

The eye of the tiger?

After a challenging couple of years as the regulator of quality and safety in health and social care, has the Care Quality Commission (CQC) now sharpened its teeth through its inspection regime and Fundamental Standards?

THE PACE OF CHANGE IN THE REGULATION OF health and social care providers has never been faster. Though the public may see a slowly moving legal framework which is perceived as sluggish to act and protect from harm, those within the sector recognise the rather different position the CQC now adopts when concerns arise.

The tsunami of regulatory change began when the second *Francis Inquiry* report made numerous recommendations about transparency, regulatory rigour, and effectiveness and safety within this complex and dense care sector. Not all of the recommendations have been adopted or implemented, but the political pressure following the report was considerable, augmented in the following two years by pre-election promises and post-election actions. The result has been “an unprecedented and sustained period of regulatory change across health and social care which requires almost instant compliance”, says Corinne Slingo, head of DAC Beachcroft’s national Healthcare Regulatory team. The challenge for providers, adds Slingo, is that, “some of these key regulatory changes require genuine cultural change rather than just operational implementation, and that cannot happen overnight. In addition, all of these changes require further investment to achieve compliance, at a time when the health and social care sector is under exceptional cost pressure just to deliver basic care. The maths are a real challenge, even if the objective is well founded.”

Has the tiger got teeth?

Data on inspections carried out thus far, coupled with feedback from providers in the sector and DAC Beachcroft’s

experience in advising providers, all indicates a firm ‘yes’. The CQC has been repositioning itself to ensure its purpose and scope is understood by all, to make clear what is within its regulatory ‘control’

and what is not. It has also set out a clear agenda of bold invention to protect patients and services users in the sector, which cannot be questioned as the regulator’s *raison d’être*.

Of the inspections to date, approximately:

- 2% of providers have achieved ‘Outstanding’
- 60% have achieved ‘Good’
- 31% have achieved ‘Requires Improvement’
- 7% have been rated as ‘Inadequate’.

While these figures cover a wide range of provider types, from single location care homes through to the largest multi-site, multi-service foundation trust or national independent sector provider, the messages to the sector and the public are currently

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clear; nearly two-thirds of providers are doing what they should be according to the CQC, but one in three providers are falling below the required standards and (to the public perception) may be unsafe in delivering health and social care. The CQC publishes its reports as soon as the factual accuracy stage closes, and prior to providers’ ability to request a ratings review under the current process. Conditions placed on registrations are not uncommon, and the trial by media linked to high-profile inspections continues to cause reputational damage – some clearly due, others perhaps less so.



In control
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Common areas picked up in inspection reports across the sector include:

- Providers' ability to demonstrate and evidence their approach to capacity issues and consent
- Under-resourcing of workforce and gaps in training and recruitment checks
- Medicines management (both acute and non-acute, health and social care)
- Paediatric services – fitness for purpose
- End of Life care
- Care environments – care pathway issues/operational maintenance issues
- Deprivation of Liberty Safeguards compliance
- Visibility and strategic goals communicated by the leadership team
- Well-led concerns – from lack of challenge in board and committee meetings through to lack of awareness of governance structures and reporting lines.

What next?

The tension between public interest in the safety of its local services and the need for a quality assured, accurate and credible regulatory process, which fairly reports both good and bad in order to encourage continuous improvement, has never been more pressing. But are we getting to that Holy Grail? Most, including the CQC itself, recognise there is more to be done.

The tiger's teeth have certainly been sharpened through regulatory reform, but the accuracy and consistency of inspection reports remains a challenge for the CQC and a frustration for providers. The distinctions drawn between the ratings per domain and per service, are on occasion paper thin, with the reason a provider falls to one side or another ('Good' to 'Requires Improvement', or 'Requires Improvement' to 'Inadequate'), remaining uncertain.

CQC: what's new?

- Large inspection teams and a new approach to inspection across services and locations
- Inspection against five key domains; safe, caring, effective, responsive and well led
- Adoption of Ofsted style ratings of 'Outstanding', 'Good', 'Requires Improvement' and 'Inadequate'
- Upskilling of inspectors and the addition of inspectors by experience, plus staff from comparable providers
- New enforcement processes, to remove the need for Warning Notices where persistent non-compliance exists
- CQC, Monitor and Trust Development Authority (TDA) interface around enforcement activity and special measures arising from quality and safety concerns
- Introduction of Fundamental Standards in April 2015 to replace the Essential Standards
- Escalated enforcement for breach of key fundamental standards
- Introduction of the Fit and Proper Person test for Directors
- Introduction of a statutory Duty of Candour for notifiable safety incidents
- New factual accuracy and ratings review process post inspection
- New offences of wilful neglect and provision of inaccurate performance data by providers
- Requirement to publish and display ratings at provider premises and websites
- CQC engagement with Coroner's Regulation 28 reports arising from deaths in health and social care services
- CQC enhanced interest in the sustainability of health and social care services and impact on quality and safety.

There are more changes ahead though; the CQC has just consulted on its regulation of independent GPs and specialists, resulting in a new 'Ambitions for End of Life Care' agreement which will shape the future regulation of such services. Corinne Slingo notes: "Change is the only constant, and regulators rightly change and progress as the sector itself continues to evolve. The CQC needs a subtlety and complexity which matches the sector it oversees, underpinned by consistency of approach in order to maintain confidence. But what it also needs is empathy as to context in such challenging times to ensure responses remain proportionate to risk, and also to applaud those providers who demonstrate areas of best practice. We are not quite there yet." ■

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