

# Response to CQC consultation on flexible and responsive regulation

## Introduction

The Care Quality Commission (CQC) has summarised responses to its consultation, [Changes for more flexible and responsive regulation](#), and confirmed next steps.

This consultation was launched in January 2021, outlining specific proposals in response to regulatory changes that took place during the COVID-19 pandemic. These included changes to how CQC intends to assess and rate services more flexibly, enabling it to update ratings more regularly, responsively, and proportionately. It also aims to make ratings easier to understand for everyone. Our submission to this consultation can be found [here](#). CQC's response is [here](#).

This consultation ran at the same time as CQC was consulting on its new strategy, which was also launched in January, and published in its final form in May.

## Key points

- CQC set out feedback received in support of **simplifying the ratings process** to make ratings clearer, simpler and easier to understand for the public and service users, as well as partner organisations.
- CQC also sets out respondents' concerns regarding whether ratings will provide enough detail about **variation between services within a trust**. It has clarified that it will no longer aggregate service-level ratings together to give trust-level ratings for the safe, effective, caring and responsive key lines of enquiry.
- CQC responded to noted concerns from respondents that ratings may become less accurate, reliable and transparent as a result of the changes. It clarifies its position that its current trust-level ratings conceal variation in quality with regards to the service-level ratings, and removing the trust level rating for safe, effective, responsive and caring will offer a more accurate and reliable view of quality within individual services.
- Respondents highlighted the need for **trust-level assessments** to be effective and reflect quality at service level. CQC has confirmed that this will be based on a "development" of its current

approach to assessing the well-led key question. CQC has said it intends to work with strategic partners and providers as it strengthens its well-led framework in areas such as collaboration, equality, diversity, and inclusion.

- CQC emphasised that its **ratings will be more dynamic** and responsive to evidence that demonstrates a change in quality. It also intends to strengthen relationships with providers so it can identify risks and changes in quality, including where improvements have been made.
- Overall, respondents to CQC's consultation strongly supported using a **wider range of regulatory approaches**, rather than relying solely on onsite inspections to assess quality of care, and reviewing and updating ratings more flexibly.
- Responding to concerns around **fewer on-site inspections** leading to missed insights into care, CQC has offered assurance that it intends to use a combination of all its regulatory methods. It intends to carry out site visits when it is responding to risk, it needs specific information that can only be obtained as part of a visit, where it needs to observe care, and where it needs to ensure its view of quality is reliable.
- Respondents outlined concerns regarding the **quality and reliability of data** drawn from wider sources to assess quality of care. CQC emphasises its intention to work with providers, the public and other partners to ensure it is using the best data and up-to-date information about services.

## Summary of proposals

- CQC proposes to assess quality and rate services by using a wider range of regulatory approaches including a range of sources of information and feedback, rather than relying solely on a schedule of set-piece inspections.
- Rather than following a fixed schedule of inspections, CQC proposes to move to a more flexible, risk-based approach determining how often it assesses and rates services. It will also move to an approach to rating services that will allow it to update a service's rating without a site visit.
- CQC proposes to remove aggregation for NHS trust-level ratings and develop its current approach to assessing the well-led key question for a trust. Rather than provide trust-level ratings for each of the five key lines of enquiry (safe, effective, responsive, caring and well-led), it will only publish these at the service level and instead produce a separate trust-level rating based on an assessment of well-led.

Following its consultation process, CQC has decided to proceed with its proposals outlined above. It has summarised feedback received from respondents and addressed queries and concerns raised by its stakeholders below.

## Summary of key themes from responses

The CQC outlines key themes it identified in responses. These include:

- Strong support for using a wider range of regulatory approaches rather than relying solely on onsite inspections to assess quality of care.
- Strong support for reviewing and updating ratings more flexibly rather than following set piece inspections. Many respondents believed this would allow CQC to be more responsive to changes in the quality of services and enable it to provide more accurate and reliable ratings.
- A perception that the proposals would improve the relationship between CQC and trusts, which would enable more collaboration between inspectors and providers.

It also outlines key areas of concern highlighted by some respondents. These include:

- Fewer on-site inspections could reduce the importance of seeing care being delivered in making judgements about quality.
- The reliability and availability of data and information that the CQC will use to change a rating and how it will be collected.
- The loss of detailed and useful information that CQC will use to inform its assessments when it moves to simpler ratings processes.

## Summary of CQC's response

### Assessing quality

**Proposal:** CQC proposes to assess quality and rate services by using a wider range of regulatory approaches, rather than relying solely on set-piece inspections.

Many providers supported the proposal to assess quality using a wider range of approaches. NHS Providers also welcomed this shift away from relying solely on set-piece inspections in our response to the consultation, while emphasising the need for the new approach to be applied consistently and equitably across all providers and sectors. We also highlighted the need for transparency in assessments, and to ensure it does not add further burden to trusts. CQC responds to specific queries received regarding this proposal below:

**The potential for the new approach to lead to fewer on-site inspections, with a risk of missing important issues due to lack of onsite presence:** CQC's response offers assurance that it intends to use a combination of all its regulatory methods, tools and techniques to assess quality continuously, including site visits where appropriate. CQC emphasises that it will continue to carry out site visits, focusing particularly on the types of care settings or providers where there is a greater risk of poor culture going undetected. It also intends to carry out site visits when it is responding to risk, it needs specific information that can only be obtained as part of a visit, where it needs to observe care, and where it needs to ensure its view of quality is reliable. CQC also intends to improve how it gathers and analyses people's experiences of care and the views of staff in its assessments, and will consider other ways of collecting evidence as site visits will not always be right for all types of service, such as digital services.

**Concerns around the quality of the data and information CQC will use to update ratings:**

Respondents outlined concerns regarding the quality and reliability of the data drawn from wider sources to assess quality, and how this will affect CQC's ability to accurately identify risks or improvements in a service. There was specific concern around CQC not understanding the context of the information it collects, and the concern that the approach would add burden to providers.

CQC emphasises the intention to work with providers, the public and other partners to ensure it is using the best data and up-to-date information about services. It clarifies that it will only ask trusts for information that is unavailable elsewhere, and it will work with providers, other regulators, and partners to coordinate data collections. CQC will build digital platforms to better integrate the data it holds and enable consistency in the way data is interpreted. This will be combined with the experience, knowledge and professional judgement of its inspectors.

**Risk of a less transparent and consistent approach to assessing quality for different types of providers and services:**

CQC intends to make sure the information on its website clearly explains how it is regulating and rating services as its new approach develops. When it updates a service's rating CQC states that it will be transparent about the information it uses to do so, and how that contributed to its decisions. CQC aims to assess services more flexibly, so it can update ratings more often and in a more accessible, responsive, and proportionate way.

**Next steps:**

- Site visits will remain an important part of the regulatory approach, but CQC will also draw on wider approaches to assess quality without always needing to visit. It will do this when, for example:

- It has gathered evidence without a site visit and used this to take enforcement action – it will use this evidence to update a rating.
- A provider can show full evidence that it has made improvements following an inspection – the CQC will be able to update a rating to reflect improvement without another site visit.
- Inspecting homecare providers using remote technologies following a piloting phase
- CQC will continue to develop its regulatory approach in line with the proposals outlined in its [new strategy](#).

CQC will start to work in this way from **July 2021**, engaging with providers as its approach develops.

## Reviewing and updating ratings

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

CQC's response states that overall, respondents welcomed the proposed risk-based approach, emphasising that it would facilitate a fairer ratings system than the previous approach, under which providers could wait for long periods before ratings were updated. Similarly to the first proposal, respondents outlined concerns around the quality of data CQC will use to review and update ratings, the transparency of its approach, and the value of site visits. In our response to CQC's consultation, we highlighted similar concerns and noted that while there are benefits to updating trust ratings more regularly, there are also risks arising from changing them too often.

**Respondents also outlined the risk that a move away from CQC's current inspection frequencies could lead some services to become complacent and feel they do not need to continue to improve:** CQC emphasises that its ratings will be more dynamic in response to evidence that highlights a change in quality, and will therefore provide an up-to-date view of quality. It states that this will ensure providers are continuously demonstrating that they are delivering safe, effective, and high-quality care. The CQC intends to strengthen relationships with providers so it can identify risks and changes in quality, including improvements.

### Next steps:

- CQC will continue to build on its "transitional monitoring" approach adopted during the pandemic, including moving away from published inspection frequencies based solely on overall ratings.

- It will continue to respond to risk and inspect and re-rate services where appropriate. Further information will be published on CQC's website about how often it will update ratings as it implements its new approach.
- CQC will develop the process to update ratings and assess quality more frequently and dynamically.

CQC will start to work in this way from **July 2021**.

## Rating NHS trusts

**Proposal:** CQC proposes to remove aggregation for NHS trust-level ratings and develop its current approach to assessing the well-led key question for a trust.

Overall, support for this proposal was mixed. However, CQC notes that there were higher levels of support among providers and commissioners than from all respondents overall. CQC set out feedback received from respondents in support of making ratings clearer, simpler and easier to understand for the public and service users, as well as partner organisations. In our response we said the current approach relies on multiple levels of complex and aggregated ratings that could be made clearer for everyone who uses them. CQC also described feedback that this approach would lead to clearer information about improvements needed, strengthen public confidence, and strengthen leadership and culture within trusts.

**Concerns about whether CQC ratings or reports will give enough detail about variation in quality between the different services in a trust:** CQC notes that it will continue to publish ratings for services and locations where people receive care. The change will be that it will no longer aggregate these together to give trust-level ratings for the safe, effective, caring and responsive key lines of enquiry.

**Whether the proposals will make the ratings less accurate and reliable, and less transparent:** CQC intends to remove the step in its internal process that aggregates the multiple service-level ratings into separate overall ratings for safe, effective, caring and responsive key questions for the trust as a whole. CQC states that its trust-level ratings conceal variation in quality at service-level, and so removing this will offer a more accurate and reliable view of quality within individual services.

**The need for the trust-level assessment to be effective and reflect quality at service level:** CQC confirms that this level of assessment will be based on a "development" of its current approach to assessing the well-led key question for NHS trusts. It intends to work with strategic partners and

providers as it strengthens its well-led framework in areas such as collaboration, equality, diversity, and inclusion. It will also look at how it can more broadly assess overall quality and leadership for a trust and how service-level findings will form part of this assessment.

Next steps:

- CQC will work with providers and other key stakeholders to develop its assessment approach for trusts.
- It will also align its approach with NHS England and NHS Improvement and ensure it links in with the NHS system oversight framework.
- CQC will review and develop its framework and approach to ratings and reporting in line with wider changes to its regulatory approach.

CQC intend to implement these changes in **Spring 2022**.

## NHS Providers view

We welcome CQC's summary of responses to its consultation on flexible and responsive regulation, which outlines key themes in the feedback it received from stakeholders, provides clarity on some of the key concerns and questions that remain about its new regulatory approach and confirms next steps.

Regarding concerns around the quality of the data CQC will use in the future to assess and rate the quality of services, we welcome the intention to work with providers, the public and wider stakeholders to ensure it is using the most up-to-date and accurate data about services. We would continue to emphasise the importance of ensuring this new approach, which will rely on collecting data from trusts, does not lead to additional regulatory burden, particularly as providers remain under significant pressure managing the care backlogs and addressing unmet need. We look forward to engaging with CQC to ensure its approach is proportionate and robust.

We appreciate the clarity CQC has provided in its response regarding the intention to continue using site visits, where necessary, as they remain an important tool for assessing the quality of care. We would also welcome clarity on next steps for providers looking to improve their ratings. We would encourage CQC to ensure that where evidence is gathered without a site visit to support enforcement action that this information is validated, and the trust has the right of reply. We emphasise concerns around ensuring key insights are not missed that may otherwise be drawn from a site visit particularly within this context of enforcement action.

We welcome CQC's emphasis on strengthening relationships with providers and engaging with them regularly on the new regulatory approach. Ensuring these relationships are based on trust and transparency will be critical. We therefore continue to encourage CQC to develop the right culture to enable providers to trust and work in collaboration with CQC inspectors to identify risks and drive improvement.

We welcome CQC's intention to evolve its current approach to assessing the well-led key question for NHS trusts in a way that strengthens its well-led framework in areas such as collaboration, equality, diversity and inclusion. In our response to CQC's consultation, we outlined our concerns around placing a stronger emphasis on the well-led key question for trust level ratings. We would emphasise the need to ensure the well-led framework is fit for purpose and robust enough to use as it underpins a significant part of the new regulatory approach. We look forward to working with CQC as this approach develops and facilitating engagement with our members in this area.