Factual accuracy process and “Next Phase of Regulation”: Where are we now?

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Factual accuracy process

Last year, CQC proposed changes to its factual accuracy process and asked providers for their views on the proposals, which included the introduction of a word limit for factual accuracy comments. CQC has now introduced a new form and guidance for factual accuracy comments, which includes a 975 character limit (approx. 150 words) for each point a provider wishes to raise.

CQC has confirmed that it did not carry out a formal consultation before introducing the limit because it considers this change to be a minor amendment to existing policy and guidance and therefore does not consider that it requires formal consultation. Whilst CQC ran three exercises on its online community in order to gain feedback on its proposals, the response from providers was low and mixed views were provided to CQC.

The factual accuracy process is the only opportunity a provider has to correct inaccuracies in a draft report before it is published. We regularly assist providers with factual accuracy comments which can lead to significant changes in the content of a report and/or a service’s ratings. However, we are concerned that imposing this character limit will considerably reduce a provider’s ability to formulate comprehensive arguments, particularly when it is necessary to refer to rating characteristics and evidence. It is currently unclear how CQC will respond if a provider exceeds the new character limit which CQC has imposed.

Next Phase of Regulation

In its “Next Phase of Regulation” consultations, back in 2017, CQC proposed wide ranging changes to its

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regulatory model. In this article, we provide an update on the progress of CQC's implementation of some of the proposals put forward in Consultations 1 and 2.

Consultation 1

This included three main proposals affecting adult social care: (1) the regulation of new models of care and complex providers, (2) the introduction of changes to the assessment frameworks and (3) changes to how CQC registers services for people with a learning disability. Full implementation of Proposals 2 and 3 has taken place resulting in a sharp rise in CQC refusals of applications for registration of services for people with a learning disability under its policy "Registering the Right Support". We are currently representing providers who are appealing those decisions. In relation to the new assessment frameworks, we have noticed that the strengthening of some key lines of enquiry, together with the move of some key questions from one domain to another has affected ratings for some providers.

In contrast, the first Proposal in relation to the registration of complex providers has somewhat lagged behind. In its response to Consultation 1, published in June 2017, CQC confirmed it would be consulting on proposals to extend the scope of registration to ensure organisations are registered at the level of ultimate accountability for the quality of care and on proposals for a new approach to provider level assessments. The proposals meant that parent companies and groups which have previously been beyond the scope of regulation of the CQC may need to register. Under the proposals, CQC could take enforcement action against both a parent company and the provider.

Consultation 2

Registration of entities that "direct and control care"

In the majority of care groups, it is the holding company which makes the major decisions relating to the care of individuals within its various subsidiaries and yet it is often subsidiaries which are registered with CQC. CQC has, therefore, no recourse against a holding company although it might be culpable for regulatory breaches of its subsidiaries. Subsequently, in its response published in October 2017 to this issue, which was the subject of consultation 2, CQC confirmed that it would focus on criteria that describe the direction and control of care rather than financial interests alone. It said it would publish more detailed criteria in Spring 2018. To date, the publication of the new criteria and implementation of those proposals has not happened. Likewise, we still await further developments on CQC's proposal to introduce provider level assessment and rating. CQC has confirmed to us that no changes have been made yet and that those proposals are still undergoing internal consultation.

Continuing regulatory history

CQC also advised that it would develop an approach that ensures that the regulatory history of a service

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(ratings, enforcement action and inspection reports) are still visible when its ownership changes. On 27 March this year, CQC published new guidance entitled “Continuing Regulatory History”. From 1 April 2019, CQC’s website will show the regulatory history of locations where there is a change of ownership or address at an existing location. This will apply to all new applications.

Previously, when a provider made a change to their registration such as a change of legal entity, purchase, acquisition, merger, or certain address changes, the previous history and ratings were not shown against the new location. CQC’s new policy means that where a location is acquired by a new provider, they will inherit the previous location history, although the rating was not awarded to them.

Whilst the regulatory history of a location will now be published on CQC’s website for all new applications, the guidance confirms that when a location undergoes a change of ownership, the successor provider is not legally required to display the rating awarded to the previous provider, however, CQC encourages providers to do this. Providers should ensure that if they chose to display a predecessor’s ratings, they clearly show that the rating was awarded to the predecessor. Failure to do so may lead CQC to take enforcement action if statements related to a rating are considered false or misleading. For full details of the changes, we recommend providers familiarise themselves in full with the new guidance.

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