Review of Care Service Definitions:

Challenges and Recommendations

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Iriss

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Andreea Bocioaga & Ellen Daly

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The 2020-21 Programme for Government included the commitment to complete a review of care services definitions. This was to enable social care support services and workers to be more flexible and responsive to people's needs and work both more autonomously, and with others across professions.

A steering group, led by the Scottish Government with representation from the Care Inspectorate and Scottish Social Services Council, was established to progress this Programme for Government commitment. The group commissioned independent research to review current definitions of care and explore options to ensure that they better reflect, more holistic approaches to deliver person-centred, flexible outcomes.

The research was conducted by Iriss during May and June 2021.

This document presents the findings from the independent research and will inform any further recommendations that may be made.

1. Acknowledgements

We would like to thank all those who contributed to this evaluation and partner agencies who shared their insight and experiences, this added much value to our understanding of the issues with the current definitions and categorisation of care services and social service. We would also like to thank our Iriss and Scottish Government colleagues for their valuable input and support throughout this project.

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1. Executive summary

The Scottish Government commissioned Iriss to help review the current care services definitions (section 47 and schedule 12 of the Public Services Reform Act (Scotland) 2010 Act), by engaging with key stakeholders in the sector. Iriss interviewed 55 stakeholders representing organisations from across the social services, health, and education sectors and local and national government (see appendix 2 for the stakeholder list). The following report provides feedback on key areas of changing the current care definitions: challenges the current definitions pose, the changes the sector wants to see, the implications of any suggested changes and approaches to consider for taking forward recommendations from this research.

Challenges

Some stakeholders felt that the current definitions of care services posed a range of challenges to the sector. Some challenges were around service provision. Stakeholders argued the definitions hindered person-centred care, exacerbated the current challenges of integration and created barriers between social work and social care. Stakeholders also felt the current care definitions complicated the practical operation of the SSSC Register for social care workers and further challenged professional roles in this sector. Similarly, those using services cannot always access the support they need and some stakeholders showed transitions are a crucial area missed by the schedule for care definitions.

Changes

Stakeholders wanted to see a range of changes to the current definitions. Some argued for specific changes to each definition (see appendix 1). This included the creation of new categories, using more appropriate and updated language that reflected the culture of the sector, developing further guidance to support the current schedule, and broadening the definitions of care services. Others argued

for wider transformational changes focusing specifically on person-centred care and providing holistic support.

Implications

Stakeholders were mindful of the potential implications of changing the current care services definitions. Many reflected on the pressure this might put on service provision, as services could become over-regulated. Some also considered the positive implications on public attitudes towards some areas of the sector which currently carry stigma and negative connotations. Stakeholders were also concerned that any changes to the definitions would negatively impact social care workers in the sector by creating new regulatory barriers and by threatening flexibility and autonomy for workers. Stakeholders, however, felt that changes to the definitions would lead to better quality of care for those accessing support services.

Iriss recommendations

This report concludes with Iriss' recommendations for development with references to systems change and health and social care redesigns.

2. Introduction

Iriss conducted a research study during May and June 2021 to provide the Scottish Government with evidence about how the care services definitions reflect the current and future needs, demands and delivery of health and social care provision in Scotland.
This section outlines the aims, objectives and key research questions of the study.

2.1 Aims

This research aimed to inform the review of the definitions and provide a steering group led by the Scottish Government with timely, robust information about:

- Issues with the current definitions and categorisation of care services and social service workers;
- An assessment of the risks involved in making changes or continuing with status quo;
- Any equalities implications of suggested changes.

2.2 Objectives and research questions

In order to meet the aims, the specific objectives of the project were:

- The clear identification (from analysis of relevant policy and legislation, and stakeholder interview data) of how the definitions reflect, or do not reflect, the current and future needs, demands and delivery of health and social care in Scotland;
- To identify, develop, and assess options for new/amended definitions for the Scottish Government to consider. Proposed options should consider potential implications for: legislation and guidance; regulatory bodies; people who use support services; carers; service providers; and workers.

The key research questions were:

- How do the current definitions of care services and roles (section 47 and schedule 12 of the Public Services Reform Act (Scotland) 2010 Act) and the

Regulation of Care (Scotland) Act 2001 reflect the current and future needs, demands, and delivery of health and social care provision in Scotland?

- What changes to the definitions are required 'to enable social care support services and workers to be more flexible and responsive to people's needs, to work more autonomously, and to work with others across professions'[1]?
- What would be the implications of any change to definitions for: legislation and guidance; regulatory bodies; people who use support services; carers; service providers; and workers? For example: registration, inspection and scrutiny of services; operational resilience for regulatory bodies; quality of care and personal outcomes; commissioning and procurement of good quality service provision; workforce conditions.

[1] https://www.gov.scot/publications/protecting-scotland-renewing-scotland-governmentsprogramme-scotland-2020-2021/ (p.74)

3. Background and methods

3.1 Policy Context

The definitions established in the Public Services Reform (Scotland) Act 2010 determine which services the Care Inspectorate regulate and inspect, and dictate the Scottish Social Services Council's registration of social care workers. However, over the last decade, the introduction of the Health and Social Care Standards, the implementation of Self-directed Support (SDS), and health and social care integration have led to significant changes in the sector in terms of how social care is commissioned, provided and how people access this care and support. Since the implementation of the 2010 Act, different approaches are needed to deliver person-centred, flexible care and support, in the right place at the right time for people. More recently, the COVID-19 pandemic has further highlighted the need for flexibility in the delivery of health and social care support.

Below details some of the key pieces of legislation and policy developments which frame the current social care landscape.

Regulation of Care (Scotland) Act 2001

This sets the foundation for social care workers' registration in social services.

Self-Directed Support

The Social Care (Self-Directed Support) (Scotland) Act (2013) came into effect in April 2014 and placed duties on local authorities to provide options for individuals to choose how much they want to be involved in the organisation and design of their care and support.

Health and Social Care Integration

Integration was a fundamental change to health and social care services in Scotland. Integration aimed to improve care and support for people who use services, their carers and their families. In Scotland, integrated care was formalised with the Public Bodies (Joint Working) Scotland Act (2014). The Act was intended to help shift

resources away from the acute hospital system towards preventive and community-based services.

Carers (Scotland) Act 2016

The Act gives carers rights to a new adult carer support plan or young carer statements. This reflects a preventative approach to identify carers' personal outcomes and needs for support. This preventative approach is also reflected in the requirement to provide information and advice services to carers.

Health and Social Care Standards

The Health and Social Care Standards were introduced in 2017 to drive improvement, promote flexibility and encourage innovation in how people are cared for and supported. All services and support organisations, whether registered or not are encouraged to use the Standards as a guideline for how to achieve high-quality care.

The Promise

The Promise (2020) was an Independent Root and Branch Review of Care ('the Care Review'), driven by young people with experience of care.

Adult social care: independent review

The recent Independent Review of Adult Social Care in Scotland (2021), chaired by Derek Feeley ('the Feeley Review'), reinforced the emphasis on people who use social care support, families and carers, and social care workers, being at the centre of service delivery. The review recommended improvements to adult social care support in Scotland, primarily in terms of the outcomes achieved by and with people who use care and support services.

3.2 Methods

This research involved a mixed method approach, including desk-based research and stakeholder engagement.

Desk-based document analysis

A rapid review of key policy documents and legislation was produced to gain an understanding of the context of the current definitions and to help prompt discussion with stakeholders.

Semi-structured individual and group interviews

23 interviews were conducted with a total of 55 stakeholders representing organisations from across the social services, health, and education sectors as well as local and national government (see appendix 2 for the stakeholder list). Of the interviews, 9 were with individuals and 14 with two or more stakeholders.

Some additions to the stakeholder list were made in response to requests from stakeholder organisations. One organisation requested another, closely related organisation join their group interview. Another stakeholder felt strongly that they needed to ask for the views of people accessing support before taking part in this research and so conducted a short poll using the interview questions from this research. Feedback from the poll was shared with Iriss so it could be included in the analysis. Another key social services organisation offered to contribute and so were also added.

All interviews were conducted remotely, using mainly video calls with some over the phone. Interviews were semi-structured and the questions, information sheet and consent form were shared with interviewees ahead of time. Each interview was audio recorded and transcribed.

Analysis

Each transcript was comparatively analysed using secure data analysis software and coded to extract commonality and themes, as well as highlighting areas of importance to those representing specific parts of the sector.

Views of stakeholder organisations were summarised to protect anonymity. Quotes included in the report were drawn from across the data with longer direct quotes attributed to organisations.

4. Challenges

This section outlines key themes from across the interview data focused on the challenges presented by the current definitions and the impact of these on a range of issues including service provision, the workforce and people accessing support.

4.1 Challenges to service provision

Restricting service provision and challenges to commissioning

Stakeholders described how the current care services definitions restricted service provision, citing challenges around having to 'fit into what was allowed within a service' and extensive bureaucratic operational processes for registration, reporting and regulation. Boundaries and separations between services in the definitions were referred to as 'artificial', hindering holistic, joined-up support. A 'divorce' between the practice of care and the regulatory framework was frequently highlighted.

An example of this was some shared accommodation arrangements for three or four people would have to register as a care home and follow all the associated, 'incredibly restrictive' standards, demonstrating a mismatch between the ambition to support 'ordinary and independent living' and the category it has to fit in.

Services experienced barriers when trying to change their model of care 'and don't fit neatly into one of the boxes', which made commissioning new models challenging. However, it was noted that some challenges to commissioning and registration were not well understood 'because people were finding ways round them'. An example of this given by a stakeholder was to describe the service 'in a way that means they don't have to be registered for it', incurring the risk that services could be offering significant support without 'governance or oversight of what they're doing'.

Commissioning and procurement were seen as fundamentally linked to some stakeholders' definition of the workforce, contributing to an environment of commissioning 'on a time and task rather than on a relational and preventative model'. This was seen to perpetuate a tight definition of the workforce, preventing autonomy and being risk averse, features described as 'the antipathist to what social care is meant to be'.

Hindering person-centred care

A number of stakeholders felt the current definitions of care were at odds with areas of legislation like SDS (2013) and the Carers Act (2016). The current definitions are thus seen to hinder person-centred care in different ways. Firstly, they are seen to undermine the SDS legislation and the efforts of integration to deliver person-centred care. This is particularly challenging for the sector as SDS

was highlighted several times across the data as demonstrating how it can be used to support people in new ways through the COVID-19 pandemic.

Several stakeholders also felt that SDS was being applied inconsistently across the country as there is a lack of legislative cohesion in the sector.

Stakeholders also reflected that 'what is care and what's not in terms of self-directed support' needed to be unpacked as part of understanding revisions to the scope of the care definitions. Given the flexibility of self-directed support, people are able to choose how they wish to be supported and this might not be through what is traditionally understood as 'care'.

The definitions were seen as not only disjointed from SDS but also the principles of the Health and Social Care Standards of dignity, respect, compassion and quality.

Enablers of SDS – innovation, flexibility, creativity – were seen as restricted and subject to interpretation by local authorities by some stakeholders. The definitions were at times seen as outdated and rigid, geared to 'models of care that do not exist, or do not exist in the same way as they have in the past'. An example of a 'future' model of care that would be limited by current definitions was the hybrid, 'hub' model described by the Residential Care Task Force[2], which CCPS pointed out would require separate registrations for each component (e.g.. residential care, day care, community-based outreach).

Stakeholders of Disability Equality Scotland highlighted that care services take many forms in practice. They expressed concern, however, that the current broad categories 'could easily lead to one's care needs having to be questioned further than perhaps necessary' in terms of 'proving' a need and financial eligibility.

The 'industry of regulation'

Across the interviews some concerns were raised about the balance between regulation and care. There were also some worries about the conflation between legislation and care assurance and a dominance of regulation over the law which 'shouldn't be based on what the inspection regime is' but vice-versa.

[2] Scottish Government, The Future of Residential Care for Older People in Scotland (2014), Scottish Government (https://www.gov.scot/publications/future-residential-care-older-peoplescotland-full-report)

The definitions pose particular challenges for providers registering their services in categories that are not always adequately matched with some services looking to adjust their aims and objectives accordingly. Debates between unregistered providers and the Care Inspectorate, who might feel they should be registered, were also noted. In some cases, creative approaches were taken by the scrutiny body to overcome the limitations of the definitions and meet the needs of the people using the service. An example given reflected on the rigidity of the 'care home service' definition so an innovative approach was taken to enable an older sibling over the age of 21 to remain living with two younger siblings in the same home without having to change the registration to a care home for adults.

Services being registered and inspected separately were seen as challenges to 'inspecting and ensuring quality of a holistic service for an individual'. Similarly, stakeholders also raised the issue of dual registration – where services have to register under different definitions if they deliver different kinds of services i.e. adult and children's services. This was seen as having a negative impact on the ability of local authorities to procure SDS packages that meet individual's needs:

> "It's very difficult to get highly specialist children's services to deliver in our area because there's not enough need… and it impacts significantly on individual families [...] and most organisations don't want to try and go for a dual registration because it's just so much more complex and such a lot of hassle" (CSWO).

This was a common theme across the interviews, with stakeholders highlighting how person-led care should not be restricted or diluted by processes or definitions that no longer aligned with a more progressive and aspirational model of care.

Integration – exacerbating the gap between health and social care

Throughout the interviews, there were key questions and concerns about the ways current definitions exacerbated gaps between health and social care and caused barriers to integrated working. Definitions were seen as restrictive in their exclusion of integration and 'divisive' between health and care. For example, one stakeholder pointed out that currently, the schedule stipulates that: 'paragraphs (c) and (d) do not apply where the provider is a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c. 29)'. They argued this was against the spirit of integration and might allow for 'space for people who are not signed up to an integrated way of working'. Creative multi-disciplinary

working was seen as stifled by these compounded issues as ‘regulation bordered by definition was not helpful in an integrated environment’.

One stakeholder felt that the definitions created an uneven relationship between health and social care and contributed to a ‘lack of parity’ with health, particularly because health does not have an equivalent set of service definitions. There were nonetheless, differing views on how well the definitions were understood by health colleagues – some felt that ‘people in the health service… do not understand all these differences and these variations and the different types of service’ while others felt there was a common understanding across integrated services.

Many highlighted the fact that there are a number of pieces of legislation that services operate under. There are also different guidelines which have their own definitions of specific terms and their own vocabulary of care (e.g. Carers Act and the Public Services Reform (Scotland) Act 2010). This further adds to the fragmentation of the sector and prevents effective integration as different services are being shaped by different guidelines, especially between health and social care: ‘everyone needs to be reading the same documents, the same procedures, the same protocols, the same guidance’.

Social work and social care

The definitions were seen as not only divisive between health and social care but also across the social services. Separations between ‘social work care services’ and other areas of the social work landscape’ were described as ‘artificial’ and ‘dangerous’. Tensions were outlined between these and other definitions including social services and social work services as well as social care services charged and not charged for as outlined in Section 1 of the Community Care and Health (Scotland) Act 2002.

Some stakeholders felt that while these definitions set out the context of care and where it takes place, it does not define what care actually is in terms of some of the relational or everyday care experiences. The lack of clarity about care also relates to points made about digital support and the need for it to be ‘reflected in discussions around what is a care service’. A lack of consistency across Scotland in the way telecare is perceived and registered was also noted:

> “In some areas it’s registered as a care service...in some it’s registered as a housing service, and in some it’s the alarm receiving centre, the call handling

> bit that's registered. In some, call handling is not registered, but the response service is the bit that's registered. And none of that is defined in legislation at all" (TEC).

Some also highlighted the way in which commissioning is skewed in favour of those services that fit in specific areas of the care definitions. This leads to other important areas of delivery to be underfunded because they are not reflected in the same definitions. As a result, statutory duties covered by these definitions are seen to take precedence when it comes to commissioning resources.

Amplifying operational complexity in the sector

The definitions are seen as part of a wider issue in the sector regarding regulated and unregulated services. Discussions of the definitions brought forward the tension between the flexibility of a less regulated sector and the quality assurance of a more regulated one. Regulated services were seen by stakeholders to have more mechanisms of quality control, but the unregulated sector is seen to provide valuable flexibility and accessible alternatives to people using care and support.

Some highlighted that the challenge of operational complexity in the sector is also due to wider sector culture and local interpretations which ties in with discussions about consistency of guidance across the sector.

SOSCN argued for minimum child protection standards to ensure quality of care even among the less regulated sectors of care and support provision. This again reinforces concerns in the sector about the standards of care surrounding unregulated services.

4.2 Challenges for the workforce

Many of the challenges that stakeholders reflected on related to the social care workforce, professional roles and the tension between flexibility, autonomy and standards of care.

Some stakeholders felt that workers do not recognise themselves in the definitions and have to register under categories that are not always the most suitable for them (e.g. those working in housing support or care at home, who are actually working with children, are coming into the Register on parts that actually have a qualification that is more designed towards adults).

Practical operation of the Register

As part of their efforts to future-proof the Register, the SSSC identified key challenges to the practical operation of it, specifically:

- There are 23 register parts containing prescriptive definitions
- Workers employed in combined registered services are required to be registered on both parts of the Register
- There are inconsistencies in how services are registered

Reducing, simplifying and amending the definitions were called for to help address these issues.

Worker roles

Stakeholders recognised that the definitions were 'tied to rigid worker categories' which prevented flexible deployment. They reflected on the shift in priorities towards role flexibility and the need to 'encourage innovative practice around the definition of the care worker'.

Certain roles across health and care were also seen as challenging to integration. In particular, the 'healthcare assistant type role and the social care type role' which was 'starting to be perceived as a barrier to delivering care in the way that integration is intended to achieve'. Unevenly paid roles were also being created as the definitions operationally link to regulation and registration through fees and the rates paid between health and social care workers.

Complicating professional roles between health and social care staff

Stakeholders reflected on how the definitions are part of a wider issue in the sector surrounding workers' roles. Some felt that those working in social care were not always recognised for their role. Others highlighted that those social care workers who are not registered with SSSC do not always have the same access to support, information and training as well as career progression opportunities. Stakeholders acknowledged ongoing tensions between the registered and unregistered workforce.

Many also reflected on the professional distinction between health and social care staff. Some saw this as an indicator of where integration has not fully taken place

and some argued this was linked with the lack of integration across guidelines and definitions – Schedule 12 of the 2010 Act included.

Qualification framework

Stakeholders recognised the way in which the definitions interconnected with other systems. Definitions are tied to worker categories on the SSSC Register which are aligned to the qualifications framework. Where the current definitions are not fit for purpose this has a knock-on-effect on worker qualifications potentially becoming unfit for the purpose of the service.

4.3 Challenges for those accessing care & support

Inflexible support

One of the most urgent priorities emerging from the data was the need to address the lack of alignment between the current service-based definitions and flexible, personalised support embodied in the SDS Act.

There were conflicting views on the impact of the definitions on people accessing support. On one level, stakeholders recognised people accessing support might be quite distanced from the wording of the legislation, suggesting that 'their view is, it makes absolutely not a jot of difference what you call it, and therefore do we need definitions?'. On the other hand, they also recognised that where workers were hindered by lack of flexibility, autonomy and creativity in their roles, this would directly impact the person accessing support and the extent to which their care could be personalised.

Transitions

Related to a lack of flexible support, the definitions were seen to make transitions, both for people accessing support and workers moving between services, more challenging. The natural progression for children moving through ages and stages was seen to involve 'lots of different formalities' and 'hoops of regulation'. Processes were seen as separating rather than bringing together support at the expense of the individual.

Transitions from children's services to adult services can be financially impacted in terms of defining resources either 'through the adult care lens or the children's care lens'. An example given was when a young person moving into independence in a residential care or foster care setting can lead to support

services finding themselves in a definitional ambiguous area between children and adult services.

In terms of staff transitioning between different service areas, this poses complexity and administrative burden in terms of registration and qualifications.

Geography of care

Stakeholders pointed out challenges with the definitions in the context of rural and remote areas. Some felt the definitions simply 'wouldn't work' in remote and rural areas or needed conditions added to a registration to meet the needs of people accessing a support service.

In particular, where choices for childcare might be limited in rural areas, a childminder might be the only option. As it currently stands in the definitions, childminders should not receive payment for providing childcare to family members and relatives. However, if the childminder has a relative looking to access childcare to receive their 1140 hours of early learning and childcare statutory entitlement, technically they can't do so because of the current definition.

Digital support, absent from the current definitions, also has particular relevance for those in rural and remote areas. The importance of digital engagement to supporting care was further highlighted by the COVID-19 pandemic, with people needing support to access information and services, but also to connect with friends and family.

5. Sector Recommendations

Overall, the stakeholders interviewed were able to identify key changes they saw as necessary in the legislation. Some of them wanted to see specific changes made to the definitions most relevant to them, which would add clarity to the legislation. This included wording changes or adding further qualifiers (see appendix 1 for these types of specific changes). Others felt that more drastic interventions were needed in order to address some of the current challenges in the sector. Many highlighted the need for a person-centred approach to how care is

defined and advocated for definitions that enabled services to improve people's wellbeing and ensure an overall good quality of life.

Although stakeholders recognised the need for changes to the definitions, they also acknowledged the difficulties inherent in defining something so complex as care and of future-proofing against a fast-changing landscape with local variation.

This section separates sector recommendations into specific, focused changes, and more aspirational, transformational changes.

5.1 Specific changes to care services definitions

Importance of language

Language was a recurring theme across the interview data. Stakeholders felt it a priority to update the language used in the definitions which was consistently flagged as outdated, and in some cases inappropriate in light of personalisation, human rights and independent living. A rejection of the term 'care' and 'carers', particularly from the disability movement was noted. 'Care and support' as opposed to 'care services' was a more frequently used description. The Three Conversations approach[3] was highlighted as an example of language that had moved away from service-led terminology towards conversations to understand what really matters to people and families.

Some also felt that the language in some of the definitions carried stigma for those using particular support services. For example, secure care representatives felt the definition of 'secure accommodation' is focused on restricting liberty, as opposed to considering the overall protection and wellbeing of the children that it involves. Similarly, Who Cares? Scotland raised the issue of the language in some of these definitions being disconnected from the experiences and realities of those accessing different kinds of support throughout their lives: 'some of the language and the terminologies that are used to describe children, young people, groups of children, groups of young people, groups of adults – are experienced as quite othering, quite labelling, quite unhelpful'.

[3] http://partners4change.co.uk/the-three-conversations/

Increased recognition of unpaid care

Coalition of Carers stressed the lack of carers' visibility in these definitions and their role as support givers, and suggested a new corresponding category for carers which should look at carer support, and includes carers services like carer centres, short breaks, respite and replacement care. This should be considered alongside the Carers Act to ensure consistency of guidelines.

Creating new categories

Some argued for a more clear delineation between different elements within children and adult services and transitional periods. NDNA highlighted how 'day care' of children currently encompasses a range of categories that are often quite distinct – e.g. day care includes both very young children but also teenagers and children with additional support needs. They questioned whether this could be further split into areas like early learning and out of school care.

SOSCN also considered the possibility of further distinctions in the area of day care between indoor and outdoor nurseries: 'you could actually have an indoor specific registration, or more or less, or an outdoor specific registration'. They also warned however of the knock-on effect this could have in terms of registration with the SSSC and the qualification requirements.

Who Cares? Scotland highlighted the need to include transitional periods in these definitions to ensure that individuals in age categories that were not adequately defined, still received the care and support they needed.

Some also highlighted the need to include areas like kinship care or residential care for children which are not currently reflected in the definitions.

Developing statutory guidance

A number of stakeholders highlighted that one solution to the challenges posed by legislation, especially surrounding lack of clarity and ambiguity, could be to develop further guidance. This could support the existing legislation and clarify what is meant and what are the expectations of the service – and also the mechanisms by which to hold people to account.

Social work academics also argued that guidance could be a helpful place to acknowledge and develop debates and that changing the guidance or schedule rather than the definitions might be sensible.

Broadening definitions of care

Some also highlighted that definitions of the care services could be expanded to reflect a holistic person-centred perspective and include, psychological, social and spiritual needs.

Similarly, the definitions could be expanded to allow for more worker flexibility. Some stakeholders felt that currently, the definitions restrict workers' role and lead to practices like 'salami slicing' where roles are broken down by small tasks i.e. cleaning staff are allocated a small portion of care duties but their pay and title does not reflect that. The definitions could be altered to allow workers more flexibility and a different range of tasks to be reflected in their role.

Others argued for definitions that allow the sector to be less divided between third and statutory areas – both existing on equal grounds. This might involve broadening the scope of the definitions to allow for more choice and control.

Further suggestions included exploring a single definition of a care service, with the Care Inspectorate allowed to bring such regulation as it considered appropriate for that type of service and to specify exclusions. Adding an 'other' option for services that offer elements of the definitions was proposed as a way that could offer flexibility and help to future-proof the definitions.

Having broad definitions covering service areas – adults, children, social work – were suggested by some while others felt it important to 'challenge ourselves as to why some of these categories need to be specifically referenced'. Broad definitions would also still permit the SSSC to link registration to service-specific qualifications.

5.2 Transformative changes to the definitions

Generally, stakeholders recognised that 'tweaking the language' or 'tinkering' around the edges would not achieve the change required and would not help to future-proof the definitions. Exploring 'wholesale change' was seen to be an important way to show commitment to transformation, looking at social care across all legislation. However, views on this differed depending on the level of impact on the stakeholder – those who felt they were not overly affected by the

definitions felt that tweaking the language or updating a term was appropriate in their situations. For others, who were impacted by all or most of the definitions, their suggestions tended to be more radical and recognised a need to overhaul the whole system. Some wanted to 'do away with categories all together' and adopt a model which licensed the organisation rather than its services, though overall stakeholders did not advocate removing definitions completely.

When it came to bold changes, the stakeholders all focused on the quality of care provided. Issues of regulation and worker registration were seen as secondary to the key priority of care services which allow people to be supported in the ways that are most meaningful, useful and accessible to them.

'Take a rights-based approach'

Stakeholders argued that the definitions should be fundamentally shaped by a rights-based approach to care and focusing on needs first. NDNA highlighted the importance of focusing on children's needs and defining services from there, an illustration of this being the use of outdoor nurseries as a result of COVID-19. This indicated how a health and wellbeing approach was taken to ensure children had continuous access to the support and care they needed.

Though the importance of a rights-based approach was a common theme across the interviews, another perspective cited feminist ethics and the need to move away from 'rights and rules, towards responsibilities and relationships'.

'Simplify it to make it stronger'

Many felt it was important that the legislative definitions are centred on the people they are meant to serve. This might mean simplifying the definitions to say, 'care is care'. The focus should be less on where it is given, who it is being given to and more on support to live. Unite felt that currently, the definitions allow for loopholes and often fail to protect people when needed. Changing the definitions to be person-centred would put that protection at the core of the legislation. Disability Equality Scotland also highlighted the need for definitions to promote the independence of those using services.

‘Focusing on improving wellbeing’

Others highlighted that currently Schedule 12 is weighted towards contested words such as ’vulnerability’ and ‘needs’. Stakeholders felt that it was important to focus not just on ‘vulnerability’ or ‘health’ needs, but also wider, on improving people’s wellbeing and outcomes for individuals in general. This might mean finding inspiration in other pieces of legislation like the Care Act (2014) in England which is focused on specific themes around care, wellbeing, health, access, eligibility.

Representatives from IJB also raised the matter of definitions reflecting an ‘end-to-end consideration of care’. This meant looking at individuals and their pathways through interactions with services that provide support as a ‘whole journey’ as opposed to isolated parts. This includes aspects like reablement and preventative care.

‘Fit for purpose’

Stakeholders felt definitions need to be updated to adequately reflect the current realities of the sector. For some, this meant the definitions needed to be questioned to ensure they are fit for the sector’s statutory duties: ‘they should reflect choice and flexibility’.

‘Capture experiences from the front line’

Stakeholders emphasised the importance of any next steps being collaborative and inclusive of other key groups missing from the scope of this research. It was consistently acknowledged that it was vital to gather the views of people accessing support and those with lived experience. Existing employees and employers, particularly those who have wanted to innovate outside registration were also crucial to include. Other suggestions were to consult with industry suppliers to find out if the ways in which services are defined hampered how they developed products and entered the market. Engaging those with international expertise on proposed changes was also recommended.

Continual review

Representatives from the Disability Equality Scotland proposed that definitions are reviewed regularly to ensure they adapt to emerging issues and unforeseen circumstances as in the case of COVID-19.

6. Implications of changing definitions

Stakeholders commented on the risks of changing the definitions. Insight into these areas was more general and speculative; they often did not reflect specific changes but expressed certain worries in the sector, especially surrounding regulation, workers' rights, and how any changes might affect the flexibility of the sector.

Key themes in this section focus on the impact of recommendations on service provision, care quality and assurance, attitudes, workers (regulated and unregulated) and people accessing support.

6.1 Restricting service provision

Dangers of overprescribing

Stakeholders felt that a risk of changing the definitions would be that of over prescribing which would then impact services by reducing flexibility. Coalition of Carers argued that the danger of defining things too narrowly affects both what gets funded but also how things are funded and it can lead to inflexibility for those accessing services. An example given was of carers support and what is deemed a short break. The focus should be on individuals' needs and on allowing them the choice to do things creatively.

PA representatives also highlight that for many disability campaigners who advocated for freedom and choice over the services they use, over regulating the definitions would lead to individuals feeling a step back had been taken and a sense of restricting what they could provide.

Regulation: care quality and assurance

Stakeholders recognised that changing the definitions would significantly impact regulation of services and workers. IJB representatives highlighted that any legislative changes have implications for care assurance, and all local authorities

have established strategic and operational care assurance processes which would need to adapt to the new changes.

SOSCN highlighted that one way to regulate the current unregulated sector would be to set a minimum standard in an alternative way to the current model of registration. This could then impact those accessing services to be able to make informed decisions about the quality of care and standards of each provider: 'it might mean that they have to have evidence of X, Y, Z level of basic training on the UNCRC child protection'.

Similarly, CCPS also considered the English model of voluntary registration, but argued this would need resource consideration. The Care Inspectorate expressed concerns however, that a 'regulation light' option would come with 'assurance light' too and expectations around this would need to be carefully managed. Union representatives, similarly, were concerned about the regulatory implications of changing legislation particularly regarding the ability of any organisations to enforce the legislation and ensure that the rules are respected and the challenges of self-regulation.

The Care Inspectorate warned against having generic definitions that could lead to complex regulatory documents to support them. They argued for legitimising expectations as a regulator, so that those providing the service would know what it was that they were expected to do. Another possible implication of generic definitions would be that information provided to local and national government by the Care Inspectorate for research and analytical purposes might be diluted if granularity was lost through broader definitions.

IJB representatives also highlighted the potential risk the changes could have to providers, as the definitions expand their coverage this could further put financial strains on organisations needing to adapt their operations to the new regulations. Similarly, several stakeholders highlighted that regulating activities like summer sports clubs and family childminders would trigger onerous obligations for providers around policies, procedures, staff qualifications and care planning.

Moreover, SSSC expressed concern about potential implications for overlap with the Care Inspectorate and blurring of boundaries between service regulation and workforce regulation, particularly if SSSC began to register roles which are not working in a service regulated by the Care Inspectorate.

Changes to attitudes and perceptions

Some stakeholders, especially providers, highlighted that the definitions could have positive implications on how people currently perceive services. This was specifically important for services like secure care. The five heads of secure care services that were interviewed argued that making the definitions more centred on the element of wellbeing might help counter some of the stigma that those using the services feel: by adding emphasis on care and wellbeing, as opposed to punishment and consequence.

Similarly for the childminding definition, stakeholders argued that adding 'registered' to the term 'childminder' in the definition could add legitimacy and tackle negative perceptions of childminding as a lesser, more informal way of providing care to children.

Perceptions of staff and people accessing support were highlighted as important to address, particularly around the experience of moving between definitions. One stakeholder described the 'hoops of regulation' and that tipping into 'a slightly different regulatory basket... doesn't make sense to people'.

The point was also made about potential changes to the attitude of the public towards regulation. Current regulation and inspection processes were seen to provide public and political assurance which might need to be reconsidered if the definitions and regulatory frameworks were to shift.

6.2 Implications for workers

Regulated workforce

Scottish Care argued that the definitions should allow more flexibility among social care workers: if 'the descriptions are an illustration of practice' then that practice needs to be 'freed up to enable the workforce to be much more dynamic in both its description and its scope of practice'. A possible risk of this might be 'muddying the key skills of a care worker' and a lack of clarity around the distinctiveness of the role, though this risk would need to be balanced against the benefits of increased flexibility and autonomy.

SSSC suggested that broader definitions could have a positive impact on developing qualifications by allowing for alternatives like 'a hybrid qualification that

allows people to work across healthcare and social service settings' or 'an apprenticeship that allows for work across children and adult services'.

Unison also discussed the challenge of how a wider definition would fit a wider group of jobs which would help with the current issue of compartmentalisation. They considered how this might lead to an increase of workers registering with SSSC which could positively impact quality of care. On the other hand, they warned against low paid workers being exposed to an overarching regulatory 'machinery' and having to pay more fees which could act as a deterrent to working in the sector. A widely held concern across stakeholders was the operational pressure an increase of worker registration would put on regulatory bodies and their lack of capacity for this at present.

Some also cautioned against current practices where providers go around the registration requirements of legislation to create roles which might not always be subject to regulation. Stakeholders were concerned that whatever revisions are made to legislation can impact upon employment terms and conditions and wages which ultimately has an impact upon the quality and delivery of service. Some cautioned against the consequences, including those unintended, of such changes.

Unregulated workforce

Stakeholders outlined several impacts on the unregulated workforce of changes to definitions, both positive and negative. On the positive side, registration could mean increased access to training and support and, overall, a more skilled workforce. However, requirements around regulation, fees and qualifications might put people off working in the sector, negatively impacting recruitment and retention.

6.3 Implications for people accessing care & support

Some touched on the positive implications of extending the definitions to include areas that are not currently regulated when it comes to those who access care and support. NDNA indicated that if there was a new definition of day care for school age childcare, this could then mean that parents – especially parents of children with disabilities, could access childcare tax credits, because eligibility is linked to the organisation being regulated under this definition of day care. So if it was broadened, or expanded or changed to include this, that could also give parents more choices about childcare and help with the costs of it.

Several stakeholders argued that while those using services might experience little impact in terms of awareness and knowledge of the definitions, they might be impacted in terms of the flexibility of the worker to meet their needs.

PA representatives highlighted that changing the definitions to include a broader range of issues like addiction services and mental health support could have positive impacts on those 'marginalised communities' accessing services by making a wider range of options available to them.

Similarly heads of secure care argued that changing the wording for secure care could help young people achieve better outcomes and not feel as stigmatised. If the language used was more focused on nurturing and caring elements of secure care as opposed to punishment it might help to shift the focus onto recovery and being safe: 'for the young people themselves who use the service… to make it sound a bit more human.' Stakeholders felt that changes to the current definitions would allow services to deliver better person-centred care with a higher degree of flexibility. Thus, when considering how those receiving support would be impacted by the changes, stakeholders reflected on a range of positive implications rather than risks. However, the opposite was the case for social care workers or providers, alluding to the wider tension in the sector between achieving positive outcomes for people and the operational challenges that come with regulation. Stakeholders had a range of concerns regarding the operational challenges of changing legislation on areas like registration, the potential future burden of increased regulation, and the impact on workers. These challenges, however, would also impact those accessing services – e.g. if providers and workers are dis-incentivised to operate by an increase in levels of regulation this could also lead to less choice of providers. The risks and implications for those needing support are intertwined with all areas of the sector which could require a transformative change.

7. Conclusion

This research uncovered a range of challenges posed by the current care services definitions and the ways in which they impact on social care workers, providers and those accessing support. It has drawn out tensions, implications and risks and made a number of recommendations to consider. These range from the specific to the transformational. Overall, stakeholders agree that the status quo is not going to achieve the desired future of social care and that more work must be done to better understand gaps, gather missing perspectives and unpack experiences. The section touches on evidence and approaches that can support sector recommendations for transformation and for next steps to be taken collaboratively.

Thinking in systems

Approaching the care services definitions as part of a system which interacts with other systems (e.g. inspection, registration, qualifications, self-directed support) may be a helpful lens through which to view changes, tensions and risks. System and process mapping can help to identify pain points and places to intervene.

Places to intervene in a system:[4]

(in increasing order of effectiveness)

9. Constants, parameters, numbers (subsidies, taxes, standards).
8. Regulating negative feedback loops.
7. Driving positive feedback loops.
6. Material flows and nodes of material intersection.
5. Information flows.
4. The rules of the system (incentives, punishments, constraints).
3. The distribution of power over the rules of the system.
2. The goals of the system.
1. The mind-set or paradigm out of which the system – its goals, power structure, rules, its culture – arises.

[4] D Meadows (1999), Leverage Points: Places to Intervene in a System, The Sustainability Institute

Based on the above list, changing the legislation could be seen as 'Point 4: changing the rules of the system'. The data from this research suggests mind-sets (Point 1) have already shifted away from restrictive ideas of care and now need the support of new system rules to fully realise personalised support and achieve the future of social care presented in the Feeley Review.

Systems redesign and transformation

Naylor & Wellings' (2019)[5] report details the elements of a system redesign. It argues that radical changes involve the emergence of an entirely new form/ structure, often prompted by a shift in what is considered possible or necessary, which results in a profoundly different structure, culture or level of performance. The King's Fund has carried out research which suggests that successful transformational change in health and care is more likely to happen when a number of enabling conditions are in place, as listed below (Dougall et al 2018)[6].

- Transformation is often emergent 'from within' and led by frontline staff and service users, rather than being imposed by external pressures such as national targets.
- Transformation requires collaborative styles of leadership in which power and responsibility are distributed across the system, and with relationships that cut across boundaries.
- Transformational change in health and care systems is often organic, with strategic goals emerging over time rather than in advance, albeit transformations are often guided by a core purpose that is constant.
- Learning and adapting are a critical part of the process of transformation and organisations need to have the right data and skills to be able to change direction when necessary.
- Significant time is often required to allow new relationships to be built and for trust to be established before transformation can take place.

Ham, Dixon & Brooke (2012)[7] also advise that transforming delivery means:

- Enhancing the role of users in the care team

[5] C Naylor & D Wellings (2019), A citizen-led approach to health and care Lessons from the Wigan Deal, Kings Fund
[6] D. Dougall, M. Lewis, S. Ross (2018), Transformational change in health and care – Reports from the field, King's Fund
[7] C. Ham, A. Dixon, B. Brooke (2012), Transforming the Delivery of Health and Social Care: The case for fundamental change, King's Fund

- Changing professional roles
- Rethinking the location of care

- Using new information and communication technologies
- Harnessing the potential of new medical technologies
- Making intelligent use of data and information

They also indicate that locally embedded health and social care systems are essential to effective service delivery that is meaningful to the community and the individual.

Reviewing the conditions needed for transformation as outlined here can be a useful starting place for planning a large-scale change, helping assess what enablers or levers are already in place and identifying potential barriers.

Redesigning with people

This project was an initial piece of research with a limited number of organisations involved. Stakeholders were aware of missing voices from frontline practice and those accessing support in particular. Changing the definitions and the systems they are part of needs the involvement of people affected by those systems. Taking an inclusive approach to involving people through co-design, co-production and service design methodologies can ensure meaningful engagement with the change process and new systems. The Scottish Approach to Service Design (SAtSD) for example is recognised as having a critical role to play in transforming services around people's needs and creating new cultures (Digital Health and Care Strategy, 2018)[8].

Final reflections

What we have heard from stakeholders in this research is a desire to bring in those who access support into the decision-making. We have also heard from those who want to see a fundamental change of professional roles to be based around the needs of a person and their care, as opposed to being restricted by a service definition or geographical boundary. We have also been told about the challenge of providing digital support to people to help them stay connected to family and friends, and to help them stay in control of their own care. If a route is chosen for transformational change around defining care, then these elements will

[8] Scottish Government (2018), Digital Health and Care Strategy, Scottish Government

need to be addressed. The core purpose and constant (that care and support is person-centred, flexible and in the right place at the right time for people) was at the centre of many of our discussions with stakeholders. This seems to indicate an environment, alongside recent developments around The Promise and the Feeley Review, that sees transformational change as being both possible and necessary.

Appendix

Appendix 1: Sector comments & recommendations by definition

Definition	Limitations / suggested changes
Support services	• Too broad; • Patronising use of the term 'vulnerability'; • Not seen as distinct enough from housing support service; • Should include carers; • Remove exclusion of health boards.
Care home service	Distinguish between nursing and residential care homes.
School care accommodation service	'Boarding' is a more recognisable term for independent schools.
A nurse agency	Eliminate confusion on whether employment agencies who supply nurses and other non-caring staff should be regulated by the Care Inspectorate over their whole activities and not just nursing specific areas.
A child care agency	Issue with term 'child carers' – possible confusion with language used to describe 'young carers'.
A secure accommodation service	• Clarify 'residential' secure accommodation; • Clarify whether children's route is through Court system or Hearing system; • Add wellbeing element.
An offender accommodation services	Revisit the use of the term 'offender'
An adoption service	N/A
A fostering service	N/A

An adult placement service	Current definition doesn't include an element of continuing care

Childminding	• 'Domestic premises' distinction is important, and must be retained – though another stakeholder argued that some large-scale childminders with domestic premises have more children than some nurseries. • Change 'looking after' – doesn't feel appropriate and suggests a lesser form of childcare. • Strong resistance to adding age ranges and maximum capacities – wouldn't serve to future proof and would be too restrictive. • Change to 'Registered Childminder' – would be helpful to address negative perceptions about childminding.
Day care of children	• Consider including independent schools, which also provide day care to children e.g. schools with nurseries & kindergartens; • 'Early learning and childcare' are the currently preferred terms; • 'Day care of children' – not a term used by childminders – more of a policy and reporting term; • Include outdoor nurseries; • Distinguish between age categories; • Current definition has connotations of 9am-5pm childcare rather than more flexible hours.
A housing support service	'Pointless distinction' between housing support service and support service.

Appendix 2: Stakeholder list

- Care Inspectorate
- Centre for Excellence for Children's Care and Protection (CELCIS)
- Lead Social Worker
- Chief Social Work Officers (CSWO)
- Coalition of Care Providers Scotland (CCPS)
- Coalition of Carers in Scotland (Coalition of Carers)
- COSLA
- Deputy Chief Nursing Officer
- Disability Equality Scotland
- Heads of Secure Care
- Integrated Joint Boards (IJB)
- National Day Nursery Association (NDNA)
- Personal Assistants Network (PA)
- Self-Directed Support Scotland (PA)
- Scottish Care
- Scottish Childminding Association
- Scottish Council of Independent Schools
- Scottish Government Technology Enabled Care Team (TEC)
- Scottish Out of School Care network (SOSCN)
- Scottish Social Services Council (SSSC)
- Social Work Scotland
- Social Work Academics
- Unison
- Unite the Union
- Who Cares? Scotland

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