Response to Care Quality Commission Consultation (CQC) – Our next phase in regulation 2

Written evidence from The Relatives & Residents Association

About the R&RA

I. The Relatives & Residents Association (R&RA) speaks up and speaks out on behalf of older people in care homes. It is the only national charity for older people providing a daily helpline which concentrates entirely on residential care for this age group.

II. R&RA was founded to campaign for a better quality of life for older people living in care homes. By using the unique perspectives of relatives and residents, we work in harness with others to help improve service and standards. We also try to influence policy and practice by reflecting the experience of our members and callers who use our daily Helpline and thus can make evidence based comments on the case we make, the research and training we carry out and the policies we advocate.

III. We provide support and information through our Helpline and enable older people and their relatives to make better informed decisions about looking for a home, explain their rights under guidance and regulations, and the benefits and standards they should expect.

IV. We also act as a listening ear to help support families and individuals at what is often a time of crisis and trauma for them, when it becomes apparent that a partner, parent or friend can no longer live at home. We also help them when there are difficulties, complaints and concerns about the standard of care and often act as brokers between the relative/concerned individual and the care home.

V. Our comments are based on our Helpline service and our activities, including training, research and feedback about the reality of daily life in care homes for older people. Inevitably, our Helpline service is sought by relatives experiencing problems within care homes. However, we acknowledge there are many homes where very good care is provided and that there many frontline staff who are doing their utmost to provide the best quality of life they can for older people living in residential and nursing homes.
CQC consultation: Our next phase in regulation 2

1.1 Clarifying how we define providers and improving the structure of registration

1a What are your views on our proposal that the register should include all those with accountability for care as well as those that directly deliver services?

- The question (1a) clearly differentiates between “all those with accountability for care” as well as those that “directly deliver services” and asks for views on this change. As we explain in more detail in the response below, we welcome this development. It reflects, to some extent, the original NCSC requirements for the accountable person as in the 2001 Regulations. However, throughout the consultation document, “Our next phase in regulation 2”, the term “provider” is sometimes used interchangeably, while meaning the day to day manager of the service. This is confusing and needs to be amended to ensure complete clarity throughout about the intentions of the regulator.

- We welcome the restructuring of the register to ensure that the public know who owns a service. Residents and their representatives wish to know if a service is part of a group of homes, whether a small chain or large corporation.

- The present system is currently confusing to prospective residents and their representatives, particularly when homes are moved between different companies owned by corporate bodies or larger provider groups. This can lead to homes being advertised on the company’s websites as awaiting inspection when in fact they have recently been inspected under a different company name but owned by that corporate provider. An example of this is Begbrook House (http://www.brighterkind.com/begbrook-house/) which shows it as awaiting inspection on the care home’s website. However, there is a current report published in January 2017 rating it as Requires Improvement. This is shown on the home’s archived page on CQC’s website, http://www.cqc.org.uk/location/1-124830268. Despite this page being “archived” in June 2016 presumably when it was transferred to a different company within Four Seasons Health Care. The explanation given by CQC was that the inspection process had been started before the transfer. However, given that it is a change of company name only with the directors, staff and leadership team remaining the same, this is very misleading.

- It is also extremely difficult for anyone to judge how a provider of multiple homes is performing overall when its homes are all registered under different names on the CQC’s website. This can be important for commissioners, prospective residents and their families to know, as a home that is rated Good may well have a far higher chance of slipping from this standard when a large proportion of homes in that group (whether owned by different internal companies or not) are failing to meet the required standard.

- In addition to this, we would like to see the report histories of homes retained, when homes, move from privately owned to company owned, but the named directors remain the same, or where companies might change names, but on the whole the directorship of the homes remains the same.

- There needs to be much greater transparency about provider performance, particularly given the lack of consumer power held by those using the care sector. This is something which R&RA have highlighted for many years and which was recently reinforced in CMA’s initial finding in its ‘Care Homes Market Study’.
1b What are your views on our proposed criteria for identifying organisations that have accountability for care (see page 12)?

- Although the general suggestions laid out in the consultation seem sensible, the devil is in the detail and it would seem to challenge the system of registering a nominated individual.
- However, it is essential that the process of introducing more transparency about care home ownership and management does not dilute the rigour of the inspection of individual care homes. It is impossible to see how effective the policies of a company are without establishing their effectiveness at ‘ground level’ and ensuring that the most vulnerable are able to achieve a good quality of life and receive the care they need.

2 We have suggested that our register show more detailed descriptions of services and the information we collect. What specific information about providers should be displayed on our register?

- Providing a more detailed description of a service will be helpful. It is important to demonstrate that any service which is registered to provide care and support should have the expertise to do so.
- It is not clear that all providers have been vetted appropriately to ensure that this is the case and that all providers have the needed background and qualifications to carry on the service.
- This is equally true of many managers. CQC reports rarely give details of managers’ experience and qualifications. This is also an area of concern in relation to the care workforce. A repeated complaint to our Helpline is that staff are not given sufficient training to support residents’ needs. A typical example of this is a lack of quality training on dementia to ensure care workers can engage effectively with residents.
- The public assumes a home or care service that is registered to provide dementia care has sufficient training and expertise to deliver this and yet we have examples of staff simply completing the Alzheimer’s Society “Dementia Friend” online programme as their only “training” on dementia, which is clearly neither sufficient nor appropriate. It is a continuing concern that such a large proportion of the social care workforce has no relevant qualifications.

1.2 Monitoring and inspecting new and complex providers

3a Do you agree with our proposals to monitor and inspect complex providers that deliver services across traditional hospital, primary care and adult social care sectors? [Strongly agree/ Agree/ Neither agree or disagree/ Disagree/ Strongly disagree]

3b Please explain the reasons for your response. Our next phase of regulation: Consultation 2

- We are not clear about how these proposals will operate in detail. They are, therefore, difficult to evaluate.

1.3 Provider-level assessment and rating
4a Do you agree that a provider-level assessment in all sectors will encourage improvement and accountability in the quality and safety of care?

[Strongly agree/ Agree/ Neither agree or disagree/ Disagree/ Strongly disagree]

- The evidence upon which this assertion is based is not clear. With the limited amount of information available, it is impossible to say whether or not it will encourage better quality of care. Since the removal of the former Regulation 26, poor providers have good reason to remain at arm’s length for the services for which they are responsible and may easily disclaim all knowledge of the detail of day-to-day service deficits.
- At present, users of social care may have limited ‘choice’ depending on how they are funded (The Care Act only requires a ‘choice’ of one care home to be provided), while in other areas the limited places available at the time of need, often after a crisis, hinders the ability of prospective residents to shape the market. It remains the case that less than 1% of all care homes providing care to older people are rated ‘Outstanding’ against over 20% of schools.
- R&RA believes that it will take more than simple encouragement for a market that does not face the same commercial pressures over their performance as other markets, where consumers are much more able to ‘vote with their feet’.
- That said, there are plenty of groups who can be found to be performing badly by CQC and it would be useful if direct action could be taken against the umbrella company rather than on one home at a time basis, as such performances indicates core problems with its senior management. A few recent examples of such providers are:
  - RochCare Ltd [http://www.cqc.org.uk/provider/1-101641674](http://www.cqc.org.uk/provider/1-101641674)
  - Amore Elderly Care Ltd [http://www.cqc.org.uk/provider/1-118164405](http://www.cqc.org.uk/provider/1-118164405)
  - Veecare Ltd [http://www.cqc.org.uk/provider/1-101653785](http://www.cqc.org.uk/provider/1-101653785)
- Overseeing the performance of a provider’s locations is not new and has been tried previously in various ways e.g. Provider Relationship Managers. However, the way in which this is monitored needs to be approached in such a way that CQC staff and others are able to be made aware of concerns, whilst also being able to report their own concerns to a central point, perhaps a special team, rather than specific staff dedicated to a provider. In short, it needs to be a two way and transparent process.
- Again we would strongly argue that this should not dilute the need for individual inspections of care homes and domiciliary care on which so many vulnerable individuals depend.

4b What factors should we consider when developing and testing an assessment at this level?

- We suggest that CQC should carry out detailed analyses of the reports of various individual services of those providers who struggle to reach the required standards, to understand how the failures of these homes are affected by internal group policies, procedures and pressures.

1.4 Encouraging improvements in the quality of care in a place
5a Do you think our proposals will help to encourage improvement in the quality of care across a local area?  
[Strongly agree/ Agree/ Neither agree or disagree/ Disagree/ Strongly disagree]

5b How could we regulate the quality of care services in a place more effectively?

- R&RA would be concerned if CQC were to seek a wider role in working with commissioners, providers and NHS to overcome the challenges to integrate health and social care, as it would distract from its core role of regulating services. This seems to suggest CQC becoming a conduit for information rather than a regulatory body.
- Given that there are already bodies (NHS England, local authorities, CCG’s) with these tasks, this seems a duplicate role. In addition, CQC has no legislative power to impose any of its recommendations.
- Although there are specific issues with social care recipients accessing good quality health care, such as providing sufficient support to enable residents to attend medical appointments, or have access to a dentist, optician or audiologist, these for the most part, could be addressed within CQC’s current regulatory responsibilities.
- However, please see answer to Q15a.

2.2 Adult social care services

11a Do you agree with our proposed approach to monitoring quality in adult social care services, including our proposal to develop and share the new provider information collection as a single shared view of quality?  
[Strongly agree/ Agree/ Neither agree or disagree/ Disagree/ Strongly disagree]

11b Please give reasons for your response.

- Although changes which provide better information on providers are to be welcomed in principle, these do not necessarily change what is happening at a location level and the impact of the adult care services on the people who use them. This should be the focus of any regulation and inspection regime. The reintroduction of Minimum Standards which users of services, families and professionals can actually understand easily, should be a first step in this process.
- The sharing of the information with other stakeholders e.g. local authorities, CCG, etc., if a two-way process, must lead to better intelligence. It is important, however, that the information collected also includes hard evidence of health and safety procedures, safeguarding, training and all aspects of running a service which can be measured and used as evidence if checked. As providers of any size should be collecting this information as part of their normal quality assurance processes, it should not cause any additional burden for providers.
- We would like to see this information also made available to prospective residents and relatives so that they are able to make more informed choices and are disappointed that, despite the coverage of this within CQC coproduction meetings, this was not included in the consultation.
Using statements from providers to demonstrate their culture and learning will only be valuable if there are systems in place to monitor these and are, in themselves, not valid unless tested from time to time. While other stakeholders with access to these may be able to see if these assertions are in evidence, they do not necessarily have the powers to take action if there are shortfalls.

However, we have little confidence that an increased reliance by the regulator on monitoring activity will lead to the identification of deteriorating care and the need for timely inspection. It is well established that care homes and those providing domiciliary care can be isolated from other services and produce limited data. CQC will be largely reliant on information supplied by the provider through the live provider information form and by the prompt notification of serious incidents. CQC’s own inspection reports show that a number of providers do not supply the required information, nor do they report incidents as required by the regulations.

12a Do you agree with our proposed approach to inspecting and rating adult social care services?

[Strongly agree/ Agree/ Neither agree or disagree/ Disagree/ Strongly disagree]

12b Please give reasons for your response.

- By its own admission, the CQC has found, since ratings were reintroduced, the quality of care in adult services to be variable and its ability to influence improvement has been mixed. Most of the systems used to currently inspect services have been in place for several years and the new proposals are essentially the same, although perhaps with some refinements, except for lengthening the gaps between inspections. The gathering of intelligence, obtaining information from providers and the rather complicated methodology for the actual inspections, has been tried and tested over a long period. If the outcomes e.g. improvement of quality, in adult social care are not showing the progress that should be expected after eight years of the CQC, there needs to be a fundamental change in approach.

- Whether or not the CQC monitoring systems are improved, this does not, of course, mean that all relevant information comes to the attention of the CQC. Unlike health care, it is much more difficult to monitor social care from afar as there are fewer sources of data. Where service users are at their most vulnerable (those with dementia, severe learning disabilities or living in their own homes), they will often be unable or unwilling to complain. Smaller care homes and many supported living environments are particularly unprotected due to few staff and visitors. There is, therefore, no substitute for seeing people regularly or, in the case of domiciliary care/supported living, making visits, surveying or telephoning.

- Thus, the proposal to increase the inspection interval for Good and Outstanding care homes to two and a half and three years respectively, is alarming and without justification. CQC’s own data shows that there can be major changes in the quality of care within a much shorter period and even where the home remains under the same ownership and management. The recent State of Adult Social Care Report revealed that 26% of homes previously rated as Good had deteriorated by the next inspection. In view of CQC’s own concerns about the ‘variable’ quality of adult social care, we had expected to see a much more active approach to regulation, rather
than a retrograde proposal for even fewer inspections and an increasing reliance on remote monitoring.

- While the focus of concern needs to be on homes that are Inadequate or Requires Improvement, as they may be unsafe or neglectful, a service which has not been inspected for long periods may well be providing an inadequate service. It may have only just have achieved the criteria for a Good rating with difficulty. By reducing the length of time in which a service shows improvement from six months, it potentially increases the fragility of the service, since the progress may not be maintained. This is particularly concerning if a Good service is not to be inspected for a two and a half years. Where there are breaches in several services owned by the same provider, this risk is further escalated.

- We are concerned about the proposed change to “focused” (i.e. limited) inspections to check on specific breaches of regulation. The improved service may then not be inspected again for two and a half years. In such cases, the rating may not be reliable in respect of the other four key questions, particularly if the service has been without a manager for some time. It may be that the home has acquired a manager and is now meeting its ‘well-led’ key question, but without a thorough inspection, it cannot be assumed that the home is meeting the other criteria. There is also evidence from CQC reports that even when serious breaches of care have been found, e.g. too few staff to get residents out of bed before lunchtime and other failures, the home can still get a Good rating and currently left uninspected for two years. This proposal is unlikely, therefore, to be helpful in achieving the legislative requirement to improve services.

- It is impossible to comment on whether reports should be shorter without knowing what is to be cut. A quick comparison between the older CSCI reports and the latest CQC reports showed that the former were both, on the whole, longer and more informative. At the moment, the current reports are too often unspecific in nature, tell readers too little about the quality of care and, too often, have internal contradictions. So a home might be rated as Good under the Well Led criterion, even though it might be failing to maintain fluid and nutritional records of its most vulnerable residents and rated as Requires Improvement in Effective and Safe. This anomaly may arise because the distinction between a good manager and good practice is not always clear. For example, individual leadership may have improved but staffing maybe inadequate.

- We would welcome a change to the reporting process, particularly a history of the inspected service and information about other services run by a provider. It would also be helpful to revert to signed reports. When a home, formerly described as Inadequate is now described as Good, it would be helpful to know if this is the considered view of the same or a different inspector.

- The current reports are in need of improvement to make them more useful to people wanting to find a service which suits their needs. Information on specific topics in a care home e.g. meals, activities, environment, health and medical needs, staff qualifications and turnover, which are important to people using the service, are not always easily accessible or present in reports.

- There also needs to be some indication that checks are made on health and safety e.g. fire safety, food safety, and are up-to-date and whether inspectors had particular specialties or whether an Expert by Experience had been present.
• We would welcome more examples of good and excellent practice being highlighted and promulgated. However, with a policy of fewer inspections of *Good* and *Outstanding* homes, and so few of the latter, inspectors will have fewer experiences of excellent care to share.

• No-one would disagree with more timely enforcement action being taken against providers where serious breaches have been found. The current systems appear to be slow and action is not always taken when it is evident that it should have been. There need to be shorter deadlines and faster follow up. There will be many poor homes where older people will live and die without ever experiencing an inspection. Where there are breaches affecting several services of a provider, we welcome the proposal for effective and timely provider-level conditions in such cases.

13a Do you agree with our proposed approach for gathering more information about the quality of care delivered to people in their own homes, including in certain circumstances announcing inspections and carrying out additional fieldwork? [Strongly agree/ Agree/ Neither agree or disagree/ Disagree/ Strongly disagree]

13b Please give reasons for your response.

• The recognition of the need to seek the views of a range of stakeholders, including people receiving care in their own homes and their relatives is welcomed. At R&RA we have advocated consistently for this approach to be adopted when inspecting care homes for older people, who are equally vulnerable and whose relatives often have a great deal of information about services.

• With regard to services for people in their own homes, any system which provides for more information to support a thorough inspection of an agency is welcome. However, this is probably best obtained when an inspection is due and has been announced to be held within a set period, although the dates should never be precise. For the information to be relevant, it would need to have been obtained reasonably near to an inspection period. The ability to extend the unannounced element, to check on information obtained e.g. through phone calls, late surveys (or whatever the methodology is used) is one that could add value to any inspection process and should always be available.

14a Do you agree with our proposed approach for services which have been repeatedly rated as requires improvement? [Strongly agree/ Agree/ Neither agree or disagree/ Disagree/ Strongly disagree]

14b Please give reasons for your response.

• A more robust approach to providers who fail to improve and are frequently in breach of the regulations is long overdue. Unless CQC uses its regulatory powers more effectively, the deterioration in the quality of care reported in the State of Adult Social Care report and the subject of regular television documentaries will continue.

• As indicated above, there are too many provider groups which fail to meet the basic regulatory requirements, putting those in their care continually at risk. Continuing failures of this kind need shorter time-scales for urgent enforcement action.
Reliance on the management review meeting for change may, therefore, prove dangerous to the welfare of those reliant on services.

- When inspections were carried out from local and regional offices in the past, the facility to bring providers to management review meetings was a valuable tool in improving services. Also, where necessary, providing a clear warning of the consequences of failing to meet enforcement deadlines.
- We welcome CQC engagement with the Department of Health to seek the ability to publish information about enforcement activity at a much earlier stage.

15a Do you agree with the proposal to share all information with providers? [Strongly agree/ Agree/ Neither agree or disagree/ Disagree/ Strongly disagree]

- Given that CQC is often reliant on whistle-blowers to identify any inconsistencies in the information provided by a nominated individual or to highlight potential failings of a director to be considered a ‘fit and proper person’, then the CQC must show a duty of care and confidentiality to them.
- To suggest that it should routinely send all information, anonymised or not, to the company is to potentially place whistle-blowers and others at risk and undermine CQC’s reputation and ability to be trusted with such information.
- The current system does need to be seriously reviewed, as we, like many members of the public, are confused as to how some individuals have been allowed to register as the nominated individual despite questionable histories.
- An example:
  - Prasur Investments Ltd, were allowed to register two care homes: one after a director of the company closed his GP practice after it was rated as “inadequate” in 2015 and was later suspended by the GMC while being investigated. Both care homes were rated as “inadequate” in their last inspection.
- It is unclear if there are any means for CQC to check or cross-reference the registration and movements of failed nominated individuals and registered managers who have been in charge of poor services.
- Given that these individuals are responsible for some of the most vulnerable in society then stronger and more reliable checks need to be incorporated into the system.

16 Do you agree with the proposed guidance for providers on interpreting what is meant by “serious mismanagement” and “serious misconduct”?

- Yes.

R&RA
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