

NHS Providers response to CQC's consultation on changes for more flexible and responsive regulation

About NHS Providers

NHS Providers is the membership organisation for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS trusts and foundation 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 all trusts in voluntary membership, collectively accounting for £92bn of annual expenditure and employing more than one million staff.

Introduction

We welcome the opportunity to feed into CQC's work to regulate trusts more flexibly and responsively, drawing on the lessons learned from the COVID-19 pandemic. This shift in the regulatory approach will be welcomed by trusts given the operational challenges they face as they continue to care for COVID-19 patients and begin to recover the backlog of elective services. The intention to be more flexible, responsive and dynamic aligns with proposals outlined in CQC's new strategy for smarter regulation. In our response to the new strategy we set out our views on the shift away from relying on set-piece inspections to regulate providers more dynamically using a wider range of information sources, changes to how trusts' ratings are updated, and how CQC intend to engage with its diverse stakeholders on future changes to its approach. This response therefore reflects the views we have already set out.

Our response has been informed by responses to our annual member survey on regulation, targeted discussions with trust leaders, and our engagement on CQC's new strategy. It is important to note that this consultation has been published at a challenging time for trusts as they manage ongoing COVID-19 pressures, so we will welcome the opportunity to continue working with CQC over the coming months as it develops and implements its new regulatory model. We are happy to facilitate CQC's intention to co-produce this approach with trusts going forward.

Key points

- We welcome CQC's intention to move away from relying on set-piece on-site inspections and draw on a wider range of regulatory approaches that can be completed remotely in a more timely manner
- However, it is important for CQC to ensure its approach is applied consistently and equitably across all providers and sectors. The criteria for undertaking an on-site inspection or using other regulatory approaches should be clearly set out. CQC should consult on this criteria before implementing the new model
- We are supportive of using inspections where necessary and proportionate, as they are useful in providing a clearer picture of the culture, including closed cultures, and behaviours within an organisation that may influence quality.
- It remains important for CQC to meet its ambition to reduce unnecessary burden. We would encourage CQC to also consider streamlining the submission process for trusts and work more closely with other bodies including NHS England and NHS Improvement to streamline regulatory requirements.
- While there are benefits to updating trust ratings more regularly, there are also risks arising from changing them too often. CQC should set out a clear framework outlining how often ratings could change, ensuring the threshold is not too low and setting a minimum and maximum time period between changes to a trust's rating. CQC should consult on this framework.
- We understand CQC's aim of simplifying the way it determines trusts' ratings, which currently relies on multiple levels of complex and aggregated ratings. It is important that ratings, and the underpinning methodology are clear and relevant to all users including patients, the public, and providers themselves.
- We do have concerns that basing trust-level ratings solely on the well-led key questions (at trust level and service level) will not represent a true picture of the quality and safety of services being provided within the trust. CQC must consider how to ensure that the quality of care provided by staff and providers is fairly reflected and ensure that service users are able to access information on the quality of services they receive.
- Before placing a stronger emphasis on the well-led key question for trust level ratings CQC must ensure that the well-led framework is fit for this purpose and robust enough to use as the underpinning for trust-level ratings.

Proposals to change trusts' ratings

Assessing and rating quality

Proposal: CQC proposes to assess quality and rate services by using a wider range of regulatory approaches – not just on-site or comprehensive inspections.

CQC's set-piece inspections are an important way to assess the quality and safety of services and in-person visits are a valuable tool for gathering information that cannot be conveyed by data alone. However, the need for CQC to streamline regulation during the pandemic to allow trusts to focus their efforts on managing the virus, made it clear that the regulatory model did not provide the flexibility to respond to change and assess quality effectively during a period of significant operational pressure. We therefore welcome CQC's ambition to assess quality and rate services by using a wider range of regulatory approaches to allow them to be more responsive. The intention to update ratings more dynamically also aligns with CQC's broader strategic aim to be a smarter regulator and may also support more effective use of CQC's resources.

We know through our engagement with trusts on CQC's strategy and through our annual regulation survey that trusts welcome the commitment to a more flexible approach with less reliance on resource intensive, 'set-piece' inspections. Trusts are also supportive of the intention to update ratings without always requiring a site visit, particularly those looking to improve ratings or come out of special measures, as it can take a significant period of time for those who have taken action following a 'requires improvement' or 'inadequate' rating to see their rating reflect those changes.

However it will still be important for CQC to ensure its new approach is applied consistently and equitably across providers in order to maintain full confidence in the ratings system. CQC should ensure there is full transparency about the thresholds and criteria being used to determine when to carry out an inspection, change a rating, or use other regulatory models to assess quality and rate services. This detail should ideally be consulted on before implementation. A model which explores all the drivers of care is welcome, and while it is positive that this ambition moves CQC in this direction, there will still be a need to implement this effectively in practice and we would like to facilitate opportunities for trusts to engage and co-design the future approach with CQC.

As CQC seeks to assess quality from a wider range of data and information sources, it will also be important for it to reduce unnecessary burden, meetings and paperwork as part of this process. Some

trusts have raised concerns around the volume and format of data requests they receive, and the deadlines given for completing them, particularly where data has been similar to that which is collected by NHS England and Improvement (NHSE/I). Submissions to data requests can be lengthy and arduous and may reflect a need for CQC to review this alongside ambitions to streamline its regulatory approach moving forward and continue to work with other bodies to explore ways of reducing bureaucracy.

Proposal: Rather than following a fixed schedule of inspections, CQC proposes to move to the more flexible, risk-based approach for how often it assesses and rates services.

The intention to move away from a fixed schedule of comprehensive inspections should in principle provide necessary flexibility during a very challenging period for trusts, and beyond. Trusts are keen to see CQC adapt to changing ways of working, respond to operational pressures, and make best use of new tools and technology.

CQC's transitional monitoring approach developed during the pandemic enabled it to focus on areas of risk and safety concern and respond more flexibly, and we are encouraged to see that CQC will be taking the lessons learned from this approach to ensure future models are implemented proportionately and take into consideration the context trusts are working within. Communication with trusts and clarity around expectations will be fundamental to ensuring this new approach has the intended impact in practice, especially as it might take time for changes to set in. As we noted in our response to CQC's strategy consultation, a piloted or a staged roll out should be considered to test the new model before wider implementation.

A clear benefit of the previous fixed-schedule regulatory approach was that it gave trusts clarity on when inspections were due to take place. The move to this more flexible and risk-based approach, with the ambition to update ratings more regularly, means there is potential to add complexity and confusion to the process, with more frequent changes, and a less predictable schedule of site visits. Therefore the criteria used to determine how regularly ratings are updated needs to be clear and be consistently applied to enable a standardised approach and avoid ratings becoming volatile. We would recommend setting a minimum and maximum time period between changes to a trust's rating. These timeframes and criteria will also need to be realistic and take into account the context within which trusts operate in local systems and as they continue to face significant operational pressures following the second wave of the pandemic.

Many trusts (63%) who responded to our recent regulation survey said they felt CQC had a fairly good or very good understanding of the pressures they faced during the pandemic. However, some trusts highlighted that the threshold for triggering a site visit had felt low and created disproportionate pressure at a very challenging time for them. While we recognise that CQC was using a variety of data sources to identify where a site visit needed to take place, including whistleblowing complaints, there will be a need going forward to ensure the appropriate balance between responsive but proportionate regulation.

We are supportive of using on-site inspections where necessary and proportionate, as they provide context to data being assessed and are important for providing a clearer picture of the culture and behaviours within an organisation that may influence quality, as well as where there is a risk of closed cultures. Trusts have fed back that the flexible approach to updating ratings will be useful for providers looking to improve their ratings and have improvements in care taken into account, but there are questions around what data collected remotely would result in a reduction in a rating, and when a site visit may be used to corroborate findings. Using on-site inspections in a more targeted way has the potential to reduce burden on trusts and help CQC use its resources more effectively, but it will be important for CQC to clearly outline when they would expect an inspection to be triggered under this risk-based approach.

We will be interested to see how outputs used by CQC to communicate inspection and monitoring insights are developed to go alongside these changes, such as how inspection reports might evolve to better capture and communicate ratings and assessments to trusts and the wider public, and how remotely captured information has been used to form a picture of quality. We welcome CQC's intention to review how it displays rating information, and likewise the transparency and insight provided by reports is useful for trusts' internal work to continually improve services and so should be maintained or replaced in a format which provides a similar level of insight. These considerations may be important in the context of CQC's monitoring piece to review all data they have on trusts to identify gaps. We would support this with the caveat it would need to be timed well, be light touch and very focused.

Simplifying ratings for trusts

Proposal: CQC proposes to remove aggregation for NHS trust level ratings and replace it with a single trust-level rating, based on a development of its current assessment of the well-led key question for a trust.

The new approach, which seeks to simplify how ratings are calculated, will remove trust-level ratings for each of the key questions, and will base the trust level rating on the organisation's performance against the well-led key question, including findings from service level well-led assessments. The consultation document notes that CQC is pursuing this change because the current approach to determining a trust's overall rating can conceal variation in quality of service, become out of date in the absence of updated service level inspections, and does not always reflect how people experience services and care.

We are supportive of CQC's aim to ensure that the way it determines trust level ratings are simple and clear to understand, as well as being relevant to the quality of services people receive. However, this is a significant change and there is a lack of detail in the consultation on the impact this will have on trusts current ratings and how CQC will ensure that the overall rating will represent a true picture of the quality and safety of services being delivered within the trust. There is also no information on whether the transition will be incremental as part of CQC's ongoing assessment work, or whether each trust's rating will be updated according to existing evidence in one go.

We also have concerns that basing trust-level ratings solely on the well-led key questions (at trust level and service level) will not represent a true picture of the quality and safety of services being provided within the trust. CQC must consider how and make clear how regulatory intervention in a particular service would impact overall ratings based on 'well led' and ensure that service users are able to access information on the quality of services they receive in complement to their new proposed approach. CQC should test different ways of communicating and displaying these ratings to understand how best to support interpretation.

With the well-led key question playing a stronger role in the overall assessment of trusts, it will be imperative that the well-led framework is effective and fit for purpose. We are aware of work underway to ensure the learning from the review of well-led is taken into account and we would expect this work to be completed and published prior to this change being implemented.

Proposals to change to how CQC engages with stakeholders

Proposal: CQC intends to change the way it consults and engages with its stakeholders on regulatory changes to ensure it can respond more quickly to changes in health and care.

While we support CQC's intention to engage more dynamically with its diverse stakeholders by including more ongoing opportunities and targeted ways to respond to their work, the statutory

public consultation process is still an important mechanism to ensure changes to regulation are robust and evidence based. We understand this change enables CQC to respond more quickly to changes taking place in health and care, however it will be important for CQC to ensure it does not miss important insights it would obtain through the more detailed statutory consultation process. CQC engages with a diverse group of stakeholders so ensuring all perspectives are captured and considered in its targeted consultation approach will also be important.

CQC states that where it does “need to consult on areas under section 46 of the Health and Social Care Act 2008, the consultations will be more targeted and responsive”. Trusts will continue to experience significant pressures off the back of the pandemic, so we would support a targeted approach should it enable trusts to engage more easily and within their current capacity on a focused area of regulation. It is positive that CQC intend to provide more focused guidance about how it regulates to ensure it is more accessible and easier to understand. It will also be important for CQC to provide the evidence behind any changes to regulation so that it is clear and transparent to providers and the public how decisions were made.

Conclusion

We are pleased to see CQC evolving its approach to take into account lessons learned from the COVID-19 pandemic, and in line with the changing context trusts are working within. The pandemic has made clear to CQC that some of the ways it currently works prevents it from being flexible and responsive to situations as they happen, so we are supportive of the broader ambitions to ensure regulation is fit for purpose as health and care evolves. It will be important that these changes to regulation will also ensure it is proportionate and takes into account the operational pressures trusts are facing as they come out of the second wave of the pandemic, support their staff recover and manage a backlog of care.

As CQC develops this new approach, we would strongly encourage CQC to maintain dialogue with the providers they regulate to ensure regulation has the intended impact and enables trusts to deliver effective care and drive improvement. We would welcome the opportunity to facilitate this. There are also some areas where we feel further consultation is necessary.

With the increased emphasis on systems, and likely changes to CQC’s regulatory role to include the system-wide context, communication with trusts remains ever important. Trusts are broadly supportive of regulators taking the system-wide context into consideration when reviewing services,

and we would continue to encourage alignment with NHSE/I in this area and other regulatory activities so it that it is cohesive for trusts.

These changes to regulation are taking place during a very challenging time for trusts, so we will continue to welcome the opportunity for trusts to codesign the future approach with CQC and respond to further consultations on the detail of the changes.