



## **DISCLOSURE (SCOTLAND) BILL**

### **Response to call for evidence from the Education and Skills Committee of the Scottish Parliament**

**from**

#### **CCPS - Coalition of Care & Support Providers in Scotland**

CCPS welcomes the opportunity to submit evidence on behalf of our membership. We would like to thank the staff and MSPs of the Education and Skills Committee for taking the time to consider our submission.

#### **Summary**

##### **1. Fees:**

Further clarity is required on how fees work for disclosure checks and the Protection of Vulnerable Groups (PVG) scheme, and size of the fees involved, as we are concerned that this will result in barriers to entry for people looking to work in the third sector as care providers, both as volunteers and paid staff.

##### **2. Regulated Roles**

We do not believe the shift in definition to regulated roles will achieve the aim of preventing employers from insisting on given posts requiring compulsory membership.

We welcome that regulated roles, as now defined, close the loophole in PVG membership whereby trustees of charities that work with both children and adults do not require PVG checks.

##### **3. Membership Cards**

We are seeking greater clarity regarding non-digital ways of interacting with the scheme, what the cost may be to those of our members' staff who are not able to interact with the scheme digitally, and whether this acts as a disincentive.

##### **4. Impact of ORI and Review of Decisions on Recruitment**

The opportunity for individuals to request reviews on disclosure statements is welcome, but the process described is likely to impact on recruitment, potentially acting as a disincentive to apply.

##### **5. S.50 - considering a signatory/counter-signatory for role of Suitable Person**

We were concerned that one of the factors to be considered, 'other information held by Ministers', was too broadly defined and may have privacy implications although dialogue with Disclosure Scotland (DS) indicates that guidance should address this.

**These points are expanded in the following pages.**

## **1. Fees**

- a) Under S.62(2), fees may be charged for changing prescribed details of accredited bodies' signatory/counter-signatory (e.g. addresses if they move), and also for nominating a signatory/counter-signatory. This doesn't happen currently and will be an unnecessary additional cost for the voluntary sector providers of social services.
- b) Fees are charged for reviews of level 1 and level 2 applications. In addition to noting that this process presents a challenge for recruitment (see point 4 in this document), these fees are a further disincentive for people to apply to work in regulated roles.
- c) It's not clear from the legislation or the policy memorandum whether volunteers will be expected to pay for disclosure, nor whether volunteers will continue to have fees waived to be members of the PVG scheme. The annual CCPS workforce survey, covering almost half of the voluntary sector workforce, showed that in 2018/19 ninety two percent of respondents used volunteers and use is increasing. Forty five percent reported an increase in the use of volunteers compared to the forty two percent reporting this in 2017/ 18. We would like confirmation that volunteers will not be expected to pay for disclosure nor to be members of the PVG scheme, as otherwise it imposes a significant barrier to volunteering and a cost to our members.
- d) Another area which hasn't been addressed since our submission to the consultation is whether volunteers would be expected to pay to be on the PVG scheme upon becoming paid staff. Given the high number of volunteers working within the sector, this remains a significant concern.

## **2. Regulated work vs Regulated Roles**

- a) The schedule of regulated roles is a combination of certain listed roles, and broadly-defined roles. There's a concern that this broader definition of roles, in combination with the compulsory nature of the PVG scheme, will result in employers erring on the side of caution and making PVG membership a condition of any given job. It's not clear that this achieves the aim laid out in the policy memorandum of reducing the number of people on the PVG scheme. As a result it may act as a disincentive to apply for posts and impose unnecessary costs on our members.
- b) Disclosure Scotland (DS) have said that the revised roles in the schedules close a loophole in the Protection of Vulnerable Groups Act (2007). Previously trustees of those charities working with both adults and children weren't eligible for PVG checks. We welcome the wording of S.30 of Schedule 2 and S.22 of Schedule 3 of the Bill which closes this loophole, as some of our members had expressed concern about trustees not being required to be eligible.

## **3. Membership Cards**

- a) There's no mention in the Bill of membership cards although this was brought up in the consultation. The policy memorandum circulated with the Bill speaks of making available a non-digital alternative for those who cannot access the scheme digitally (see S.168 of policy memo). It says regulations can be drawn up for administration of the membership scheme, but makes no mention of fees. We would be concerned about the possibility of a fee being introduced, as the charge imposed on those employees who couldn't access the scheme digitally would be a further cost in a low-paid area and

disincentive to applying for posts. Some of our members have reported that their staff include those who are themselves visually impaired. As a result we would welcome further detail as to how a non-digital alternative could be implemented at minimum cost to potential employees.

#### **4. Impact of ORI and Review of Decision on Recruitment process**

- a) The legislation lays out a review process for the information in the disclosure in S.7-12 and S.23-33. This review can be requested, then submitted for independent review and finally, if on a point of law, reviewed by a sheriff.
- b) PVG enrolment will be compulsory for regulated roles, requiring employers to build extra time into the recruitment process to potentially allow for review.
- c) This is likely to impact on members in two ways. Firstly, roles dependent on external funding cannot start as quickly, so projects that have received such funding must complete the work in a shorter time. If conditions of funding insist on posts starting by a certain date, it potentially requires our members to make a choice between a swift recruitment to comply with funding conditions and running a recruitment process that is procedurally fair to all applicants.
- d) Secondly, the time required by the review process may act as a disincentive to apply for work within the sector for applicants with previous convictions. They may be concerned that any delay to receiving a disclosure statement could prejudice employers against them. Furthermore, review also requires applicants to pay for it, which is another barrier. Finally, some members have reported that lived experience of the justice system can be of value when delivering voluntary sector social services and that this might be lost if applicants with previous convictions decide not to apply for posts in our sector.
- e) It is unclear from the legislation how many times an applicant might have to go through this process when applying for jobs that are considered regulated.
- f) Given that social care recruitment is currently facing well-evidenced recruitment and retention challenges<sup>1</sup>, we are keen that this legislation avoids creating further barriers to employment.

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<sup>1</sup> Evidence can be found in the CCPS HR Benchmarking Report. It notes that 78% of respondents “reported that recruitment of front-line support and nursing staff was very or quite difficult”: CCPS, 2019, *Annual Voluntary Sector HR Benchmarking*, Edinburgh <<http://www.ccpscotland.org/wp-content/uploads/2019/05/2018-Benchmarking-Exec-Summary-FINAL.pdf>>, Page 5. See also the jointly issued paper by the Care Inspectorate and Scottish Social Services Council which reports 45% of respondents finding vacancies hard to fill: Care Inspectorate and Scottish Social Services Council, 2017, *Staff Vacancies in Care Services 2017*, <[www.careinspectorate.com/images/documents/4766/Joint%20CI%20&%20SSSC%20staff%20vacancies%20in%20care%20services%202017.pdf](http://www.careinspectorate.com/images/documents/4766/Joint%20CI%20&%20SSSC%20staff%20vacancies%20in%20care%20services%202017.pdf)>, Page 20. Finally, see the Scottish Government Social Work Services Strategic Forum’s Recruitment and Retention Project, which notes that “Most respondents reported that their organisation has experienced difficulties, either regularly or occasionally, in recruiting care or support workers”: Fawcett, J, Granville S and Mullholland S, 2016, *Recruitment and Retention Project: Survey findings*, <<https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2016/12/social-work-recruitment-retention-project-survey-findings/documents/recruitment-retention-survey-findings-pdf/recruitment-retention-survey-findings-pdf/govscot%3Adocument/Recruitment%2B%2526%2BRetention%2BSurvey%2BFindings.pdf>>, Scottish Government, P.20

## **5. Section 50, Suitable Persons and Other Information held by Scottish Ministers**

- a) Under S.50(1)(g) the Ministers must have regard to 'any other information held by Scottish Ministers' when considering if someone is a suitable person to receive disclosure information. This is a broadly-defined term and does not indicate what other information they consider, where it comes from within government, what permissions were associated with its use, what the original intention for use of that information was.
- b) There is a concern that members cannot tell their employees what checks they can expect to have run as to their suitability for the role of signatory or counter-signatory, since they have no way of knowing what 'other information' DS would be making use of.
- c) DS have assured us in correspondence that this broad definition is not their intention and it should only relate to information already held by DS in relation to its functions under S.47-57. They have said that explanatory notes will make clear that this is not a wide-ranging power. We welcome this and hope it addresses our concerns that the legislation, as it currently stands, might impact on the Article 8 right to privacy and possibly be non-compliant with both the European Convention of Human Rights (ECHR) and the General Data Protection Regulation (GDPR).

Once again, many thanks for taking the time to read and consider the points raised in our submission.

19 August 2019

CCPS – Coalition of Care & Support Providers in Scotland

### **About CCPS-Coalition of Care & Support Providers in Scotland**

CCPS-Coalition of Care & Support Providers in Scotland is a members organisation representing the Third Sector voluntary care and support providers. Our mission is to identify, represent, promote and safeguard the interests of third sector and not-for-profit social care and support providers in Scotland, so that they can maximise the impact they have on meeting social need.

CCPS membership comprises over 80 of the most substantial care and support providers in Scotland's third sector, providing high quality support in the areas of community care for adults with disabilities and for older people, youth and criminal justice, addictions, homelessness, and children's services and family support.

Our members support over 206,000 people and their families; employ approximately 43,000 staff and work with approximately 5000 volunteers in providing services. They work in all 32 of Scotland's council areas.

CCPS is a company limited by guarantee registered in Scotland No. 279913, and as a Scottish Charity registered with the Office of the Scottish Charity Regulator (OSCR) Charity No. SCO29199