

REGULATION REIMAGINED:

Supporting transformation



Health adviser

REGULATION REIMAGINED:

SUPPORTING TRANSFORMATION

While healthcare undergoes transformation, regulation too must be reimagined. **Corinne Slingo** explores how regulatory change can support the transformation agenda across the sector.

The process of successful transformation requires retrospection, positive learning, ambition and a commitment to improvement. Regulators reimagined their approach during crisis mode, with the Health and Safety Executive (HSE) and the Care Quality Commission (CQC) shifting away from set-piece inspections to a remote oversight model.

"During the peak of the pandemic, we were very conscious of the fact that services were under enormous pressure and needed to focus on providing care, as well as of the need to limit infection risk by minimising the number of inspectors going into care settings," says Ted Baker, Chief Inspector at CQC. "But the fundamental standards we regulate against have not changed during the pandemic."

It was a move Brent Kilmurray, Chief Executive at Tees, Esk and Wear Valleys NHS Foundation Trust, describes as a proportionate response.

"It worked well, and staff appreciated it," says Kilmurray. "It was right to keep that oversight and involvement, while getting to the bottom of asking the right questions."

Since then, the proportionate response has been to consider how to sustain the changes that worked, whilst evolving the approach to ensure it is fit for purpose in modern health and social care provision.

"As healthcare delivery advances, so must regulation," says Dawn Hodgkins, Director of Regulation at the Independent Healthcare Providers Network (IHPN).

Baker, who has long been a champion of transformation, agrees, and welcomes the opportunity to deliver it.

"If we are going to be part of this change, we need to change ourselves," says Baker. *"We needed transformation anyway and the pandemic has writ that large."*

SUPPORTING REGULATION

The CQC has been a strong advocate in recent years of the need for joined-up care, encouraging different providers to work together to make sure care is provided in a way that is responsive to people's needs and where quality of care crosses multiple care settings.

"In line with the health service's wider move towards Integrated Care Systems and delivering more joined-up care, the CQC are keen to mirror this approach and work towards assessing healthcare on a systems-level," says Hodgkins.

Improving the entire care pathway is clearly important and squarely in-focus, and Baker welcomes the move to Integrated Care Systems (ICS).

"It is down to all of us – regulators, providers, the whole wider system – to make these Integrated Care Systems successful," says Baker.

To that end, CQC has published its 2021 strategy document, setting out its ambitions for the next five years. The strategy is built upon four key themes: People and communities; Smarter regulation; Safety through learning; and Accelerating improvement.

While part of the equation is that services need to transform, the strategy pillar of 'Smarter regulation' promotes regulatory introspection and makes clear that CQC recognises the need for it to transform, too: "our purpose and our role as a regulator won't change – but how we work will be different".

Embracing the ongoing digital healthcare revolution is one element of this, alongside a continual assessment model, and the development of strong partnerships with providers.

"Seeing ourselves as having a common purpose – ensuring people get the high-quality care they need – and understanding our roles and contributions to that, is where we want to go to," says Baker. *"We want to be a supportive regulator."*

Part of that support involves listening to people receiving services and the communities in which they live. Recent reports from the Paterson Inquiry to Ockenden all contain the common theme of a system not listening to patients well enough.

"We have to be better at listening, so that our regulation is informed by their experiences. We also, of course, want to see providers responding to user's needs," says Baker, who also wants to emphasise the importance of encouraging providers to contribute to tackling inequalities that have been exacerbated through the pandemic – from inequalities in access to care, through to outcomes.

"We will be focusing on inequalities much more and essentially take the

view that quality has to be about equity and equality of care," says Baker. *"Everyone should have the chance of having good quality outcomes, otherwise we haven't got it right."*

NURTURING A CULTURE OF TRANSFORMATION, SAFELY AND AT SPEED

Accelerating improvement is a regulatory goal focused on supporting provider improvement through its own interactions with providers, while facilitating the availability of improvement support. NHS Improvement supports NHS bodies in this regard, but many independent sector providers do not have external improvement support available to them. While regulation must accept it is confined by conflict of interest when it comes to improvement support, Baker says CQC wants to work with organisations such as IHPN to help ensure it is available.

"Proposals to provide more clarity on standards of care, increase engagement around improvement and increase benchmarking data are to be welcomed," says IHPN's Hodgkins. *"From the sector's perspective, we are keen for this to go further, with more opportunities to share best practice around safety and quality, and the ability to ask for guidance without fearing this will affect ratings, with CQC potentially providing a framework to support providers with a 'requires improvement' rating."*

Improvement support being seen as a positive area for development, rather than a mark of compliance issues, speaks to the culture and mindset change that Baker wants to promote across the sector. This culture also applies to the fourth goal of safety through learning.

"There is a sense we have looked at safety predominantly through a process-driven lens," says Baker. *"That is important but not sufficient. We need to get the right expertise and culture in place. We have to make our approach to regulation of safety*

more about a culture of safety and not just about process. It shouldn't be a transactional approach to safety."

Healthcare - where it is clear that safety is an absolute necessity - can learn from other industries when it comes to safety culture and managing risk.

"Other industries are ahead of the game in their focus on culture and creating teams and processes that are safe, understanding human and team dynamics, which can be safety risks," says Baker. "We can learn from them, while working with other regulators and NHS England and NHS Improvement."

This speaks to developing a safety approach based on strong frontline learning, with leadership figures driving a culture of two-way dialogue, transparency and learning.

The rapid establishment and set-up of Nightingale hospitals is an example to draw from, according to Baker. Those sites were set up almost overnight, and diverse clinical teams were assembled and brought together at short notice. Learning how to make the sites 'better' and safer was done on a daily basis.

"This typifies the culture of learning we want to create. A culture that doesn't see things going wrong as a failure, but as an opportunity to learn. This is tricky for healthcare, but we don't want a culture of defensiveness when things go wrong, we want honesty, transparency and learning," says Baker. "We don't expect perfection; everyone is fallible and all services have problems. We want a service that understands those problems and does its best to learn and improve. My concern as a regulator is not services that have problems; it's services that are defensive about those problems."

With a shared focus on how services can respond if things go wrong, CQC hopes to establish a mature and open partnership with providers, rather than the relationship being arm's-length. Sir James Mackey, Chief Executive of Northumbria Healthcare NHS Foundation Trust, stresses that providers must play a driving role in nurturing the right culture and relationship.

"We need regulation as a safety net, maintaining minimum standards. But it should not be expected to intrinsically be an improvement mechanism, on its own," says Mackey.

COLLABORATION BETWEEN REGULATORS

The CQC action plan provides a robust roadmap towards regulatory transformation, but CQC is not the only regulatory body within healthcare, of course. The likes of HSE and the Medicines and Healthcare Products Regulatory Agency (MHRA) clearly have a role to play.

Aside from the individual roles of the various regulators, collaboration between and among them will be a key to unlocking transformation. Smarter, more dynamic regulation that is driven by people's and communities' needs requires regulatory organisations to foster an aligned approach and support provider attempts to improve care.

"The regulatory environment can be complex, but if we work closely with other regulators, we can make sure things are consistent and coordinated," says Baker. "It's really important that we are speaking with a common voice."

If providers face a problem and various regulator all arrive on the scene at once, the risk of being pulled in different directions could compound the problem. A joined-up approach should help providers solve things as quickly as possible.

Data and technology play a role in making joined-up thinking easier, as well as in making the regulatory environment less complex.

"CQC is undergoing a digital revolution at the moment. In a year or so, we'll have a new digital platform to allow us to be more fleet of foot and using information in a smarter way," says Baker. "There are great opportunities to use novel technologies and we as a regulator need to recognise and support that. But innovation has to be safe and done in a way that is properly risk assessed and managed."

“Technological change at pace can sometimes lead to health and safety considerations being forgotten,” notes Professor Andrew Curran, Director of Research and Chief Scientific Adviser at the Health and Safety Executive (HSE), in its Annual Science Review 2021. *“If these considerations are made early enough in the technology journey, they can help to increase the pace of deployment.”*

Hodgkins notes that regulators’ ability to provide a timely and accurate picture of quality in the health system will be key to them delivering on their goal of dynamism. Regulators must respond to data around how services are functioning, but also promote data and information sharing, with appropriate privacy safeguards in place.

“Importantly, dynamism and digitalisation will make it easier for services as well as patients to exchange relevant information with regulators,” says Hodgkins.

The ongoing digital revolution must be accompanied by continued regulatory evolution. Mackey observes that there is a real opportunity, now, to seize the moment for change, building on what has worked well, and learning from what hasn’t, through the course of the pandemic.

“The most energising part of last year was the feeling of liberation from constraints – whether real or perceived, and most aren’t actually real. But there’s a power in the liberation that was felt,” says Mackey. *“Necessity is the mother of innovation. A lot of meaningful medical advancement comes during wartime or pandemics, in times of extremes. That has certainly been evident in this last 18 months or so and we need to harness this.”*



Corinne Slingo
Partner, Healthcare Regulatory


T: +44 (0)117 918 2152
cslingo@dacbeachcroft.com

Corinne leads the national Healthcare Regulatory team advising on all aspects of healthcare law from patient care/consent issues through to statutory powers, governance and assurance. Her health work includes a wide range of areas of advice and reputational management for businesses within the health and social care sector.



dacbeachcroft.com

 Follow us: @dacbeachcroft

 Connect with us: DAC Beachcroft LLP

DAC Beachcroft publications are created on a general basis for information only and do not constitute legal or other professional advice. No liability is accepted to users or third parties for the use of the contents or any errors or inaccuracies therein. Professional advice should always be obtained before applying the information to particular circumstances. For further details please go to www.dacbeachcroft.com/en/gb/about/legal-notice. Please also read our DAC Beachcroft Group privacy policy at www.dacbeachcroft.com/en/gb/about/privacy-policy. By reading this publication you accept that you have read, understood and agree to the terms of this disclaimer. The copyright in this communication is retained by DAC Beachcroft. © DAC Beachcroft.