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# Care Quality Commission consultation on regulatory fees from April 2018: NHS Providers response

## About NHS Providers

**NHS Providers is the membership organisation and trade association for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS foundation trusts and trusts to deliver high-quality, patient-focused care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate.**

**NHS Providers has 99% of all trusts in membership, collectively accounting for £74bn of annual expenditure and employing more than one million staff.**

**Throughout this document, NHS trusts and foundation trusts are referred to simply as providers.**

## Key messages

- Any Care Quality Commission (CQC) fees scheme structure needs to balance fairness, proportionality and simplicity. We support CQC's ongoing commitment to look carefully at the costs incurred by regulation.
- We support CQC's ambition to charge fees as fairly as possible and recognise that CQC has faced a significant challenge in moving to a full chargeable cost recovery model by 2017/18, as required by HM Treasury.
- From the options proposed by CQC, we would support the option with no minimum fee (floor) and no maximum fee (ceiling) as this model is most closely aligned to a scheme which is equitable and fair. However, this option is problematic as some providers will see their fee rise substantially.
- While we welcome the reduction of fees paid by around 75% of providers under the proposed changes, we are concerned that around 25% of providers will see a substantial increase. The largest fee increase is expected to be from a fee of £332,248 to a fee of over £1 million. Any fee increase represents an unfunded cost pressure and is difficult for providers to accept at a time of significant financial, operational and demand challenges.
- We urge CQC to avoid imposing any immediate increase for 2018/19 and instead to adopt a transitional period and more gradual pace towards implementing any change for the providers that will see a substantial rise. We also urge CQC to recognise the importance of a ceiling in the future. If NHS providers continue to grow in size, CQC will need to consider a ceiling to restrict the highest possible fee paid by an individual provider and thereby prevent fees from rising to unsustainably large sums that do not necessarily equate to the cost of regulating them.

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- Given CQC's efficiencies and strategic approach, providers expect to see a commitment not to raise fees in the future, as well as stability in the amount paid year on year and a reduction in fees over time.

## Introduction

NHS Providers welcomes the opportunity to respond to CQC's consultation on regulatory fees from April 2018 on behalf of our members. Our response focuses on proposal 5 in relation to NHS providers as this is the proposal in the consultation affecting our membership.

We acknowledge that CQC is reviewing the 2018/19 fees scheme structure now that it has reached full chargeable cost recovery for the NHS provider sector, as required by HM Treasury, and are pleased to see no new increase in the total amount of income CQC collects from providers. While the majority of providers are pleased with the way the income is redistributed across individual provider fee payments under the proposed 2018/19 fees scheme structure, there are some which are concerned about the increase to their fees; our consultation response reflects this divided opinion in our membership. We build on our concerns raised in previous years about the succession and scale of fee increases for individual providers and the speed at which they are implemented.

In general, providers support inspections as a crucial part of an effective regulatory framework that ensures high-quality and safe care for patients. However, providers continue to raise concerns about the substantial human and financial resources required to prepare and participate in inspections. As CQC implements its strategy to move to a more targeted, risk-based, efficient and cost-effective regulatory model, we would expect to see a reduction in the costs of regulatory activity and ultimately provider fees. CQC's process for setting fees should therefore be closely aligned to the implementation of its new strategy. We encourage CQC to monitor and analyse the costs and savings of the new approach and feed this information into how fees are calculated in future years.

## Financial context in which providers are operating

The financial challenge facing the NHS continues to cause concern. The extra funding announced in the Autumn Budget 2017 was welcome and the £1.6 billion for 2018/19 will support the most challenging year of NHS funding. However, an unfunded gap remains between the increasing demand for and cost of care. At the end of Q2 in 2017, 152 (64%) of 238 providers reported a financial deficit, and the overall growing deficit risks financial recovery building. In this context, providers face difficult choices as they strive to continue to provide high-quality care and maintain performance against the delivery of the national standards. In its own State of Care report (October 2017), CQC stated that the health system was facing a "precarious" future due to financial and demand pressures.

Against this backdrop, we are concerned that although the proposals do not increase the *total* income collected by CQC, they do represent significant increases for individual providers with the highest turnovers. Given that providers will have already carried out financial planning for 2018/19 by the time the fee increases are finalised, any increase would represent an additional unfunded cost pressure and risks

diverting resources away from frontline patient services if providers do not receive funding from commissioners to cover the increase. For example, our analysis estimates that some providers will see their current CQC fee triple under the proposed changes, with the greatest fee increase being an equivalent sum to a provider employing over 30 new entry level nurses. Providers would therefore welcome reassurance that they will be reimbursed through the tariff or other payment mechanisms. We suggest that CQC should seek to work with the Department of Health and Social Care and other national partners to address this issue urgently, to mitigate the impact of any increase in fees on providers' financial sustainability.

We are particularly concerned about the limited capacity of providers to absorb significant additional CQC fees at the speed and scale proposed. We urge CQC to take a transitional approach to any increase for fees in 2018/19 and consider any potential unintended consequences on the sustainability of services. For example, CQC could allow for a transition period to smooth the impact or flexible payments to help providers manage their cash flow. A transition period could consist of a staggered increase in the maximum fee paid in the current top fee band or an increase in the number of bands, thereby allowing CQC to recoup all costs incurred and providers to mitigate the impact of the proposed changes. We are also concerned that the consultation does not allow for revising the timescale of implementing the changes; the final fees scheme is set to be published in March 2018, for implementation on 1 April 2018. It also places an expectation on providers to take the fee levels set out in the document as indicative of what they will be paying. Given this short timeframe between agreement and implementation, providers will need a transitional period to reduce the impact of the unplanned, unfunded additional cost pressures.

In addition, these proposals follow two years of fee increases for providers as CQC has moved towards a model of cost recovery; fees rose by as much as 75% in 2016/17 and again by almost 50% in 2017/18. As stated in previous responses to CQC consultations on its fees scheme structure, the proposed increases will add further pressure on providers already operating in a climate of significant financial constraints and operational pressures. As in previous years, we reiterate our concerns about the potentially destabilising impact on primary and social care providers too. The impact of the fee increases for community social care services as CQC moves into the third year of its four year trajectory to full chargeable cost recovery is also concerning. CQC needs to consider the wider impact of the additional costs absorbed by the social care sector on the NHS provider sector.

## CQC's rationale

Under the proposals, CQC would abolish the current banding structure and calculate fees based on a proportion of the total cost of regulating the provider sector, potentially with a minimum and/or maximum fee. We broadly accept the proposed methodology for fairly calculating a provider's fee payment, including the size of turnover as an appropriate measure for the resource required for regulation. CQC's rationale is based on developments in the provider sector including the increased complexity within organisations, the recognition that some providers have merged into larger organisations, and the costs associated with regulating larger providers. However, some providers have questioned whether turnover is the single best indicator as it may not fully reflect an organisation's complexity or inherent risks. Turnover is

unlikely to be a fair representation of the cost of regulation in the future as larger organisations do not necessarily incur a greater cost of regulation, for example, in a core service inspection.

CQC's rationale for abolishing the banding fee scheme is that when it was first introduced in 2010, only a small number of providers had a turnover of over £500 million and fell into the top fee band; CQC now estimates over a fifth of providers would fall into the top fee band in 2018/19. Under the proposals, fees would reduce for smaller providers while larger providers with a turnover of over £0.5 billion would see their fees increase. CQC therefore states its dual objective is to not only provide a fairer fee distribution to all providers, but also to protect its own income position (it forecasts a shortfall in income of £600,000 in 2017/18). While we support the fact that the proposed changes will remove the 'cliff edges' between bands, CQC's rationale is based on the impact over the whole sector, not on the individual provider. In addition, CQC will become dependent on a small number of providers for a significant proportion of its income. CQC should recognise that this burden may affect the relationship those providers have with CQC and ensure they mitigate this.

## Implementing CQC's new fee structure

CQC proposes three potential options for changing the fee structure for NHS providers. We would support the option with no minimum fee (floor) and no maximum fee (ceiling) as the most equitable and fair overall. While we support this model to an extent, a transition period is crucial to reduce the impact of a fee rise on individual providers and a cap on the maximum payment will be increasingly important in the future to restrict the highest fees paid.

### Option A: no floor or ceiling

The model without a floor or a ceiling is the most proportionate distribution of regulatory fee amounts as every provider would make a payment of 0.07% of total annual turnover to CQC. This means that smaller providers would pay less and larger providers would pay more in comparison to the current banding structure, thereby creating a fee system which would be aligned in direct proportion to the size of the organisation. If option A was implemented, it is estimated that 178 providers (77%) would see their fees decrease and 54 (23%) would see their CQC fees increase. Our analysis estimates that while non-acute providers would see the most significant reduction in fees, 96% of providers that will see a fee increase are acute trusts and 2% are mental health trusts.

While this option is the fairest, it is also the most problematic as providers with the largest turnovers will be heavily impacted. Our analysis estimates that eleven providers would see their fees more than double and three providers would see their fees more than triple. We estimated that the provider with the largest fee increase would go from a fee of £332,248 to a fee of over £1 million; this fee increase of over £750,000 is undeniably substantial and could seriously adversely affect a provider, for example, if it subsequently missed its control total and did not receive its sustainability and transformation funding. While the cost for individual organisations would be large, it is also sizable for the sector. Our analysis used 2017 turnover data to model the average fee increase and decrease for providers; for the 178 providers that would see a decrease in the fee paid to CQC, it would go down by an average of 29%, while for the 54 providers that

would see an increase, it would go up by an average of 52%. This modelling shows that the average fee increase is significantly higher than the average decrease. Providers need a transition period to cope with this impact, in addition to a ceiling in the future as it is not proportionate to allow individual fees to rise exponentially, especially given the context of the size of planned accountable care systems and group structures.

## Option B: floor and ceiling

The model with a floor and a ceiling would similarly involve a proportionate fee distribution amongst providers depending on their turnover, within a smaller range. According to CQC, the floor would reflect the fact that there is always an essential level of regulatory activity and associated costs, irrespective of the size of the provider. CQC also argues that the ceiling would reflect the fact that economies of scale in very large providers effectively mean that costs tend to plateau. CQC anticipates the range of proportional fees to be between 0.06% of a provider's turnover for the largest providers and 0.11% for the smallest providers. This range is less dispersed than the range under the current fee structure which sees some smaller providers paying up to 0.23% of their annual turnover, while larger providers are paying only 0.02%. Therefore, the largest impact would again be on those with the smallest and largest turnovers. However, with the information available it is not possible to do a proper impact assessment.

While having both the floor and the ceiling would bring down the range, option B does not appear to be equitable as it will disproportionately affect smaller providers. Introducing a floor would raise the fee for smaller providers and reduce it for larger ones, which may result in a provider with a lower turnover being asked to pay a fee that is likely to be unaffordable. Introducing a ceiling would result in providers with a higher turnover benefiting from a more affordable fee. While we accept that costs tend to plateau due to economies of scale, it is also true that increased efficiencies would reduce the cost of regulating larger providers. In addition, larger organisations would not necessarily incur a larger cost of regulation, for example if the expansion of its services did not include core services.

## Option C: floor only

The model with a floor only would mean that providers with a smaller turnover may pay slightly more than a proportionate percentage of their income compared to larger providers. CQC estimates that option C would have the same impact as option B because no provider has an annual turnover of over £1.6 billion, so no provider would breach the limit imposed by the ceiling in option B. However, there are a number of providers and predicted mergers that are approaching the ceiling threshold of £1.6 billion. If the turnover growth between 2015/16 to 2016/17 is used to estimate the potential turnover of providers for 2017/18, two providers would have a turnover which is higher than £1.6 billion in 2017/18. While there may currently be no providers in breach of the threshold, it will be increasingly important in the future to have a ceiling to restrict the maximum fee paid so it does not continue to rise exponentially.

## Demonstrating value for money

One of the core tenets in CQC's strategy for 2016 to 2021was to deliver an efficient and cost-effective model of regulation. NHS Providers welcomed this commitment to delivering value for money in the way CQC regulates care, which can be measured by the impact regulation has on the quality and safety of care relative to the cost and burden imposed on the bodies it regulates. We recognise and value the many improvements the new approach has brought, as detailed in the National Audit Office's recent report.

While CQC has a requirement to cover its costs by charging fees, it is also accountable for working in a fair, efficient, effective and proportionate manner. For this reason, CQC should carefully consider both direct and indirect costs relating to regulation and reduce the burden this places on providers. As CQC embeds a more targeted, risk-based and digital approach to inspections, we would expect the changes to its operating model to have an effect on the costs of regulation and ultimately reduce fees for providers over time. We therefore urge CQC to make a commitment not to raise fees in the future.

Providers would like to see CQC gather evidence and publicly demonstrate its value for money and sustainability as it moves into the next phase of regulation. In our regulation survey published in April 2017, over half of respondents (56%) indicated that the regulatory system provides 'poor' or 'very poor' value for money for taxpayers. In addition, 38% of respondents felt that the benefits did not justify the significant human and financial resources required to prepare for and participate in the inspection process. This is particularly relevant in the context of CQC's work with NHS Improvement to assess and rate how well providers are using resources.

## Conclusion

In conclusion, we support a model with no ceiling and no floor as it is the most fair and proportionate option, but emphasise the importance of a transition period to reduce the impact of substantial fee increases on providers and the role of a ceiling in the future.

While we understand CQC's duty to recover its costs by charging fees, CQC must ensure its financial burden on providers is minimised given the severe financial and demand pressures they are currently facing. CQC must continue to assess the value it provides and ensure that fees in future years can be kept to a minimum.

While we commend CQC's efforts to increase efficiency and reduce the cost of fees for the majority of providers, we have serious concerns about the fee increases of the proposed magnitude for certain providers. Any changes need to be linked to CQC's strategy for 2016 to 2021and CQC needs to increase transparency around the cost of regulation. We welcome the open and transparent approach that CQC has taken to setting fees in 2018/19, and hope CQC continues to take this approach to consulting on key policy changes in future.

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