

Healthcare regulatory lawyer **Sam Lindsay** at Mills & Reeve LLP explains how the health and care watchdog is changing its approach to regulation with plans to rely less on set-piece inspections and instead becoming more risk-based and data driven



# Walking the talk

**The Care Quality Commission (CQC) was established in April 2009 under the Health and Social Care Act 2008. Since its inception it has operated as the sole regulator of health and adult social care in England and Wales.**

While the CQC as regulator has endured, the regime under which it regulates services has evolved over time and in 2021 it launched a new strategy, the Single Assessment Framework (SAF). Originally planned to go live in January 2023, the SAF has been pushed back until the end of the year. Nonetheless, it will benefit those regulated by the CQC to familiarise themselves with the SAF now so that they are fully prepared when it lands.

## The case for change

CQC's current regime applies to service providers carrying on regulated activity. It is provided for in the 2008 Act and various subordinate legislation, principally the Health and Social Care Act (Regulated Activities) Regulations 2014 (which establishes the categories of regulated activity and the fundamental standards that providers must not fall below) and the Care Quality Commission (Registration) Regulations 2009, which deal primarily with administrative functions. The legislation is then supplemented by CQC policy and protocol that sets out how CQC will implement the legislation and perform its statutory functions.

For those unfamiliar with the current regime – a provider will first apply to register with the CQC, who will carry out a desktop review of the provider's application and conduct a site visit to ensure the operator is compliant with

regulatory requirements. Compliant providers are then registered and entitled to carry on regulated activity in accordance with the conditions of their registration.

CQC monitors registered operators through point-in-time inspections, both routine (the frequency of which is determined by performance during past inspections) or in response to concerns. The conclusions of the inspections are documented in published reports that detail findings and the ratings awarded in the five key domains (outstanding, good, requires improvement and inadequate) and overall. Non-compliance may lead to CQC taking civil or criminal enforcement action against a provider.

Long criticised as not fit for purpose, the existing regime has been burdensome to providers and been described as inflexible and lacking the dynamism and responsiveness required by a modern-day and fast-moving sector. Its reliance on point-in-time assessments as a means for assessing and rating provider performance has long been in need for reform, as has its process for determining ratings, which is opaque, confusing and relies on the discretion of inspectors exercising professional judgement.

## Learning from the pandemic

Covid-19 impacted significantly on CQC's ability to monitor services as they were obviously prevented from attending services in-person to conduct routine inspections. Circumstances forced the CQC to temporarily revise its approach so, necessity being the mother of invention, it adopted a

policy of hybrid inspection, reserving site visits for those services where there were known concerns or where on-site attendance was fundamental for effective regulation. New applicants and existing services were otherwise monitored via desktop review and remote site visits conducted over digital video platforms.

Originally intended as temporary, CQC instead did not revert to its established method of monitoring, apparently favouring this new approach. Then, in July 2022, the CQC announced the SAF, which would build on the model borne out of the response to the Covid-19 pandemic.

## The Single Assessment Framework

The SAF builds upon the hybrid approach developed in response to Covid-19. It provides for rolling multi-point assessments, which means ratings may change more often, and marks an end to point-in-time ratings based on periodic inspection. SAF promises to be 'dynamic' and 'data-led' – exactly what you would expect of a modern regulator.

It will capitalise on available evidence which will be gathered from both on-site and off-site sources and used to score services across 34 quality statements. These are based around the statutory fundamental standards and are underpinned by between one and six new 'evidence categories'.<sup>1</sup>

The ratings system survives the change but now they are based on the culmination of numerical scores awarded first for each evidence category and then each quality statement. This should make the process clearer and



provide a greater depth of analysis and understanding.

The SAF dispenses with the separate registration process. Now, prospective providers are required to submit baseline data against which they will be monitored going forward.

The dynamic, hybrid nature of the SAF will be facilitated by a new online provider portal, through which all monitoring will be done. CQC and providers alike will be able to upload and share data relevant to assessment via the portal, in real time, and there will be a dynamic dashboard presenting the data in an accessible way.

## Broader oversight

New under the SAF is that it will also apply to integrated care systems and their integrated care boards and local authorities, not just providers. The ICS/ICB fall within scope of CQC's regulatory regime in line with the new oversight responsibilities under the reforms set out in the Health and Care Act 2022. The SAF, as the name suggests, will apply universally to all regulated entities.

## Glass half full

If the SAF delivers, then it will be a significant improvement over the

current regime. The dynamic approach to monitoring and rating services should result in more detailed, accurate assessments and in ratings that better reflect the quality of underlying services.

While the numerical scoring system under the SAF still relies on the professional judgement of inspectors, it should deliver more consistent results than the current method and with greater transparency, making it easier to identify when something has gone wrong. These are things to be welcomed by providers and service users alike.

Combine these changes in methodology with the implementation of the electronic portal system and a more focused approach to inspections and it is easy to see how the SAF should mean CQC is able to better meet its statutory objectives with the limited resources available.

A further reason for optimism is the opportunities to utilise the access to greater quantities and quality of data, particularly in its numerical format, to analyse the health and social care sector more broadly and so drive change within the industry at a time where services are stretched, and innovative solutions are a necessity. It is easy to imagine such data impacting not just service-level improvement, but also policy and practice at the regional and national level.

## Looking ahead

While winter pressures for health and care services continue, with CQC adjusting its regulatory activity until the end of March 2023, it continues to implement its new approach in phases.

From spring the focus will be on:

- Getting the technology in place and testing it with providers

From summer:

- The new online provider portal

From end of 2023:

- CQC will start to carry out assessments in the new way, using the new SAF supported by the integrated care assessment teams and technology
- Providers can expect to register with CQC and make ongoing change to registration through the portal, with the expectation that all interactions with providers will be on the portal

### NOTES

- 1 <https://www.cqc.org.uk/about-us/how-we-will-regulate/evidence-categories>