Royal College of Nursing

RCN Policy Unit

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Looking Back to Look Forward

Key lessons from system regulation of health and social care in England

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Looking Back to Look Forward: Key Lessons from System Regulation of Health and Social Care in England

Introduction and objective

This briefing provides a rapid review of the lessons from published reports on health and social care system regulation. The aim is to summarise the key lessons, particularly relevant as a new integrated regulator begins its work on the 1st April 2009, replacing the previous Commissions. It also sets out what the RCN view is on system regulation, and what the RCN wishes to see as key priorities for the coming years. The RCN recognises that 2009/10 is a year of unprecedented change, but from 2010/11 onwards believes that there is a real opportunity to learn from both and good across health and social care for the benefit of patients, carers, staff and the public at large.

Context

There is a new single regulator for health and adult social care in England. The Care Quality Commission (CQC). The CQC will replace:

- The Commission for Healthcare, Audit and Inspection (known as the Healthcare Commission (HC));
- The Commission for Social Care Inspection (CSCI); and
- The Mental Health Act Commission.

The CQC will be operating in a changing NHS and social care environment which includes:

- *Commissioning*, either undertaken by Primary Care Trusts (PCTs) or commissioning outsourced to independent sector providers deciding what to buy and from whom;
- *Patient choice and voice* allowing patients choice over their provider and more consultation and engagement with patients. In addition, the potential for greater scope of personal or individual budgets for some service users in both health and social care to purchase those services which best meet their needs;
- *Plurality of providers* including Foundation Trusts1 the independent sector and the third sector (including for example, charities and social enterprises);

[1] See also RCN Policy Briefing 01/2007 Mergers; Markets; and Monitor: An Update on NHS Foundation Trust Developments http://www.rcn.org.uk/__data/assets/pdf_file/0012/24024/mergers_markets_and_monitor.pdf

- A renewed *focus on quality* as part of the Next Stage Review;[2] and
- A new *NHS constitution*.

Lessons from the experience of the HC

The HC reported in March 2009 on lessons it learnt from its regulatory activities from 2004-2009.[3] The HC rightly points out that their risk based approach to system regulation was brand new and has evolved over time. The HC has been open to learning and has commissioned independent external reviews of its approach. On the whole these have been supportive of the approach taken by the HC. The HC does however note several key lessons and priority areas for the future of system regulation, including:

1. More action to ensure people are involved in decision making including in relation to their own care [p.27];
2. Stronger standards relating to handling of complaints in the light of CQC no longer having the function to review complaints [p.27];
3. Need for simplification and alignment of the standards and metrics used to measure performance [p.28];
4. Shifting regulatory focus away from 'Trusts' (which may actually deliver care in different buildings) towards services and pathways of care to ensure particular groups in society are not *'drop[ped] through the net'* [p.29]
5. Improve the available information on what is important to patients, as part of the risk based and information driven approach to system regulation [p.31];
6. Exploring the potential for real time monitoring of performance, particularly to act as an early warning system (for example if there was an unexpected jump in mortality rates this could be investigated rapidly and in a collaborative approach between the regulator and local managers and clinical staff) [p.31];
7. **Improve the available information on 'safe' care; both in terms of reporting of serious untoward incidents and so called near misses** [p.32];
8. **Improve information on outcomes rather than processes or activities** [p.32];
9. Improve information on independent providers as part of moving to a level playing field [p.33];
10. Refocusing attention on mental health, learning disabilities, equality, and integration of health and social care [p.33];
11. Benchmarking of performance of services and pathways and local units; not just the 'Trust' level [p.34];

[2] More detail is available in RCN Policy Briefing 12/2008 NHS Next Stage Review http://www.rcn.org.uk/__data/assets/pdf_file/0004/174739/12-2008_Darzi_Policy_Brief_July_08.pdf
[3] Healthcare Commission (March 2009) The Healthcare Commission 20042009 http://www.healthcarecommission.org.uk/_db/_documents/Healthcare_Commission_legacy_report.pdf

12. **Ensuring that things that are easy to measure do not overshadow those that are not, including recognising the greater emphasis on financial turnaround than quality of care** [p.38];
13. Reviewing controls over information that is collected from various regulatory agencies in a busy regulatory landscape [p.38];
14. The importance of a 'local presence' to ensure local intelligence sharing [p.39].

Lessons from the experience of CSCI

The CSCI reported in January[4] and March 2009[5] on their reflections of regulating the social care sector. Key areas that CSCI see as successes, and which by inference, should continue in the approach of the new regulator are:

1. Providing information on a diverse sector [p.5, Jan 09, p10 Mar 09];
2. Involving users, in particular Experts by Experience [p.6, Jan 09, p.5 Mar 09];
3. A rights based approach, with a central focus on human rights [p.7, Jan 09];
4. Focus on people with complex needs, and the link between the council commissioned services and the providers [p.8, Jan 09, p.18 Mar 09];
5. An outcome focus, rather than just processes and activities, providing an incentive for providers to improve [p.9, Jan 09, p.14 Mar 09];
6. **Stronger focus on safeguarding vulnerable people** [p.11, Jan 09, p.14 Mar 09];
7. Sufficient quality assurance and training for inspectors [p.13, Jan 09];
8. Stakeholder involvement [p.14, Jan 09];
9. Monitoring support to carers [p.10, Mar 09];
10. Working with other regulators [p.20, Mar 09];
11. Influencing policy [p.24, Mar 09];

MHAC

MHAC will remain, for the foreseeable future, a separate focus within the CQC. This will retain the existing approach and staff, reflecting the particular issues regarding safeguarding vulnerable people under the Mental Health Act.

Link to Professional Regulation

It is also relevant to note that CQC acts as the system regulator but there are also regulations regarding the professions and individuals who work in the health care sector. The purpose of professional regulation today is public and patient safety,

[4] CSCI (January 2009) Key Issues in Social Care Regulation and Inspection
[5] CSCI (March 2009) Making Social Care Better for People CSCI 2004-2009

a shift that emerged directly as a result of the recommendations of the Bristol Royal Infirmary inquiry into the death rate of children following surgery there.[6] This shift is endorsed by the recent Government white paper concerning the regulation of all health care professions.[7]

Within this broader regulatory field there is a balance to be struck between where individual vs organisational responsibilities lie. These include responsibilities to report serious and untoward incidences, professional indemnity insurance, and staffing levels.

RCN View

The RCN has made clear in several recent Consultation responses and briefings the importance of system regulation. The RCN calls for a **truly effective regulatory regime** given the increase in providers involved in the delivery of health and social care. This includes sufficient levels of monitoring, investigation, and inspections, appropriate metrics and timely intervention by the regulator where quality is poor. This means **a regulator with teeth.**

The RCN would also hope that the CQC will assess in a transparent manner its own approaches and be willing to adapt over time as appropriate.

The **RCN is also calling for 'intelligent' regulation**. This means avoiding a box ticking approach but rather allowing for the use of professional judgement. It also requires **investment in leadership** by the CQC. This can be achieved by providing continuing training and support to assessors and inspectors and allowing standards to be measured through a mix of questions and indicators. The RCN recognises that this is a longer term agenda but hopes that it will be a focus of the first year of the new regulatory regime and going forward.

The RCN also agrees with the very clear statement made by the HC that:

"The overall performance of the NHS in relation to safety of care has not changed in the last three years of the annual health check….This is for a set of standards that the Department of Health said should be met everywhere in 2004. But, this inadequate level of performance does not even get a mention in the Operating Framework for the NHS for 2009/10. It may be that the political pressures in the system are more concerned with certain specific targets which are readily measured than with the less easy to document, but fundamentally more important, general achievement of a set of standards for everyone" [p.35]

[6] Bristol Royal Infirmary Inquiry (2001) Learning from Bristol: the report of the public inquiry into children's heart surgery at the Bristol Royal Infirmary 1984-1995, London, The Stationary Office

[7] HMSO (2007) *Trust, Assurance and Safety- The Regulation of Health Professionals in the 21st Century* HMSO: London

The RCN therefore continues to work with all stakeholders on ways to ensure safe, high quality care.

The RCN also notes that this absolutely requires investment in leadership; not just at CQC, but within every organisation in the NHS and social care (from commissioners to providers). The HC has repeatedly documented the importance of leadership and culture and appropriate staffing and training when it has investigated serious incidents. This is also backed up by various other evidence on the link between staffing levels, the role of nurses and patient outcomes.[8] It is now well known that there need to be sufficient nurses, able to perform their role, to avoid negative impacts upon patients. This evidence of the link between these must not be ignored and the new integrated regulator has a real opportunity to champion long term sustainable safe and high quality care.

On the 30th March 2009 the Department of Health has opened a new consultation, *A consultation on the framework for the registration of health and adult social care providers*. This further sets out details on the registration requirements of CQC. More details will be provided on the final arrangements as this becomes clear.

Tell us what you think

This briefing is intended as an backgrounder to role of the CQC and the Policy Unit would like to receive comments/feedback from as many members as possible on this important issue - policycontacts@rcn.org.uk.

Further information will be issued as the work of the CQC develops.

1st April 2009

[8] Not least the latest report of the Healthcare Commission on Mid Staffordshire Trust, http://www.healthcarecommission.org.uk/newsandevents/mediacentre/pressreleases.cfm?cit_id=1640&FAArea1=customWidgets.content_view_1&usecache=false.
Other examples include: research by Dr Veena Rayleigh of the Healthcare Commission examined the Patient experience survey and staff survey and found a correlation between positive patient experiences and good HR and health and safety practice.
http://www.nhsemployers.org/EmploymentPolicyAndPractice/staff-engagement/Pages/Healthcare-Commission-research.aspx See Healthcare Commission Investigation into outbreaks of Clostridium difficile at Maidstone and Tunbridge Wells NHS Trust (October 2007)
http://www.healthcarecommission.org.uk/_db/_documents/Maidstone_and_Tunbridge_Wells_investigation_report_Oct_2007.pdf See also Nurses in society: starting the debate (15th October 2008)
https://clearingatkings.org/schools/nursing/nnru/reviews/nis.html and State of the art metrics for nursing: a rapid appraisal (15th October 2008)
https://clearingatkings.org/schools/nursing/nnru/reviews/metrics.html and Manley K. Organisational culture and consultant nurse outcomes: Part 1 organisational culture. Nurs Stand 2000;14:34-38. and Manley K. Organisational culture and consultant nurse outcomes: Part 2 consultant nurse outcomes. Nurs Stand 2000;14:34-39