United Kingdom Homecare Association
The professional association for homecare providers

Care Quality Commission
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Newcastle Upon Tyne
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By e-mail to: feesconsultation@cqc.org.uk

18 January 2018

Dear Sirs,

CQC Consultation: Regulatory fees – have your say

Thank you for the opportunity to respond to the above consultation, which I have the pleasure to do on behalf of the United Kingdom Homecare Association (UKHCA).

UKHCA is the national professional association for organisations which provide social care, including nursing care to people in their own homes. Our mission is to promote high quality, sustainable care services so that people can continue to live at home and in their local community. The vast majority of our 1,800 members in England provide services which are regulated by the Care Quality Commission.

As you are aware, before this consultation was issued and following discussion with CQC, UKHCA carried out a survey of our membership with a view to identifying our members' views on the proposed changes to CQC's fee structure. We are pleased to note that the Commission has included our findings within its consultation document and its draft impact assessment.

We have also encouraged our members to submit comments directly to CQC and to feed their views to UKHCA in order to inform our own response to this public consultation, herewith attached.

Our submission also includes summaries of individual views submitted to us by a number of our members.

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It has become clear that the proposals contained within this consultation has highlighted differing opinions amongst providers and as a professional association representing both large and small organisations, it has proved difficult for us to recommend a single option.

We recognise that any move from the current, banded structure to any of the alternative measures will create winners and losers within the homecare sector but we firmly believe that CQC's fees should reflect its activities in relation to each provider rather than the providers' activities in delivering services within the sector.

We have therefore taken a balanced view of the range of opinions held by our membership

In general, both UKHCA and our members support the CQC's proposal to replace the current banding system (Proposal 1) which was felt to produce "cliff edges" whereby fee levels could change markedly when a provider crossed an arbitrary number of branches threshold.

However, we should like to propose a counter and we believe, a more equitable proposal, not considered in the present consultation document but favoured by UKHCA and many of our members.

We propose that CQC should charge:

- a single, flat registration fee and:
- an additional fee for each inspection and its associated costs.

This would have the advantage of rewarding businesses achieving 'good' or 'outstanding' ratings and extracting full costs from those that required most regulatory action.

This approach, which we believe CQC may have previously considered, would ensure that CQC's back-office costs were recovered and that those providers who required most attention from CQC paid according to the demands they placed on the organisation. 'good' or 'outstanding organisations would receive fewer inspections and see a drop in unit costs.

Rewarding providers that delivered better quality care would have the added advantage of providing an incentive to all providers to improve the

quality of their service provision and receive fewer inspections and lower fees.

With respect to Proposal 2, whilst we understand the rationale and the drivers behind the proposed percentage fee increase in the move towards full cost recovery, the Commission will know of the strength of feeling among providers about the additional burden that this move places on an already challenged provider market.

Of the options proposed by CQC in the final consultation document, subject to our counter proposal above, there was overall support for a location-based approach as the most representative measure of the relative size of providers within the market which also provides a relatively objective measure for collecting and collating data.

We recognise that this represents a change from the views expressed in our pre-consultation survey but reflects the greater detail of the relative impact, particularly on larger providers highlighted by the costed models in CQC's consultation document.

The *per location* approach was also felt to represent best the current inspection regime, which focuses on site visits, rather than hours of care provided or business turnover.

We believe that there is a lack of transparency in CQC's operating costs and the potential increase in unit inspection fees highlighted by this consultation has led a number of our members to question whether the CQC's proposals do, indeed, represent the recovery of the costs associated with regulation of the sector and how, given the organisation's current operating surplus, the potentially large increase in fees associated with the proposals, would not continue to result in the generation of a large surplus income for CQC.

We note that the consultation does not explain how CQC treats surplus income at present, or under a future model and whether surplus income is used to off-set fees in future years.

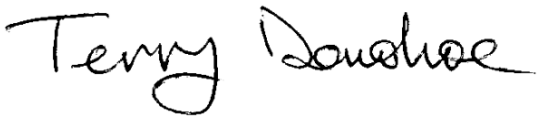
Our members questioned CQC's justification for potentially large increases in its inspection charges against a background of increased shortfalls between the actual costs of delivering home care and the fees paid by many local authorities.

The Commission's consultation has highlighted a widespread impression that providers achieving 'good' or 'outstanding' ratings effectively subsidise those that achieve lower ratings.

Our members also raised concerns around the consistency and value for money of the existing inspection regime and expressed a strong wish for a more transparent, responsive regime. Tangible improvements could, potentially, provide CQC with a stronger justification for increased fees in the short-term provided they were followed by longer-term, demonstrable reduction in overheads and increased efficiency in the delivery of the inspection regime.

Please do not hesitate to contact me if you require any further information.

Yours faithfully,



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UKHCA's response to CQC Consultation Regulatory fees – have your say

1.We propose to change the fees scheme structure for community social care providers by charging fees in proportion to the size of the provider relative to the sector.

Do you agree?

Yes.

We believe that fees should be based on the costs of CQC's activity, rather than providers' activity but recognise that size of provider gives a reasonable proxy.

We agree that the current system of banding is inequitable and that a system based on the size of an organisation is one way of delivering a gradation in fees that represents the differing contributions of businesses within the sector.

If the fee levels are derived from data already collected from the sector, by CQC, additional regulatory burdens would not be placed on businesses.

Of the options provided, a location-based system would seem to be the most equitable and transparent.

CQC states that the annual cost of regulating the homecare sector is £26million but does not appear to be seeking to cap its income at that level.

In addition, CQC states that it currently recovers 90% of its total costs from fee income and claims to be expecting to see fees reduce for providers over time but there are no data within the consultation documents that demonstrate how this will be achieved.

CQC states that it needs to raise an additional £5million in 2017/18, around 2.5% of the 2017/18 fees of £196million. It would therefore seem more reasonable to recover the shortfall by increasing current fee levels by 2.5%, rather than the range of percentage increases quoted in the consultation document.

1a. What do you think would be the best way to measure the size of the community social care providers?

In the first instance, UKHCA believes that fees should be charged in proportion to the effort (ie costs incurred by CQC), of regulating and inspecting each provider rather than dividing the total costs associated with regulation by one of the proposed measures of the providers' activity.

We note that the Civil Aviation Authority does not take into consideration an airline's market share as a determinant of fees, and other regulatory authorities, notably the Financial Conduct Authority, take into account providers' capitalisation and liability, rather than market share, market spread or product diversity.

In our view, the difference in the level of activity required for the inspection of either small or a large locations is marginal and the content fairly consistent.

Our understanding is that inspection activity, for homecare providers, rarely exceeds 1.5 days per location[1].

We believe that CQC's fees should reflect its activities in relation to each provider rather than the providers' activities in delivering services within the sector.

However, taking each of the options, proposed by CQC, in the order presented:

[1] In a recent survey of 101 UKHCA member organisations, we were told that 9% of inspections had lasted fewer than 4 hours; 62% had lasted between 4 hours and 8 hours; while just 29% had lasted more than 8 hours, or more than one day.

Total hours of care (number of hours of regulated activity provided over the last seven days at a location)

No.

Although this option received significant support from our members in our pre-consultation survey, the option does not have a floor or a ceiling and uses a benchmark of 810 hours of care provided per week with a variation of £270 for every 100 hours of care provided per week above or below the benchmark.

This assumes a stable service provision. In practice, the situation for homecare is often dynamic and as this would be a snapshot of activity, the approach could disadvantage providers if they withdraw or lose a contract and see major over or underestimates of activity.

As outlined above, this approach does not represent the actual costs of regulation incurred by CQC and which it is seeking to recover fully. In addition this costing approach does not reflect the inspection regime which is site-focused rather than reflecting providers' activity.

Number of service users (number of people receiving support with regulated activities at a location)

No.

While this option was also relatively popular in our pre-consultation survey the option has only a floor and no ceiling and is calculated on the basis of 50 service users rather than 55 showing a variation of £425 for every 10 additional service users.

These data would deliver a metric related to providers' activity, but, as outlined above, do not represent the costs of activities carried out by CQC and which it is seeking to recover fully.

Annual turnover by location

No.

This option was extremely unpopular with our members in the pre-consultation survey. It has both a floor and a ceiling with the ceiling set in relation to 'known outliers' when data are obtained and "…if a ceiling were applied then it would increase fees for all providers below the ceiling…" without specifying what those higher fees would be.

Whilst we recognize that CQC employs this type of approach for assessing NHS Trusts' fees it would present a disproportionate data collection burden for small to medium enterprises to generate and for CQC to verify as accurate.

All providers are subject to market fluctuations, particularly if they withdraw or lose a contract, where a snapshot in time may not represent even the provider's short-term financial position.

Number of staff employed (whole time equivalent staff employed at a location)

No.

This option was the least popular with our members in the pre-consultation survey.

These data would deliver a metric related to providers' activity but, as outlined above, do not represent CQC's activity costs and which it is seeking to recover fully.

Number of locations

Yes.

This option already had good support from our members in the pre-consultation survey and overwhelming support since providers have seen the final consultation document from CQC.

It is, therefore, the favoured option, of those provided in the consultation document, with the caveat that a ceiling would need to be introduced to avoid the largest providers paying grossly disproportionate fees and potentially leading to destabilisation of the market.

The current fee structure is based on the number of locations, albeit with an unpopular banding system included. Location data are, therefore, already collected, by CQC, from the sector.

The new proposal would not impose any additional data generation burdens on businesses and reflects better the focus of CQC's current regulatory activities, which are site-specific. However, as outlined previously, the income generated does not reflect CQC's actual costs, which it is seeking to recover.

Other

The costs in CQC's consultation appear to be based on an assessment of the relative size of providers in proportion to the market rather than how each provider should contribute to the £26 million cost of regulating the homecare sector.

Given the nature of the inspection regime which focuses on each individual registered location, basing fees on, for example, the numbers of hours of care delivered does not appear to reflect the actual costs of CQC's activities.

CQC's current fees' system creates 'cliff edges' and may be likely to create perverse outcomes. For example, were a provider to open another office and in so doing crosses an arbitrary boundary, this could incur an increase, or even a doubling of their fees because they have moved into the next category based on the number of branches – conversely, a provider could close-down or rationalise the number of branches to bring them into a smaller category thereby saving as much as 50% of their previous fee.

In a previous consultation CQC stated that it is considering limiting the geographical spread that a single office can service. This could, potentially, lead providers to re-open or set up a new office because the CQC deems their coverage too distant and/or too 'thin on the ground' adding an additional cost to the provider.

A more equitable approach, as stated previously and favoured by UKHCA and many of our members, would be to charge:

- a single, flat, registration and;

- an additional fee for each inspections and its associated costs.

This would have the advantage of rewarding businesses achieving 'good' or 'outstanding' ratings and extracting full costs from those that required most regulatory action.

Any fee based on a sliding scale, regardless of the currency used, runs the risk of creating *comparative advantage* for some actors and this may lead to *gaming* of the system.

It is important that any fees' scheme that does not**:**

- restrict or distort competition
- hinder organisational expansion
- discourage employing more staff
- add unwarranted additional costs in mergers and acquisitions
- create untoward barriers to entering the market
- add penalties for exiting the market
- obstruct the provision of care in unforeseen surges in demand for care
- place a surcharge on success or failure

1b. If fees are based on the size of the provider, would you prefer:

No minimum fee (floor) and no maximum ceiling

No.

This does not appear equitable within a full cost recovery model as there must be a threshold for delivering statutory functions to which all businesses within the sector should contribute and since CQC has identified its annual costs (£26million), would ensure that CQC was nor seen to be generating surplus income.

A minimum fee (floor) and a maximum fee (ceiling)

Yes.

This would demonstrate that the costs recovered were indeed finite, related clearly to the recovery of costs associated with regulation of the sector.

Such an option would, potentially, allow CQC to offer lower rates to the smallest providers, albeit still at a level at which CQC could demonstrate that its costs were recovered and since CQC has identified its annual costs (£26million), would ensure that CQC was not seen to be generating surplus income.

A minimum fee (floor) and no maximum fee (ceiling)

No.

The lack of a cap on fees does not appear consistent with the argument that fees relate to recovery of the costs associated with regulation. Simply collecting fees based on market share would, potentially, provide CQC with revenue above the actual costs of regulation and would place an inequitable burden on larger businesses.

2.Do you want to give any additional feedback about proposals 1 and 2?

The current CQC fees' system creates 'cliff edges' that may carry perverse outcomes. For example, were a provider to open another office and in so doing crosses an arbitrary boundary, this could incur an increase, or even a doubling of their fees because they have moved into the next category based on the number of branches – conversely, a provider could reduce the number of branches to bring them into a smaller category thereby saving as much as 50% of their previous fee rate.

CQC appears to have realised this is a potential issue and has stated elsewhere that they are considering limiting the geographical spread that a single office can service.

CQC cites the cost of regulating the sector but its current and proposed fee structure have not identified the actual costs of the CQC's statutory activities basing fees on a percentage of income derived from the sector.

We recognise that the CQC's intention to increase further the fees by 15%, is part of the four year graduated increase that they agreed with the Treasury solely for the homecare sector, as other sectors were already on course for the required Full Cost Recovery required by the government.

This approach runs the very real risk of significantly contributing to market instability by increasing the burden on the sector for undefined outcomes and a lack of quantifiable data on efficiency savings.

We remain concerned that there are insufficient incentives for CQC:

1. to demonstrate its operational efficiency and

2. provide sufficient barriers to CQC to prevent it developing increasingly complex regulatory structures which could add disproportionate costs compared to the benefits to society.

The impact calculations carried out by CQC (Appendix E) show costs for small location providers decreasing from £6,093 in 2017/18 to a maximum

of £4,543 where larger providers could see an increase from £12,184 to a maximum of over £90,000.

Basing fees on a fixed registration cost plus additional charges for inspections and their associated costs, as we have argued previously, would, potentially, be more equitable and reward providers delivering better quality services with a reduction in overall costs as the inspection regime moves from a 2 to 3 year inspection frequency for 'good' and 'outstanding' businesses while those businesses subject to more frequent, focused inspections would make a clear contribution to the increased costs associated with such follow-up activity.

This would counter some of our members' sense that larger providers foot the bill for smaller ones as there is a finite number of registered providers which require inspection and therefore cost, regardless of the numbers of hours of care each provider delivered.

CQC has consistently argued that its fee system is not based on cross subsidies between sectors or providers within a sector. Regrettably, we do not think that this has been addressed in the options presented in this consultation.

Views of UKHCA Members

The following comments were drawn from representations made by UKHCA members, which, we understand, have also been submitted directly to CQC. They have been anonymised as they have been used for illustrative purposes within this document.

Provider A

This large regional provider, operating predominately in the South of England, currently pays £40k in fees and estimates that it is likely to pay in the region of £78k under CQC's proposals, representing a doubling of charges over the current levels.

The provider comments that the increase in CQC fees (combined with other cost increases and continued uncertainty over levels of local authority rates) would severely impact the organisation's business and their ability to invest in or expand their existing service provision.

The provider also notes that continued increases in regulatory costs were likely to have a perverse incentive for social care commissioners to adopt unregulated forms of social care as regulated services become more expensive. Such services include increased use of unregulated personal assistants, or on-line web-based introduction agencies who have no ongoing role in the control or direction of the worker.

The provider believed that calculating fees based on locations, without employing a banding structure, but with a ceiling, was the preferred option.

Provider B

A large regional provider, operating in London and the South East expressed concerns about the relative burden of regulatory charges within fees paid by local authorities.

With reference to the changes proposed by CQC, the provider preferred a fee structure based on registered locations and avoiding the current banding system.

The provider proposed that CQC could consider a nominal registration fee per location plus a charge per inspection.

Provider C

This is one of the largest homecare providers in the UK and therefore makes a significant contribution to the maintenance of the regulatory system. This provider currently operates several legal entities, which, under the current fee system, means that it pays a larger fee across its businesses than it would do if it were a single legal entity and made a comparison between its current registrations fees (in excess of £200k) and those of a similar-sized competitor (around £60k): a three-fold differential.

The provider naturally regards the current fee structure to be irrational and expressed a strong preference for a fee structure based on registered locations, without banding and with a ceiling.

The provider considered that the other options outlined in the consultation:

- Were inequitable;
- Carried a risk to CQC that providers could successfully 'game the system' without detection; and
- Did not take account of models of outcome-based commissioning

The CQC's suggestions related to charging by total hours of delivered care, or charging based on numbers of service users by location were rejected by this provider.

The closest fee proxy to the costs incurred by CQC was considered to be the number of registered locations, on the basis that it was a simple, less variable measure and imposed no further reporting burden on the sector.

The provider also expressed considerable concern about the relative impact of CQC's increasing fees on providers, particularly those delivering state-funded care, given the inadequate funding of adult social care.

Provider D

This large regional provider operating in the Midlands and North of England agrees that effective regulation and monitoring of care provision is necessary but should be:

1. Proportionate to its benefits
2. Economically efficient

As such that it should not impact adversely on care provision should not place the main burden for recovery of full costs on care providers.

The provider expressed concern that 'good' and 'outstanding' services appear to subsidise the more regularly inspected inadequate services who do not pay more, despite taking up more CQC time and resource, a situation likely to increase as CQC focus their inspections even more so on services presenting the greater risks.

The impact of micro-providers, who are not regulated and pay no CQC fees was also raised as a concern.

The "cliff edge" issue, whereby fee levels currently suddenly change when a provider steps over an arbitrary 'number of branches' threshold, was referenced as a reason for CQC to change the CQC fee-charging basis, but the proposed changes could, potentially, increase fees by between 50% and 200%, or more.

The provider noted that whilst, to date, no one has been put out of business due to CQC fee increases, the annual increase has never been of the potential size anticipated here and may see providers' withdrawal from the market.

Fee increases of the levels proposed by CQC were considered to represent a significant threat to the sustainability of many local authority contracts.

Given that a location has to be registered, and subsequently inspected, the provider considered that the only logical basis of applying fees is 'by location', as is currently the case.

The provider considered that observed that to charge according to volume, be that hours, service users, staff, or anything else, would be disproportionate and potentially, a disincentive to building capacity.

The provider suggested that a fee structure based on a single 'flat' registration fee for every provider, regardless of size or geographical spread, with separate fees charged on a per inspection basis per branch and with fees determined by a 'common currency', applicable to every branch operated by every provider, calculated on a reference period, may be something worth exploring, the advantage being that better organisations would be rewarded, as they would be subject to fewer inspections.

The provider also drew attention to CQC's statement that "…During this period (4 year spending review) we have changed our funding position, as a direct result of HM Treasury policy, such that funding from government has reduced and funding from providers has increased. Nearly 90% of our activities are now funded through fees. **We therefore expect to see fees reduce for providers over time**…"

They felt that there was an inherent contradiction in the statement.

The provider also noted that, if only 10% of the budget now needs to covered, but calculations demonstrate that providers are likely to face increases in excess of 50% it would appear that the CQC could make a significant surplus if the current proposals are to be adopted. This is not compatible with CQC's stated aim of full cost recovery.

Further, the CQC's claims that it needs to raise £5million in additional fees in 2018/19.

£5million as a % of the 2017/18 fees of £196million is 2.55%.

Therefore why are fees not being raised fees by 2.55 based on a "per location" scheme that ends the "cliff-edge" issue? Providers would be more likely to support such an approach and it would deliver the required 2.55% increase.

Provider E

This is a large UK-wide provider that supported the CQC's proposed move away from the current, banded fee structure but observed that, on the basis of its calculations, there would a significant increase in its fees whether based on a location model or hours of care delivered.

The provider's current fees are around **£123k** per annum

On a location basis, the CQC's proposals would potentially increase our fees to over **£300k** per annum and on an hourly basis to **£215k** representing a doubling or tripling of the current fees

These figures did not include the proposed 15% uplift.

An hourly-based fee structure would provide a marginal advantage for this provider but it was recognised that generating such data may be more difficult for smaller providers

The provider considered that the substantial proposed increase in fees would put significant pressure on the business and although it would be unlikely to result in branch closures it would, potentially, affect quality of care due to a reduced ability to provide training and other aspects related to continuous improvement.

The provider suggested that if CQC is seeking to recover the full costs of its functions from the regulated sector it would like to see greater transparency

and consistency in the operation of CQC's interactions with the sector as it considered that, at present, CQC is expensive remote, inconsistent and requires a significant proportion of their time to be spent challenging the content of reports due to the inconsistent behaviours and skills of inspectors.

By contrast, the sector regulators in Scotland and Wales were considered to offer better value for money being more approachable, collaborative and prepared to work more closely with providers.

Larger providers, like this, feel that they are effectively subsidising the regulation of the sector and would like to see incentives for better performers, either in terms of rebates or for a fee structure more closely aligned to the quality rating achieved by a business

Provider F

This provider currently pays in excess of £250k per year and questions the sustainability of further increases at a time at a time of reducing fee rates paid by Councils resulting in losses in home care services the provider's viability being threatened.

The provider noted that CQC is projecting an underspend of around £10million on its budget, and therefore questioned the justification for further increasing provider costs and considered that there were fairer ways of changing the charging structure other than size of provider relative to the sector.

The provider considered that a charge based on the number of locations, without banding, would represent the fairest basis for fee charging given that the cost to CQC is driven predominantly by the number of registered locations, the number of inspections, the number of reports, and the work involved in enforcement action and if necessary service closure.

Like other providers, this business suggested that CQC consider a charge per inspection, so that poorer quality providers that need to be inspected more frequently pay more than good quality providers, reflecting the greater time involved on CQC's behalf.

The provider rejected the other suggested fee structures: total hours of care (number of hours of regulated activities provided over the last seven days at a location); number of service users (number of people receiving support with regulated activities at a location); annual turnover by location, number of staff employed (whole time equivalent staff employed at a location).

The provider considered it unfair that some *housing with care* providers, for example, have a large number of registered locations, all of which need to be inspected, but deliver relatively few hours of care to a relatively small number of customers would see their fees decrease substantially, although the work of inspection teams in visiting and inspecting each location would remain unchanged.

With regards to 'floor' and 'ceilings' the Provider suggested that there needs to be an additional option of no minimum fee (floor) and a maximum fee (ceiling)

CQC's efficiency and methodology was also questioned.

The Provider was charged over £250k annually and was inspected 20 times, representing a cost per inspection of £14k.

Under one of the options proposed by CQC, the Provider could see its annual fees increase by a further £95k and its individual inspection fees rise to over £19k.

The provider currently shows a very high level of compliance with CQC standards. The CQC's proposed reduction in inspection frequency for such providers would, on the basis of current performance, potentially represent a reduction from 18 to 14 CQC inspections per year in future.

On the basis of the £95k proposed annual fee increase, this would lead to a cost per inspection of almost £25k.

Although regulatory fees are not just levied to cover inspection this is the only real measure providers have of value for money. The Provider questioned how CQC could justify such a large increase in charges and suggested that good providers were, effectively, subsidising poorer providers, given that the latter consume more CQC time and require more CQC inspections, visits and follow-up action.

The provider therefore suggested that a charge per inspection rather than per location or any of the other methods suggested would ensure that poor quality providers who require more intervention from CQC would pay more than good quality providers lending added incentive to providers to improve quality standards.

The provider also questioned the efficiency of CQC's inspection processes noting that whilst providers are encouraged to use technology solutions, CQC still conducts inspections using clip boards, paper and pens and may take several weeks to produce typed reports from these notes.

Additionally, providers than wait for several weeks for draft reports, which often contain factual inaccuracies, but are afforded only 10 working days to respond to CQC.

The provider suggested that CQC improves the efficiency of its working practices before further increasing provider fees