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Regulatory Changes Consultation
Care Quality Commission
Citygate
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NE1 4WH

Sent by e-mail to: regulatorychanges@cqc.org.uk

Date: 22 March 2021

Dear Sirs

Consultation on changes for more flexible and responsive regulation

Thank you for the opportunity to respond to the above consultation, on behalf of United Kingdom Homecare Association (UKHCA).

UKHCA is the national, professional association for organisations which provide social care, including nursing care, to people in their own homes. Our mission is to promote High quality sustainable care services so that people can continue to live at home and in their local community. The vast majority of our members in England provide services which are regulated by the Care Quality Commission.

Yours sincerely



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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.

Question 1a. To what extent do you support this approach?

We welcome CQC's aspiration to increase the use of intelligence gathering as opposed to the previous focus on inspections of providers' business premises and documentation. We believe that the present system on inspection is too heavily focused on examination of processes, compared to outcomes achieved, particularly when an inspection is undertaken without the use of experts by experience.

Greater emphasis must also be placed on the experience of people who use services.

Broader intelligence gathering, combined with a systems-based approach will, hopefully, lead to a more rounded and balanced view of the actual performance of services within the broader context of their clients' experiences and the environment in which the providers operate.

The consultation document does not contain much detail in terms of delivery of the stated aspirations. The presentation of the consultation package and the formulation of the questions posed are disappointingly simplistic and could lead to a less than rigorous process.

We urge the Commission to ensure that its policies and procedures are consistent, transparent and balanced. In addition, information gathering will need to be inclusive, particularly for those stakeholders who do not have access to or experience with digital platforms.

In addition, whilst we support the aspiration to use a broader data set, the impacts of the system within which providers operate must also be considered.

We recognise that CQC, currently, has limited powers to hold local care systems to account, particularly local authority and NHS commissioners who are responsible for commissioning 70-80% of the homecare sector's output. A number of undesirable practices, such as contracting services by the

minute are imposed on providers by their commissioning authorities and can have a negative impact on the ability of providers to deliver the high quality services we should all support as well as the ability of services to invest in continuous improvement.

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

If handled sensitively, appropriately and consistently, the incorporation of a wider set of views and data sets has the potential provide a more balanced view of the performance of a service.

However, information gathering will need to be inclusive, particularly for those stakeholders who do not have access to or experience with digital platforms.

Contemporaneous feedback to providers will also be important, particularly where intelligence is being gathered outwith the provider's quality records. Such intelligence also needs to reflect the totality of the service rather than the selected views of a limited number of individuals or data-points.

CQC will need to ensure that conscious or unconscious bias is minimised in its analysis.

Where feedback is sourced from a range of stakeholders, providers should have the opportunity to see and respond to it (suitably anonymised, where necessary) before being included in the draft report. In the past, we have received reports of inspectors giving disproportionate weight to a small number of negative views. In these cases, the provider had not been sighted on the comments. This resulted in the provider being unable to seek clarification, any opportunity to challenge the opinions expressed, or provide mitigating evidence prior to the issue of the draft report in which those views were given as being representative of the entire service.

Greater reliance on opinions of motivated individuals could lead to distortion if not handled carefully and transparently.

Whilst the more flexible approach is to be welcomed, CQC needs to reflect those aspects, related to the quality of services provided, that are within

the control or influence of the providers, those that are not and balance the relative impacts. The latest draft White Paper outlines proposals to grant greater powers to CQC to hold local authority commissioners to account and we have supported this aspiration and will continue to do so.

CQC must also share data and best practice learnings, gleaned from the regulatory process, more openly and consistently. By doing so, providers will have access to data against which to benchmark their performance but also to innovate and improve services.

We would, for example, like to see a regular digest of the learnings from inspections (including what worked extremely well and could be emulated by others, and where there are patterns on undesirable practice). At present, we do not think that the Commission maximises the use of the inspection data it accumulates.

CQC currently has access to a wealth of data and we would urge the Commission to accelerate its previous digital strategy as a key component of future activity in this area.

2. Reviewing and updating ratings

Rather than following a fixed schedule of inspections, we propose to move to the more flexible, risk-based approach set out in this section for how often we assess and rate services.

Question 2a. To what extent do you support this approach?

We have supported the recent changes that CQC has made in the way it has carried out inspections and interacted with providers throughout the pandemic including the recent pilot of virtual inspections for homecare providers in which UKHCA members actively and enthusiastically participated.

We have supported CQC's increased engagement with providers under the Emergency Support Framework (ESR) and the evolution towards the Transition Monitoring Approach.

However, the current systems have resulted in ratings being frozen due to the impact of COVID-19, except in a small number of circumstances and there is currently no mechanism in place to enable a provider to request a ratings' review. This has led to providers, who have implemented improvements in their services, seeing their ratings being maintained at a lower level than they should be and resulting in difficulties in marketing and growing their businesses.

During the course of the pandemic CQC's move away from scheduled inspections to focus on higher risk providers has disadvantaged those providers who have addressed previous concerns raised by CQC but have not had a ratings review. This has impacted directly in terms of the costs and availability of insurance cover with insurers placing significant weighting to the quality rating assigned by CQC.

Both CQC and providers have benefitted from increased engagement and support, but UKHCA has previously expressed disappointment that the current framework does not allow for ratings to be changed. The proposed Flexible Approach to Regulation gives CQC the option to change ratings more rapidly and flexibly and we would urge CQC to implement this option as quickly as possible.

We would urge CQC to carry out a thorough 'lessons learned' exercise on both the ESR and Transitional Approach to ensure that best practice is reflected in future frameworks.

UKHCA and other professional organisations contributed to 'What to expect from inspection': a CQC exercise aimed at improving the inspection process. This was a successful collaboration and the subsequent guidance document reflected that both CQC and providers can benefit from closer collaboration and shared expectations. We commend the Commission for this approach.

Flexibility also applies to the consistent, transparent and proportionate application of registration criteria to providers of 'personal care'.

Increasingly, over the last few years, there has been a growth in the commissioning of services from 'micro-providers'. These services are currently unregulated by CQC and people being supported by these services may be unwittingly taking on the responsibilities of employers.

Following representation by UKHCA, CQC had agreed in 2019 that appropriate and proportionate regulation should be applied to those micro-providers which are in the scope of the current Regulations, particularly to the 'umbrella organisations' who are, in fact, delivering the regulated activity of 'Personal Care'.

UKHCA contributed to a Regulatory Sandbox exercise in 2019 and the subsequent development of a registration and inspection framework which was due to be piloted in 2020.

CQC has not, to date, brought this approach forward and UKHCA would urge the Commission to address this omission urgently as part of its strategic plans as failure to do so would appear to be in breach of the Regulations CQC is required to enforce.

Making CQC's approach to regulation more flexible is a positive ambition but the Commission must ensure that its plans offer true value for money. This must be reflected in the way the Commission charges for its services, not least because full cost recovery for the costs of regulation now applies.

UKHCA has consistently argued that CQC's current charging formula, based on the number of service users, is not flexible and does not reflect the actual costs of regulation. With a move away from set inspection timetables, increased use of virtual methods and increased use of intelligence, the charging framework must reflect the differences in costs between the previous regulatory approach and that being proposed in this strategy document.

If CQC is intending to broaden the scope of its activities to cover systems, the balance of funding must genuinely reflect the scope of CQC's activities in relation to homecare and homecare providers' fees should not be cross-funding activities in relation to other system partners.

We are also disappointed that CQC has not described or sought views on whether the proposals described will be more or less expensive and outlined their impact on future fees.

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

This proposal has the potential to improve the relationship between providers and CQC as well as providing a more dynamic picture of the performance of providers but this does need to be accompanied by a review of how the costs of regulation are calculated.

As outlined above the ratings' system needs to be equally flexible and dynamic.

Question 5. 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.

There is insufficient detail in either the strategy document or the draft equality impact assessment to fully assess the impact of the strategic ambitions in respect of tackling inequalities.

Access to care and the funding of that care are current inequalities within the health and care systems.

Access to more data and a more flexible approach to regulation may make CQC more aware of where these and other inequalities exist as well as providing greater understanding of the potential drivers for them. However, in the absence of regulatory powers CQC cannot alter current perverse drivers including, for example, commissioning decisions or funding levels. Providers, for their part are also unequal partners.

A more collaborative approach with providers and other stakeholders may go some way to address what is, an unequal balance between regulators and providers. However, this will depend on how the ambitions articulated in the strategy document are implemented.

The ability to more flexibly and proportionately alter ratings would be welcomed by providers. The criteria for awarding a 'Needs Improvement' rating and a 'Good' rating should also be considered and addressed.

The current limitations on the equality information currently held by CQC could be addressed by making providers aware of why the data were being collected, how they may have influenced CQC's actions and practical learnings from those data to aid providers in improving performance.

Access to better and more consistent data about equalities has the potential to improve performance and address negative issues.

However, CQC must use data in a more proportionate, consistent and transparent way.

Previous inspection approaches have led to some inspectors looking for fault rather than taking a more balanced view of overall performance. Some providers feared the potential regulatory consequences from sharing information more freely with inspectors meaning that some issues were not appropriately assessed and addressed. This reticence in sharing data with the Commission combined with deliberate withholding of information, contributed to recent, reported problems related to closed communities as well as sexual and other abuse across the health and care sectors.

Greater collaboration, transparency and consistency would be more likely to reduce or remove negative impacts across the health and care systems.

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