Challenging the Impact of CQC and Ofsted inspections

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The tragic death of Ruth Perry, the head teacher that took her own life following an Ofsted inspection downgrading the service she led from Outstanding to Inadequate, has focused attention on the mental health impact inspections can have.

Authors of an opinion piece in the British Medical Journal on 21 May 2023 say they are aware of at least eight other such suicides. The BMJ article references the Office for National Statistics (ONS) data used that looked at suicides by profession between 2011 and 2015. It found primary and nursery school teachers were at 42% greater risk of suicide than the national average but found teaching as a whole had a lower-than-average risk.

On review, the same ONS data shows male and female carers had a risk of suicide that was almost twice the national average. For females, the risk of suicide among health professionals was 24% higher than the national average, a finding largely explained by the higher risk of suicide among nurses, which was 23% above the national average. The same data indicated when looking at other specific occupations with at least 50 suicides, that the risk of suicide among carers and home carers was 70% higher than the national average.

This data evidences a distressing pattern. It is no secret that care providers are faced with the impact that working tirelessly through the pandemic has had on the mental health of staff, the consequences of the cost of living crisis coupled with spiralling costs of operating the services, the impact of recruitment challenges and limited fee increases.

The impact of regulators and their decision-making extends wide across all factions of the care and education sector. The recent trend in Inadequate ratings for independent apprenticeship training providers has also had its fair share of negative impacts, not only on providers but staff and learners alike. The consequence of an Inadequate rating has far-reaching consequences for lives, including the closure of businesses, learners losing continuity of provision, disruption in the marketplace, financial loss to directors and inevitably, an immense impact on mental health.

There are many similarities between the experiences of those inspected by Ofsted and those inspected by CQC. For example, neither schools nor care providers get to see all the information on which inspectors base their judgements, making it more difficult but not impossible to challenge the findings. There are processes in place to check factual accuracy and raise complaints; however, judgements are more subjective and are subject to

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what could be referred to as a “professional judgement”. Those working in care, like those working in education, often take the judgements very personally because they care so much for those they serve, not to mention the resources, time and effort they have personally poured into the business.

The call for these kinds of deaths to be investigated by the Health and Safety Executive is understandable. It would be reassuring for the care sector to hear that (as part of its new approach to regulation, currently still in development) CQC is taking the opportunity to consider its own duty of care to the mental health of care leaders and staff when inspecting and passing judgements on services.

In an inquest situation, care providers often consider what actions they could take to prevent future deaths. Should, or indeed *could*, this scope be widened to the regulators?

Perhaps, as CQC is already on a path to reinvention, it would be useful for CQC to give some consideration to the impact an inspection or report or judgement can have on the mental health of the individuals involved. Will CQC be mindful and show care and compassion towards those working in the sector? Such reflection could equally apply across all types of services CQC regulates and, as such, would support a single assessment framework approach.

Last week saw the end of mental health awareness week, with a focus on anxiety. Even the most confident providers may experience some anxiety waiting for an inspection to occur, during an inspection, at the report stage and after - be that by the CQC or Ofsted. The regulators must surely recognise that positive change, improvement, innovation and better outcomes will more likely be achieved when the organisation leaders feel empowered and that the regulators have considered both context and nuance in their inspections in a collaborative way.

The CQC’s corporate performance report notes, as of February 2023, that 41% of its own staff absence was in relation to stress and/or mental health reasons, an increase in the previous quarter.

In September 2022, CQC lost an employment tribunal claim brought by Mr Shyam Kumar, a consultant orthopaedic surgeon who worked for CQC as a Specialist Professional Advisor. The employment tribunal was highly critical of CQC, concluding that CQC's decisions were materially influenced by the concerns Mr Kumar raised. CQC has recognised that at the same time, colleagues raised concerns about how they listen and respond to concerns. As a result, CQC commissioned two reviews, the *"Listening, Learning, Responding to Concerns Reviews"* (“LLR”) highlighted failings in CQC’s performance.

At the CQC Board meeting on 24 May 2023, a Board paper set out its reflections on the recommendations made in the LLR and explains how CQC will implement its responses to the recommendations. CQC explains, "*At CQC our role is to secure the provision of safe, effective, compassionate, high-quality care. We do not take that responsibility lightly. What we do matters. It matters because we can affect the quality of care received by people in every part of England. It matters because we impact the daily experience of those working in the health and social care sectors. It matters because it motivates colleagues to do their best in the service of*

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others." It is reassuring to note that CQC recognises the impact it has on the daily experience of those working in health and social care. How CQC representatives conduct themselves and the impression they leave on those they interact with and inspect really does matter.

The Board paper continues, "*We are clear that organisations that actively listen to, learn from and act on people's experiences deliver better outcomes. It is even more important to listen, learn and respond when something has gone wrong.*" CQC understandably expects providers to do this in respect of those people it serves. As part of CQC's broader cultural renewal and the new single assessment framework, will CQC lead the way for regulators to be mindful of their impact on all the people it interacts with?

Lester Aldridge has extensive experience in supporting and represents care homes, supported living providers, apprenticeship providers, schools, nurseries, further education providers, health and social care professionals and children's homes. Our expertise in the regulation of health and social care has earned us our reputation as market leaders in the sector. If there are any matters relating to your business including inspection challenges, enforcement action or complaints, please do not hesitate to contact our team, headed by Laura Guntrip, on 01202 786135.

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