

Health and Care (Staffing) (Scotland) Act 2019: Scottish Borders Annual Report

Declaration

Name of local authority / integration authority: **Scottish Borders Council**

Report authorised by:

Chris Myers

Director of Adult Social Work and Care

30/06/25

Details of where the report will be published: **Scottish Borders Council and Health and Social Care Partnership websites.**

Information Required

- 1. Please detail the steps you have taken as an organisation to comply with section 3(2) of the Health and Care (Staffing) (Scotland) Act 2019:**

1.1 Background

During financial year April 2024 through to March 2025 the vast majority of commissioning arrangements across children's and adults commissioning areas were simply extended for a further year, some further detail of which is below. These commissioning arrangements in the main were simply extended in order to provide further time to develop a new approach to commissioning in the Scottish Borders.

1.2 Developing approach to commissioning

In 2022 a new post of Chief Officer – Strategic Commissioning and Performance was created in order to review our approach to commissioning in the Borders. A range of improvements in terms of how we intend to commission have progressed since then and are summarised below:

- Establishing robust governance of commissioning decision-making through the establishment of a Strategic Commissioning Board covering

commissioning across three directorates with appropriate Terms of Reference and membership.

- Developed a draft commissioning strategy with eleven commissioning principles which underpin our future approach to commissioning and support a more ethical approach to commissioning, reflecting fair working practice and also health and care staffing duty..
- The mapping of long-standing commissioning arrangements in order to determine what is being delivered and whether it is still needed.
- The commissioning of a whole system modelling exercise across seven key health and social care settings in order to provide evidence for future need.
- An annual template issued to commissioners asking them to detail their commissioning priorities for the financial year ahead and the following five years in order to generate a programme of commissioning activity which will determine continued commissioning, commissions to be redesigned, proposed de-commissions and new commissioning proposals.
- All commissioning activity captured in an annual commissioning workplan and overseen by the Board.
- A high-level performance framework to be developed allowing the commissioning board to have oversight of the impact of commissioned services.

1.3 Areas of commissioning extended for a further year

As a result of focussing on developing our future approach to commissioning a number of key areas of commissioned delivery were simply extended. These commissioning areas include:

- Care at home – contracts with existing providers were simply extended by one year from April 2024 to March 2025.
- Supported living - contracts with existing providers were simply extended by one year from April 2024 to March 2025.
- Extra Care Housing - contracts with existing providers were simply extended by one year from April 2024 to March 2025.

- Third sector community services - contracts with existing providers were simply extended by one year from April 2024 to March 2025.
- Residential and nursing home placements – placements were made as usual utilising the National Care Home Contract (NCHC) terms.
- Early Learning and Childcare framework
- Social care and health contracts relating to children and young people as well as education contracts.

1.4 Exceptions

Although the majority of commissioning has simply been extended for the year in question there are some exceptions. They are:

- Residential and nursing placements are ‘commissioned’ continually based on the assessed need of the individual. These placements use the NCHC when local or elsewhere in Scotland and the relevant staffing clauses are included below for information.
- One new care at home provider was commissioned for the first time in 2024 to operate in the East of the Borders. Although a new provider they were brought on to the existing care at home framework which needs to be renewed so strictly speaking this is not new commissioning.
- There was some new commissioning within the children and young people’s services from the framework which we use to contract Early Learning and Childcare with nurseries and childminders (day care of children or childminder in CI registration):
- A learning disability supported living service was commissioned in 2024 which supported an individual to return to the Borders from previously being supported in another local authority area. Much effort was put into determining safe staffing ratios when agreeing the work roster in order to appropriately support the individual returning to the Borders.

1.5 Relevant clauses and checks

1.5.1 Residential clauses relevant to safe staffing:

National Care Home Contract (NCHC) clauses used:

A.9.7 The Provider shall employ and ensure that at all times sufficient qualified and suitably trained and experienced Staff are available to deliver the Service. The level of Staffing shall at all times be no less than that agreed by the Care Inspectorate in a Staffing schedule attached as a condition of registration (if applicable) or to the statutory requirement contained in Regulation 15 of SSI 2011/210, namely the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011. Where the role and duties of Staff require them to be registered with the SSSC or the Nursing and Midwifery Council, the Provider will ensure this is in place and is maintained.

A.9.12 Where the Provider reduces either the Staff-to-Resident ratio or the qualified Staff-to-Resident ratio with the agreement of the Care Inspectorate, because of a change in the dependency levels of Residents, the Council reserves the right, in consultation with the Provider to review the Council's Approved Rate, the Additional Service Charge, Additional Care Charge and the level of Care for each Resident.

A.12 STATUTORY OBLIGATIONS AND GUIDANCE

A.12.1 The Council and the Provider shall exercise their powers, obligations or discretions in terms of the Contract in a reasonable manner and in accordance with their statutory and regulatory obligations.

A.12.2 Throughout the duration of this Contract the Provider shall observe and comply with all statutory enactments, regulations and by-laws applicable to the Care Home, including without prejudice to the foregoing generality all health and safety standards and regulations and they shall comply with all Care Inspectorate registration conditions, requirements and Care Standards, and this Contract.

A.12.3 Should any procedures or other matters regulated by this Contract become subject to statutory provision which results in any change to the manner in which such procedures or other matters require to be dealt with then such changes shall take precedence over that contained in the Contract.

In terms of updating the NCHC, the following clause has been in the Memorandum Of Variations (MOVs) since the original contract. This contract is drawn up nationally by Scotland Excel for all Local Authorities and is it not varied or written by local authorities as such however this matter can be raised with Scotland Excel. We will support any appropriate updating required to any national contracts as well as all of our own local contracting. This will of course be coupled with Care Inspectorate regulating services using the most up to date legislation and regulations.

IT IS HEREBY AGREED:

1. *That both parties note the continuing application of Clause A.1.1 of the 2013-14 contract, namely -*

“Any reference to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, codes of practice, directions, consents or permissions (together with any conditions attaching to the foregoing) made thereunder.”

As a consequence, the most recent version of said legislation and instruments, including (without limitation) the national health and care

standards or national performance framework relating to any part of the Contract will apply to the provision of Care under the Contract.

1.5.2 Care at home clauses relevant to safe staffing:

The Provider shall ensure that all staff employed or to be employed by the Provider are suitably qualified, trained and/or experienced to deliver the Service and meet all requirements of this Contract. If necessary, the Service Provider shall engage such staff so as to meet these requirements.

The Provider shall be a person fit to provide the Service in terms of the Regulations and the Provider shall at all times use and ensure that there are on duty sufficient suitably trained and experienced staff to ensure that the Service is provided in accordance with this Contract.

The Provider shall comply with any requirement under Part 3 of the Regulation of Care (Scotland) Act 2001 for staff to register with the Scottish Social Services Council and comply with any relevant Code of Practice issued by the Scottish Social Services Council.

The Provider shall support non-qualified staff and to attain any skills and qualifications required of them by the Scottish Social Services Council. In order to provide the Service and the Provider shall keep training records for all staff and make such records available for inspection by the Council for the purpose of monitoring this Contract.

The Provider shall provide staff development, support, supervision, and clear and effective leadership.

The Provider shall ensure that staff meet the requirements of the Service Specification in relation to care planning, in that staff that are responsible for the support of Service Users are aware of their outcomes, how to plan for and meet these outcomes, and are able to communicate effectively with Service Users.

The Provider shall maintain an ongoing programme of training to ensure that staff who are employed in the provision of the Service receive the level of training required and appropriate to the needs of the Service Users. In order to ensure compliance with legislation and continuously improve service quality, the Provider shall be required to:

- (i) ensure that staff receive training on equalities matters appropriate to the Service;*
- (ii) record staff development; and*
- (iii) report on this annually to the Council, using such reporting information as is required to be submitted to the Care Inspectorate in respect of training.*

1.5.3 Learning Disability clauses relevant to safe staffing:

Clause 3 – Provider's obligations:

	<p><i>In supplying the Service and otherwise when performing the Contract, the Provider must comply in all respects with:</i></p> <p><i>all applicable law;</i></p> <p><i>a) any applicable requirements of regulatory bodies; and</i></p> <p><i>b) Good Industry Practice.</i></p>
--	---

Service Specification – Schedule B

Clause 16.2

The Provider will ensure Staff deliver the Service in accordance with policies and procedures which continually meet the requirement of the Care Inspectorate, other regulatory bodies as appropriate and the Council as lead bodies for the Protection of Vulnerable Groups. The policies and procedures will guide Staff in the delivery of the Service, will be embedded in day to day practice and should be quality assured.

Therefore as you will be aware, this includes the care inspectorate guidance and requirements on staffing levels as well as the 2019 Act.

Clause 26.2

The Provider will ensure there is sufficient Staff capacity in place to guarantee the following whilst delivering the Service:

Every effort should be made to ensure that people have consistency of support Staff, so that the Service User experiences minimal changes in personnel carrying out their care and support;

Staff will be deployed in a flexible way to meet the Service Users' needs; contingency plans are in place to allow the Service to respond to either demand for increases or reductions in support packages for Service Users to ensure that Staff can be appropriately re-deployed or rotated where there is a relevant need or to prevent staff burnout;

Professional management and supervision of the Service over a 24 hour period (out of hours);

Robust policies and procedures for staff development, support and peer support, supervision, clear and effective leadership and health and safety;

A range of staff suitably trained and qualified in the care and management of people with complex needs and/or multiple vulnerabilities in a community setting;

A robust monitoring system in place to ensure that all staffing hours are delivered per contract for each individual.

1.5.4 Children's and Young People clauses relevant to safe staffing:

The Provider will fulfil its statutory obligations concerning the employment of Staff

and at all times ensure it has a sufficient number of suitably trained, qualified and competent Staff in accordance with the Law and Guidance.

The Provider will ensure that all Staff who are required to be Registered, are Registered with the appropriate Regulatory Authority, hold and maintain the required Registration, including without limitation, the Scottish Social Services Council (SSSC) and, for example the General Teaching Council Scotland (GTCS) for Teachers.

The Provider will comply with the SSSC Code of Practice and, if applicable, the Code of Practice and Professionalism of the GTCS (including as they may be, from time to time, revised or replaced) and take all reasonable steps to secure the compliance by all Staff with any relevant codes of practice and Guidance issued by the relevant Regulatory Authorities.

1.6 Plans for commissioning going forward

There are plans for major reviews of certain key areas of commissioning during the year 2025-26 and onwards. These are:

- A redesign of care at home provision in the Borders. Aiming to improve sustainability of care at home provision.
- Development of care villages in the Borders.
- Further Extra Care Housing developments.
- A review of older adult day care.

1.6.1 Further work in order to ensure compliance with the Act in the future

- As part of developing guidance for commissioners we will ensure that the Health & Care (Staffing) (Scotland) Act 2019 duty is highlighted as part of that guidance along with other relevant legislation, regulations and guidance.
- All contracts will be amended to include specific clauses on the Health & Care (Staffing) (Scotland) Act 2019 and this Act will be discussed with providers in order to ensure compliance with the Act.

- The Health & Care (Staffing) (Scotland) Act 2019 will feature as part of exception reporting and in terms of the monitoring of providers.
- We will re-establish a working group to support work that will ensure we actively embrace the guidance and principles of the Act across both our internal and externally commissioned services.

2. Please detail any ongoing risks that may affect your ability to comply with the duty set out in section 3(2).

- Out of area placements of adults, children and young people present a real risk in that such placements are complicated by the existence of a host authority (commissioner) and this is accompanied by alternative contractual arrangements which very often are the contractual agreement used.
- Operational or practitioner 'commissioning' when decisions are needing to be made at pace for the safety of the child or adult in question and then authorised are a risk area and it is important that any guidance we are developing for commissioners stresses that the Health & Care (Staffing) (Scotland) Act 2019 duty is a requirement when commissioning.
- On-going provider challenges linked to availability of staff, recruitment and retention challenges.
- Challenges relating to the financial envelope and the difficulty in addressing and meeting the uplift requests from providers leading to significant risks associated with compromised sustainability.

3. Governance

This report has been shared with lead commissioners across children's and education services, learning disability and mental health services, adult and older adult services and will be shared at the Strategic Commissioning Board.