A NEW START
Consultation on changes to the way CQC regulates, inspects and monitors care

A response from the English Community Care Association

1 Introduction

1.1 The English Community Care Association (ECCA) is the leading representative body for community care in England. Our members provide a wide range of services for adults with care and support needs including residential and nursing settings, homecare, housing and community-based support. Our members also deliver specialist care home services such as rehabilitation, respite, palliative care and mental health services.

1.2 We welcome the opportunity to comment on CQC's proposals for changes to its regulatory regime, before which we make some general observations on issues raised in the consultation document but which do not appear to be addressed directly by any of the questions.

1.3 Whilst we recognise that the document reflects the Commission's initial thinking, we regret the shortage of detail made available for consultation. One consequence is that our responses to the questions should, at this stage, be regarded as provisional.

1.4 We look forward to seeing the consultation on proposals for a broader set of "enhanced and developmental" standards.

1.5 With regard to the proposed judgement process, we would stress the need for providers to have a right to challenge the judgements, making representations on the judgements themselves as well as on the facts/data/intelligence on which they have been based.

1.6 Adequate levels of public funding are critical to the delivery of quality care. Commissioning systems must be fit for purpose. We remain concerned about the tacit assumption that it is legitimate to keep asking more of providers – to continuously improve the quality of the care they provide – without factoring in the need for them to be provided with appropriate resources. Consultations like this treat resource allocation, where they acknowledge its significance at all, as

though it is an activity that takes place in a different universe from the provision of services. While we are aware that the issue cannot be resolved by CQC, we rely on the Commission to press the point in all relevant forums.

1.7 At some stage, individual Board Members of provider organisations will be held accountable for their organisation's performance in the delivery of care services. In that context, we would expect councils that act as service providers to be held similarly accountable before the law. It would be entirely consistent, therefore, for questions about "effective leadership" and "fair and transparent culture" that will be asked of their regulatory responsibilities also to be addressed to them in respect of their funding decisions. To paraphrase the question put in the document at page 10: Does an authority make decisions about funding based on sound evidence and information about its services, and are concerns discussed in an open and frank way?

1.8 In which respect, we believe it worth noting the comments Robert Francis QC has made on NHS management:

> *"… there's been an increasing emphasis on management doing a systems business, which is balancing the books, following various policies and so on. And I think it's quite easy in those pressured circumstances, particularly perhaps when resources are under challenge, to forget what the whole purpose of the system is, which is to help patients."* [1]

The mindset described is equally prevalent among local authorities.

1.9 There is a proposal for acute hospitals to have a risk adjusted inspection frequency, eg an outstanding rating would warrant an inspection only every 3 to 5 years. Should the same proposal be put forward for care homes then we would want to see a proper consideration of the consequences and understand what safeguards will be put in place for an inspection taking place sooner, in the event of adverse feedback or other risk factors. In addition, it should be remembered, that it was the move to a less frequent inspection for high ratings under CSCI, which led councils as commissioners to institute their own more rigorous monitoring regimes. These have mushroomed to the extent that they represent a significant extra administrative burden on providers and can duplicate the efforts of the regulator.

[1] Interview on BBC Radio 4 'Today' programme, 24 June 2013

2 Consultation questions

Section 2

General

Question 1

What do you think about the overall changes we are making to how we regulate? What do you like about them? Do you have any concerns?

2.1.1 We believe it sensible for the Commission to regulate different services in ways that reflect the nature of the services, the settings in which they are delivered and the impact they have on the quality of care, rather than being bound by a single inflexible regime. However, as we have said before (in our response to the consultation on CQC strategy for 2013 to 2016), there are common issues that cut across services – safeguarding, for example – in which the Commission must act consistently, regardless of the setting in which the care is being delivered, or by whom.

2.1.2 We are encouraged by the set of "general principles" the Commission has committed to observe in its operations. In particular, we welcome the proposed improvements to the registration process and the commitment that inspection reports will not deal exclusively with concerns but will recognise when high-quality care has been delivered by providers. We would welcome clarification as to how the good practice highlighted in online provider profiles on the NHS Choices website will be used by CQC. As with much else in this consultation document, we look forward to having sight of the underlying detail.

2.1.3 We await with interest more detail on how the transition from the present essential standards to five key questions is to be managed.

Question 2

Do you agree with our definitions of the five questions we will ask about quality and safety (is the service safe, effective, caring, responsive and well-led)?

2.2.1 We do. We look forward to having sight of the guidance on the focus of inspection procedures and learning more about the process by which "professional, intelligence-based judgements" are reached.

Fundamentals of care

Question 3

Do you think any of the areas in the draft fundamentals of care above should not be included?

2.3.1 We question the need for "fundamentals of care" to be detached from "expected standards" in the manner proposed. We are not confident that members of the public will be able to understand the qualitative difference that is intended to separate fundamentals from expected standards and we fear that the latter may be devalued by the former.

2.3.2 Required improvements will be brought about not by re-categorising standards but by changing providers' organisational cultures and ensuring that regulators have the expertise and experience relevant to their responsibilities.

2.3.3 Without prejudice to the response above, we are not convinced that the following "fundamentals" are entirely consistent with this sub-set of essential/expected standards, as defined: pages 13/14

- Bullet point 5;
- Bullet point 8;
- Bullet points 2 and 3 could be merged.

2.3.4 We are not confident that standards can be expressed in generic form. Doing so would be to revert to the formula that has already been discredited. In our view, standards should be service/sector specific.

Question 4

Do you think there are additional areas that should be fundamentals of care?

2.4.1 In a recent House of Lords debate on the Care Bill, Lord Bichard, chair of SCIE, promoted the significance of the concepts of dignity and respect – which are not included in CQC's current draft of fundamental standards – as he argued for them to be placed on the face of the Bill:

> *"Dignity and respect are the basic rights which those in care have the right to expect, but they also provide the benchmark by which professionals should be judged as they go about their work."*

Question 5

Are the fundamentals of care expressed in a way that makes it clear whether they have been broken?

2.5.1 We understand the word "clear" to mean being expressed in language that both the public and professionals can easily understand. In a word, our answer is no. Take the expectation that "I will be cared for in a clean environment": there could be differing perceptions of what constitutes cleanliness – a variety of meanings, more or less tightly drawn, one of which could include being free from the risk of infection. The scale/extent of the "environment" is also unclear. Will the judgement relate to the entire premises within which the regulated activity is carried out and include any equipment and material used? For example, in a care home that has several communal rooms, WCs, etc for the use of residents, will the judgement be based on all or could it be based on some? Will the kitchen and the laundry room qualify? Obviously, where the care is being delivered in the user's own home, the cleanliness of the environment will be largely beyond the control of the carer.

2.5.2 It is important, we believe, to be precise, particularly as the consequences could be so severe, and so immediate. The fact that a care home is also a

person's home and there is a need to provide a homely environment, does create significant challenges which need to be addressed for this sector.

Question 6

Do the draft fundamentals of care feel relevant to all groups of people and settings?

2.6.1 See response at 2.3.4.

Section 4

Duty of candour

Question 17

Do you agree that a duty of candour should be introduced as a registration requirement, requiring providers to ensure their staff and clinicians are open with people and their families where there are failings in care?

2.17.1 We do.

Question 18

Do you agree that we should aim to draft a duty of candour sufficiently clearly that prosecution can be brought against a health or care provider that breaches this duty.

2.18.1 We do.

Question 19

Do you have any other comments about the introduction of a statutory duty of candour on providers of services via CQC registration requirements?

2.19.1 No.

Impact assessments

Question 20

Do you have any comments on the draft Regulatory Impact Assessment?

2.20.1 There is an issue that has not been covered in the RIA. We are concerned that rising costs in CQC's personnel budget, contingent upon the move to expert-led inspections and the introduction of a more rigorous inspection methodology will knock on to increases in regulatory fees for providers. ECCA is a member of the Fees Advisory Panel and appreciates the early discussions around possible changes to CQC regulatory fees in the future. We expect that the data and information on which CQC bases its decisions on fees will become more detailed and comprehensive and so allow providers a transparent understanding of why fees are at the level proposed.

Question 21

Do you have any comments on the draft Equality and Human Rights Duties Impact Analysis?

2.21.1 We have no comments to make.

ECCA

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For further information please contact
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