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BRIEFING PAPER

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Social care: Recent changes to the CQC's regulation of adult residential care (care homes)

By Tim Jarrett

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Summary

There have been fundamental changes made to the Care Quality Commission's (CQC) inspection regime for adult residential care (i.e. care homes) in the past couple of years:

- in June 2013, the CQC issued a consultation ("A new start") which proposed a new approach to inspection across all sectors, which proposed risk-based inspections (rather than annual inspections), specialist inspectors and new quality ratings. These were seen as being very similar to an earlier inspection regime;
- the approach was confirmed in October 2013, subject to some changes that were raised during the consultation;
- following on from the new overarching framework, in April 2014 the CQC issued draft "Provider handbooks" for consultation, which provided detail on the inspection regime for specific sectors including residential care homes;
- the new "Provider handbook" for residential care came into effect from 9 October 2014;
- in April 2015, the CQC introduced a special measures regime for failing services;
- also in April 2015 new "fundamental standards" set out in regulations replaced the "essential standards", following the review of the Mid Staffordshire NHS Foundation Trust scandal – a new "Provider handbook" was issued for residential care settings;
- it was originally intended that all adult care services were be inspected under the new framework by March 2016, but on 22 October 2015 the CQC's chief executive announced further slippage in the timetable to the end of December 2016;
- looking ahead, the CQC is planning to launch a consultation on its new strategy in January 2016; as a first step, on 28 October 2015 it issued a discussion paper entitled Building on strong foundations in which the CQC is asking "for your views on how regulation can develop ahead of the next stage of consultation on our new strategy in January 2016";
- in April 2015, the CQC also became responsible for monitoring the "financial health" of certain care and support providers, especially larger providers.

Community Care magazine has commented that the adoption of the previous risk-based approach (in place of annual inspections of all providers in place since 2012) meant that the CQC's regulation of care homes was going "back to the future".

1. Consultation and adoption of a new framework (October 2013)

1.1 "Fresh Start" consultation

In June 2013, the CQC published *A new start – Consultation on changes to the way CQC regulates, inspects and monitors care* which included this helpful diagram explaining the then current approach, and the proposed new approach:[1]

From	To
• Focus on Yes/No 'compliance' • A low and unclear bar	• Professional, intelligence-based judgements • Ratings – clear reports that talk about safe, effective, caring, responsive and well-led care
• 28 regulations, 16 outcomes	• Five key questions
• CQC as part of the system with responsibility for improvement	• On the side of people who use services • Providers and commissioners clearly responsible for improvement
• Generalist inspectors	• Specialists, with teams of experts • Longer, thorough and people-focused inspections
• Corporate body and registered manager held to account for the quality of care	• Individuals at Board level also held to account for the quality of care

One key aspect of the proposed regime as noted above (which was also subsequently implemented) was the "five key questions", namely:

- Is it safe?
- Is it effective?
- Is it caring?
- Is it responsive to people's needs?
- Is it well-led?[2]

1.2 Response to the consultation

In October 2013, the CQC published responses to its consultation, and in a press release provided the following summary:

> **Clear public support for inspection changes**
>
> *The Care Quality Commission has received clear public support for key changes to the way it regulates and inspects care services.*
>
> The changes put it clearly on the side of people who use services, making sure they're treated with dignity and respect, whenever and wherever they receive care.

1 Care Quality Commission, *A new start – Consultation on changes to the way CQC regulates, inspects and monitors care*, June 2013, p6
2 As above, p8

> The commission engaged with 2,900 people during its three month consultation between June and August 2013. Most people – members of the public, people who use services, carers, CQC staff, organisations that provide care, care professionals, voluntary organisations, and others – agreed with CQC's proposals for:
>
> - Regulating different services in different ways, based on what has the most impact on improving the quality of people's care
> - The five key questions CQC will ask when it inspects
> - Specialist inspectors
> - Larger, expert inspection teams
> - More use of people with experience of care - experts by experience - in inspection teams
> - Intelligent monitoring of NHS acute hospitals, how it will organise 'indicators' to direct regulatory activity and the sources for the first set of 'indicators'
> - Rating a service and hospital and inspecting a core of services to award a hospital rating
> - The introduction of a statutory 'duty of candour' to make sure those who provide care services tell people about any problems that have affected the quality of care
>
> People asked for more clarification on some areas, and there was less than 50% support for some of the proposals – for example the need for both fundamentals of care and expected standards and inspection frequency of 3-5 years for NHS trusts rated outstanding. The Care Quality Commission is considering these areas further, and is committed to working with the public, providers, stakeholders and its staff to do this.
>
> CQC Chief Executive David Behan said: "These changes enable us to do that and to deliver our purpose of making sure health and social care services provide people with safe, effective, compassionate, high-quality care, and to encourage services to improve.
>
> "We are very pleased that our proposals have clear public support. We will take on board all the comments we've received, including where people have expressed concerns, as we develop these changes further, continuing to work with people to do so."
>
> The Care Quality Commission has already started to introduce some of these changes to the way it inspects NHS Hospitals because there was a clear need for urgent improvements in this area. Over the next year it will begin to introduce changes to the way it regulates all other care services.[3]

The CQC published *A fresh start for the regulation and inspection of adult social care* which explained the new framework.

1.3 Commentary on the changes

As *Community Care* commented in October 2013, the changes were in fact reinstating a previous model of inspection of social care:

> A return to specialist inspectors of social care is something providers have been crying out for since the birth of the CQC's generic model in 2009-10. Sutcliffe and her fellow chief inspectors – Mike Richards (hospitals) and Steve Field (primary care) – will be dividing up the regulator's staff between them. Those with a background in social care practice, provision or regulation will be welcome on Sutcliffe's team, she says.
>
> […]

[3] Care Quality Commission, *Clear public support for inspection changes*, press release, 17 October 2015

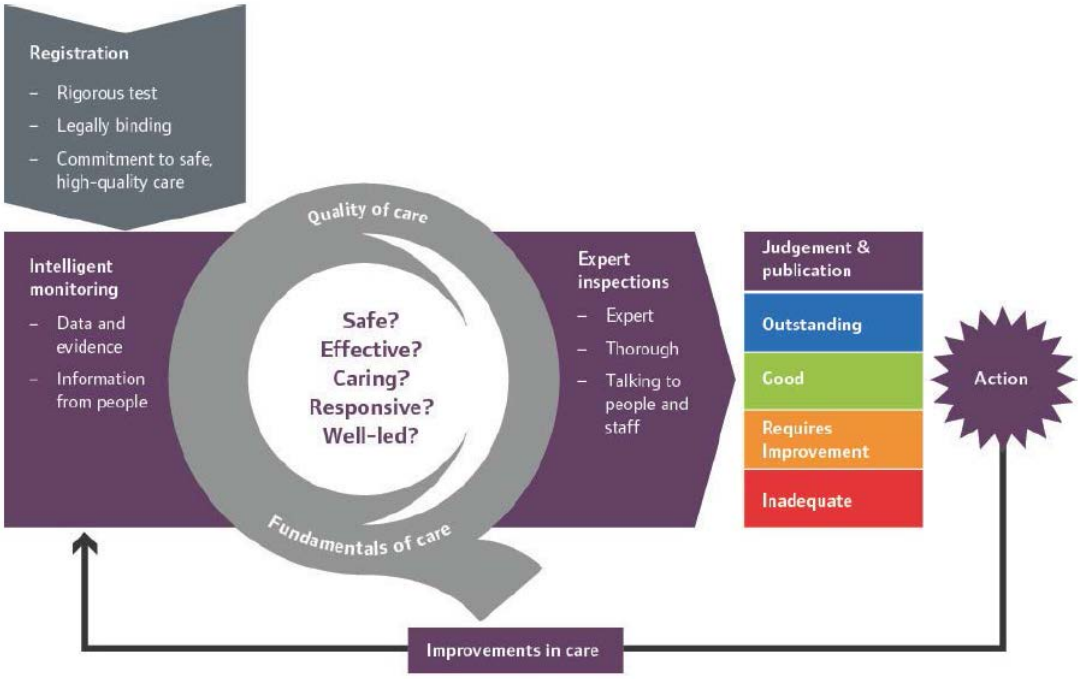
Another popular comeback for social care providers will be quality ratings of the work that they do, which were last awarded in 2010. Sutcliffe will now start working with the sector on drawing up the structure for these ratings.[4]

4 "'If we need to get tough with providers we will': CQC social care chief sets out her stall", Community Care, 14 October 2013

2. New "Provider Handbook" for adult residential care (October 2014)

2.1 Publication of draft handbooks

In April 2014, the CQC published draft "Provider Handbooks" across the areas that it regulated based on the new approach to inspection – including the *Provider Handbook for residential adult social care services* – for consultation. It noted that the Handbook was based on the CQC's new operating model, developed from the new framework:[5]



In terms of the "key principles", the CQC explained that:

> To direct the focus of their inspections, it is our intention that our inspection teams will use a standard set of key lines of enquiry (KLOEs) that directly relate to the five key questions listed above.
>
> Within the standard set of KLOEs we have identified a number of mandatory KLOES which inspectors must use on every inspection. Having a set of mandatory KLOEs ensures consistency in what we look at under each of the five key questions and ensures we focus on those areas that matter most. This is vital for reaching a credible rating that will allow comparison between services.
>
> In addition to the mandatory KLOEs, inspectors will select a minimum of four additional key lines of enquiry overall. They will make this selection by using their knowledge of the service, the information available to them before the inspection and their professional judgement. If necessary they will select more than four additional KLOEs to help them make a robust judgement. In making their selection inspectors will choose the KLOEs that support them to identify good practice as well as review identified risk areas and poor practice.[6]

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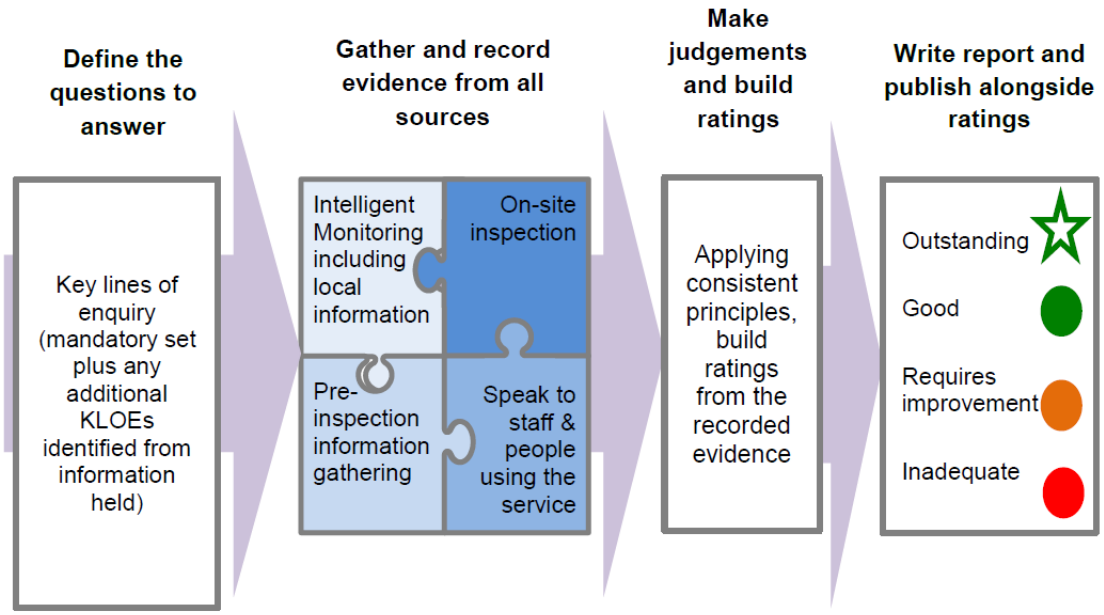
5 Care Quality Commission, *Provider handbook – Consultation: Residential adult social care services*, April 2014, p6

6 As above, pp8–9

A diagram showing the inspection process was also published:[7]



In terms of the frequency of inspections, the consultation document said:

> From October 2014, the frequency of planned inspections will be linked to ratings as follows:
>
> - Inadequate within 6 months of the last inspection
> - Requires improvement within 12 months of the last inspection
> - Good within18 months of the last inspection
> - Outstanding within 24 months of the last inspection
>
> In addition to these inspections there will be inspections that:
>
> - Respond to risk.
> - Are carried out to follow up on any action we have told the provider to take.
>
> We will also each year inspect 10% of randomly selected good and outstanding rated services (that are not due an inspection in accordance with the timescales above).[8]

2.2 Response to the consultation

In October 2014, the CQC published the response to the consultation, and noted that:

> Overall, the respondents:
>
> - Stressed the importance of CQC ensuring that its assessment framework supports consistent regulatory judgements and, to underpin this, the need for an expert, well-trained inspection workforce.
> - Queried whether our proposed ratings principles and the level at which we would set outstanding care were tough enough.
> - Made various suggestions for changes to the key lines of inquiry and ratings characteristics, to ensure greater clarity and focus in reaching our judgements.[9]

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7 As above, p9
8 As above, pp24–25
9 Care Quality Commission, *Response to the consultation on our provider handbooks – Residential adult social care services, community adult social care services and adult social care hospice services*, October 2014, p4

The CQC said that "In response to what we heard during the consultation and what we learned during the testing of our new approach, we have made improvements throughout the handbooks to clarify and confirm the inspection process". This included:

- "we have clarified the circumstances under which a focused inspection may take place";
- "we have reduced the number of key lines of enquiry (KLOEs) from 23 to 21, and increased the number of mandatory KLOES from 13 to 16, ensuring a wider coverage and more consistent base for comprehensive inspections and ratings judgements";
- "rationalised some of the KLOEs and prompts to reduce areas of duplication that were in the framework we consulted on";
- "we have reviewed the language of the KLOEs and prompts to make sure that we are using terms that reflect current practice and that we do not use jargon";
- "in response to the consultation and the evaluation of our pilots we have developed a training programme that all inspectors will attend before they begin inspections from 1 October".[10]

The new Provider Handbook underpinning the revised inspection regime for residential care was launched on 9 October 2014.[11]

2.3 Commentary on the changes

Ahead of the formal announcement, *Community Care* published an article based on an interview with the CQC's Chief Inspector of Adult Social Care which (again) noted the similarities between the incoming inspection regime and the earlier "risk based approach":

> **CQC chief unapologetic over dropping annual inspections to focus on poorest providers**
>
> Next month, the Care Quality Commission will go back to the future by ending annual inspections of all adult care services and reintroducing a "risk-based approach" that will see the best-rated services inspected half as frequently.
>
> But whereas annual inspections were introduced two years ago to address concerns that the previous risk-based approach was leading to poor care being missed, CQC chief inspector of adult social care Andrea Sutcliffe makes "no apologies" for reintroducing this approach.
>
> "We need to be focusing our effort on encouraging those services that are rated 'inadequate' and 'requiring improvement' [under the new four-tier rating system] to improve and absolutely making sure that that is happening."
>
> […]
>
> Sutcliffe defends the CQC's decision to reduce the frequency of inspections for services rated outstanding – who will be reinspected within two years – and those assessed as good, who will be seen within 18 months.
>
> This resembles the system used prior to 2012, when services underwent an inspection at least once every two years with poorer performers being inspected more frequently.
>
> But Sutcliffe says there will be "no apologies" for focusing inspectors' effort on the services where people are at the greatest risk, because, she says, the CQC will be better placed to pick up on signs of deterioration in good or outstanding services.

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10 As above, pp9-10

11 Care Quality Commission, *Making the 'Mum Test' real: CQC sets out its new model for inspecting adult social care*, press release, 9 October 2014

"I'm confident about this decision because we will be using the information that comes in about services in a much more intelligent way," she says. "If we start getting information about unexpected notifications of death, concerns about safeguarding or whistleblowing reports, we will be going back and we have retained the capacity to do that."

[…]

Sutcliffe says two periods of testing of the new model – with approximately 250 providers inspected between April and June, and a further 700 in July – has shown that "it is a much better way to inspect services".

[…]

Appointing a series of specialist inspectors was also top of Sutcliffe's to-do-list and this is well on the way to becoming a reality. An adult social care directorate was established on 1 April and the senior leadership team across inspection and regulation is now in post, which includes four deputy chief inspectors and 15 heads of service.

"We have enough inspectors on board to start implementing the new arrangements and that is what we will be doing, but we are still recruiting for a full establishment," she says.

[…]

Thoroughly "embedding and developing" the new approach will also be top of the agenda and Sutcliffe's priority will be to ensure inspectors are supported through training and development to "really understand what good looks like" in individual services and for particular groups of people who use those services.

She adds: "We've got the framework, we've got the assessment but how do we absolutely make sure that providers are capable and confident of considering the different needs of people in those services?"

So, now more confident in an approach that makes better use of information and puts the voice of the service user at the heart of its work, Sutcliffe says she's "ready to roll". But when asked if she's any more confident one-year-on that problems of poor care are being addressed, the chief inspector takes a long pause. "I think I would have to say yes," she says. "But I would say it with a cautionary note."

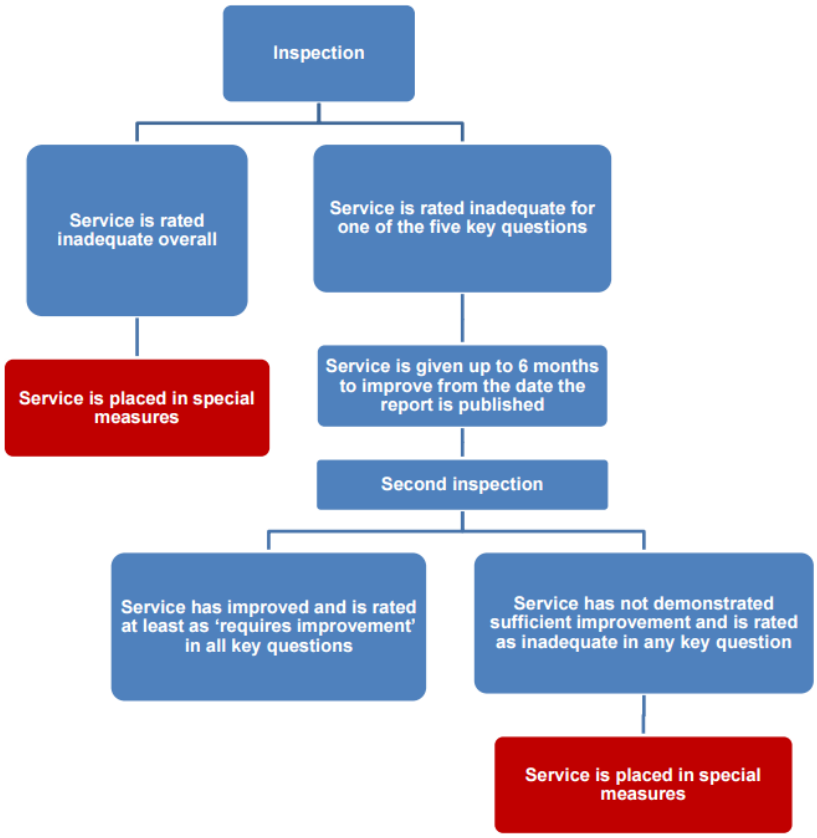
"There has been a greater focus on poor care and a greater willingness to tackle some of those problems. But we haven't cracked it yet, there is still a lot more to do."[12]

[12] "CQC chief unapologetic over dropping annual inspections to focus on poorest providers", *Community Care*, 23 September 2014

3. Introduction of special measures for failing services (April 2015)

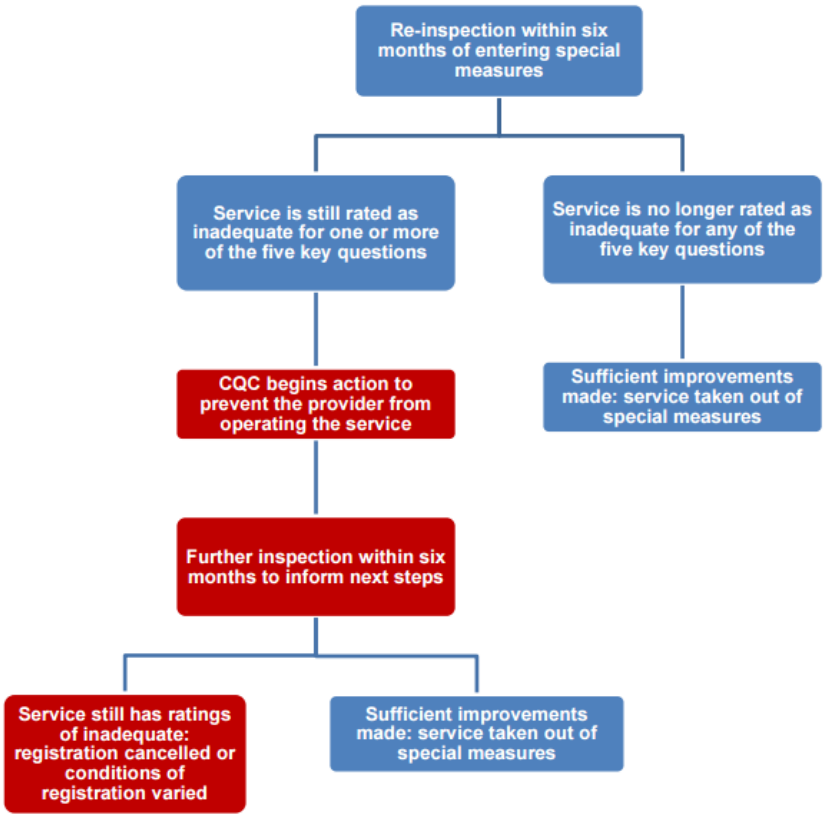
In December 2014, the CQC launched a consultation on its special measures approach, so that where a provider is rated "inadequate" it could "provide a framework within which we use our enforcement powers in response to inadequate care and work with, or signpost to, other organisations in the system to ensure improvements are made", and "provide a clear timeframe within which providers must improve the quality of care they provide or we will seek to cancel their registration".[13]

Following the publication of the responses to the consultation, the CQC introduced the special measures policy on 1 April 2015 (although it was not applied retrospectively). The CQC has published *Guide to special measures – Adult social care* which explains how a provider could enter special measures:[14]



In terms of routes out of special measures, the following flowchart by the CQC provides a helpful summary:[15]

13 Care Quality Commission, *CQC's proposals for special measures for adult social care*, December 2014
14 Care Quality Commission, *Guide to special measures – Adult social care*, p2
15 As above, p6



The CQC explained how the special measures policy worked with its existing enforcement regime:

> We will use special measures alongside our other powers. Enforcement action allows us to protect people who use regulated services from harm or the risk of harm and to hold providers and individuals to account for failures in how they provide services.
>
> It is very likely we will also be taking enforcement action against providers that we put in special measures. This could include Warning Notices and imposing conditions of registration, and this would require monitoring during the special measures period. In general, enforcement action will address individual issues which need to be addressed quickly to ensure that the service meets the fundamental standards. The aim of placing the service in special measures is that they make improvements that can be sustained in the longer term as well as addressing any short term failures.[16]

[16] As above, p4

4. Introduction of the inspection regime's "Fundamental Standards" and revised Provider Handbook (April 2015)

Since April 2015, care homes have been assessed against "Fundamental Standards". The Care Quality Commission (CQC) originally published generic "Essential Standards" that applied across the health and social care sector.[17]

4.1 Consideration of the underpinning legislation by Parliament

The Fundamental Standards have a legislative basis (the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*) – during the debate on the regulations in Grand Committee, the then Health Minister, Norman Lamb, noted that the Francis review into the Mid Staffordshire NHS Foundation Trust scandal had recommended the introduction of:

> "Fundamental standards…to make it clear what is the minimum required to protect patients from avoidable harm, and what is treatment and care which falls below a tolerable standard. Failure to comply with such fundamental safety and quality standards should not be tolerated, whether in individual cases or within an organisation…Breach of these standards should result in regulatory consequences for an organisation".
>
> The draft regulations implement that recommendation. They set out new fundamental standards of care that all registered providers of health and adult social care must meet, reflecting the views that we have received from several consultations during the past 18 months. They improve the current registration requirements by being clearer and fewer in number, and they introduce two new requirements: a duty of candour, which is incredibly important, and a fitness test for directors of NHS bodies. Importantly, they bolster the power of the regulator to take enforcement action, including bringing prosecutions against providers of poor care, providing additional protections for people from unsafe care.
>
> Through those changes, we are putting in place a system whereby patients, staff, families and carers know the basic standards that must always be met—the fundamental standards. Those are that patients must receive safe care that meets their needs and reflects their preferences; patients must be treated with dignity and respect; they must be properly fed; their views must be listened to; they must be protected from abuse of any kind; the environment in which they are cared for must be clean, safe and secure; and care organisations must be well run, properly staffed and open and transparent with people about their treatment. Those are indeed fundamental standards, ones that we all have a right to expect whenever and wherever we need care. Every organisation providing care must meet them.[18]

4.2 Adoption of Fundamental Standards by the CQC

Following a consultation and after the passage of the draft regulations through Parliament, on 11 November 2014, the CQC announced that:

> The government has today published the fundamental standards regulations. They include two regulations – the duty of candour and the fit and proper person requirement for directors – which will come into force on 27 November for NHS

[17] Laing and Buisson, *Care of Older People – UK Market Report 2013/14*,, p88
[18] DL Cttee 16 October 2014 c4

trusts, Foundation Trusts and some special health authorities that provide care and treatment to people that is regulated by CQC.

The remaining fundamental standards will come into force from April 2015. The duty of candour and the fit and proper requirement for directors will also be extended to all other providers from April via additional regulations, still subject to Parliament.

The duty of candour and the fit and proper requirement regulations will help to ensure that providers have robust systems in place to be open and honest when things go wrong and to hold directors to account when care fails people.

The final debate to agree all of the fundamental standards regulations was held in the House of Lords last week. The published regulations replace the previous 16 essential standards.

We will shortly be issuing guidance to NHS providers on how they can meet the duty of candour and the fit and proper person requirement regulations.

The fundamental standards are:

- care and treatment must be appropriate and reflect service users' needs and preferences.
- service users must be treated with dignity and respect.
- care and treatment must only be provided with consent.
- care and treatment must be provided in a safe way.
- service users must be protected from abuse and improper treatment.
- service users' nutritional and hydration needs must be met.
- all premises and equipment used must be clean, secure, suitable and used properly.
- complaints must be appropriately investigated and appropriate action taken in response.
- systems and processes must be established to ensure compliance with the fundamental standards.
- sufficient numbers of suitably qualified, competent, skilled and experienced staff must be deployed.
- persons employed must be of good character, have the necessary qualifications, skills and experience, and be able to perform the work for which they are employed (fit and proper persons requirement).
- registered persons must be open and transparent with service users about their care and treatment (the duty of candour).[19]

4.3 Updated "Provider Handbooks" and guidance

In March 2015, the CQC published the new *Guidance for providers on meeting the regulations*, which set out how all providers, including care homes, could meet the new fundamental standards.

Following the introduction of Fundamental Standards, the CQC also published the following specifically for the care home sector (both of which are the current version):

- *CQC's inspections: Residential adult social care services – What to expect when we inspect*, March 2015
- *How CQC regulates: Residential adult social care services – Provider Handbook*, March 2015

[19] Care Quality Commission, *Publishing of the new fundamental standards*, press release, 11 November 2014

The new guidance came into effect on 1 April 2015.

5. Implementation of the new inspection regime (ongoing)

In the original version of the CQC's *A fresh start for the regulation and inspection of adult social care* published in 2013, in the "current proposed timeline for changes for the adult social care sector" it was stated that by March 2016 every adult social care service would be rated under the new inspection regime.[20]

However, at its public board meeting on 22 October 2015 the CQC confirmed that:

> plans to inspect every adult social care, general practice and out of hours primary care service in England by the end of September 2016 [note the slippage from the original March 2016 timetable] with its new inspection regime are behind schedule and further planning is needed to confirm whether all independent health services can be inspected by the end of December 2016.
>
> David Behan [CQC's chief executive] explained that although productivity is increasing, the time it has taken to recruit the required numbers of inspectors and to ensure they are fully trained means that there is a possibility that some targets may not be achieved.
>
> Although there are still ten months left to recover the shortfall, CQC has raised this possible risk to its ability to deliver on its commitments early on, in the interests of openness and transparency and to reassure the public that it will never compromise on the quality of its recruitment, its inspections or its judgements.
>
> David Behan said: "The inspections we've carried out so far are delivering a deeper insight into the quality and safety of services than ever before.
>
> "Already we are seeing services improve the quality and safety of their care, which is reflected in their performance ratings and in many coming out of special measures [as we announced that Burton Hospitals NHS Foundation Trust did this week]. This is positive news for people who receive these services and for providers.
>
> "Our productivity is increasing as we recruit more inspectors and we are highlighting this possible risk to delivery now and planning in an open and transparent way as to how we can address this.[21]

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20 Care Quality Commission, *A fresh start for the regulation and inspection of adult social care*, p27
21 Care Quality Commission, *Update on CQC's inspection programme*, news story, 23 October 2015

6. Looking ahead – development of the CQC's new strategy

The CQC is planning to launch a consultation on its new strategy in January 2016; as a first step, on 28 October 2015 it issued a discussion paper entitled *Building on strong foundations* in which the CQC is asking "for your views on how regulation can develop ahead of the next stage of consultation on our new strategy in January 2016". It added:

> Two years ago, we set out our strategy, *A Fresh Start*,[22] which made fundamental changes to the way we regulate. These changes have resulted in a more robust way of inspecting and rating providers, which is providing the most comprehensive insight ever into the quality of health and social care and increased transparency for people who use services.
>
> With our strategy for the next five years (2016-21), we will develop the way we regulate health and adult social care in England based on what we have learned from inspections and as new 'models of care' develop, which seek to dissolve the traditional boundaries between primary, community, hospital and social care so that they are structured around people's needs and experiences.[23]

[22] See: https://www.cqc.org.uk/sites/default/files/documents/20131013_cqc_afreshstart_2013_final.pdf
[23] Care Quality Commission, *Give us your views on the future of quality regulation*, news story, 28 October 2015

7. Monitoring of the financial health of larger providers (April 2015)

From April 2015, the CQC has been responsible for monitoring the "financial health" of certain care and support providers, but not all providers are monitored by the CQC's regime; as the Department of Health explained:

> The Care and Support (Market Oversight Criteria) Regulations 2014 set out the entry criteria for a provider to fall within the regime. These are intended to be providers which, because of their size, geographic concentration or other factors, would be difficult for one or more local authorities to replace, and therefore where national oversight is required. CQC will determine which providers satisfy the criteria using data available to it. It will notify the providers which meet the entry criteria.[24]

For those companies that are under the CQC's regime:

> CQC must then assess the financial sustainability of the provider's business. If it assesses there is a significant risk to the financial sustainability of the provider's business, there are certain actions CQC may take with that provider (none of which involve local authorities).
>
> Where CQC is satisfied that a provider in the regime is likely to become unable to continue with their activity because of business failure, it is required to tell the local authorities which it thinks will be required to carry out the temporary duty, so that they can prepare for the local consequences of the business failure.[25]

[24] Department of Health, *Care and Support Statutory Guidance*, October 2014, p70, para 5.17
[25] As above, p70, paras 5.18–5.19

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