

## **Public Accounts Committee hearing: Care Quality Commission inquiry**

### **Submission by NHS Providers, December 2017**

NHS Providers is the membership organisation and trade association for the NHS acute, ambulance, community and mental health services that treat patients and service users in the NHS. We represent 99% of all NHS foundation trusts and trusts, who collectively account for £70 billion of annual expenditure and employ more than 964,000 staff.

#### **Key messages**

- We welcome the improvements made by the Care Quality Commission (CQC) over the last few years, which have been highlighted by the National Audit Office (NAO) report.
- Last year the CQC published a new five year strategy which includes an ambition to implement a more risk-based and proportionate model of regulation and reducing the regulatory burden. We welcomed their thorough and extensive consultation on this. The CQC has started to make good progress with implementing this new approach, but there is no doubt that it faces an on-going challenge as it seeks to deliver its duties with reduced resources, align its activities with other NHS national bodies and keep pace with a fast moving health and care sector.
- As the NAO has pointed out, there is further work to be done to ensure that the regulator is providing value for money and operating an efficient inspection regime. In the course of embedding the next phase of their regulatory approach, we would urge the CQC to be realistic about taking on new responsibilities or expanding its role during this important period of change. Clarity as their approach develops is important given the level of resource that trusts dedicate to supporting regulatory processes. We are concerned to avoid uncertainty for providers in how they are regulated.
- The senior leadership team at CQC is aware of the challenges the organisation faces and we welcome this acknowledgement and their willingness to work together to address concerns that trusts raise. We will continue to work closely with the CQC and are pleased that they continue to engage and listen to trusts, incorporating our feedback into their work.
- We welcome the Committee's sustained scrutiny as the CQC continues on its improvement journey.

#### **Introduction**

1. Our submission focuses on the progress the CQC has made and ongoing feedback we have received from trusts. We frequently survey their experience of regulation, and use the information gained from this in our evidence to the Committee.<sup>1</sup> The last survey report was published in April 2017, before the implementation of their next phase of regulation; however the findings are still indicative of the views of trusts.
2. Since last appearing in front of the Committee, the CQC has completed its first round of comprehensive inspections of all NHS providers. It has also developed a new five year strategy in response to a review of its regulatory approach and the changing context in which it and

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<sup>1</sup> NHS Providers regulation survey report 2017 - <http://nhsproviders.org/media/2836/impact-of-regulation-in-a-shifting-environment.pdf>

providers are operating. We have valued the CQC's extensive engagement with us and trusts throughout the development of this new strategy. We look forward to continuing the same level of engagement during this consultation period and as the new approach is implemented.

3. When considering the performance of the CQC, it is important to focus on the role of quality regulation assigned to the CQC, which is one of setting minimum national quality standards and identifying where services fall below these standards in order to protect the public. The primary responsibility for the safety and quality of care, and improving that care, lies with NHS provider boards and their staff. It is for boards to balance the service that trusts provide with the resources available.

## **New regulatory approach**

4. We welcome the CQC's new regulatory approach and see it as a vital step in ensuring that the system of regulation for trusts is fit for the future.
5. We appreciated regular engagement with the CQC as it undertook its comprehensive inspection programme and the willingness of the leadership team to respond to our concerns and address them where possible. This was through a number of engagement opportunities and our ongoing dialogue with the CQC's leadership team, which continued while it developed its new five year strategy. We believe this reflects a welcome commitment to continuous learning and improvement and an openness of approach from the CQC.
6. Trusts are broadly positive about the direction of travel set out and the move to a more risk-based and proportionate regulatory model. We think that if implemented appropriately, this new approach should enable the CQC to achieve the ambitions set out in its strategy document. We support the CQC's commitment to improving how it uses data and information and to work with providers to develop a single shared view of quality.

### *Information collection*

7. Data and information requests from NHS Improvement, NHS England and other regulators and the impact this has on the burden of regulation, has been an ongoing concern of trusts. This led to over two thirds (68%) of respondents to our most recent regulation survey feeling that the regulatory burden had increased over the previous 12 months.<sup>2</sup>
8. Trusts welcome the CQC's work to streamline the Provider Information Request (PIR), which trusts receive ahead of an inspection. The new PIR has reduced the number of data requests. However, trusts have concerns about the format of the PIR and other requests received from the CQC, which continue to be in formats that do not always match the way data is recorded by trusts. The model of regulation is based on acute providers, and then applied with some modifications to the wider sector. This can create difficulties for ambulance, community and mental health trusts. For example, some community trusts capture workforce data by location and multi-disciplinary teams rather than by role type. This causes significant additional administrative burden for providers.
9. Trusts are also finding that they are receiving additional requests from CQC inspection teams, sometimes up to 100 requests. They are often asked to return this information within a few days

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of the inspection team visiting, leading to uncertainty about how effectively the data is interrogated in advance of inspection.

10. In addition to requests from inspection teams, the CQC leadership team will also write to providers requesting ad hoc information and data. The purpose of these requests is not always clear and there is often a lack of detail about what the information will be used for. A recent example of this was a request for information on radiology reporting, which seemed to duplicate a request from NHS Improvement and did not include much detail on how CQC would be using the information.
11. We would encourage the CQC to take every opportunity to reduce the reporting burden on providers and ensure that only indicators which provide useful insight into quality are collected. We support the long-term aim to eliminate the need for ad hoc data requests. We note that this is a new approach and the CQC is at the beginning of this process.

### *Inspections*

12. We welcome the CQC's commitment to reducing the size of inspection teams and the frequency of inspections as hosting and managing inspections can in itself be time consuming and resource intensive. However, trusts have reported, that although inspection teams are smaller, they can now be on site for a longer period of time. We appreciate that it is early days of the new regulatory model and therefore the new inspection approach, we will continue to engage with trusts and the CQC on the size teams and length of inspections as the new model is rolled out.
13. Although there has been some improvement and a commitment to faster turnaround, our trusts continue to raise concerns about the length of time taken for reports to be received following inspections. This is an issue highlighted by the NAO and the Committee previously and there remains scope to improve the speed and accuracy of report writing, as well as improving the checks in place to ensure the final report is accurate and a trust's rating accurately reflects the findings of an inspection
14. We remain concerned about the process to challenge a rating. For example, we are aware of an NHS provider that requested an appeal to its rating and had to wait over 12 months for a response from the CQC. Inaccurate ratings can have a detrimental impact on improvement, including in terms of staff morale, operational transactions and risk ratings, as well as local reputation and public confidence. There remains a case for a clear, objective and methodical ratings review and appeals process in the event that providers are not satisfied that their report accurately reflects care in their organisation.

### *Digital transformation/intelligence*

15. The NAO highlighted that there have been delays in making improvements to provider information collections and trusts are not yet confident that the proposed Insight Model will effectively measure risk to patient safety and quality. Trusts have stressed the importance of an intelligent approach to interpreting the data that the CQC collects. It is essential that those monitoring performance have a full understanding and appreciation of what indicators mean, with the ability to interrogate the data and identify causes and effects so that activity can be targeted where it will make the most difference.
16. We understand the CQC is currently working on plans to align its intelligence outputs with changes in inspection frequency. As the CQC moves into its next phase of regulation, it will need

to strengthen its digital capabilities further if it is to meet its ambition of becoming an intelligence driven regulator. We look forward to working with them on this, continuing the open approach taken to date.

### *Improving quality*

17. As the CQC develops its offering for supporting services and systems to undertake quality improvement, we would encourage it to ensure its efforts are not duplicated by other NHS national bodies or organisations. Its focus should remain on its statutory regulation functions.
18. In order to maintain the integrity and robustness of regulation, the CQC's improvement support should not influence its judgements. We welcome the recently published best practice resource<sup>3</sup> that CQC has prepared, which provides examples and strategies that are being used in trusts but we need to ensure that any improvement support is rigorous and evidence-based. Ultimately overall responsibility for improving quality should rest with a trust's board.
19. We welcome the emphasis of the new Chief Inspector of Hospitals on supporting trust leaders and the need to move away from a 'blame culture' in the NHS. It is important to recognise the important role non-executive directors also play in driving improvements in quality, particularly through building a supportive culture and relationships and through effective challenge, scrutiny and questioning.

### **CQC fees**

20. The CQC is currently consulting on proposed changes to regulatory fees for NHS providers for 2018/19<sup>4</sup> as part of its required trajectory towards full cost recovery. We are pleased that the majority of trusts would see a reduction in their fees under the proposals. We are, however, concerned that a quarter of trusts would see a significant increase in fees. For example, a trust with a turnover of £1bn to £1.1bn would, on average, see fees increase from around £330,000 in 2017/18 to between £687,426 and £736,512 in 2018/19. This could be particularly difficult given the recognised financial challenges facing trusts.
21. The timing of this consultation has been a concern. The CQC intends to introduce the new fees from April 2018; however trusts will have already carried out their financial planning for 2018/19. To enable trusts to budget for fee changes, in future we would like to see consultations happen much earlier to fit with budget setting and planning cycles.
22. As the CQC moves towards a more targeted, risk-based approach to inspection, we expect that these changes will have an effect on the costs of regulation and should that be the case, CQC should reduce the fees for providers over time. In the meantime, and as highlighted by the NAO, we would encourage the CQC to focus on operating an efficient inspection regime that provides value for money.

### **CQC and NHS Improvement collaboration**

23. The formation of NHS Improvement in April 2016 offered an opportunity for the two organisations to work together to review the regulatory framework as a whole and ensure it is

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<sup>3</sup> <https://www.cqc.org.uk/publications/themed-work/sharing-best-practice-clinical-leaders-emergency-departments>

<sup>4</sup> <https://www.cqc.org.uk/get-involved/consultations/regulatory-fees-201819-%E2%80%93-consultation>

streamlined, fit for purpose and adds value. We welcome both organisations' commitment to collaboration.

24. We support the joint approach the CQC and NHS Improvement are taking to create a use of resources assessment. We have previously raised concerns that this approach risked duplication with NHS Improvement, and asked that the CQC co-produce this element of its regulatory model. We therefore welcomed the news that this would be the case, and that the proposals will be refined and tested over time. We understand that progress in this area has been slow and would encourage greater involvement of NHS providers in developing the approach.
25. Trusts have also raised concerns about proposals to combine the use of resources assessment with the existing quality ratings. This has the potential to introduce a new, different, and potentially confusing ratings system across providers, as well as increase the risk of regulatory 'double jeopardy' where a trust is held to account by both NHSI and the CQC for its use of resources. Moreover, we believe it is essential that, in order to maintain the integrity of quality regulation, independent and robust judgements on quality regulation must be finance blind.
26. While progress has been made, with 44% of respondents to our regulation survey agreeing that there has been effective coordination between the regulators, we believe potential exists for further alignment. As reflected in our survey's findings, 35% of respondents continue to report that regulators are not effectively coordinating their activity<sup>5</sup>. Trusts have reported inconsistency between the CQC and NHS Improvement's application of the well-led framework and a lack of clarity around what the regulators are looking for and how well-led core service inspections fit in with the overall well-led inspection. One trust has commented that "while they are more joined up for example with joint publications there is still overlap between the roles of the key regulators"<sup>6</sup>.

## **New models of care**

27. Integration and the development of new organisational forms have always posed a challenge for quality regulation. This is likely to intensify with the development of sustainability and transformation plans (STPs) and accountable care structures. The development of regulation of these new models of care will need careful consideration.
28. As accountable care systems (ACs) and accountable care organisations (ACOs) emerge there is, rightly, a need for the regulators to consider how these new models of care will be held to account and how their performance will be assessed. As the regulatory model for accountable care develops, there is a risk of introducing additional layers of bureaucracy and regulatory burden. For example, when assessing system-level working the CQC must ensure there isn't duplication at provider level. We welcome the steps CQC took to consult and engage with providers on this issue.

## **Conclusion**

29. We welcome the CQC's new regulatory approach and see it as a vital step in ensuring that the system of regulation for trusts is fit for the future. Good progress has been made, but it is clear

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<sup>5</sup> NHS Providers regulation survey report 2017 - <http://nhsproviders.org/media/2836/impact-of-regulation-in-a-shifting-environment.pdf>

<sup>6</sup> NHS Providers regulation survey report 2017 - <http://nhsproviders.org/media/2836/impact-of-regulation-in-a-shifting-environment.pdf>

the CQC faces on-going challenges as it seeks to deliver its duties with reduced resources, align its activities with other NHS national bodies and keep pace with a fast moving health and care sector. As it continues on its improvement journey, we would encourage the CQC to maintain its open and transparent approach and commitment to continual improvement.