

# Does greater regulation of care

After being accused of failing to act on warnings of inhumane and cruel treatment of patients at Winterbourne View six years ago, the Care Quality Commission (CQC) has been striving to demonstrate that it is an effective regulator ever since, placing additional burdens on care providers.

Some say the CQC has an impossible task in improving standards among providers already struggling to run profitable homes. In 2016 the Care Quality Commission's budget was cut, compelling it to make up the shortfall by transferring costs to care homes.

At a time when the perilous state of the sector was obvious, forcing care homes to shoulder another financial burden was likened to 'simply moving around the deficit deck-chairs on the Titanic'.

At around the same time, the CQC's powers to investigate and prosecute also expanded. Since 1 April 2015, enforcement responsibility for health and safety

**ANDREW KATZEN** and **CLAIRE WALLACE** of Hickman and Rose Solicitors question whether regulatory compliance is the same thing as good quality care.

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into force, there was a 200% increase in the number of prosecutions brought by the CQC from the two years preceding the Regulations.

While this might appear to suggest a renewed act of strength on the part of the CQC, it could also represent the CQC's failure to engage with providers quickly enough to stop problems before they escalate, therefore ultimately requiring more serious enforcement action to be taken.

John Burton, an experienced independent social care consultant, argues that CQC 'inspectors need to be closer and more in touch with the services they are inspecting,

as possible can allow them to get worse, leading to serious situations escalating.

The CQC sees its enforcement record in a different light. A CQC report published in 2017 states that 'providers think that our enforcement regime encourages services to meet fundamental standards', noting that 74% of those the CQC surveyed agreed that 'the prospect of enforcement action is an effective deterrent'. However, the question remains whether 'meeting the fundamental standards' as set by the CQC really translates into better front line care.

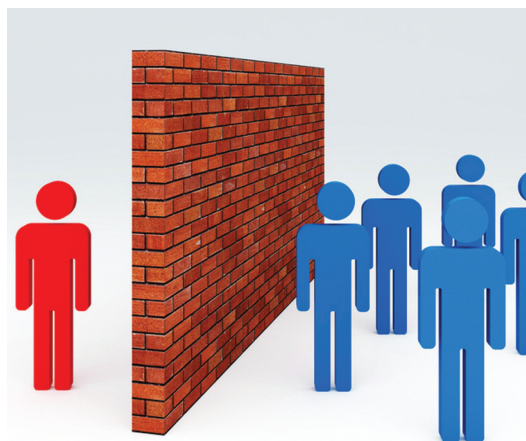
The cost of a CQC inspection, which now must be borne by a care provider, is high. Burton estimates that each service user in a four-bedded home rated outstanding will pay £627 for one inspection visit and report. A home of 91 service users also rated outstanding would see each service user pay £530 for the same.

## Precipitating closures

It must be remembered that the CQC set the standards by which they judge success. Having recognised that the sector was at tipping point in 2015, the CQC is likely to be aware that too rigorous an approach could crush the sector completely. The number of providers closing down is hitting record highs. Reportedly, 421 homes closed due to insolvency between 2010-May 2017.

Targeting large providers carries a special risk; if they disappear, so will far too many beds and, as demand begins to outstrip supply, these beds will be needed. In these circumstances, the CQC may feel it has little choice but to take a more lenient approach towards large providers.

Indeed, larger providers have already 'learned how to get good ratings', according to Burton. A low rating can see a corporate provider bring in turnaround teams to solve issues before the next inspection. How



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incidents in the health and social care sector has transferred from the Health and Safety Executive and local authorities to the CQC. On the same date, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 gave the CQC the power to prosecute new offences where people using a registered service are harmed or placed at risk of harm.

These new powers coincided with a rise in prosecutions. In the two years following the abovementioned Regulations coming

so that they can pick up problems before they become serious'. Currently, service users or relatives cannot directly contact CQC inspectors. Burton points out that the concerns that a relative or service user may want to speak to an inspector about are usually urgent, yet currently these concerns are routed to a national call centre where the staff have no direct involvement with the care home, causing inevitable delay in dealing with the issue.

Clearly, not dealing with problems as soon

# homes create better outcomes?

sustainable those improvements will then be, especially if caused by understaffing (identified by the CQC as a factor in poor care) is far from clear. If the standards being set by the CQC are superficial, so too will be the improvements that they generate.

In addition to having to pay for the actual inspection, a focus by the CQC on 'compliance on paper' also means that care homes may have to divert time and money away from front line care to ensure that the records show that everything is being done by the book.

## The real cost of compliance

Burton argues that this focus is wrong and 'no home should have to do anything extra for inspection. The inspector should simply be examining the practice'.

There is a risk that an emphasis on compliance on paper is being prioritised over long-term improvement and investigating allegations of abuse.

Winterbourne View illustrated that the

worst cases of abuse were about a care home's culture, not record keeping. While it is clearly important to ensure that proper records are kept, this should not be focused on as the primary determinant of compliance in lieu of proper inspection of the front line care being provided.

As the current bed shortage crisis is being increasingly met with informal care set ups, the CQC may find that these informal providers, including charitable initiatives, may not be able to comply with every element of its stringent paperwork requirements.

The CQC may find itself having to choose between full enforcement or allowing these providers to survive.

If care homes are being forced to disproportionately focus on compliance at the expense of front line care, the improvement in CQC's ratings of homes offers little reassurance about the actual state of care.

Although there has been a rise in the number of care homes that improved their

rating after being initially rated as inadequate, the inspection regime may be less effective than it appears.

In 2017, 23% of adult social care services rated 'good' saw their ratings drop following re-inspection, raising questions about whether compliance with CQC standards are sustainable and whether services' responses to inspections are superficial. In 2017, 38% of adult social care services rated 'requires improvement' remained at this rating upon re-inspection.

Clearly the role of a proper and efficient regulator is critical to ensuring the safety of service users within the care sector.

However, if the intention is to ensure better care on the front line, rather than simply improving what could be seen as self-serving statistics, then it may be that a localised CQC, with inspectors taking a more involved approach to homes within their area, is needed to support care providers in achieving high standards of care. **ct**

# Charity calls for action on abuse in sheltered housing

Action on Elder Abuse (AEA) has called attention to reports that tens of thousands of instances of abuse have taken place in sheltered housing over the last three years, as revealed by a BBC *File on Four* investigation.

Data collected via Freedom of Information requests sent to local authorities shows that over the period 2014/15 to 2016/17, more than 30,000 instances of abuse in sheltered housing complexes were recorded across the UK.

The figures showed a 30% increase over the period, despite many councils providing either incomplete data or none at all.

AEA director Stephen McCarthy said the findings were "deeply troubling" and should trigger an urgent

investigation into what is happening, and what is being done about it.

"Sheltered housing is not regulated in the same way as residential homes, and most complexes no longer have dedicated managers living on site," said Mr McCarthy.

"Yet there is an increasing number of frail and very vulnerable older people living there, part of a government strategy to keep people at home for longer – but without the same protections.

"The fact that there were 7,200 reports of neglect

says a lot about what is going wrong in this system, which seems to treat this type of accommodation as just 'housing' when it is so much more than that. It is 'sheltered' for a good reason."

Mr McCarthy said AEA had highlighted in a recent report that there was a 'postcode lottery' when it came to councils investigating allegations of abuse, with some launching an inquiry whenever abuse is reported and many others not.

"We have no doubt that these latest figures are the tip of an iceberg, and that many cases in sheltered housing go unreported," he said.

"How much longer must older people put up with this? This is the reality facing too many older people across the UK.

"It's about time the governments of the UK got serious and made elder abuse an aggravated offence similar to hate crimes based on race, religion, sexual orientation or disability."

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