

South West Joint Improvement Partnership

**An options framework for assuring
quality in the provision of non-
regulated care and support services**

SW Regional Commissioning

July 2010

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Background

This options framework has been developed by the Institute of Public Care in response to an identified need from commissioners of adult social care and health services across the South West. It is intended to help commissioners ensure the development of a set of resources locally to enable local authorities and individuals manage the relationship with non CQC registered services fairly and efficiently. The options framework does not advocate an accredited or regulated approach to monitoring and recognises that the approach taken will invariably depend on the authority in question, the nature of the service, its size and its client group. What it aims to do instead is assist commissioners and individuals in looking at and assessing the options for the closer regulation of small to medium sized non regulated care and support services should they feel it is necessary. It will particularly focus on:

- Identifying the main issues surrounding the contracting and accreditation of non regulated care services.
- Pulling together current approaches to the accreditation of non regulated care and support services and examining the advantages and disadvantages of each approach.
- Identifying examples of accreditation approaches.
- Assessing the best approach for different kinds of non regulated care and support services.
- Examining best practice in the development of contracts/specifications for small to medium sized non regulated care and support services.

Introduction

The services commissioned by adult social care can be split into two groups: those that are regulated and those that are not. The Care Quality Commission is responsible for regulating all residential homes, nursing homes, adult placement schemes and domiciliary care providers. However, adult social care is also responsible for commissioning a range of services that are not regulated by the Care Quality Commission or anyone else. These include the more obvious such as day centres, supported housing, independent living schemes but also a range of other services such as personal assistants and low level preventative services. The local authority relationship with these services will also vary, some may be directly purchased, some may be delivered through a series of framework agreements and others may have no formal contracts at all.

How then does the commissioner provide the reassurance both to the local authority, service user and their families that, the services that are non-regulated, don't just meet the required minimum legal standards, but also provide a service that is both valuable and safe to some of the most vulnerable people in society.

There is an inherent dilemma for commissioners when using the non-regulated care sector. That existing services are not regulated reflects a judgement taken at national level that they need not be, and the belief that blanket regulation could bring a level of scrutiny that is unnecessary, cumbersome and restrictive to providers. Yet for the commissioner, and the service user, the pertinent issues that exist within the regulated sector still apply. Is the service user safe? Is the service good quality? Does it demonstrate value for money and is it striving to improve? Is the business well run, reliable and financially viable? Finding a solution to this dilemma is difficult, and as the remainder of this document demonstrates, the solution will often depend very much on the service being delivered and group to whom it is being delivered.

Options for greater quality assurance

When it comes to deciding whether to regulate non regulated services, commissioners are currently faced with a spectrum of choice. At one end they can put in systems of checks and verifications on providers, essentially developing a local regulation regime. Or at the other end they can adopt a hands off approach, taking the view that if the government determines that these services need not be regulated, then it is not their place to regulate.

The risk for commissioners if they adopt the wrong level of regulation is that providers, overwhelmed and overstretched by bureaucratic demands, could fold or walk away, or service users could be cared for people and organisations that pose a danger to them.

Whichever approach local authorities choose to adopt, the decision should be taken in full consultation with local contracting teams, relevant provider organisations and service user representatives. For the commissioner, EU regulations remain the same regardless of whether the provider group is regulated by the CQC or not. Non regulated service providers will still need to meet general standards such as data protection and health and safety, and will need to be inspected by fire officers and environmental health officers, for example, to meet their obligations as employers.

The table below sets out possible approaches which commissioners could develop to enable the ‘regulation’ of non-regulated services that are contracted with the local authority. Some can be used in conjunction with each other, such as asking for CRB checks for staff as part of the entry requirements for an accreditation scheme. Many of the options, such as quality standards or an accreditation scheme, can be made highly customised to local circumstances and adapted to sensibly balance risk to service users, and the cost to providers (and ultimately commissioners) of the ‘regulation’.

Table 1: Table of regulatory options for Local Authorities

Option	Overview	Options	Advantage	Disadvantage	Links/resources
(Enhanced) CRB check	Checks on individuals to support organisations recruiting people into positions of trust.	Standard CRB A Standard check contains details of all convictions, cautions, reprimands and warnings held on the Police National Computer (PNC). Enhanced checks contain the same information as the Standard check but also include a check of the new barred lists and any relevant and proportionate information held by the local police forces.	Recognised mark of checking.	A Standard check cannot reveal if a person is ISA-registered or barred from working with children or vulnerable adults. Would have to be run through the Council or another Registered body – could become bureaucratic and costly.	The CRB Website
Vetting & Barring Scheme (VBS)	This scheme has currently been halted. The Government will begin a process to	All those on the Council’s recommended list/given contracts etc who will come into contact with service	Basic, cheap way of setting a safeguarding standard.	Could create a false sense of security as those registered with the ISA are not	ISA decision making process guidance. Regulated and controlled activities

Option	Overview	Options	Advantage	Disadvantage	Links/resources
	<p>“review the criminal records and vetting and barring regime and scale it back to common sense levels”.</p> <p>The VBS will require all those working with vulnerable groups to undergo an enhanced vetting procedure before being allowed to commence any relevant duties.</p>	<p>users obliged to be ISA registered.</p> <p>Recommend that individuals check the status of prospective employees with the ISA.</p>	<p>Domestic employers have the opportunity to check the status of the individual.</p>	<p>assessed unless concerns are raised.</p>	<p>factsheet.</p>
Quality Standards	<p>Quality standards against which providers can be benchmarked or judged.</p>	<p>Can be used as the basis of an accreditation scheme or preferred provider.</p>	<p>Clear standards and expectations that providers can work to and service users can judge on</p>	<p>Potential lack of proportionality and flexibility - could be overall bureaucratic for smaller providers and perhaps insufficient for others.</p>	<p>NE RIEP Quality Standards (currently being piloted).</p>
Accreditation scheme / approved lists / preferred providers	<p>A list of providers that have been ‘accredited’ or ‘approved’ by local authority, and thereby notionally recommended to purchasers. Can be used to define or identify ‘preferred providers’.</p>	<p>Can be extended over a region or sub-region.</p>	<p>A way of developing quality assurance and regulating providers. They create potential for greater engagement with providers and longer term relationships.</p>	<p>Challenges around who accredits or approves, achieving consistency, ensure new comers to the market are not excluded, developing minimum standards beyond registration, maintain standards once accredited and how this information is</p>	<p>Third Party Supplier Accreditation Study.</p> <p>Lancashire Preferred Provider Schemes (for CQC regulated services only).</p>

Option	Overview	Options	Advantage	Disadvantage	Links/resources
				shared , reported and updated.	
Framework agreements	Where terms and conditions can be agreed and contracts called off when needed, for up to 4 years.	Frameworks can cover more than one provider, and a further mini-competition between agreed providers can be used.	Potentially streamlined process for the local authority and those on the list.	Can disadvantage new comers to the market and thereby restrict innovation.	OGC Guidance on Framework Agreements.
Hands off signposting	Provide information about non-regulated services but make it clear that they are not necessarily monitored, endorsed or recommended by the Council.		Low cost.	Lack of quality or safety standards may limit choice for service users who want to purchase accredited services.	HantsWeb. Buy with confidence.
Education of service users	Checklist or leaflet to help service users understand the obligations and risks of employing non-reg service and to give advice on how to do so.	Could include a standard contract covering basics such as compliance with national minimum standards, employment law, payments, pricing reviews etc.	Provides the tools for service users to manage contracts.		“Getting Started” – direct payment customer toolkit.
Website space allowing feedback on non-reg services	Allows service users to rate providers of non-regulated services.	Refer residents wanting trades people to www.ratedpeople.com .			

The following table looks help commissioners in assessing what regulatory option(s) might be best for the range of services that they currently commission. Against each regulatory option it assesses which service characteristics this option might be most appropriate for. This table is intended to be used as a starting point for discussion from which commissioners and providers can discuss the advantages and disadvantages of such an approach to both service users, providers and commissioners themselves.

Table 2: Assessment of regulatory options

Option	This option may be appropriate for services that are.....					
	Dealing with adults that may require safeguarding or who are deemed high risk.	Flexible in what they provide and the care that is offered	Provided by a large range of different providers	High cost	Preventative in their approach and supposed benefit	Demanded by both publically and privately funded service users
(Enhanced) CRB check	✓			✓		✓
Vetting & Barring Scheme (VBS)	✓			✓		✓
Quality Standards		✓		✓	✓	✓
Accreditation scheme or approved lists	✓	✓		✓	✓	
Framework agreements	✓	✓		✓		
Hands off signposting		✓	✓			✓
Education of service users		✓	✓			✓
Website space allowing feedback on non-reg services			✓			✓

Developing Relevant Contracts

In situations where the local authority contracts with providers for the delivery of non regulated care and support services, care and consideration should be given to the 'type' of contract that is used. Many of the services that deliver the vast range of non regulated care and support services are provided by small to medium sized provider organisations, and feedback suggests such organisations feel that contracts are often not proportionate in size or appropriate to the service being delivered. The table below sets out a number of considerations for commissioners when contracting for services that are small to medium in size. The reasons why these considerations should be taken are set out in the 'rationale' column of the table.

Table 3: Checklist of considerations¹

Consideration	Rationale	Good practice
Clarity, consistency and co-ordination	Understanding the maze of funding opportunities and hoops to jump through in local government is not always easy. If providers understand what is going on then there is a better chance of them engaging to deliver good services.	<ul style="list-style-type: none">• A clear and explicit commissioning framework across local government• Consistent involvement by providers in the development of commissioning strategies, purchasing plans, and specifications, as well as in developing information and monitoring systems and reporting and monitoring arrangements.• Funders should endeavour to join-up or standardise parts of the funding, procurement or accreditation chain to minimise burdens on organisations and ensure a focus on delivery.• Commissioners need to clarify exactly what the contract entails, and be specific about the level of information required in the bid.

¹Based on: CSIP (2007) Managing relationships between commissioners and the voluntary and community sectors; Home Office (2005) Funding and Procurement Compact Code of Good Practice; Department of Health (2006) Report of the third sector commissioning task force: part II, outputs and implementation

Consideration	Rationale	Good practice
Developmental support	To reach a shared understanding of commissioning, commissioners roles and responsibilities, and providers challenges and ideas.	<ul style="list-style-type: none"> • Joint training and development groups. • Regular commissioner/provider partnership meetings or provider forums to monitor progress and resolve issues.
Proportionality	What is necessary or highly desirable should be achieved in the simplest possible way. Small scale contracts should not require the same documentation and form-filling from the provider as large, complex contract.	<ul style="list-style-type: none"> • There should be a direct correlation between the size of the contract being tendered for and the amount of work/time required to submit a bid. • Document length should be reduced as much as possible and the “kitchen sink” approach abandoned. • The use of large-scale contracts, including regional frameworks and a rationalisation of the supplier base, can rule out many small organisations.
Realistic time scales	Providers, particularly smaller organisations, can experience difficulty in finding out about funding opportunities including tenders, and who to approach. Small organisations have limited time, money and resources to commit to the application process, so unless a contract is of a significant length, it may not be worth them diverting valuable resources from their day-to-day activity of actual service delivery.	<ul style="list-style-type: none"> • Time should be allowed for identifying the tender and planning the service required. • The contract must be of sufficient length to make it worth tendering for. Short-term contracts that are low value are less attractive. • It takes time to formulate good contract bids and to prepare for delivery when a contract has been won.
A level playing field	The same opportunities, conditions and safeguarding measures should apply to all sectors otherwise the ability to secure the best services will be skewed.	<ul style="list-style-type: none"> • Third sector organisations should be subject to the same set of requirements and evaluation criteria as their private sector and public sector counterparts.
Sustainable efficiency	Relationships with care providers are rarely, if ever, one-off spot transactions. In a long term relationship both sides should take account of the issues and challenges	<ul style="list-style-type: none"> • Services should be efficient, enabling commissioners to achieve quality services at value for money. • Commissioners should also demonstrate a commitment to full cost recovery and ensure a shared understanding of what it means.

Consideration	Rationale	Good practice
	facing each side and work together to resolve them if the service is worth maintaining. A relationship where both sides help get the best out of each other is a partnership where the service provided will thrive and improve.	<ul style="list-style-type: none"><li data-bbox="1104 248 2056 384">• Discussion and dialogue should take place between commissioner and provider to help build trust. Commissioner and provider should be able to work together to improve efficiencies - and identify and overcome problems before they impact on the delivery of outcomes.<li data-bbox="1104 400 1872 432">• Risk should be shared between commissioner and provider.