
Health and Social Care Scrutiny Board (Scrutiny Board 5)
Cabinet
Council

7 November 2011
29 November 2011
6 December 2011

Name of Cabinet Member:

Health and Community Services – Councillor Clifford

Director Approving Submission of the report:

Director of Community Services

Ward(s) affected:

All

Title:

Care Quality Commission proposals for their Judgement Framework and Enforcement Policy – consultation response

Is this a key decision?

No

Executive Summary:

This report details the City Council's response to the Care Quality Commission's public consultation on proposals for changes to their Judgement framework and Enforcement policy, published in September 2011. The Care Quality Commission is the independent regulator of health care and adult social care services in England. The proposals under consultation aim to simplify and strengthen the regulatory model while reducing the burden on providers who comply with the essential standards. The proposals are in response to the government's aim to strengthen the role of the Care Quality Commission so that the focus is on its 'core business' of registering providers against the essential standards of quality and safety and to monitor and inspect providers to make sure that the essential standards are being met and to take action where they are not. The changes to areas of the Care Quality Commission's existing guidance is presented as 'raising the bar' in terms of approach by inspection being more targeted and focusing on where providers are not meeting the required standards; moving from a focus on compliance to identifying and taking action on non-compliance.

In response to the consultation the Council welcomes the commitment to more frequent inspections and supports the attempt to distinguish more clearly between compliant and non-compliant providers. However, the proposed shift in the regulator's focus on to non-compliant providers is viewed by the Council as eroding the expectation on providers to commit to continuous improvement; compliant providers are not incentivised to invest in excellence, as it is not recognised by the regulator. Additionally, the proposals mean that, other than 'compliant' or 'non-compliant', there is no easily identifiable measure for the range of quality in the market, impacting on the information customers have to make their choices.

The response appended to this report has been amended following consideration by the Health and Social Care Scrutiny Board (Scrutiny Board 5) on 7 November 2011.

Recommendations:

1. Health and Social Care Scrutiny Board (Scrutiny Board 5) is asked to note the consultation response and forward any comments to Cabinet.
2. Cabinet is requested to
 - (i) Consider any comments from Health and Social Care Scrutiny Board (Scrutiny Board 5).
 - (ii) Recommend to Council that they approve the proposed consultation response.
3. Council is requested to approve the consultation response.

List of Appendices included:

Consultation response

Other useful background papers:

Our proposals for our Judgement framework and Enforcement policy (Care Quality Commission), September 2011.

Judgement framework and determining our regulatory response (Care Quality Commission), September 2011.

Enforcement Policy (Care Quality Commission), September 2011.

Regulatory impact assessment CQC regulatory model, Judgement Framework and Enforcement Policy (Care Quality Commission), September 2011.

All documents are available from Governance Services and are currently available at:
<http://www.cqc.org.uk/yourviews/consultations/keyguidancechanges.cfm>

Has it been or will it be considered by Scrutiny?

Yes – 7 November 2011

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

Yes – 6 December 2011

1. Context (or background)

- 1.1 The Care Quality Commission is the independent regulator for health care and adult social care services in England. The regulator is holding this consultation to give providers, the public, commissioners and other stakeholders the opportunity to comment on its proposals to make changes to its existing judgement framework and enforcement policy. These guidance documents are two of four existing documents which underpin the Care Quality Commission's regulatory model.
- 1.2 The judgement framework is written for Care Quality Commission staff to help them reach judgements about the compliance of a provider or a manager with the essential standards, and to decide the regulatory response when non-compliance is identified.
- 1.3 The enforcement policy document sets out the principles the Care Quality Commission follows when using their enforcement powers under the Health and Social Care Act 2008, in order to improve health and social care services and protect the health, safety and welfare of people who use them.
- 1.4 The proposals under consultation are aimed at simplifying and strengthening the process by which the Care Quality Commission make judgements, while reducing the regulatory burden on those providers who comply with the essential standards. The changes also underpin the regulators strategic priority to act swiftly to help eliminate poor quality care.

2. Options considered and recommended proposal

- 2.1 The proposed changes to the judgement framework and enforcement policy have been considered by senior officers within the Community Services directorate (Adults Social Care; Policy and Performance). The appendix to this report details the full proposed Council response.
- 2.2 The Care Quality Commission state that the changes proposed are, in part, in response to feedback from providers indicating that they would prefer a clearer judgement framework and enforcement policy where they are judged to be either compliant or non-compliant with essential standards. The current system, where providers can be compliant but with concerns, can be confusing both for them, and for people who use services and for commissioners who make choices based on the Care Quality Commission's judgements.
- 2.3 Much of the judgement framework and enforcement policy remain unchanged. For example, the range of enforcement options open to the regulator remains the same and the principles of the judgement framework have not changed; inspectors will always consider whether they have enough evidence to make a judgement and consideration will be given to what is reasonably practicable and proportionate (under public law principles) before taking any action.
- 2.4 The proposals for change are presented as creating a 'newly simplified and strengthened regulatory' model. The proposals state that the new model will see inspections happening more often, and inspections being more targeted and aimed at ensuring consistency in how

judgements about compliance and non-compliance are made and in how the enforcement policy is applied.

2.5 The following changes are proposed:

Judgement Framework

- Following an inspection, providers will be judged to be either compliant or non-compliant with standards. No action will be taken if providers are compliant, meaning no improvement actions or regulatory follow-up will be issued.
- Judgements about levels of concern (the impact on people) will be made *after* the judgement of non-compliance. Currently, a judgement about the level of concern is made *before* a judgement as to whether the provider is compliant or non-compliant is made.
- The regulatory response will be based mainly on the impact of the non-compliance on people who use services, rather than on the Care Quality Commission's judgement (i.e. confidence on the provider's capability to improve).

Enforcement Policy

- There will be clearer, more transparent and time-bound enforcement processes in place. Timescales will not normally be extended and second compliance actions will not normally be issued. Failure to respond to compliance on enforcement actions will usually result in an escalation of enforcement activity. This change is balanced with a commitment to act proportionately
- Warning notices will be published in the compliance report, so that it is open to the public.

2.6 The City Council understands that the Government has directed the Care Quality Commission to focus on its core business of monitoring and inspecting providers to ensure essential quality and safety standards are being met. Therefore the focus on non-compliant providers appears a sensible one within the regulators resources.

2.7 The City Council welcomes the proposals relating to the enforcement policy. A clearer escalation policy should more effectively support providers to achieve compliance. The publication of warning notices for non-compliance within reports will increase transparency and make clearer the action the regulator is taking with a provider.

2.8 In relation to the proposals to the judgement framework, the City Council welcomes the commitment to more frequent inspections and understands that judging a provider as either compliant or non-compliant may be clearer and therefore addresses the feedback the regulator has received. However, the focus on identifying and addressing non-compliance risks losing any opportunity for the regulator to identify best practice and improve overall standards within the care and support sector. By focusing on compliance of the essential standards, the full picture of a provider's performance is missing.

2.9 The focus on non-compliant providers may only improve standards of the poorest quality providers, and by the smallest margin in order to become compliant. There will no longer be improvement action plans for compliant providers, where specific areas are targeted. As a result, the focus on continuous improvement across the sector is lost and those providers who do meet standards for compliance may not improve.

- 2.10 Similarly, providers who just meet the standards for compliance will be viewed as the same as a provider who is delivering a significantly better service. Perversely, this may act as a disincentive for providers to excel, as the regulator places no visible value on being 'excellent' when it makes its judgement. The Care Quality Commission has the opportunity to set a high standard for compliance and thereby drive up what is considered acceptable within the market. It is unclear whether this opportunity will be taken or not.
- 2.11 Quality ratings (or star ratings) are no longer awarded by the Care Quality Commission and its proposed 'excellence' award received little support from the sector and was abandoned. Simple, comparative ratings are a useful tool for people who use services, their families and carers, as well as commissioners and the wider public, to make decisions. Officers' experience is that citizens have achieved a level of understanding and common knowledge about the 'star ratings' previously used by the regulator. The opportunity to build on and develop this understanding with a graded judgement system has been lost.
- 2.12 Increasingly, people will be making their own choice of service provider from the care and support market and officers do not believe a judgement of 'compliant' or 'non-compliant' will support people to identify the best providers in the market.
- 2.13 The City Council considers that these issues should be taken into account by the Care Quality Commission.

3. Results of consultation undertaken

- 3.1 The consultation response is from the City Council and therefore wider consultation has not been undertaken.

4. Timetable for implementing this decision

- 4.1 Responses to the consultation are required by 9 December 2011. Following the consultation period, the Care Quality Commission will review the feedback and consider any changes to the proposals. It is expected that the final versions of the Judgement Framework, Enforcement Policy and impact assessments will be published in early 2012.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

There are no direct financial implications arising from the consultation. If greater responsibility for quality assurance and standard setting is expected from Adults Social Care Teams then this could increase costs to the City Council. The financial impact of this will be unknown until further clarity is available of the final proposed changes.

5.2 Legal implications

The functions, purpose and activities of the Care Quality Commission are governed by the Health and Social Care Act 2008.

Alongside this consultation, the government is consulting on aspects of the Health and Social Care Act (Regulated Activities) Regulations 2010, which are also being reviewed with the aim to ensure clarity, or to remove unjustified burden on providers. This will include proposed changes to the criminal enforcement process.

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

The proposed changes to the Care Quality Commission's regulatory framework will contribute to ensuring quality and safety of care and support services in the city and ensuring non-compliance is addressed promptly and effectively. This will contribute to citizens living longer, healthier lives.

6.2 How is risk being managed?

There are no specific risks relating to the consultation response itself. The proposed changes to the regulatory framework, if implemented in their current form, could mean that Adults Social Care teams have greater responsibility for quality assurance and standard setting, which could have resource implications.

6.3 What is the impact on the organisation?

The consultation response itself will result in no specific impacts on the organisation.

The proposed changes to the regulatory framework, if implemented in their current form, will impact on the way regulated providers and registered services are judged to be compliant with essential quality and safety standards and how non-compliance is addressed. The City Council directly provides 18 Care Quality Commission registered services, providing care and support to people in the city. Other Adults Social Care teams impacted upon are:

- Commissioning teams – Through its Commissioning function Adult Social Care monitors the standard or service delivery and agrees action plans with service providers so that standards of provision improve overall. This function is focused on continuous improvement as well as contract compliance. Teams work closely with the Care Quality Commission in this regard and use their findings, as regulator, to help inform where improvements need to take place. Regardless of the outcome of this consultation the City Council will continue delivering this quality improvement function. However, how the City Council continues to engage with the Care Quality Commission in managing quality may change dependant on the final proposals to be implemented.
- Social Work, Brokerage, Carer Teams and services commissioned to provide targeted support and advocacy – the proposals impact on the quality and amount of information, advice and support teams will be able to offer Coventry residents and their relatives when making choices about care support provision.

6.4 Equalities / EIA

An Equality and Human Rights Impact Assessment is included in the Care Quality Commission's proposals.

6.5 Implications for (or impact on) the environment

N/A

6.6 Implications for partner organisations?

The consultation response itself will result in no specific impacts on the organisation. The proposed changes to the regulatory framework, if implemented in their current form, will impact on organisations registered with the Care Quality Commission and the way in which they can expect judgements to be made about their compliance with essential standards.

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Members: Councillor Clifford	Cabinet Member	Coventry City Council	27.10.11	28.10.11

This report is published on the council's website:
www.coventry.gov.uk/meetings

Appendices

Care Quality Commission Consultation – Proposals for Judgement Framework and Enforcement Policy

Overarching questions

1. Do you agree with the improvements that we propose to make to the Judgement Framework and Enforcement Policy?

The City Council understands the proposed changes and acknowledges the direction from Government for the regulator to focus on its core role of ensuring that essential standards of quality and safety are met and therefore a focus on non-compliance is sensible.

The City Council does not agree that all of the proposed changes will result in improvement. There are concerns, for example that the withdrawal of the requirement for providers to complete Provider Compliance Assessments prior to an inspection visit removes the opportunity for providers to self-assess and self-challenge their service. This activity in itself can lead to quality improvements.

Additionally, the City Council considers that identifying and addressing non-compliance risks losing any opportunity for the regulator to identify best practice and improve overall standards within the care and support sector. The Council has concerns that compliant providers will not be incentivised to invest in service improvements. The Care Quality Commission was previously clear about its important function to promote improvement in the sector and it is the Council's view that good and excellent providers should continue to be acknowledged.

Similarly, providers who just meet the standards for compliance will be viewed as the same as a provider who is delivering a significantly better service. Perversely, this may act as a disincentive for providers to excel, as the regulator places no visible value on being 'excellent' when it makes its judgement.

By focusing on compliance of the essential standards, the full picture of a provider's performance is missing.

2. By using the revised Judgement Framework and Enforcement Policy, will CQC be able to regulate and take action to help eliminate poor quality care more effectively?

This will depend on how high the bar for compliance is set. If it is too low, CQC's action will only address the very poorest providers and not address the issues of those providers who are delivering only an average service. The clearer and more transparent enforcement escalator is likely to support a more timely and effective enforcement response to non-compliant providers.

Effectiveness will also depend upon the frequency of inspections and the speed of reporting. If inspections are infrequent and it takes many months for reports to be published, as is currently the case, the standards and quality, i.e. compliance, may have significantly changed and a provider could have become non-compliant.

Judgement Framework

3. Do you understand the processes our inspectors will follow to make judgements based on the revised Judgement Framework?

Yes.

4. Do you think that the process and associated guidance is clear?

Yes. However, with the focus on what is not being done rather than what is being done, and done well, it appears opportunities for learning from good practice could be missed.

5. Do you think that the revised Judgement Framework will enable us to be more consistent in implementing our judgements?

The City Council recognises the steps taken to remove some of the elements where inspectors have previously taken into account their level of confidence in a provider or manager. The Council supports the proposal to no longer consider the level of confidence in the provider's capability when deciding the regulatory response.

However, step 3 of the Judgement Framework ("Consider whether the provider or manager has done all that is reasonably practicable") risks relying on the subjective opinion of an investigator and may be difficult to ensure consistency in how this step is approached. The Council would want this extending to:

"Consider whether the provider or manager has done all that is reasonably practicable and describe the evidence that underpins/substantiates/you have used to formulate your views."

Enforcement Policy

6. Do you understand what our enforcement powers are and how we can use them?

Yes. The enforcement powers have not changed from the current system.

7. Do you think that our process of escalating action in response to non-compliance is clear?

Yes.

8. Do you understand the implications of non-compliance?

Yes.

9. Does the 'enforcement escalator' help you to understand the range of action that is available to us where providers are non-compliant with the regulations?

Yes.

Regulatory impact assessment

10. Does the regulatory impact assessment accurately represent the impact of implementing the guidance to providers of regulated activities and others?

Yes.

11. Does the regulatory impact assessment accurately reflect all the benefits associated with implementing this guidance for providers of regulated activities and people who use services?

The impact assessment states that compliant providers will benefit from the stronger assurance that they can offer to people who use their services, the public and commissioners about the quality and safety of their services.

The City Council considers that labeling a provider as either 'compliant' or 'non-compliant' is not specific enough about quality to help the public or commissioners to identify the best providers in the market and does not necessarily encourage providers to invest in their own improvement.



To
Cabinet

Date: 29th November 2011.

Subject

Health and Social Care Scrutiny Board consideration of the consultation response to the Care Quality Commission proposals for their Judgement Framework and Enforcement Policy.

1 Purpose of the Note

- 1.1 To inform Cabinet of the Health and Social Care Scrutiny Board (5)'s recommendations and issues raised following their consideration of the consultation response to the Care Quality Commission (CQC) proposals for their Judgement Framework and Enforcement Policy on 7th November 2011.

2 Recommendations

- 2.1 Cabinet are asked to consider and decide whether to agree the following recommendations of the Health and Social Care Scrutiny Board
- 2.2 Cabinet are recommended to strengthen the Council's response to this consultation, based on the comments made by the Board in Section 3.3 of this Briefing Note.

3 Information/Background

- 3.1 The Scrutiny Board considered the report of the Director of Community Services at their November Board meeting.
- 3.2 In a wide ranging discussion the Board questioned the Director and his staff regarding the proposed changes to the CQC regulatory framework, and the implications for the future monitoring of safety and quality standards of health and social care services.
- 3.3 Cabinet are recommended to strengthen the response prepared by the Director of Community Services to further emphasise the following:
- The Board's view is that the restriction of inspection outcomes to only 'compliant' or 'non-compliant' will lead to a significant deterioration in the value of the inspection and regulation process.
 - It is important that inspection and regulation contribute to and incentivise service improvement and enhance choice for patients and service users, the current proposals miss opportunities for this to happen.

- The Board felt that there was a danger in the risk assessment proposed that the inspection and regulation process will minimise the time inspectors spend visiting services, viewing settings and meeting with service users. Providers who do not have to be prepared for site visits and inspectors witnessing services being delivered and talking to service users might be encouraged to become complacent.
- Similarly the Board felt that any over-reliance on a self-assessment prepared by providers could also weaken the inspection regime and leave open the possibility of poor quality providers concealing weaknesses in the quality of their service provision.
- In summary the whilst the Board agreed with many parts of the draft response presented, they felt that the Council's response needs to be strengthened to reflect the level of concerns Members have regarding the potential reduction in the value of inspection and regulation of health and social care services.

3.4 Additionally the Board has requested that the Director of Community Services provide comparative data for the number of inspections carried out by the CQC in 2010/11, so that future levels might be monitored.

3.5 Further the Board has requested that the Director of Community Services provides the Board with information regarding the local social care economy. They have requested information regarding the proportion of available providers in the City with whom the City Council has contractual arrangements, and therefore maintain some level of quality oversight as part of contract management processes.

Briefing Note Author:

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17th November 2011