

The Independant Review of Inspection, Scrutiny and Regulation of Social Care

Public Consultation Response





CEMVO Scotland is a national intermediary organisation and strategic partner of the Scottish Government Equality Unit. Our aim is to build the capacity and sustainability of the ethnic minority (EM) voluntary sector and its communities. Since being established in 2003, we have developed a database network of over 600 ethnic minority voluntary sector organisations throughout Scotland to which we deliver a wide range of programmes that provide capacity building support to the sector.

As a national organisation, we continually engage with the EM voluntary sector and its communities, which enable us to gather intelligence about the needs and issues affecting the sector. This helps our organisation to deliver tailored support to the sector, and to work strategically with public, statutory, and government agencies to tackle a range of prevalent issues such as race equality, social inclusion, capacity building and civic participation.

One of our core programmes at CEMVO Scotland is Race for Human Rights. The aim of this programme is to help public service providers increasingly embed race equality and human rights in their strategic planning and day-to-day functions. This will be achieved by adopting an anti-racist and human rights-based approach.

This publication is in response to the Scottish Government's public consultation on the Independent Review of Inspection, Scrutiny and Regulation of Social Care, submitted in January 2023.

1. How can we ensure that people with lived and living experience of care and support services are able/supported to contribute to inspection, scrutiny and regulation processes?

CEMVO Scotland welcomes the commitment to a person-centred approach, an integral component to achieving a human rights-based approach. It is also vital that while reviewing/updating the way in which care and support services are inspected, regulated and scrutinised that equality matters and the existing public sector equality duties are not overlooked.

CEMVO Scotland believes that to truly ensure that people with lived and living experience of care and support services are involved in the process, anti-racism practises must be at it's core. Regulatory bodies must recognise and take steps to overcome barriers to participation, in line with PANEL principles, such as unconscious bias, implementing an inclusive communication model (accessible and translated information documents/events). Without adopting such an approach, regulatory and inspecting bodies could run the risk of reinforcing systemic barriers.

Furthermore, the marking system of regulatory and inspection bodies must include questions around how the service engages with lived experience groups or marginalised group and how they use that to inform policy and practice. CEMVO Scotland also supports the adoption of a 360 degrees approach to enable lived experience to be embedded within the inspection, scrutiny and regulation process. A 360 degrees approach means that one must consider every person who interacts with that service and how one engages with them regarding their experience and their feelings. For example, in a care home setting, this would include having a safe space for managers to reflect on how they feel the service is being provided and what works and doesn't. This should similarly apply to staff members, volunteers, people who live in the care home and family members and friends of the person receiving the care, in separate safe spaces.

There should also be a qualitative element to regulation. For example, part of the inspection should include, talking to people who receive care and asking what matters to them, that should then be scrutinised to ensure that those needs are met as part of the evaluation process

CEMVO Scotland also believes that a review of the complaint's system, to ensure that it is effective, accessible and fit for purpose is required to ensure that people with lived and

living experience of care and support services are able to contribute to inspection, scrutiny and regulation. The social services and care sector is a complex landscape and often people receive services from a multitude of different organisations and accountable regulatory/inspection bodies. Complaint systems should reflect that it is not the duty of the individual to navigate such complex landscapes, but the service provider to ensure that their complaint can be heard at any 'door', and not be repeatedly signposted to different services/bodies. There are numerous research papers that describe how this can be disempowering for an individual and does not reflect and take into consideration the situation or 'living experience' of that individual at the time. Similarly, CEMVO Scotland would also suggest, as in our evidence session on the National Care Service at the Health, Social Care and Sport Committee, that there is a lot of stigma associated with complaints terminology, and does not reflect that a person may want to raise a concern/query rather than a formal complaints procedure.

CEMVO Scotland would also welcome the inclusion of how racist incidents are logged and dealt with in the care and support service sector and equally in the inspection/regulation process. Public regulators and inspecting bodies should be transparent in their findings and access and this information should be publicly available in an accessible format. This will promote trust within communities who historically do not engage with care or support services. Furthermore, CEMVO Scotland would also advise that when poor race equality performances / practices are identified within care providers, they must be taken seriously and addressed fully with an improvement plan or a type of "penalty", and possibly referred to equality organisations for support.

Theme 2 - What needs to be inspected, scrutinised and regulated

In Scotland, there are three main organisations that regulate and inspect social care support:

Care Inspectorate - is a scrutiny body which supports improvement and regulates and inspects care services in Scotland to make sure they meet the right standards. They also jointly inspect with other regulators to check how well different organisations in local areas work to support adults and children.

Healthcare Improvement Scotland - is the inspection and improvement body for health but it carries out a number of strategic and thematic inspections with the Care Inspectorate, for example, inspections of Health and Social Care Partnerships.

Scottish Social Services Council - is the independent professional regulator for social workers, social care and early learning and childcare practitioners. It sets the standards for

their practice, conduct training and education, supporting continuous professional development.

Question 2a. If yes, please tell us which type of services?

While CEMVO Scotland does not deliver, monitor or support the access to care or support services, we firmly believe that a more strategic approach is required to have effective and impactful regulation, scrutiny and inspection of social care support. We will outline 3 areas that we believe should be reviewed:

1) Then tender/funding/contract process should, at it's heart, have criteria that ensures the fulfilment of the Equality Act 2010 (PSEDs) and Human Rights Act 1998. For example, if a service is put out to tender, the marking process should give great weight and preference to organisations who have a strong track record and commitment to equality and diversity and can demonstrate this. This is particularly important in terms of ethnic diversity given the alarming lack of representation within the sector. Diversity of workforce is an integral part to address systemic racism, it can support the removal of barriers for people to access services. It is widely reported, e.g. in our Older Persons and Social services engagement event, that the lack of diversity in existing workforces prevents them from accessing/requesting support.

2) CEMVO Scotland believe that services that are outsourced to private and third sector organisations must be equally regulated, inspected and scrutinised. It is paramount that when local authorities or public bodies outsource their services they do not outsource their legal obligations under the Equality Act 2010 and Human Rights Act 1998. One way to ensure that legal obligations are not 'outsourced' is to ensure that you have a procurement process that reflects such duties and obligations e.g. what steps have this organisation taken to encourage an inclusive workplace, what steps have this organisation taken to successfully engage with ethnic minority communities to promote the access to services.

3) CEMVO Scotland recognises that the regulation, scrutiny and inspection of personal assistants (PA's) is subject to much debate just now, however we would strongly encourage ensuring that a sustainable and effective form of regulation is co-designed by those delivering and receiving the support. CEMVO Scotland strongly supports the findings from the Alliance's National Care Service consultation response relating to the regulation of personal assistants, reaffirming CEMVO Scotland's call to take a strategic approach and ensure that we are asking the right and meaningful questions e.g. having an assistant who speaks the same language as you and is from the same community. This can only be achieved by empowering low-represented communities to learn more about personal assistant work and to take evidence-based positive action steps to improve the diversity of this often, voluntary, workforce.

Question 2b. Why you think they should be inspected/scutinised/regulated

In our response to question 2a, the first two points highlight current gaps in legal protection and that have a detrimental impact on the protection and realisation of individual's human rights. It is of the view of CEMVO Scotland that such gaps could be reduced by implementing our strategic suggestions to improving the inspection and regulation of care and support services.

Furthermore, CEMVO Scotland recognises that, in today's society, it is common practice for public services to be outsourced to private contractors, community groups or third sector organisations that the same standard in terms of equality, diversity and inclusion and human rights protection is guaranteed. This is integral to person-centred approach, we are thinking about the impact the outsourcing of this service will have on an individual. To achieve this, CEMVO Scotland would recommend the adoption of an Equality and Human Rights Impact Assessment. The importance of including human rights is that it has the scope to capture intersectionality, as it focuses on the being and not just their protected characteristic.

2c) Who should be responsible for this

It is of CEMVO Scotland's opinion that the existing regulating, scrutiny and inspection bodies have the capacity to include this within their scope. CEMVO Scotland appreciate that some sectors and areas of social care services are over regulated and scrutinised, sometimes to the detriment of individual positive outcomes. However we believe that there are gaps in regulation and what needs to change is how we regulate and the standards we have, not who regulates.

It is CEMVO Scotland's opinion that any changes to the system should reflect that this landscape is very complex and difficult to navigate and that if multiple regulators are responsible for an individual's care plan, that any 'body' could receive their concern, provide information etc.

3. Would a system work where the same regulator inspected all services

Not sure

3a) Why?

CEMVO Scotland does not deliver or monitor social care services and would respect the expertise of those who are involved in this area. However we would call for equality, diversity and human rights to be at the heart of the regulatory process.

Question 4. Should there be different regulators for inspection (the organisation that looks at how things are working) and improvement (the organisation that supports things getting better)?

Not sure

Question 4a. If yes, why? If no, why not?

CEMVO Scotland does not deliver or monitor social care services and would respect the expertise of those who are involved in this area. CEMVO Scotland would like to advise that the more agencies involved, the harder accountability measures become to implement. In adopting a human rights-based approach to regulating social care services, using PANEL principles, a clear path to the accountable body is paramount. Sectioning off separate bodies for separate duties, only adds to the already complex landscape of social care services and hinders the access to remedy by adding additional structures to accountability.

Question 5. How can we ensure that regulation and inspection processes are underpinned by a commitment to improving services?

CEMVO Scotland believes that the criteria and marking process of inspections should include specific progress questions, adapted to the areas of progress required for that service. For example, if a service provider does not have diversity in its outreach (those who access the service), a regulator must include questions about the positive action steps that they have taken to increase the diversity of their service users and how successful these actions have been. This could be achieved by developing and implementing a robust regulatory framework when assessing care providers around race / equality standards / policies & practices. This should then be reflected in the inspectors report and in their marking of the service provider.

CEMVO Scotland would also welcome the introduction of regular inspecting, a continuous assessment style of regulation and inspection. This would also allow for an inspector/regulator to get a more realistic experience of the service, which an annual visit could not achieve. For example, mystery shoppers could be used to assess how care providers deal with day to day race related issues.

Finally CEMVO Scotland would like to highlight that to ensure the regulation and inspection processes are underpinned by a commitment to improving services, the data collection process and analysis must be improved. CEMVO Scotland advocate for utilising a human rights-based approach to the review of the data collection process. CEMVO Scotland's Race for Human Rights Team have developed such Guidance Document and promoted at our Learning Workshop with the Scottish Government's Fair and Inclusive Work Directorate. You can access more information via our website [Improving Ethnic Minority Workforce Data Collection – CEMVO Scotland](#).

Furthermore, integral to the review of inspection, scrutiny and regulation of care and support services, must be a review of the data collection and analysis: data allows organisations to inform policies and monitor progress. CEMVO Scotland recognise that the collection and disaggregation of data, particularly in terms of ethnicity, is an area that many public bodies struggle with (when reporting their PSED's) and welcome the commitment by Scottish Government to improve this and would once again support the adoption of a human rights-based approach to the review of this process that: empowering people to disclose and access their data, design the collection process and captures intersectional, qualitative and quantitative data.

Question 6. Should regulation, inspection and scrutiny have an emphasis on services continually improving? What might that look like?

Question 7. What should happen if something goes wrong in a service?

While CEMVO Scotland values and supports the requirement of improvement plans as an integral tool of service and business development, the regulatory bodies must have a clear and defined line of when a service is putting people's rights at risk and is not fit to deliver a service anymore. For example, if a care home scores a 2 on their inspection and commits to improving, an equality and human rights impact assessment must be carried out. Commitment to improving is always welcomed but in the meantime this cannot be balanced with the interference of an individual's human rights such as right to inhuman and degrading treatment, right to cultural life etc. Equally, services who fail or score very low on their inspection should not be allowed to continue simply due to lack of alternative services or support.

Question 8. Who should be responsible for making improvements to services?

Those who care for or receive social care support should be the top priority and have the biggest input into service improvement. The service should be designed to meet their needs and improvements should be defined by their views. It is integral that this is the first stage of service improvement design and reflects Scottish Government's commitment to co-design. If views of people with lived experience are consulted with after improvement plans are made, it is retrospective and often their needs do not fit in to the framework designed by people who have no experience of this service.

Question 9. How do we make sure regulatory bodies are doing a good job?

Question 10. How can we ensure that people and their families who require care and support, have the information they need about how providers are performing to support their decisions about care and support?

CEMVO Scotland believe that transparency and accessibility of information is paramount to inform people and their families about the performance of providers. At CEMVO Scotland, we believe that inclusive communication is a human rights issue. All information should be available in easy-read and in different languages in the first instance, not at a later date. Additionally, there must be steps to address the barriers that certain marginalised groups in society face when it comes to accessing or receiving information about services. This calls for an acceptance of institutional racism within the sector, and taking positive action steps to address this.

Question 11. What information might that be?

Question 12. How can we make data collection and sharing better?

As outlined in question 5, CEMVO Scotland believes that integral to the review of inspection, scrutiny and regulation of care and support services, there must be a review of the data collection and analysis. Data allows organisations to inform policies and monitor progress. CEMVO Scotland recognise that the collection and disaggregation of data, particularly in terms of ethnicity, is an area that many public bodies struggle with (when reporting their PSED's) and welcome the commitment by Scottish Government to improve this and would once again support the adoption of a human rights-based approach, using PANEL principles, to the review of this process that: empowering people to disclose and access their data, design the collection process and captures intersectional, qualitative and quantitative data.

Question 13. How do we make sure regulation, inspection and scrutiny supports good practice for people accessing care and support?

CEMVO Scotland believes that to make sure regulation, inspection and scrutiny supports good practice for people accessing care and support these bodies must address and take steps to overcome institutional racism. As highlighted in previous responses, it is paramount that the inspection, scrutiny and regulation of support and care services monitor and evaluate how organisations tackle racism, lack of diversity of workforce and implement anti-racism policies and practice. It is important for inspecting and regulatory bodies to show leadership in this area, therefore a review and monitor of the training of inspectors (or those working for regulating bodies) are regularly trained on issues relating to race equality, ie. Modern manifestations of racism, white privilege etc. This will ensure that they have the capacity to scrutinise the care sector on race equality policies and practices. It is equally important that this training is of a high standard and delivered by reputable sources, meaning that procurement processes of the regulatory/inspection bodies must be fit for purpose.

Finally, regulatory and inspection bodies could also involve external race / equality experts within their inspection teams during audit visits to provide them with “expertise” on the scrutiny of care providers around race / equality.

Question 14. How do we make sure regulation, inspection and scrutiny supports good practice for people working in care and support?

Similar to our response to question 13, to make sure regulation, inspection and scrutiny supports good practice for people working in care and support it is vital that they receive regular and meaningful training on societal issues, such as institutional racism. It is important that those providing care and support are given the appropriate anti-racism training such as what microaggressions, unconscious bias, white privilege are and be provided with tools to implement such practices. For example, it is important for a person providing support with cooking to be aware of cultural dietary requirements. This again will encourage and support trust within EM communities who historically do not engage with these services.

Question 15. How do we make sure regulation, inspection and scrutiny supports good practice for providers delivering care and support?

In addition to the suggestions in questions 13 and 14, CEMVO Scotland would strongly support a review of what is being inspected, regulated and scrutinised and how this is implemented. As stated in question 1, we need to ensure that what we are inspecting, regulating and scrutinising is person-centred, that positive impacts/outcomes are monitored, that what matters to those receiving and providing the care or support service is at the heart of the evaluation. This could be achieved by co-design and production of the regulatory, scrutiny and inspection framework. This would also follow a human rights-based approach, by supporting and facilitating empowerment, a key PANEL principle.

Question 16. How do we ensure there is compliance and consistency with workforce registration requirements?

Question 17. How can we ensure that people who work in care and support services are able to contribute to inspection, scrutiny and regulation processes?

In addition to our suggestions in question 16, CEMVO Scotland believes that in order to ensure that people who work in care and support services are able to contribute to inspection, scrutiny and regulation processes there must be a system in place that allows for ongoing contribution. The system must recognise and reflect the busy schedules and working time of staff, ensuring that participating in the process does not negatively impact their service delivery or prolong their already long and demanding working day. CEMVO Scotland would also believe that such system should adopt a feedback loop, implementing the empowerment principle of PANEL. Participation often lacks in such systems due to apathy, the care and support sector is no different. Service users and providers often feel that they raise the same issues time and time again and rarely see the impact of their

participation. Feedback loops ensures that at every step of the participation process, the individual is updated and the impact their contribution has had is shared with them. Adopting a feedback loop values staff time and experience and can empower them to participate again.

It is also of the view of CEMVO Scotland that the system to involve participation should also take into consideration that there are significantly low numbers of EM staff in the care and support sector, therefore to ensure that their voices are heard, safe spaces are created specifically to discuss race issues. If numbers are significantly low, that a specific group cannot be set up, working in partnership with other regulatory/inspecting bodies should be explored. Finally, these regulatory/inspection bodies should also take a pro-active approach and improve on their PSED requirements, by engaging with race equality stakeholders to support them in their journey to being an anti-racist organisation and ensuring that their service delivery reaches all of the Scottish demographic.