

CQC statement on the new approach to disclosure of inspection notes

CQC have conducted a review of our guidance on how we provide information about our inspections to providers and we have clarified where any ambiguity exists around what we are now able to provide. The key points are:

- CQC will no longer routinely disclose redacted copies of inspection notes when requested by providers
- CQC will encourage providers to ask targeted questions, which will likely be easy to answer, and this could include provision of some key parts of the inspection notes
- This will in turn allow CQC to be transparent about the basis of our findings and allow providers to submit more effective challenges should they disagree with those findings
- The new approach promotes a more effective use of public resources which are funded through the fees CQC receives

CQC remains committed to being open and transparent with the providers and services that we regulate and we will always look to provide explanation and information to providers in relation to our regulatory findings and judgements, to the extent that it is reasonable and proportionate to do so.

Good communication and feedback at the end of the inspection is an important part of the process. Inspectors are expected to give written feedback and if, on consideration of the evidence, there is any significant change from that feedback, a further conversation should take place between the inspector and the manager/provider which will be recorded in CRM.

In order to ensure that we continue to be fair to all providers, where specific issues are raised by providers, we will endeavour to respond to those concerns by providing information and/or explanation. CQC cannot, however, disclose information where we consider that doing so would be a breach of confidence, or would prejudice our own regulatory functions.

Due to the burden caused by responding to multiple requests from providers to disclose full sets of inspection notes in a redacted form, CQC is obliged to adopt a more proportionate approach. We would therefore encourage providers to ask inspectors to provide them with specific information where there are judgements or issues that they do not understand or consider to be flawed, so that we can engage in a positive and useful discussion about such matters. We consider that such an approach will ensure fairness in our regulatory processes, will protect those who share information with CQC, and will reduce the burden on our CQC's finite resources. Below are a number of questions posed to CQC regarding the new guidance:

- 1. The New Guidance says it not a default position to refuse requests, but the explanation given to the group seemed to contradict this?**

The effect of the Guidance was to move away from routinely releasing inspection notes. This was not the same as refusing to provide any information – Point 2 of the New Guidance explains that CQC should not default to a blanket approach, but asks that providers make more targeted requests for information and inspectors should consider how they can best demonstrate transparency in relation to these targeted requests.

2. We feel inspection notes are important in understanding why reports sometimes do not reflect the initial feedback.

Good communication and feedback at the end of the inspection is an important part of the process. Inspectors should encourage providers and managers to listen and ask questions. Inspectors are expected to give written feedback and if, on consideration of the evidence, there is any significant change from that feedback, a further conversation should take place between the inspector and the manager/provider which will be recorded in CRM.

We will remind our inspectors of this process and will be reiterating the importance of good communication with providers in our learning and development programme for inspectors which will start in April 2017. We will also review how well the feedback forms have been working and whether we need to revise our policy.

3. We advise inspection notes are requested so that providers understand how judgements were reached.

Original inspection notes do not normally contain judgements but refer to the evidence the inspector saw. This evidence, along with the resulting judgements about not meeting the fundamental standards or the ratings will be set out in the draft inspection report. This allows the provider to ask the inspector any questions, or request further information in the targeted way referred to in the new guidance to ensure CQC is transparent about how it has reached the conclusions in the report. If a provider disagrees with the evidence in a draft report, they can also use the factual accuracy process to present evidence about why the conclusions reached in the report are incorrect.

4. It feels as if this move is CQC being less transparent?

The changes made are not intended to reduce transparency, but focus conversations between providers and inspectors on the points where there is need for further clarity on CQC's judgements or the basis for reaching those judgements.

5. Why do CQC need to redact interview notes and other evidence relating to people who use or work for the service?

CQC has a legal obligation to protect confidential personal information and personal data and therefore is limited in terms of how transparent it can be.

This requirement comes from a combination of section 76 of the Health and Social Care Act 2008, the Data Protection Act 1998 and article 8 of the Human Rights Act 1998. CQC also must have regard for the common law duty of confidence.

The assurance that people who use services, their families and staff members can share information with CQC inspectors in confidence is key to CQC being able to inspect effectively. Thousands of people have been protected from unsafe care because of the actions of whistle-blowers and others, and CQC must maintain their confidence. To do otherwise would prejudice our ability to inspect effectively.

In addition, an anonymous quote should never be the only reason for a regulatory judgement. Inspectors might use such evidence as a reason to investigate further and corroborate the information received in other ways.

6. Can CQC change the way it records evidence so that there is an open and a closed record, so redaction is less necessary?

A great deal of work has been done to provide a robust way for CQC inspectors to plan, conduct and report on inspections. This approach pulls all the relevant evidence together to ensure nothing is missed in reaching our final judgements. Also, if this approach was taken, it is likely that the target of most requests for notes would fall within the “closed” category in any event, so this would not provide a benefit beyond the current approach.

7. How can CQC claim that the redaction is overly burdensome a task?

For CQC to adequately protect the information it receives and collates, we must ensure that we are not disclosing information which is legally prohibited or that would prejudice our regulatory process or the rights of a third party.

CQC has to have regard for:

- section 76 of the Health and Social Care Act 2008
- the Data Protection Act 1998
- article 8 of the Human Rights Act 1998
- the common law duty of confidentiality

Therefore we must review the notes, page by page, to ensure we do not disclose information that we need to protect. It does take up to 20 minutes per page of notes to perform this task effectively, which includes seeking advice from the Information Access Team where necessary. Therefore 50 pages of notes could take almost 17 working hours to redact correctly.

8. But those legal restrictions do not apply to disclosures between CQC and providers?

Section 79(3)(f) does state that CQC “*may*” disclose information to facilitate “the exercise of any of the Commission's functions”. However, this is a voluntary requirement and is not something we are obliged to comply with.

Where CQC is of the view that the above legal restrictions take precedent and those individuals would not have had a reasonable expectation of disclosure of the information they share with us.

9. Would it not follow that if CQC cannot disclose information to a provider, that it should be omitted from any published inspection report?

CQC Inspectors are required to ensure that any statements made in our inspection reports are corroborated with evidence, particularly if based on something an individual has said. Therefore if someone claims there are not enough staff, an Inspector would need to substantiate that by looking at staff rota's, for example. Any statements which cannot be corroborated should not be used in the inspection report.