This report is based on the interim findings of a three year, Department of Health funded research project on the regulation of adult social care in England. The focus of the first phase of the research, the results of which form the basis for this report, was primarily on the processes of regulation, as perceived by key stakeholders in the regulation of adult social care in England. This summary will begin by briefly outlining the methodology of the research project. It will then present an overview of the findings grouped into seven sections: structures, methods, positives, negatives, service users, expectations and concerns.

1. Methodology

1.1 In this phase, the RASC Team interviewed senior politicians and civil servants in the Department of Health and other central government departments, in their capacity as the sponsors of regulation. We also talked to the chief executives and senior officers of key organisations that regulate adult social care – for example the Commission for Social Care Inspection (CSCI) and the General Social Care Council (GSCC) – and to key people in the agencies that used to regulate adult social care – such as the Audit Commission/Social Services Inspectorate (AC/SSI) Joint Review Team. In addition the team interviewed stakeholders of regulated organisations representing the providers of care (public, private and voluntary sector providers) including those at the top of the organisations and the professionals and staff that work for those providers (and who are themselves now increasingly regulated).

1.2 The team also interviewed frontline managers in six case study areas – that is the directors of the local authority social services departments (SSDs), and the local managers of voluntary social care organisations, private care homes and home care agencies.

1.3 In relation to the final group of stakeholders, service users and their unpaid carers, the Team interviewed the chief executives of several nationally-based organisations that champion the rights of users and carers, and that also ‘claim’ to represent those on the receiving end of adult social care services. (One-to-one interviews with service users and carers themselves will take place in Phase II.)
1.4 In total 62 in-depth face-to-face interviews were carried out. A questionnaire survey, which matched the areas of questioning, was sent to interviewees prior to interview and 54 completed questionnaires were returned, representing a response rate of 87%. Detailed analysis of interviews was carried out, and the results of that analysis, coupled with findings from the questionnaire, provide the basis for this report.

2. Structures

2.1 As expected, virtually everyone interviewed identified the Commission for Social Care Inspection (CSCI) as the main regulatory body for social care. However, the panoply of additional bodies mentioned, which also forms part of the regulatory regime, demonstrated what is a potentially confusing situation. The question of whether SSDs' commissioning role confers on them regulatory powers was one common example of this confusion.

2.2 The extent to which the formal independence of regulators is matched by reality was an area of considerable debate. Furthermore, many interviewees still regarded regulation primarily as a tool of the government of the day for delivering its policies and targets.

2.3 Many interviewees highlighted the blurred boundaries on the health and social care interface and a possible need for more joined up regulation if joined up services are to be delivered.

2.4 Despite these concerns, the over-riding impression was that CSCI is the right structure, with the right people, and heading in the right direction. What was emphasised time and again was that, although problems exist, a period of structural stability is now required. The example of the damage done to the NCSC by the timing of its demise was cited frequently.

3. Methods

3.1 Participants across all stakeholder groups tended to focus on registration and biannual inspection against centrally set standards as the key regulatory processes for adult social care in England. Interviewees raised different concerns about how regulation is carried out, often reflecting the stakeholder category they themselves came from.

3.2 Concerns were raised over both flexibility and consistency in applying regulations. An over-reliance on ticking boxes was perceived by many, but concerns about the expertise of inspectors also featured heavily. The main consistent theme to emerge was that more time should be spent during inspections talking to those in receipt of services.
3.3 Many saw ‘lighter touch’ regulation for high performers as potentially beneficial, but organisations representing service users in particular were worried by any suggestion of reducing the frequency of visits.

3.4 The regulated and organisations representing service users in particular saw an increasingly important, and beneficial, regulatory role in the training of staff being brought about by the GSCC, while for regulators and those involved with central and local government the importance of measures such as the Comprehensive Performance Assessment (CPA) carried out by the AC were to the fore.

3.5 It was generally recognised that most provider organisations had their own additional internal audit, performance monitoring and review systems, some of which had been prompted by the growth in external regulation which had become more explicit and target focussed, while others had been scaled back in response to that growth.

4. Positives

4.1 Respondents were near unanimous that the growth in the regulation of adult social care had been beneficial to a degree, in particular in removing poor providers, raising the minimum standards and preventing some abuse. Structural changes had led to greater consistency and created a level playing field. The findings from the questionnaire survey showed that 78% of Phase 1 participants felt that regulation improved service delivery.

4.2 Significant caveats tended to be raised, however, whenever the discussion moved into the realm of the wider benefits of regulation. Typical responses emphasised that if regulation is done properly then service users should benefit from services more suited to their needs, or that regulation should provide local authorities with the necessary information to enable strategic commissioning and the like. The benefits of regulation were frequently couched in terms of potential rather than actual benefits.

4.3 Providers, in particular local authorities and those in the voluntary sector, recognised the benefits to themselves of having external quality assurance and the opportunity it provided to benchmark themselves against others. Increased user-involvement was another widely perceived improvement.

4.4 Better-informed policy making was seen as a beneficial outcome of regulation, but many participants also saw specific advantages for government in enhanced control and an ability to distance itself from failures and scandals. Regulation was also seen to have produced a more qualified and recognised workforce in adult social care.
5. **Negatives**

5.1 A wide variety of problems with regulation were raised, the majority of which focussed on problems with how inspections are carried out. For example, it was considered that too much attention is spent on easy to check things such as paperwork and there is a lack of interest in the lived experience of service users. From this a trail of further problems stretched, including the compliance costs to providers in terms of time and money, to a danger that staff may lose the human element to caring.

5.2 The difficulty of setting meaningful National Minimum Standards (NMS) was recognised, along with the problem of ensuring that regulation does not just reinforce the minimum but promotes improvement.

5.3 Outside of the inspection process, similar concerns were raised by many about how risk is managed within a regulatory system. Disquiet was expressed by many over those services that currently fall outside of the regulatory regime such as Direct Payments.

5.4 Other common issues included the question of how you truly get the voice of service users, carers, and indeed potential users of services.

5.5 Many interviewees feared that regulation is used as a tool by government for covering their own backs and that in the event of something going wrong (which many saw as inevitable as regulation cannot prevent all bad things from happening) there would be a knee-jerk ratcheting up of the regulatory gears.

5.6 One unintended consequence of regulation acknowledged across all categories of stakeholder was that costs of compliance were relatively higher for smaller organisations, and that this resulted in diminished choice for service users in terms of type, style and size of care provider.

6. **Service Users**

6.1 Concern was expressed over who represents the voice of service users, and how to get that voice heard, and a wide variety of positions were put forward as to how much weight should be given to service users’ views within the regulation of adult social care. Similarly there was dispute over how accessible the outputs of regulation both are and should be to service users, reflecting the lack of consensus over what regulation is actually for.

6.2 The over-riding impression was that, despite improvements in this area, in part as a result of regulation, central government and local providers need to increase and improve their attempts to engage with service users and carers. However, less than half of all interviewees
felt that an aim of regulation was to meet more effectively the needs of service users and their unpaid carers.

6.3 A particular worry expressed by participants across all stakeholder groups was that rigid enforcement of standards by regulators could not only stifle innovation but also, at times, was in direct contradiction to the wishes and interests of service users. Opinion was divided on lay inspectors, but most participants certainly felt that there are currently insufficient inspectors with the expertise to gather the views of service users.

6.4 Choice was seen as a key concern, with the information provided as a result of regulation a potentially useful tool, but with uncertainty among many participants over how much services such as Direct Payments are, and should be, regulated.

7. **Expectations**

7.1 There was a generally optimistic view that the creation of CSCI would herald an era of more consistent regulation and oversight and that, in contrast to the NCSC, the Commission was more likely to work with, rather than against, those agencies it regulates and to increase service user (and carer) involvement in regulation.

7.2 It was widely hoped that there would be a move to an increased focus on outcomes rather than processes, and several participants thought regulators would increasingly act as a proxy voice for service users.

7.3 There was an expectation that thematic inspections would lead to tangible benefits for service users, and similarly that CSCI’s remit to look at the commissioning of services would improve choice and quality for service users.

7.4 The overwhelming impression on whether CSCI represents a regulator increasingly independent of government is that ‘the jury is still out’. Improved collaboration between regulatory bodies was generally anticipated, and most saw scope to reduce the duplication of oversight in some areas.

8. **Concerns**

8.1 Many participants raised concerns that, despite the positive noises coming from CSCI, it would lack the necessary resources to deliver on its new regulatory agenda. Notwithstanding scepticism over its real independence from government, many argued that it was central government that had created statutorily independent regulators, and so government was also free to amend, merge or eradicate them as political tides ebb and flow.
8.2 Many interviewees had heard suggestions of CSCI and CHAI merging in the future, and the majority were concerned that this would exacerbate the problem of inspectors who lack sufficient expertise relying on a tick-box mentality. They were also worried that social care would lose its voice.

8.3 It was widely felt that if the relationship between regulators and those regulated is to become a collaborative, adult-adult type relationship then considerable attitudinal shifts will be required on both sides, which will be hard to achieve and dependent on more than rhetoric.

8.4 Many participants, while accepting the need to reward high performers in some way, were far less sure as to the best method to achieve this and questioned whether a move to lighter touch inspection and greater self-regulation was workable.

9. Conclusions

9.1 Across the whole range of stakeholders who participated in the first phase of the research regulation is widely understood as deeply embedded within adult social care.

9.2 Regulation is recognised as beneficial, although with significant concerns about its cost and the specifics of how it is carried out.

9.3 The future direction of regulation currently coalescing around the concept of strategic regulation is generally welcomed, albeit with important caveats. One of the most significant problems is in accessing the voice of service users and then ensuring that regulation acts in the interests of service users and their unpaid carers.

(NB Phase I of this research was conducted before the publication of the Green Paper - Independence, well-being and choice: our vision for the future of social care for adults in England – on 21 March 2005. Recognising that over the course of the research study there may well be policy developments and changes within the sector, the Research Team has always intended to return to the stakeholders interviewed for the first Phase, so that they could reflect on the implications of those developments and changes and whether that had affected the views they had expressed when first interviewed)

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