

## Care Quality Commission Enforcement Policy Consultation

### Comments from The Residents & Relatives Association (R&RA)



1. The Relatives & Residents Association (R&RA) promotes the rights and well-being of care home residents and prospective residents by providing advice and support to them and their relatives, by campaigning to raise standards and by undertaking project and development work to improve their quality of life.
2. Being the only national charity concentrating wholly on the specific and detailed needs of older people moving into, or already living in, residential care, it is therefore uniquely placed to comment on proposals which may affect their interests.
3. We are pleased to have the opportunity to comment on the proposals for enforcement published by the Care Quality Commission. Our comments are informed by our experience of the regulatory process and its changes over the past decade, particularly that exercised by the Commission for Social Care Inspection over the past four years and about which we have had a number of concerns.

#### **4. Principles of enforcement**

We welcome the statement of principles which the CQC will follow, in particular the emphasis on safety and quality, transparency and accountability, and the commitment that CQC staff will be trained and skilled.

##### **4.1 Safety and quality**

Care home residents are an increasingly physically and mentally frail, vulnerable group of people, many without family or friends to protect their interests, and a majority with some form of dementia. Ensuring their safety must be an overriding goal of regulation. In our view safety is best achieved by having robust staff recruitment procedures,

acceptable and comprehensive quality standards and frequent inspections. The reduction in the number of statutory inspections (in some case only once in three years) and increasing reliance on provider self-assessment has already undermined the ability of the regulatory system to ensure that residents are safe and standards are met. For example, as a result of the recent changes, poorest performing homes (those with no stars under the new system) are inspected no more frequently than all homes were in the past, that is, at least twice a year. If inspectors do not visit on a regular and frequent basis and do not deal with complaints about homes (see para 7 below), we question how they will obtain essential and reliable information in order to regulate effectively.

#### 4.2 Transparency and accountability

We have concerns about the lack of transparency in the present system of enforcement and hope that the new arrangements will rectify this. Currently, where providers are issued with improvement notices, it is impossible for the public, more particularly residents and relatives, to know whether or when these have been actioned. The regulator does not report publicly on them and there is no way of knowing whether or not they have been enforced. Moreover, we are also concerned about the number of requirements laid on providers and listed in inspection reports that remain ignored by providers and un-enforced, persisting from inspection to inspection to the continuing detriment of residents. Many of these requirements and standards are major and reveal serious deficits and shortcomings in care and provision. A recent example is a statutory requirement laid on one particular home for staff supervision to be established that has remained on every inspection report since 2004.

We are also concerned that in seeking to inform and assure the public that standards are improving, the current regulator apparently relies on incomplete and thus unreliable inspection data. Statistics published annually as annual statistics are either based (because a substantial number homes are no longer inspected annually) partly on self-assessed performance and not wholly on inspection data or they only refer to those homes which have been inspected, thus excluding

those which have not. We do not know which is the case. This is neither transparent nor accountable.

We hope that CQC's commitment to both transparency and accountability will mean an end to opaque procedures of enforcement and statistical unreliability.

#### 4.3 Training and skills

We have long believed that inspection is a task that requires skills and expertise for which training is required. We welcome the CQC's commitment to appropriately trained and skilled staff. We strongly believe that inspection is a professional skill in its own right. We also believe that inspectors should have experience in the service they inspect.

#### 4.4 Proportionality and consistency

We urge the CQC to take care in defining what it means by 'proportionate' enforcement action. Proportionate regulation has rightly come under scrutiny in recent months and, in its lightness of touch, has been criticised for failing to uncover breaches of law and failures of good practice in a number of sectors. We think the same criticism of proportionality can be levelled at the care sector. Issues of cost and burdens placed on providers should not be the determinants of proportionality as applied to care home regulation. Risks to the safety and quality of life of vulnerable people should be the sole determinants.

We applaud CQC's commitment to consistency across sectors – private, public and voluntary. In putting this into practice, we urge the CQC to take particular account of the imbalance in terms of size (budgetary and user numbers) between NHS services and social care services, so ensuring that social care does not get overshadowed by the health sector.

**CQC's consultation Question 1 – do you agree with our proposed principles and overall approach to enforcement?**

Yes, in broad terms, the R&RA does agree with them subject to the caveats noted above.

### **5. Powers and manner of enforcement**

The R&RA welcomes the additional powers of enforcement which include issuing a warning note, issuing a penalty notice in lieu of prosecution and suspending registration, although we would like clarification of this latter power<sup>1</sup>.

We think that it is helpful for the CQC to have a wider range of enforcement tools at its disposal than at present, especially given the great number of very different establishments across sectors to be regulated. We think, by implication, that this increase in number and variety of enforcement tools should also mean greater inspectorial involvement at ground level and we also welcome this. The more opportunity that inspectors have for observing what goes on in practice, the better it will be for the welfare of service users.

### **CQC consultation question 2 – Do you agree with the circumstances and manner in which we intend to use each enforcement power?**

Yes, we agree in general but would stress the need to inform providers and users/and their representatives that action has been taken. At present it is very difficult to find out what, if any, regulatory or enforcement action has been taken. It should be part of the CQC's accountability to users, providers, local authorities and to Parliament to produce and publicise such information on a regular basis.

### **6. Working with other organisations**

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<sup>1</sup> If it means a "positive" way of temporarily stopping a service, eg because of ill-health or death of a partner, without the stigma of cancellation, that may be appropriate. Otherwise, the intentions and practicalities of such an approach are unclear and need to be spelled out. It could be intended for large providers where part ie one department is stopped from operating/working eg within the health service. However, its relevance to the care sector is not made clear. Suspending the registration of a home will inevitably mean that older and frailer residents are removed from it.

The R&RA welcomes the commitment to work closely with other organisations with enforcement powers. It is clear that duplication can lead to waste and misunderstanding. However, it is also important to recognise that there may be a danger of some bad cases falling through the net. The experience of certain child protection cases illustrates the difficulties facing organisations in collaborating effectively to ensure their procedures are water-tight. Given these risks, it will be essential that appropriate protocols are agreed and observed at all levels of the respective organisations involved. It must also involve regular organisation-wide training and updates to ensure that everyone knows what everyone else should be doing in any given situation. Rationalisation and streamlining of the responsibilities of the various organisations involved should be considered in due course.

**CQC consultation Question 3 – Does the way in which we propose to work with other organisations ensure a coordinated approach to enforcement?**

Given that the various organisations and their respective powers exist in the form they do, CQC's proposals for a coordinated approach is probably the only way to proceed. However, the approach should be monitored closely and the option for radical rationalisation should be considered periodically.

## **7. Complaints**

We note that the proposals do not directly address the issue of complaints and how the regulator should respond to them except tangentially in paragraph 21 on investigations and the criteria in Appendix A.

One of the R&RA's most serious concerns about the current regulatory system is that individuals (mostly relatives of care home residents) find they have no effective means of taking up concerns about the care of their loved ones. The current regulator turns them back to the care home's own complaints procedure (even though this may have been exhausted). If the regulator is to have no role as a complaints-handling body, it is essential that this is made clear and that an alternative system is established and widely and effectively publicised. The reasons for the separation of roles needs to be clearly explained

and justified if it is to take place. However, it is important to note that it makes little sense to relatives and residents, since dealing with complaints is seen by most people as intrinsic to the regulator's role. In our experience, based on evidence provided by callers to the R&RA advice line, many residents and their representatives are reluctant to use a home's own complaints system out of fear of reprisal or recrimination.

Paragraph 21 and the criteria in Appendix A indicate that the concerns of individuals may trigger consideration of 'the potential need for an investigation' (although the Appendix also notes that complaints that have not gone through established complaints procedures will not normally be considered). There is thus a likelihood that confusion will arise as to what CQC's precise responsibilities and duties are in respect of complaints.

The R&RA calls for clarification of the relationship between CQC, as the new regulator, and other bodies with a complaints-handling function.

The other issue to do with complaints is how the inspectors could use complaints analysis as an indicator of a home's performance. Currently, a home's complaints procedure is inspected for its accessibility and clarity but the complaints profile (the content of the complaints which are made) which could indicate the sort of issues cropping up and handled within the home is not analysed. The R&RA feels strongly that if this were done, the regulator could use the information in making its assessment about the quality of care. Allegations and complaints can provide cumulative and historic evidence of poor practice. Access to this evidence is essential for effective safeguarding as well as regulatory responsibilities.

A home's attitude towards and response to complaints is an excellent indicator of its approach to the people it serves. Staff training in this area is of great importance and can add enormously to residents' and relatives' peace of mind, if they feel they can raise issues directly or indirectly about areas they feel worried or concerned about. We have

evidence from our help line that many are fearful about complaining or even asking for basic information.

## **8. Conclusion**

We are delighted that the Commission sees itself as a champion for the interests of people who use services and in particular those where services are provided to those less able to speak for themselves.

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