



advice and support for older age
**Independent
Age**

**Care Quality Commission's proposals for special measures for adult
social care**

27 January 2015



About Independent Age

Founded over 150 years ago, Independent Age is a growing charity helping older people across the UK and Ireland through the 'ABC' of advice, befriending and campaigning. We offer a free national telephone and email advice service focusing on social care, welfare benefits and befriending services, which is supported by a wide range of free printed guides and factsheets. This is integrated with on-the-ground, local support, provided by a network of over 1,500 volunteers offering one-to-one and group befriending.

For more information, visit our website www.independentage.org

Speak to one of our advisers for free and confidential advice and information. Lines are open Monday to Friday between 10am-4pm. Call 0800 319 6789 or email advice@independentage.org

Independent Age is also a member of the Care and Support Alliance: a consortium of over 75 organisations that represent and support older and disabled people campaigning to keep adult care funding and reform on the political agenda.

Summary

- We support the Care Quality Commission (CQC)'s focus on rooting out inadequate care. We also support effective joint working between the regulator and adult social care providers when it serves to improve care. However, the CQC's primary focus must always be on ensuring the protection and safety of people who use services. The views, experiences and needs of people using services and their families and carers must always be paramount.
- All care homes and home care agencies assigned an inadequate rating must be supported to improve the standard of care they provide, where this is possible. As such, the special measures regime requires ongoing and active oversight by CQC. In particular, we agree there must be a defined framework and timescale within which both the regulator and the provider must operate. Within this framework, the CQC must issue clear improvement outcomes to providers. This is important as it must be straightforward to establish whether or not progress against these outcomes has been made. In this way, the regulator can ensure that if no improvement occurs, immediate enforcement action is taken straight away to ensure the safety of individuals using the service and staff.
- The CQC needs to offer more clarity on the type of support that could be given to an adult social care provider under the special measures regime and how this might be different from the support options currently available. While the onus remains on the individual provider to resolve the issues themselves, CQC says that providers will also be signposted to other organisations to ensure improvements are made. To help providers, the CQC policy on special measures published in March needs to give more information on what a 'credible improvement plan' looks like in practice. This means explaining to providers what external support and mentoring might be available to help a provider at risk of failing actually improve.
- In particular, it is vital that older people living in a care home and their relatives are communicated with effectively throughout the time a home is in special measures, so they understand the process, possible consequences for their own or loved ones' care, and any alternative care options. A clear route of accountability must be established so that staff, residents and relatives alike feel confident that any concerns they have will be dealt with swiftly and appropriately. In particular, it must be clear what the responsibilities of the provider, the regulator and the commissioner are in terms of making sure residents and relatives are kept informed of the situation and in addressing any concerns.

Key points

Focus on inadequate care

We support the CQC's focus on rooting out inadequate care. When considering the possible impact of the new special measures regime, it is important to note that 27% of care homes inspected by CQC between October 2010 and 31 March 2012 required an action plan for improvement (National Audit Office, 2014). This

is helpful for CQC to bear in mind when assessing the impact of the introduction of special measures on their other regulatory processes and estimating the additional resources and staff time that may be required should a similar proportion of homes enter into special measures from April 2015.

All care homes and home care agencies assigned an inadequate rating must be supported to improve the standard of care they provide, where this is possible. As such, the special measures regime requires ongoing and active oversight by CQC. In particular, we agree there must be a defined framework and timescale within which both the regulator and the provider must operate. Within this framework, the CQC must issue clear improvement outcomes to providers. This is important as it must be straightforward to establish whether or not progress against these outcomes has been made. In this way, the regular can ensure that if no improvement occurs, immediate enforcement action is taken straight away to ensure the safety of individuals using the service and staff.

Expert help and guidance

The Care Quality Commission needs to provide more information on the type of support that could be given to providers as part of the special measures proposals. We note that the onus is on the provider to resolve the issues themselves but that CQC will signpost to practice guidance. It will be useful to know more about the possible content of a 'credible improvement plan'.

Recent problems with care home closures at Merok Park in Surrey, Lake View Nursing Home in Lancashire, and Grantley Court in Sutton have highlighted the need for struggling care homes to get access to expert help and guidance at an early stage to avoid such emergency closures. It may be difficult for a provider under special measures to be self-critical and reflective enough in order to change the culture of their home without external assistance.

At Merok Park in particular, CQC rightly took urgent action to address serious concerns. It is our view that CQC should consider having available a team of expert advisers, e.g. experienced care home managers who could move quickly to support a underperforming home if necessary. This would be far preferable to what in fact happened, with very frail residents being moved out of their home suddenly on a freezing cold night. In all circumstances, any enforcement action undertaken must be carried out in a timely, sensitive manner and be in proportion to the risk of harm to residents.

As such, more detail is needed on what the external support and mentoring put in place to help an adult social care provider improve might look like. For example, it could take the form of peer-to-peer partnership with an outstanding care home or a home care agency or guidance from a service that has improved, or in a similar way to GP surgeries, where they are supported by NHS England, providers could be signposted to access a package of resources from an organisation like Social Care Institute for Excellence or My Home Life.

Communication with older people using services, their families and carers

More guidance is also needed on how providers should typically communicate

what for many will be a distressing decision to older people using their services, their relatives or carers, but also care staff.

In particular, for care homes, the fact that the service is entering special measures, and the process of how this will happen must be effectively communicated to residents and relatives. We note that care homes, alongside hospitals and GP surgeries, will be legally required to publish the details of their inadequate rating in a public place within the service. This move towards greater transparency will help older people and their families when making choices for their future care. However, additional communication is needed for those living and working in a care home under special measures. Unlike NHS hospitals, care homes are people's actual homes and must be treated as such during the process.

For both home care and care home providers, adequate time should be allowed for older people using the service, relatives and staff to discuss the possible consequences and be consulted with on the range of alternative care options available, especially if improvement does not take place and cancellation of the registration becomes a possibility. Indeed, communicating appropriately about special measures to service users should be considered the first 'test' of a provider's resolve to improve. This may be of a particular challenge for a home care provider over a care home setting where the users of the service are not so easily contactable. It would be poor practice if service users or their relatives and carers are only informed of the possibility that a provider's registration with CQC could be cancelled once the provider has already reached the third and final stage of the 'special measures' process.

A clear route of accountability must be established during the period in which a service is placed in special measures so that staff, older people using the service and relatives alike feel confident that any concerns they have will be dealt with swiftly and appropriately. It is during this particular period, where the provider might become particularly defensive about criticism or complaints to do with poor care that the service needs to embrace feedback and respond to any challenges from users or relatives. In particular, the different responsibilities of the provider, the regulator and the council need to be made clear so that there is always someone taking the lead to ensure older people using services and relatives are kept informed of the situation and feel confident their concerns will be addressed.

We recommend that where a service goes into special measures, all people who use the service (and carers, nominated advocates or power of attorney where appropriate) should receive a copy of the inspection report and an explanation of precisely what has been found that has placed the service in special measures. At the end of the improvement period, people using the service should be invited to comment themselves, or, in the case of care homes, to provide specific feedback via Experts by Experience on how the standard of care has changed. The views and experiences of service users should form a central part of the evaluation process.

The role of the local council in the special measures process must be made clear. We suggest that they have a role to play in supporting the struggling provider and assisting the regulator in oversight of the process. In particular, local council

commissioning should include a lever to encourage care homes who improve as a result of special measures to maintain that higher standard of care and ensure that improvements are firmly embedded. Potential incentives could be an improved funding agreement between councils and care providers, which would include a review of the local council rate to ensure it is sustainable, fair and supports higher quality care. Likewise, the CQC should highlight to the council its central role in supporting provider improvement through the payment of appropriate fees.

The 'Special Measures' Process

The regime is quite complex and as such, we welcome the proposed flow diagram that CQC has published to explain how special measures will work. In addition, it would be useful if CQC could publish, in a similar way to the flow diagrams it has published for GP surgeries, more detailed flow diagrams that focus in on the entry and exit points for special measures. These key points of entry and exit from the system need clarification so it is easy to understand what the specific set of circumstances are that would lead a service to be placed straight into special measures.

The two separate triggers that initiate the special measures process are, when, as a consequence of a comprehensive inspection, a service receives an 'inadequate' rating on two out of the five key questions or the service has had at least one 'inadequate' rating for more than six months.

In particular, it needs to be clearly communicated to users of the service, providers and commissioners that a service with 2 or more inadequate ratings will be viewed as having such significant problems that people using the service are at risk, or there will be sufficiently little confidence in the provider's capacity to improve on its own. As such, the service will be judged as having an overall inadequate rating which would result in immediate entry into the regime.

We also note that the proposed type of inspection to establish the entry point for special measures will differ depending upon whether the service has two inadequate ratings against the five key measures at the outset of the process, or one inadequate rating after six months. We disagree in the second instance that a "focussed" inspection of the one inadequate key question is sufficient. Instead we feel strongly that a comprehensive inspection is also necessary. A provider's efforts to address the one inadequate rating may have an impact on performance in the other four key question areas. As such, we are concerned that a focused inspection would not be sufficiently broad enough to pick up on the wider impact, particularly where progress in one key area, for example, being caring is then overlooked to focus on the sole inadequate area, for example that it is not well-led. As such, a comprehensive inspection is still necessary after six months to capture the impact of improvement measures on all aspects of the service's performance and to ensure that while the service might now be improving in one area, it is not failing in the other key areas.

After the service enters special measures, it is given six months to make improvements. However, there will be times when improvement is not possible and there must be room for the regulator to put to a halt any attempt by a provider to continue providing regulated care at any stage of the special

measures process. This would mean proceeding directly to enforcement action if it is clear that care standards are deteriorating and residents are at undue risk.

Lastly, at point of exit from the process, greater clarity is needed as to what will happen if a service shows improvement in the two or more key question areas highlighted but then on re-inspection receives new two 'inadequate' ratings for different areas of care. In Independent Age's view, were this to take place, we would expect the CQC to judge whether depending on the level of risk to the people using the service, whether they should proceed directly to close the home.

Intelligent Monitoring

CQC must be committed to ensuring that the proposed special measures regime is as robust as possible. This commitment must also be applied to how CQC is prioritising its resources in high-risk areas through a new 'Intelligent Monitoring' approach. We believe that, given the recent experience at Hinchingsbrooke hospital, an urgent review of the CQC's intelligent monitoring system is necessary. At Hinchingsbrooke, the intelligent monitoring system had rated the hospital as the lowest risk (out of six bands) yet the inspection report found widespread problems. The hospital had to be put into special measures, with the private company running it - Circle - withdrawing from the contract. We are concerned with the disparity between the results of the two judgements that calls the effectiveness of both demonstrates that either the monitoring system or the inspection judgement into question.

Implementation

The implementation timetable for special measures is an ambitious one if the proposals are to be applied to all future adult social care services assessed under the new comprehensive assessment from April 2015. It is important that there is enough time for preparation, in particular to establish what types of improvement support will be offered to providers and offer examples of what a credible improvement plan might look like.

We support effective joint working between the regulator and providers when it serves to improve care. However, the Care Quality Commission's primary focus must always be on ensuring the protection and safety of people who use services. The views, experiences and needs of their families and carers of people must always be paramount.

Completed by: Anna Passingham, Andy Kaye and James Holloway

Policy and Campaigns – policy@independentage.org



advice and support for older age
**Independent
Age**

Independent Age
18 Avonmore Road
London
W14 8RR

T 020 7605 4200
E charity@independentage.org
www.independentage.org
Advice line 0800 319 6789

 View our page on Facebook

 Follow us on Twitter @IndependentAge

Independent Age is the operating name of the Royal United Kingdom Beneficent Association
Registered charity number 210729