Royal College of Nursing
Consultation Response
'Care Quality Commission Strategy - 2016 to 2021'

Introduction

With a membership of around 430,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector.

The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

Background

The RCN has consistently held the position that the UK's health and care systems must have appropriate checks and balances in place, to prevent harm and support high quality care for patients and service-users.

In that vein we have also been constant in our support of the Care Quality Commission (CQC) being a 'regulator with teeth', and of the importance of it being able to take speedy action when there are real concerns about harm, including preventable deaths of patients and service-users.

Our previous engagement with members on the CQC's approach has led us to call for:

- More focus on staffing by the CQC, as staffing is a key determinant of the safety and quality of services

- "Intelligent" regulation; with sufficient levels of monitoring, investigation, inspections and use of metrics and which should include timely intervention by the CQC where quality of care is found to be poor.

We are aware that in the current financial climate, the challenge of balancing the need to be an effective regulator with securing adequate and sufficient resources puts the CQC in a difficult situation, not least since many of the organisations that it regulates are also its funders, and are being asked to increase their share of its funding by the current government.

Our response to the CQC's recent consultation on funding noted the challenges that this presents for the wider system, and we would re-iterate that position here, most importantly that we do not consider seeking increases in the financial contribution made by heath and care providers to be a sustainable funding approach for the organisation or the regulatory system for the foreseeable future.

General Comments

Doing more with less

It is important that the CQC has the sufficient means to fulfil its obligations effectively, in order to ensure public confidence in the regulator. The RCN has concerns that the substantial reduction in the CQC's funding (the CQC's annual budget is due to fall from £249m in this financial year to £217m in 2019-20, driven by cuts in Department of Health grant funding), could impact on its ability to perform its functions effectively.

On that basis, and mindful of our previous comments, we are supportive of the CQC taking all actions possible to improve its efficiency and be innovative in responding to the changing context within which it operates

We note and support the Public Accounts Committee request for greater clarity and reassurance about how the CQC intends to its programme of inspections going forward, especially along with the added new responsibilities outlined in its strategy.

Finally, we would also argue that in order to be an effective regulator and uphold its responsibilities with respect to supporting a robust inspection regime, it will be important for the organisation to devote sufficient resources to ensuring that is adequately staffed and is able to invest in workforce training and development.

Becoming intelligence-driven

The RCN supports the CQC's ambition to become 'intelligence-driven' and the commitment to find innovative ways of gathering and using information as part of the regulatory approach.

We also support its commitment to improving the availability and greater use of quality data and information for identifying risk and for registering and inspecting services.

However we are aware that data is not available to an equal or comparable extent across the different sectors and services, most notably adult social care. In light of this it is important that CQC gives consideration to how it will address the challenge of assessing all providers with parity, and ensuring consistency in its approach.

No return to 'light touch' regulation

The RCN supports the CQC's move towards more tailored and responsive inspections, and to taking a different approach to inspecting those providers which are deemed to be performing at an outstanding level. We would not wish to see the move towards risk-based approach to inspections leading, even inadvertently, to 'light touch' regulation.

With regards to 'co-regulation', we welcome the CQC's commitment to cross checking information from providers with other sources, and to continuing to make unannounced inspections where there are concerns.

We would welcome more information on the frequency of inspections for those providers who are rated good and outstanding, and a better understanding of how the deterioration of services would be managed in this approach; as we have concern that the new model may focus unduly on failing or failed services, as the expense of intervening where early action could help to prevent sub-standard care becoming more normalised. In support of this position we would also support more timely intervention by the CQC where quality of care is found to be poor.

We have specific concerns regarding the extension of risk-based approaches to social care, as we believe that the current lack of data means it is less likely to be effective for this sector. We would recommend that much more complete data about the adult social care sector is needed before we would be fully confident in supporting a move to this model of regulation for social care providers.

Responses to specific questions

1b. What do you agree with, or not agree with, about the vision?

The vision

The RCN broadly agrees with much of the CQC's vision for the regulation of the quality of health and adult social care services in 2021. We support its ambition to improve its existing functions, including more prompt and timely publication of inspection reports, and it commitment to continue judging providers against the five key themes: safe, effective, caring, responsive to people's needs, and well-led.

As we have previously noted, there are some tensions around whether the inspection and rating regimes are realistic, fair or whether they set organisations up to fail. The ratings allocated to providers are also difficult to challenge in those cases where they are deemed to be inaccurately given. RCN members have told us that they want to see a balanced approach which recognises and publicises findings of excellence as well as problems, and we would support a more emphasis being given to highlighting and celebrating examples of good care, and to learning lessons from them.

We are aware of ongoing concerns about how the component parts of the regulatory system work together, for example in sharing information and taking action on that information, but also in relation to shared values and goals, and would welcome further consideration of this issue.

We support the commitment to expanding the inclusion of 'Experts by Experience' programme, and to giving greater involvement to public in the CQC's work, in order to better understand their expectations of what standards should achieve, and of how services are experienced by those needing them.

Assessing hospitals' use of resources

The RCN notes the CQC's new role in assessing NHS trusts' use of resources, and would reference our response to Lord Carter's report into hospital efficiencies, in which we argued that the focus on efficiencies must not be at the expense of safe care.

All the evidence shows that it is the number of registered nurses which has the biggest impact on patient care in acute settings and any new metric to measure staff deployment must not be used by trusts to hide diluted skill mix.

We have previously noted the significant financial pressure on all NHS providers, and against this would highlight the CQC's fundamental role in ensuring staffing arrangements are afforded due scrutiny during its inspections.

2b. What do you agree with, or not agree with, about greater use of data and information?

The RCN supports the CQC's ambition to become 'intelligence-driven' and the commitment to find innovative ways of gathering and using information as part of the regulatory approach.

We strongly agree with and support the CQC's commitment to improving the availability and greater use of quality data and information for identifying risk and for registering and inspecting services. Given that organisations are often data rich but intelligence poor, the requirement for data should also help to drive improved data capture, and enable more robust and reliable analysis. We also support the use of a range of data, both quantitative and qualitative, to ensure a more complete picture of services.

As we have previously argued, data might not be available to an equal or comparable extent across the different sectors and services, and in light of this, the CQC must consider how it can assess providers with parity and provide consistency in its inspection approach.

The CQC's ability to respond quickly and effectively to information received from service-users and staff, especially to issues raised by whistle-blowers, as well as the quality of information on offer to people seeking a care provider, was also criticised by the Public Accounts Committee as an area requiring improvement. While this is a strong commitment in the CQC's new strategy we would like to see more information on exactly how it is intended to make these improvements.

3b. What do you agree with, or not agree with, about a single shared view of quality?

'One size fits all' approach won't work

The RCN agrees that a shared view of quality could help to drive cohesion across the regulators and across the services they regulate. However, we have questions about how this shared view would be agreed and implemented, as well as the potential for organisations to interpret this differently, which we believe could lead to problems.

With the arrival of multi-organisation arrangements, such as Vanguards and Devolution arrangements it will also be important to consider how a single shared view of quality could work and apply in such situations, where contexts, challenges and resource are likely to vary.

Staffing central to quality

The RCN believes it is important that any single shared view of quality explicitly includes staffing levels and skill mix in the regulatory approach. The feedback we gather from our regional staff to inform the CQC ahead of its inspections consistently reports that the main area of concern for patient safety is problems with recruitment and retention of nursing staff.

We would argue strongly that the CQC must explicitly recognise the long-term link between effective staffing and the delivery of quality services, and the need for the CQC to work with providers in taking a long term view on investment in staff recruitment and retention, in both the health and social care sectors.

This is perhaps most achievable through the development of shared frameworks for measuring quality of care against the CQC's five key lines of enquiry, and we would argue that standards and targets on staff health and wellbeing in assessment processes, and standards for best employer practice, including staff engagement, should be included in their development.

Specific challenges of social care

The RCN believes it is vital to acknowledge that the CQC's role goes beyond the health service, and that specific consideration should be given to adult social care and primary medical services. The RCN has members working in both of these sections of the Inspectorate and through them we understand that adult social care generates the most work within CQC, specifically through complaints, concerns, safeguarding, notifications, and enforcement.

The challenges affecting the care home sector are well documented and the financial pressures are greater there than they are in the NHS, due to the significant cuts in Local Authority funding. The general lack of available data on care homes will present a significant challenge for the CQC, something compounded by the volatility of the care market, and the consequent rapid changing level of risk.

We thus have significant concerns about adult social care, which are also pertinent for NHS providers in that they can impact on length of stay and patient discharge arrangements, and would expect to see them being captured and highlighted by the CQC's work.

4b. What do you agree with, or not agree with, about targeting and tailoring our inspection activity?

The RCN welcomes and supports the CQC's move towards more tailored and responsive inspections, and to differentiating positively in its approach to inspecting providers deemed to be performing at an outstanding level. We have consistently called for "intelligent" regulation, with sufficient levels of monitoring, investigation, inspections and use of metrics, and believe that this must include timely intervention by the CQC where quality of care is found to be poor.

That support notwithstanding however, we do have some concerns about this proposal, and would emphasise the need for caution in proceeding to speedily with this new inspection model.

Risks of the co-regulation model

The RCN believes that effective checks must be placed in order to mitigate the risks associated with providers' self-reporting, and to ensure the CQC's independence. There is also good evidence that self-reported submissions do not always accurately reflect the reality of a provider's service.

With this in mind, we are pleased to see that the CQC is committed to cross checking the information from providers with other sources and will continue to make unannounced inspections where there are concerns. This is important to ensure that poor or worsening performance is detected promptly and acted upon.

We would also like to see more information on the frequency of inspections for those providers which are rated good and outstanding, and more detail on how incidences of service deterioration would be managed in this approach. We take this position in

recognition of the potential for this new approach to lead to such services being overlooked in favour of focus being given to high-profile instances of failing or failed services, but where early intervention could help to prevent sub-standard care becoming normalised.

We wholeheartedly support the CQC's commitment to increasing the participation of service-users in the regulatory regime, and would recommend that more information be provided about how this will happen, and of how the resulting information will be used.

Identifying and responding to risk

Focusing on providers deemed to be at greater risk necessitates a clear and consistent approach to/process for identifying risk and the RCN is aware of concerns about the accuracy and reliability of the CQC's intelligent monitoring system previously highlighted by the Public Accounts Committee[1].

We believe it is imperative that the CQC provides clear information on how it will address this issue, and specifically how it will go about prioritising the inspection of services. It is important that the risk-based approach not only reacts to clear signs of failure, but as much as possible identifies and takes steps to address risks before they become serious issues.

Most importantly the RCN does not wish to see the use of a risk-based regime result in a return to 'light touch' regulation.

Specific challenges in social care

The RCN does not believe that a risk-based approach is likely to be effective in social care, primarily because the CQC has less data to help it monitor risk and inform where inspections should take place; a point highlighted by the National Audit Office, which noted that "the current information base for adult social care is not of sufficient quantity, quality or consistency to calculate overall risk ratings".[2]

We believe this highlights a disparity between the CQC's projected vision and the variations in the services and sectors it inspects, and we would encourage consideration being given to how it may acquire more complete data about the adult social care sector in order that all stakeholders, including service-users and carers, are able to have confidence in this model of regulation.

CQC assessing hospitals' use of resources

The RCN recognises that the CQC has a role to play in assessing how well hospitals use resources, and we would highlight our own work on this, including our report *'Small Changes, big differences: Driving nursing leadership in procurement'*,[3] as worthy of incorporation into work assessing hospitals' use of resources.

This work was undertaken in partnership with NHS Supply Chain and the Clinical Procurement Specialist Network, and provide examples and case-studies of nurse-led solutions for smart procurement across the health and social care sector.

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[1] Public Accounts Committee (2015) 'Circle's withdrawal from Hinchingbrooke Hospital update report'
[2] National Audit Office (2015) 'Care Quality Commission Capacity and capability to regulate the quality and safety of health and adult social care'
[3] See: ' (https://www.rcn.org.uk/-/media/royal-college-of-nursing/documents/publications/2015/november/005400.pdf

5b. What do you agree with, or not agree with, about a more flexible approach to registration?

The RCN supports this approach for making simple changes or amendments to registration details, for example a service providers the location.

However, given that the registration stage is the gateway into being a regulated service, the process must be robust and consistent, and ensure that problems are identified and dealt with before a provider is able to start offering services. This is particularly pertinent for adult social care, and especially so in the case of 'lone providers' which can be isolated.

We would also welcome more information about the CQC's process for identifying risk at the registration stage and how it will seek to ensure quality.

6b. What do you agree with, or not agree with, about assessing quality for populations and across local areas?

The RCN recognises that, in a time of change and innovation in the models and mechanisms for delivering health and care services, adopting approaches to regulation that reflect that is an important and necessary innovation.

The CQC has significant work to do to develop and test approaches to understanding how well services are meeting the needs of the local population, and we look forward to seeing the results of the pilots later this year. As a UK-wide organisation we would also like to see this evidence being shared across the devolved nations.

However, we feel that this should be approach carefully and with diligence, and not result in resources and capacity being diverted away from the CQC's statuary responsibilities and core work. We would thus welcome greater clarity about how the CQC will fund and resource this new area of work.

Against this background of more new and possibly divergent work, we would also like more details about the continuation of the national priority themes work, and how it is envisaged it will inform the CQC's approach and work going in the future.

7. What impact do you think our proposals will have on equality and human rights? (See our Draft equality and human rights impact analysis.)

The RCN is broadly supportive of the CQC's human rights impact analysis for its new strategy.

Research from the Equality and Human Rights Commission suggests that there are some groups that experience significant and persistent health disadvantages and are potentially at risk of experiencing health exclusion, and in light of this we would have found it useful to see a more 'classic' equality impact assessment with a specific focus on the protected characteristics, in addition to a wider analysis of human rights.

It is clear that equality and human rights work is still an emerging area which requires strong and consistent involvement from stakeholders, particularly Staff-Side, to ensure that the approach is appropriate to the rapidly changing health care context.

The RCN agrees that an increased focus on the views of staff is important, and we suggest that the CQC should include a specific reference to engaging with Staff Side representatives who have both qualitative and quantitative information about the service and the lived experience of staff. Staff side should also be invited to be part of the iterative process of developing new indicators and warning flags.

We make the following specific points in relation to specific areas of the impact analysis:

1. B Improving our use of data and information: risks

It would be useful to have more information about the processes that the CQC intends to adopt or use in terms of determining the methods for capturing the views and experiences of service-users who might be more at risk of breaches of human rights.

2. A Implementing a single shared view of quality: opportunities

There should be an explicit focus on workforce equality given the evidence relating to its link to overall quality and patient experience. The RCN would support the CQC's human rights and equality approach to regulation being transferred into a new shared view of quality and it would be useful to understand the processes that would be used by the CQC to establish this shared view.

3. A Targeting and tailoring our inspection activity: opportunities

It would be useful to have more information about the indicators used to make a determination about the level of risk around equality and human rights.

4. A Developing a more flexible approach to registration: opportunities

It would be useful to understand what the CQC intends vis-à-vis helping providers to embed a more consistent approach to equality and human rights.

5. A Assessing how well hospitals use resources: opportunities

I think we would want to agree with this approach about identifying waste/inefficiency /scarcity and its impact on equality and human rights

6. A Developing methods to assess quality for populations and across local areas: opportunities

It would be helpful to understand more about how the CQC intends to engage with stakeholders, especially Staff Side, in the development of different inspection approaches according to the population served. We believe that it is important that the work to develop such approaches should be informed by the knowledge and understanding of staff.

6. B. Developing methods to assess quality for populations and across local areas: risks

The RCN believes it will be useful for the CQC to enhance the sophistication of its research processes by examining the impact of intersectionality and its often dramatic impact on patient/ staff outcomes.

ENDS

14 March 2016