

NCF response to the Care Quality Commission Strategy consultation – 4 March 2021

National Care Forum

The National Care Forum (NCF) is the membership organisation for not-for-profit organisations in the care and support sector. NCF supports its 130 members to improve social care provision and enhance the quality of life, choice, control and wellbeing of people who use care services. We are the voice of the not-for-profit care and support sector.

Context

We welcome the opportunity to comment on the Care Quality Commission's (CQC) draft strategy. Our response reflects the views of many of our members, following a dedicated session with them to discuss the consultation.

The draft strategy recognises the challenges of regulating in a world where health and social care services are evolving rapidly, with new ways of working in partnership across different sectors, and that it is more important for health and care services to work together as a system to deliver care and to meet the needs of the local population and of each individual person.

We all understand that people are living longer, often with multiple, long-term conditions, which means delivering care is increasingly complex. The NCF fully supports the importance of regulation which is working to improve people's care by looking at how well health and care systems are working and how they're acting to reduce inequalities. The ambition within the strategy is a sound one which we fully support: *We want everybody to have access to safer and better-quality care and we will champion this in everything we do.*

However, we have a number of very significant concerns about the direction of travel of regulation within the four themes of the strategy in terms of how the CQC will regulate fairly and effectively across the whole system of health and care. The themes of the strategy suggest that it is the role of the provider to address broader multi-agency and societal issues, and it is important that the CQC recognises and understands the extent to which providers actually have the necessary powers to effect change in this regard. It is the fundamental duty of a regulator to act fairly; both to the organisations that it regulates and the people they support. We are concerned that the strategy appears to focus almost exclusively on addressing risks and responding to concerns raised. There is little recognition of the importance of identifying good practice and positive feedback as well as ensuring that regulatory action is based on comprehensive evidence. We would welcome a more balanced approach from the CQC, with a strategy that addresses risks and issues, but which also recognises high-quality care, and encourages providers to improve areas which are within their remit to do so.

The strategy also lacks key detail and commitments across the four themes, with little sense of how the ambitions will be achieved in relation to the voice, evidence and experience of social care providers.

Implications of the health and care white paper

A number of our concerns relate to the role of the commissioner within the whole health and care system. The draft strategy was produced prior to the publication of the recent health and care white paper '[Working together to improve health and social care for all](#)' so we look forward to hearing how the new duty for the Care Quality Commission to assess local authorities' delivery of their adult social care duties will be incorporated into the final version of the strategy.

The strategy currently says: *We must adapt and work in new ways to look at the quality of people's care on their journey through the health and care system – in individual services and across different providers and organisations.* This is clearly something we can all support but it is not, sadly, all within the gift of individual care providers as our commissioners have a fundamental role here.

We all recognise also that: *There's still inequality in how people can access health and care services across different areas of the country and among different groups of people, and the pandemic has renewed the focus on inequalities. Reducing inequalities in people's outcomes from health and care services is a fundamental part of our new strategy.* Again, the ambition is welcome, but it is the responsibility of the whole system; social care providers cannot fix it on their own.

Theme 1 – People and Communities

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

Partly

1b. Please give more details to explain why you chose this answer.

We want our regulation to be driven by people's needs and their experiences of health and care services, rather than how providers want to deliver them.

This theme needs some careful consideration. While we absolutely support the ambition for regulation to support person-centred, co-designed care and we welcome the ambition to improve overall feedback from a wider range of interested parties, we have a number of concerns about the way it is currently crafted.

Listening and Actions – very concerned about fairness; this has a focus on negative feedback, a worrying lack of balance and no reference to finding positive feedback

- The approach to this theme is a concern. The strategy actually states: *But we'll have a specific focus on people who are the most disadvantaged in our society, have had distressing or traumatic experiences, and are more likely to experience poor outcomes and inequalities.* This does not reassure social care providers who feel there is a lack of balance in the approach that the CQC will pursue within its regulatory focus. Regulation should not just be about seeking out negative feedback from people about their experiences; it must put equal effect into seeking positive feedback too. The intention that feedback from residents, families and other professionals (especially negative feedback) will have a much greater emphasis on inspection, rating and enforcement brings a real challenge here for the CQC to demonstrate very clearly how they will actively manage overall fairness.
- This theme also appears to undermine the principles within Quality Matters that the care provider is the first point of call to put things right where people using their services have

concerns or feel it is not good enough. The approach here in the strategy seems to directly contradict the ambitions and commitments within Quality Matters, which are very important for a speedy resolution to issues.

People are empowered – the ambitions here must not stifle innovation and new models of care/new technologies

- We welcome the focus on ensuring the information from the regulator is fully accessible, easy to understand and available to all who need it to plan their care. We make some observations later in our response about ensuring that more regular updates to ratings are fair, clear and do not become confusing.
- Having '*an agreed and shared view of quality*' is very important; however, it is also important that this does not stifle innovation and exploring new ways of working, new models of care and the use of new and emerging technologies

Prioritising People and Communities – how will the CQC hold local systems to account? How will this recognise care providers limited power within that system?

- Co-designing regulation with people and assessing co-design of services are ambitions the NCF definitely supports and champions. Again, it is essential that the way this is done balances the voices of people using services, gaining a broad range of view across communities. Focusing on those who have the confidence to be very vocal risks missing out on the experiences of those who have important points but may not have the confidence to contribute. The voice of the service provider is also key here. How will engagement happen and how will a balance be managed?
- The CQC states it will '*hold local systems to account for the quality of care in their area and clearly call out issues when we see them*' but there is no clarity on how this will happen. How will CQC do that in a way that recognises the limits of power of a particular care setting/particular care provider? The new powers in the white paper may help, but the CQC already has the power to regulate key parts of the health and care system and it is not all clear at the moment that the CQC is using those existing powers to regulate better across the health and care local system and join it up better for people using best partnership working.
- The strategy does not take into account the commissioning and funding limitations faced by providers. Care providers are commissioned to deliver a particular service and then receive funding accordingly. This system inevitably limits the services which can be provided to those envisaged and funded by the commissioners, and this limitation must be recognised by the CQC and its inspectors. For example, inspections often emphasise the importance of providing more activities which are tailored to people's interests and needs. However, local authority fee rates often do not allow providers to offer such activities. We urge the CQC to take notice of the limitations imposed on providers by commissioning and funding decisions (which are out of a provider's control) and work with the sector to achieve the commissioning changes needed.

Recommended changes:

When this theme is considered alongside theme 2 of the strategy and the accompanying consultation on changing regulation and ratings, it is clear that the CQC will need to demonstrate how it will ensure that regulation takes a fair and balanced view, with sufficient weight on actively seeking positive feedback, avoiding a focus on the negative and balancing the views of people using services and other professionals with the professional view of the care provider.

Our asks:

- ✓ this theme needs much more balance and clarity on how the CQC will manage to hear both positive and negative feedback about the quality of the care it regulates. How will the CQC ensure the process of seeking feedback is fair? And how will you ensure proportionate weight is provided to both positive and negative feedback?
- ✓ the CQC has an obligation to seek feedback in a fair manner. Should there be standardised ways of asking people about the service they receive from an independent agency across all providers?
- ✓ it also needs to commit to ensuring that regulation does not stifle innovation
- ✓ it needs more clarity on how it will hold systems to account while recognising the limited power of social care providers in those systems. How can this be fairly inspected? How can regulation simply focus on one part of the system if the rest of the system chooses not to collaborate and support?

Theme 2 – Smarter regulation

2a. To what extent do you support the ambitions set out in this theme?

Partly

2b. Please give more details to explain why you chose this answer.

This theme also raises very significant concerns for us, especially when taken in the round with the concerns we have about theme one and the concerns we have about the consultation on changes to regulations and ratings. While a more dynamic and flexible approach to rating services may bring some benefits, we have many concerns and much more detail is needed.

We note that the consultation states: *We want to move away from relying on a set schedule of inspections to a more targeted approach... We'll use our powers to visit services when we need to respond to risk.* It appears that the CQC is moving towards an approach where targeted inspections are carried out on the basis of concern/risk.

As a public authority and regulatory body, the CQC has a fundamental obligation to act fairly and reasonably. While we absolutely accept the need for the CQC to address risk and instances of poor care, this is properly addressed through enforcement action and cannot become the overriding focus of a fair inspection and rating regime. The purpose of an inspection and rating regime must instead be to ensure that a fair, rounded and accurate assessment is made.

For an inspection and rating regime to be fair, it must consider all relevant evidence and take a holistic view of all domains and the provider's overall performance. It seems likely that failing to adopt a fair

and balanced procedure may well expose the CQC to the likelihood of repeated public law challenges by providers.

More importantly, a comprehensive, balanced and fair inspection and rating regime is essential to ensure that the public to know where care is good and where providers are providing a high quality, person-centred service.

As a result, we are concerned that inspections will not look at a provider's improvements and performance in the round and may lead to unbalanced and potentially unfair conclusions and rating decisions. For example, a targeted inspection may result in the downgrade of a rating based on an inspection of only one or two domains, overlooking good practice or improvements in others. We would welcome more clarity on this point from the CQC.

Previous public law challenges have established that there is a need for an effective and fair process for providers to challenge the factual accuracy of inspections report, which is independent of the inspection team. In the same way, if a targeted approach is to be taken, we anticipate that it will be necessary for the CQC to ensure that there is a robust process to challenge potentially unfair decisions relating to the scope and extent of such inspections.

Targeted and dynamic – a real lack of transparency here

- This theme felt very opaque to us. It raises many questions. What does a more dynamic approach actually mean? In principle, finding ways to provide a more accurate and up to date view of quality sounds helpful, but it is really hard to tell what that actually involves. What are all of the CQC's *regulatory methods, tools, and techniques to assess quality continuously*? What does this include? Is this shared with the care provider as a matter of course? The references to large data sets, AI and data science techniques do not explain what is actually planned. What data will be used? How will providers see this data as well as the CQC? How will concerns about accuracy and objectivity be addressed? What rights do providers have to challenge and or supplement the data being used? How is an individual care service or setting expected to manage this approach? How will these dynamic assessments be reported on/documentated? What standards/objectives will the assessments/inspections be based on? Will this increase the risk of different judgements being applied by different inspectors? What will be the review process? We already have concerns about the factual accuracy checks process and this theme simply magnifies those concerns – how will this be improved for dynamic regulation? How will all this evidence be used? Where will the assessment of stakeholder working fit within this? How will the CQC gain a picture of the overall offer across the system, not just the care provider's role in that offer? Where is the reassurance that the provider's voice will be heard in all the data?
- We also have some very practical concerns about how this will operate in practice and what impact this will have on providers' operational practice and planning. How will providers be kept informed about the dynamic regulatory process? Will there be any sort of timetable or schedule for them to be aware of/ respond to? How will they be able to request a full holistic inspection if they feel that is needed as opposed to a focussed/ targeted inspection?

Making it easier to work with us - reducing duplication sounds good, a digital approach is welcome

- A co-ordinated approach to data collection is helpful; it is really good to see the commitments here. We support the COUNT principle (Collect Once and Use Numerous Times). Anything that helps to reduce the burden associated with data collection for providers is warmly welcomed, especially after the experience of the Capacity Tracker. An equally important principle is access to that data for care providers including the national, regional and local picture of trends and analysis
- The NCF has been at the forefront of digital leadership in social care and so we support the ambitions here. It is also important to understand what this means for providers who are not yet very digitally connected; how will this have an impact on the data collected, their ratings and inspections?

Future Proof and focused on what matters most – must recognise the huge pressures on the sector already

- The consultation states: *We'll expand our definition of what we consider to be a provider of care and what it means to carry on a regulated activity. This will make sure that we register all parts of an organisation that are responsible for directing or controlling care; importantly, this will make sure they can be held accountable.* We would welcome more detail on what this means in practice.
- The proposals here must also recognise the huge pressures in the sector which have only been compounded by the pandemic. This theme includes a regulatory consideration of the wider responsibilities listed, such as social and ethical responsibilities e.g. environmental sustainability, which may be a real challenge for a sector under huge pressure. We would welcome more detail as to whether CQC considers that these responsibilities would lead to additional costs and requirements for providers. If so, this may create further pressures on providers when they are already overloaded.

Relevant for all – evolving ratings feels very unclear

- It is hard to comment on the evolving ratings as it is not clear what it means in reality. How frequently will they be updated? Can providers request a re-consideration of their ratings? Can providers challenge these? Given our concerns outlined in response to theme one, how will the CQC ensure that they are fair, based on balanced evidence? How can providers benefit from these?
- In terms of the plans to move away from long reports, we do have concerns here. Some people may want the current length of reports to make an informed decision. Others may want simpler documents. With shorter reports, we have already been raising concerns about what information goes into the reports and what does not. These will need further work and discussion. From the care provider's perspective, it is important to have the detail to be able to fully understand the regulatory assessment, respond, improve and challenge if need be.

Recommended changes:

It is essential that the regulator provides a holistic view of the services it inspects rather than a partial view focussed on a narrow look at only certain parts of the service based on risks/ concerns.

Our asks:

- ✓ Much greater clarity on what a targeted and dynamic approach means in practice
- ✓ A continued focus on inspection of services as a whole, not just targeted inspections in relation to specific concerns or risks
- ✓ A clear timetable to assure providers that over a rolling period of xxx months that the whole service will be assessed
- ✓ An opportunity for providers to request that a targeted inspection is widened
- ✓ Clarity on how providers request an inspection if they feel their service has improved
- ✓ More openness - a clear promise to share the suite of data being used to make judgements about a particular service with the provider of that service
- ✓ Better ways for the care provider to ensure they are able to provide data about their service, for example, looking again at the PIR in the context of this new approach to ensure it gives sufficient opportunity and space for the provider to submit their suite of evidence; for example, greater word limits to ensure providers can explain not just where things have gone wrong, but also the processes to prevent problems and improve services and also space to 'sing' about their great work and evidence to back it up
- ✓ Consider a full 360 approach to inspection, with a clear commitment to gather a range of opinion from different angles dependent on scale and breadth of service provided, perhaps via an independent body.

Theme 3 -Safety through learning

3a. To what extent do you support the ambitions set out in this theme?

Fully

3b. Please give more details to explain why you chose this answer.

The importance of culture – organisational culture is key

We strongly welcome a focus on a strong safety culture – one in which, as the strategy says: *it's accepted that all incidents – positive, negative, and wholly avoidable – provide opportunities to learn and improve*. It is essential that this focus on safety achieves the right outcome, so providers who take a very proactive, open approach to identifying concerns themselves and addressing them do not find that they are then penalised in any inspection for doing so because that information was proactively offered to the CQC. How will the CQC ensure that providers with a strong safety culture who identify concerns and implement remedial actions are treated fairly on inspection? We want this theme in the strategy to encourage a conscientious and transparent approach to managing safety and creating a safe, learning culture.

- It is an interesting notion to reach a national agreement on a definition of safety; it sounds helpful and keen to know about how this will be developed and how the care provider voice will be heard

- It seems helpful to *highlight trends and patterns across health and care so that services have the information they need to improve*
- Providers were also concerned that this focus does not inadvertently undermine other work to ensure services are truly person-centred and not so risk-averse that people's choices are unreasonably limited – the point that the CQC often makes about people having the right to make unwise choices and not operating in such a risk-averse way that undermines good outcomes for people. Feedback from providers on recent CQC webinars seemed to suggest that the CQC is moving from intervening where there is the risk of harm to intervening where there is 'perceived' risk of harm. This raised real concerns that this the potential of very subjective inspecting which does not recognise the right of all of us to take risks with appropriate risk assessment.
- Providers also told us that they would like more emphasis on the safety outcomes related to effective partnership working, improving safety through looking closely at the learning from the engagement of other partners in any specific situations and the role that those partners may have had in the situation and how that can be improved too.

Building expertise – to be welcomed

- We welcome the CQC's plans to strengthen their safety expertise and simply caution against the point made above about not creating a very risk-averse culture for people using services.
- Better clarity is needed about the plans to make judgements about services having the right type and levels of expertise.

Involving everybody – totally agree

- We welcome the focus here that *People should influence the planning and prioritisation of safety and be truly involved as equal partners in their care at all levels*. It goes some way to responding to our concerns relating to this theme.

Regulating safety – more detail needed

- We welcome the focus on ensuring safety across the board, however, more clarity is needed as to how the CQC will check how well services work together. Whilst we support a joined-up approach to care, it is not clear how the CQC will join up its regulation of different providers and bodies.
- We would welcome more detail on the CQC's "*improved safety expertise*", how this will be acquired and who will be involved.

Consistent oversight & support – again more detail needed

More detail on the other sectors referenced would be helpful. Which sectors have a strong safety culture for us to learn from? And what do they have in place that makes it so effective?

- We would support *a national conversation on safety across health and care sectors and systems* and ask for more clarity on how the provider voice can be front and centre here.
- One of the challenges the CQC has always faced is in ensuring consistency between its inspection teams across the country. This will continue to be a key issue to address in this area of work and focus.

Recommended changes:

We want this theme in the strategy to encourage a conscientious and transparent approach to managing safety and creating a safe, learning culture.

Our asks:

- ✓ Clarity is needed on how the CQC will ensure that providers with a strong safety culture who identify concerns and implement remedial actions are treated fairly on inspection. It would be good to see clearer commitments to supporting providers who are proactive in identifying and resolving risks in an open, collaborative shared way and to not penalising them for being conscientious and transparent – perhaps the ratings characteristics may need a review to ensure this?
- ✓ A recognition of a clear distinction in the regulatory process between those providers who do take a proactive and learning approach to safety and those who have to have the CQC identifying safety issues.
- ✓ When assessing safety, keeping a strong focus on the *need to actively take into account people’s rights and their unique perspectives on what matters to them in the way they choose to live their lives and manage risk*
- ✓ Explore the opportunities of the Enhanced Health in Care Homes programme and the Multi-disciplinary teams it creates to reflect on practice and learning across the partnerships in the local

Theme 4 - Accelerating improvement

4a. To what extent do you support the ambitions set out in this theme?

Mostly

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

We are supportive of work to accelerate improvement as that is a key area of focus for us as the membership organisation for the not for profit sector. Peer learning and sharing is key as is the support of credible and experienced experts and innovators. We note the difficult balance the CQC will need to strike here in its role as the regulator in terms of objective regulation and supporting improvement.

Collaborating for improvement – potentially helpful

- The concept of national improvement coalitions is a potentially helpful one. We would urge a strong provider voice, from across the very diverse care sector and working hard to gain meaningful co-design from those using services and their families/ advocates. It is important that these coalitions are nimble and responsive in their work

- The recent white paper in health and care also merits consideration here – where to integrated care systems fit within this theme’s ambition and how will the CQC plans fit with them, work together with them and avoid duplication and confusion?

Making improvement happen – benchmarking is key

- We welcome the plans to actively support improvement, both across the sector and the wider system. Please note our earlier comments about the importance of the local system and understanding the limited powers that social care providers have within those hierarchies.
- More clarity is needed though in relation to *‘improvement conversations’* as it is key that we have a shared understanding and agreement of what improvement looks like
- Benchmarking data sounds very helpful. As you know, the NCF has been a strong and robust advocate for access to data for the social care sector during the pandemic and we would be keen to work with the CQC to ensure benchmarking data is well designed and properly accessible.

Encouraging Innovation - We welcome explicit reference to innovation in this theme.

- From a regulatory perspective, the CQC can sometimes seem to stifle innovation rather than promote it; while we are sure this is an unintended consequence of different approaches by different inspectors and a different appetite for risk, we think more clarity on what this approach entails is needed.
- It would be good to see a more proactive approach to innovation, with a safe space to discuss ideas and plans in advance to seek some positive assurance about the direction of travel, rather than having to invest in the innovation and then wait to see the verdict of the regulator. In terms of new developments of services, some sort of pre-development approval might help, some sort of pre-approval process with a proposal to take the risk out of the development/ innovation. Without this, providers can only gain confidence about approaches the CQC will approve from the regulatory response to existing services. As a result, the lack of a pre-approval process encourages a retrospective rather than forward-looking view.
- We welcome the references to the importance of digital tech to improve care and the NCF would be happy to work with the CQC to support this work.

An approach based on evidence – throughout the whole strategy, more clarity is needed here

- A consistent theme throughout this whole strategy document is the reference to evidence and data and a real lack of clarity about what this actually means, how it will be judged, how it will be shared and how it will be balanced and challenged.

Recommended changes:

We are supportive of work to accelerate improvement as that is a key area of focus for us as the membership organisation for the not for profit sector. It is important to fully involve providers of services in this work as well as the people using services.

Our asks:

- ✓ We urge a strong provider voice, from across the very diverse care sector and working hard to gain meaningful co-design from those using services and their families/ advocates
- ✓ A more proactive approach to innovation, with a safe space to discuss ideas and plans in advance to seek some positive assurance about the direction of travel
- ✓ Much more clarity on the evidence and data that is referred to throughout the strategy.

In each of the four themes in this strategy, we have an ambition to improve people's care by:

- **assessing how well health and care services work as a local system**
- **looking at how services and local systems are acting to reduce inequalities**

5a. To what extent do you support our ambition to assess health and care systems?

Fully

5b. Please give more details to explain why you chose this answer.

We absolutely support the ambition to assess how local systems are working to improve care and reduce inequalities. However, the strategy needs more clarity on how it will hold systems to account while recognising the limited power of social care providers in those systems. How can this be fairly inspected? How can regulation simply focus on one part of the system if the rest of the system chooses not to collaborate and support?

It is also important to recognise the key role of the commissioner here in the hierarchy of power, funding and control. The strategy is silent on this point.

6a. To what extent do you think the ambitions in the strategy will help to tackle inequalities?

To some extent

6b. Please give more details to explain why you chose this answer.

The ambition to assess how local systems are work to tackling inequalities is key, as are the ambitions around improvement and innovation. Care providers are often the advocates of those they support and work hard to address many of the inequalities embedded in the current commissioning and needs rationed system. The voice of those using services is essential in this mission and the strategy is strong on ensuring they have a voice. However, the wider reform of social care and suitable investment in it is what is truly needed to tackle the current inequalities in the way things work.

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