in deciding the fitness of a provider. NCH Scotland shares CCPS' concern, however, that, without the availability of detailed guidance, there is a real risk that the proposed change could lead to a lack of clarity, and to confusion, over which agency determines the fitness of care providers, or care managers or care staff. We, therefore, welcome the clarification provided by the Scottish Government, in recent correspondence with CCPS, that:

*“There is no expectation that the Care Commission will seek to override decisions made by providers in recruiting staff. The Commission’s concern is that providers demonstrate that safe recruitment practices are in place; that the procedure is open and fair to all candidates; and that it is followed in all cases. It is anticipated that, as currently happens, managers will continue to decide on the suitability of staff, providers will decide on the suitability of managers and the Commission will decide on the suitability of providers”.*

NCH Scotland supports CCPS' view that this clarification should be clearly reflected and outlined in any guidance accompanying the Regulation of Care (Requirements as to Care Services)(Scotland) Regulations 2002, and in the Explanatory Notes included in these regulations.

### **Regulations 6, 7 and 9**

NCH Scotland notes the references in Regulations 6, 7 and 9 to “and who is, by reason of that conviction, unfit to be a” provider/manager/employee of a care service. We understand from CCPS that the Scottish Government has confirmed that this phrase has been used to try and provide greater flexibility in determining whether or not a conviction for a particular offence would make an individual unsuitable for a specific post. This is another issue on which we support CCPS' recommendation that, to avoid any confusion, clarification of this point must be clearly reflected and outlined in the regulations, and in the Explanatory Notes accompanying this legislation.

Please do not hesitate to contact me on 0141-550-9010 if you require more information, or would like to discuss any of the issues raised in our response further.

Yours sincerely

Andrew S. Girvan  
Director of Children's Services

