Care England response to the CQC consultation on regulation

Consultation questions
Before answering these questions, you'll need to read Part 1 of the consultation document.

Our inspection reports and ratings give a view of quality that's vital for the public, service providers and stakeholders. We want to introduce changes to allow us to assess and rate services more flexibly, so we can update our ratings more often in a more responsive and proportionate way. The changes will make ratings easier to understand for everyone.

These proposals apply to all health and care sectors that we regulate (including those that we don't have the powers to rate).

1. Assessing quality
We propose to assess quality and rate services by using a wider range of regulatory approaches – not just on-site or comprehensive inspections.

1a: To what extent do you support the ambitions set out in this theme?

Partially.

1b: What impact do you think this proposal will have?

The CQC wants to move away from using comprehensive, on-site inspection as the main way of updating ratings, instead using wider sources of evidence, tools, and techniques to assess quality. Broadly, this is something to be welcomed. Covid-19 has highlighted the pitfalls associated with the adherence to the previous rigid regulatory model of assessing quality. Care England has heard on a consistent basis from our membership that over the course of the Covid-19 pandemic that they have not felt sufficiently supported especially in the early months by the regulator. The opinions of providers are a fundamental indication of the extent to which the system was not fit for purpose. CQC was in a unique position to help navigate the Covid-19 pandemic through clear messaging and oversight.

As the CQC wish to use other sources of information, beyond that acquired from an on-site inspection as the foundation for assessments and changes to ratings, further detail is required as to what these wider sources of information are and how CQC will be accessing them. It is also unclear how the CQC will ensure that the wider sources of data and information are accurate. Further, it is not clear how the information requested through these fluid inspections is accessed or interpreted (i.e. will it be direct access to business information and how will different systems provide a standard approach for evaluation?).

It is also not clear how providers will be able to evidence improvement via remote inspections. As has been demonstrated by the Emergency Support Framework and Transitional Regulatory Approach, introduced over the pandemic, providers are not given the opportunity to evidence improvement across all the CQC key lines of enquiry (KLOEs).

As for the continuation of on-site inspections, more clarity is needed as to what capacity these will continue in. At present it appears that on-site inspections will only be conducted where there is "significant risk." There is a real lack of clarity around how the CQC will inspect and support services which are performing well.

It should be noted that the current basis for inspections is already dependent upon subjective information gathering regarding a service, which brings in issues of credibility. It is therefore important for providers to understand how such subjective information gathering will be informed by an objective framework. Across the gathering of information, there must be an opportunity for the provider to have input, especially regarding the accuracy of information presented. This is crucial if ratings are now going to change without CQC conducting an on-site inspection.

Relatedly, clarity is required around how CQC will engage system partners in the collation of information for a service and which system partners will be engaged. This new regulatory approach must capture system performance, rather than the care setting in silo. The Covid-19 pandemic has demonstrated the interdependence of the health and social care system and the organisations that operate across the system. Thus, going forward, the CQC needs to look to not only promote this interdependence, but also look at system performance through more effective whole systems pathways.

There is a heavy emphasis on the use of data and digital technology in this new approach. As discussed in our strategy consultation response we support the use of technology and use of local relationships to have better direct contact with people who are using services, their families and staff in services, and would certainly support the use of technology to help inform assessments of quality. Indeed, access to digital care records would allow for remote assessment of individual care. However, what is not clear is how this will operate and in what capacity.

Further, over the course of the Covid-19 pandemic there has been a significant issue around duplicate data: Local Authorities are still asking for the same data via direct request to their local providers; CCGs are also asking for data; the introduction of the support packages such as the Infection Control Fund has seen a huge amount of extra reporting data being required via new routes; and the requirement to complete the NHS Capacity Tracker. The pandemic has highlighted that such an approach is not feasible going forwards with providers being continuously asked for information and data without any attempt to rationalise and explain what and how such data is being used. CQC are in the prime position being independent to sort this issue out, but it has still not happened. If data is to allow different and more flexible assessments, then national and local bodies must work to address the issue of duplication once and for all. Indeed, in order to improve data collection providers need support and also need to know they are not going to be asked by multiple requesters for data.

2. Reviewing and updating ratings

Rather than following a fixed schedule of inspections, we propose to move to a more flexible, risk-based approach for how often we assess and rate providers.

2a: To what extent do you support this approach?

Partially.

2b: What impact do you think this proposal will have?

The CQC propose to move to a more flexible, risk-based approach regarding how often the CQC assess and rate services. The move towards a less rigid approach and towards assessing quality continuously is welcome.

Again, however, we have concerns around the lack of detail surrounding this approach. The CQC state that it will use the best available information about quality in a service to review ratings more often. This will include a better understanding of people's feedback and experiences of care, and using a combination of targeted inspections, national and local data and insight from other organisations and partners, and from the CQC's relationships with care services and Providers own self-assurance and accreditation.

Similar to the points made in the previous section, more information is needed as to who the CQC will gather this information from and how they will gather this information. It remains of fundamental importance that providers have a voice in this process. This is particularly important given the focus on feedback. This information must be looked at in conjunction with other sources of data. It remains unclear what capacity the Factual Accuracy Process will continue in, if at all.

Relatedly, when discussing the use of people's feedback and experiences of care, as well as other data, reference is made to providers' own accreditation. What accreditation is this referring to and what is the standard expected of providers?

As the CQC will recognise, service ratings are of fundamental importance to business continuity and have significant commercial implications. The move towards a regulatory model based around the continuous assessment of quality rather than an assessment of a moment in time is welcome. Providers who receive unfavourable ratings often highlight how their ratings are not an accurate reflection of the standard of care they provide; many of the judgments underlying an inspection or assessment are outdated. Conversely, it is also important that services who received favourable ratings are continuing to maintain the high standard of care their rating reflects. On both fronts, the current approach will hold a service to a rating which is unreflective of the service provided due to a lack of timely follow up inspection.

To this extent there is significant benefit in this new regulatory approach to ratings. However, it is of critical importance that this new regulatory approach is informed by a fair and proportionate framework which gives providers a clear voice to speak up against inaccuracy. Providers must be clear about the CQC's regulatory framework and how to hold the CQC to account where needed.

Within the strategy consultation, the CQC has set the ambition of continuous improvements in quality; there is an expectation for services to keep on improving so that they remain

good. Whilst this is a desirable goal and one that the whole health and social care system should strive towards, there needs to be a recognition of the context in which services across health and social care have been operating. Covid-19 compounded longer-term trends where the NHS was perceived as the long-term project whilst neglecting adult social care, in the same way that it's been neglected over the last 20 years by Governments of all colours. The issues brought about within adult social care are symptoms of long-standing trends intertwined with the Covid-19 pandemic.

In order to achieve the satisfaction of this ambition, the CQC must enable providers to learn from inspections in order to help drive improvement. The CQC must create the right environment for improvement. It still remains unclear what an improvement conversation with an adult social care service would look like. Services must feel empowered to strive for improvement, which can be aided by a greater level of transparency within the CQC.

Further, as the CQC plans to drive improvement across the health and care system, a significant player in the satisfaction of this goal, is the role of the Local Authority and the CCG as commissioners of care in the independent care sector. The CQC should investigate mechanisms for including Local Authorities within the assessment process of a care service. A greater degree of oversight and assessment is required.

Changing how we rate GP practices and NHS trusts

In our new strategy, we have an ambition to evolve our ratings to make them easier to understand and more relevant for service providers and people who use services. We want to get going on this now, starting with changes to simplify how we rate GP practices and NHS trusts, and how we aggregate ratings. At the moment we are not proposing any changes to how we aggregate ratings in adult social care as part of this consultation.

3. Changes to rating GP practices and population groups

We currently inspect and rate GP practices for the five key questions and assess people's experiences of care in six population groups. We rate each population group against the effective and responsive key questions and then aggregate the two ratings to reach an overall rating for these population groups.

We plan to introduce simplified ratings for GP practices at two levels:

Level 1: A rating for each key question for the location/service. This will be based on relevant evidence of how GP practices personalise people's care and provide care for different groups of people.

Level 2: An overall rating for the service. This will be an aggregated rating informed by our findings at level 1.

This means we won't provide an additional and separate rating for different groups of people for the effective and responsive key questions.

We propose to stop providing separate and distinct ratings for the six population groups when rating GP practices.

3a: To what extent do you support this approach?

3b: What impact do you think this proposal will have?

4. Changes to rating NHS trusts

As well as inspecting and rating core services in NHS trusts, we also inspect and rate the well-led key question at trust level (and the trust's use of resources, where applicable). We use our aggregation principles and the professional judgement of our inspection teams to rate the other four key questions at trust level. We then aggregate these to produce a rating of the overall quality of the trust.

We propose to simplify ratings for NHS trusts by publishing a single rating at the overall trust level, rather than multiple levels of complex, aggregated ratings. This will enable us to focus on the culture and leadership of an organisation, as well as the services where people receive care.

4a: To what extent do you support this approach?

4b: Please give more details to explain why you chose this answer

Our draft equality impact assessment

We need to consider equality and human rights in all our work, so we've produced a draft Equality and Human Rights impact assessment for this consultation. It identifies the opportunities and risks for doing this through our proposals for assessing and rating services. Importantly, it identifies the actions we'll take to mitigate the risks and make positive change happen.

Q5. We'd like to hear what you think about the opportunities and risks to improving equality and human rights in our draft equality impact assessment. For example, you can tell us your thoughts on:

- Whether the proposals will have an impact on some groups of people more than others, such as people with a protected equality characteristic.
- Whether any impact would be positive or negative.
- How we could reduce or remove any negative impacts.

CQC says of its Equality and Human Rights impact assessment, that "It identifies the opportunities and risks for doing this through our new strategy. Importantly, it identifies the actions we'll take to mitigate the risks and make positive change happen."

We applaud the attempt to marry up this strategy with a human rights-based approach. We are glad of the opportunity to comment at this draft stage since we fear that the entire strategy comes over as being too focused on a narrow interpretation of 'safety' without engaging in a nuanced analysis of what this means, in terms of the rights of all citizens to live as they choose as far as possible, without undue interference with their rights.

Within the Strategy consultation Accelerating Improvement theme, we note concern around statements such as "We'll check... how they are investing in improving safety" and "We'll use the evidence we collect to support improvement...including evidence and best practice from other industries." These appear to indicate that the complete avoidance of, for example, accidents to people who use services is both possible and a good thing. We are reminded of the Court of Protection judge who said, "All life is an experiment... what good is it making someone safer if it merely makes them miserable?"

Within the sub-theme Regulating Safety, "Learning and improvement must be the primary response to all safety concerns in all types of service" suggests a push towards a top-down imposition of a risk-averse culture. Indeed, in the prior sub-theme Involving Everybody, the draft mentions the need to uphold rights but the final message, about relevant learning, suggests that people need to be appropriately informed so that they can 'play a part in their own safety.'

Within the impact assessment Safety through Learning it states "We are aware that our ambition to improve safety cultures...may inadvertently create more complex regulation without actually improving the situation." In 'mitigating actions' for this risk, the clear thrust is to ensure 'that any change we make, or any role we assume, will actually improve safety for people', rather than a recognition of the huge risk of breaching people's Article 5 and Article 8 rights.

We have commented earlier in this response on the wide-ranging, complex challenges to equality and look forward to CQC playing its part in helping to address these. We would remind CQC of its important ongoing work to encourage person-centred, positive risk-taking among people who use services, and we are concerned that, without a more nuanced approach, this new strategy will pull in entirely the opposite direction.