Towards Intelligent Regulation

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About the writer:

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Introduction

A regular catch up with the CEO of a care organisation flagged up to me the challenges faced by them in dealing with regulatory inspections. This conversation coincided with press reports of a headteacher taking her own life after a disappointing inspection report and various discussions in the media about the basis of assessments. In discussion with that CEO we agreed that it would be instructive and useful to explore, in a slightly more structured way, the experience of Care Quality Commission inspection subjects. We put together a round table event to invite Owners, Directors and Managers to:

- Discuss our experiences of inspection, its impacts and effects (on all parties);
- Identify and explore common themes, threads and concerns arising from those experiences.

We have chosen, in this document, to not identify the individuals concerned nor to name their facilities. Eight individuals attended the discussion.

"My Experience of CQC"

In a very simple, round table format, each attendee was invited to share their experiences and, rather than attempting a verbatim report I am including here key points raised. These are not in the order delivered but have been clustered to assist with identifying themes.

We start with a number of quotes from those attending the workshop with key words highlighted in bold and underlined:

> *"Feel as registered manager, you **PERSONALLY** take on the burden of responsibility"*
> *"The inspection feels like it **focuses on the individual NOT the system** and/or the employer"*
> *"Standards are **ridiculous**"*
> ***"Lack of consistency** of approach"*
> *"You have only come **to find fault**"*
> *"The **emotional impact** that the process has on the individual"*
> *"Not interested in well-being and looked after, **MORE interested in the paperwork and the checklists"***
> *"Registered manager – focus is **on building the evidence** not on doing the job"*
> ***"Can't win against them**"*
> *"Have had some great, helpful Inspectors"*
> ***"Why are we doing this for CQC? Who are we doing it for?"***
> *"People, politics, **follow the money**"*
> *"Standardising reporting is **more efficient for the inspector** but it tells you less as a provider"*
> *"Loading up work on the Managers and Operational leaders **– lots of stress and pressure**"*
> *"What is it **appropriate** for a member of staff to know and **be responsible** for?"*
> *"**Satisfying CQC** is such a focus of our activity"*

Without pretending to undertake any deep analysis of this it is clear that the key words are emotionally charged and show that those involved experience CQC events and inspectors as addressing them as individuals not as agents of the organisations and their systems. This comes across particularly in expressions such as "can't win", "lots of stress and pressure" and "ridiculous" and "lack of consistency" all of which suggest experiencing inspection as personal and subjective

rather than objective. The suggestion of “more interested in the paperwork” and question of “who are we doing it for?” indicates at best a lack of clarity about the purpose of inspection.

We turn now to comments alleged to have been made by Inspectors during their visits:

> *“**I don’t care** what improvements have been made, I am looking at today”*
> *“**Inspect against inputs** not outcomes”*
> ***“MUST get it right ALL** the time”*
> *“**I don’t give** outstandings”*
> *“You are invited to challenge **BUT nobody is listening/reading it**”*
> *“Asking for minutes from an inspection? **WE don’t do minutes of OUR meetings**”*
> *“**I’m not here**, I am just observing” (non-residential care setting)*

These, accepting them as being faithful statements of what our participants believe the heard make the apparent approach clear. First is the positioning of the Inspector rather than the system or standard as being the arbiter, “I don’t care” “I don’t give” “nobody is listening,” all suggestive of a subjective assessment with ample scope for personal biases and preferences to drive the outcome. The measurement “against inputs not outcomes” suggests that what is being measured is simply compliance to an arbitrary, and personally validated, standard, “I don’t give outstandings”. Meanwhile ‘we don’t do minutes of OUR meetings” suggests a system that seeks to hold its subjects to a higher standard than it does itself which, if true is both arbitrary and indefensible. Finally, the invitation to challenge coupled to “BUT nobody is listening” is an indicator to the subject that the Inspector is in a position of absolute power, that there is no effective recourse or right of appeal.

These notes relate the lived experience of the participants in the workshop should be considered unacceptable in any inspection system and, are at best, in denial of natural justice and oppressive of those subjected to it.

Who are the Inspectors?

At least one of the participants had applied to become a CQC inspector and described the process as “long, slow, difficult, bureaucracy is horrendous”. Further observations were wide ranging:

*How is **THEIR performance** measured?*

*How do **'they' want the 'evidence'**?*

***No strong qualification** for being a CQC inspector*

***NO longer have experience/background** in the service which they are inspecting and lack understanding of the service*

*"Outstanding" is **hard work for the Inspector***

*Are they asking **the right questions**?*

*The operating model **has deteriorated***

*Used to be **a 'mentoring model'***

***Lack of trust** in the staff members*

*What are **the criteria for each 'grade'**?*

These comments indicate not just a lack of clarity about the performance criteria but also about the expected qualifications, expertise and approach of the inspectors. They perhaps reflect experience of inspections as personal and subjective rather than impersonal and objective, an approach which is unlikely to generate comparable, consistent results over time and limits the value of comparisons between facilities.

The lack of a 'strong qualification' acknowledges a wider concern about the competence of the inspectorate to sit in judgement of the inspected. If inspection is experienced as some how arbitrary, personal, biased and personal then that undermines the legitimacy of the inspecting body.

What is CQC for?

The participants explored whether the role of CQC is to ensure compliance to a standard or to support the delivery of quality care, recognising that the one is an inspection regime, the other an assurance regime with each having very different characteristics and experiencing them as follows:

Compliance managers or Quality Managers

***What is the role** and requirement*

*Now **lost personal relationship**/contact*

*Some forms going in, **no response***

*The Inspectors **personal approach and style** hugely changes the relationship*

*'**There is nobody left'***

Big transition

*Question – are they meeting **statutory obligations**?*

*CQC **will not acknowledge** its own limitations*

***Waiting months** for a result/outcome*

Again the key phrases here are suggestive of a system whose purposes is unclear – "what IS the role?" - perhaps uncertain or lacking confidence in its methods – "no response" "personal approach and style" "nobody left". Perhaps then CQC which "will not acknowledge its limitations" is struggling to populate the inspector roles and hence using individuals with less knowledge and experience and who, in the absence of a robust, well-founded approach will, of necessity, retreat behind a narrow, personal interpretation of the rules. To be "waiting months" for the results of an inspection visit, which is very brief, is again suggestive of an organisation system which, for whatever reason, is failing to cope with its workload. What combination of volume, people, skills and process is causing that is beyond the scope of this review but does beg the question 'what is CQC for?' and, more importantly, cause us to consider whether its purpose can be fulfilled when it is experienced as shown.

A visit to the CQC website (www.cqc.org.uk) on 5th August 2023 states the following:

> CQC is the independent regulator of health and adult social care in England.
>
> We make sure health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage care services to improve.
>
> We monitor, inspect and regulate services and publish what we find. Where we find poor care, we will use our powers to take action.

This role definition, a "what", clearly emphasises quality of care as the focus and underpins this with notions of safety, effectiveness and compassion implying a people centred approach. However, its second line, a "how" is all about compliance "monitor, inspect and regulate" with a focus on retribution. These somehow seem, if not in opposition to each other, at least to be not entirely consistent. Reading on through the purpose and role we find this:

> We register care providers.
>
> We monitor, inspect and rate services.

We take action to protect people who use services.

These statements are unequivocal and, at least for me, make it very clear that the CQC is providing an inspection regime, one which is concerned with compliance to standards (and legislation) but not one which is explicitly concerned with ”quality of care” in relation to behaviour and compassion. It is notable that the values espouse say nothing explicitly of two groups – the service providers and the service users.

Excellence – being a high-performing organisation
Caring – treating everyone with dignity and respect
Integrity – doing the right thing
Teamwork – learning from each other to be the best we can

These all seem to be about CQC.

CQC is stating an ambition to change its approach to assessment:

https://www.cqc.org.uk/assessment

While the website outlines the method and approach and the stated ambition seems clear, it would seem that there will be substantial cultural challenges (as well as knowledge and experience to be gained) if there is to be a real change in the relationship between the regulators and the regulated. This will be essential if the process is to deliver benefit to the vulnerable individuals who use the regulated services. There is substantial work on the CQC website setting out how they intend to evaluate in the future. Some at least of the outcome measures will be drawn from repeatedly quantifiable data while others will continue to draw on more subjective, qualitative insights. It will be essential to acceptance of findings that the subjective measures are explicable in a consistent coherent manner. Given the comments reported above that will require effort.

Commentary on the current inspection process itself underpins the previous remarks:

Inconsistency
Inspectorial ***Preferences***
Subjective *not Objective*
Competence *of Inspector*

Understanding *of facility/needs*

*"**Trained to look for the bad**"*

*Evidence is driven by **the "paperwork" not by "good care"***

*Pressure on Inspectors, **not a healthy relationship***

***Emotional impact** on individuals, inc Reg'd Manager AND wider staff*

*Underlying assumption – **'you are not up to standard'**….*

Each of these comments is indicative of an experience which, at best, feels unfair to those subjected to it and undermines trust in the process. As one participant remarked:

> "we respond to how we have previously been treated in the same set of circumstances……bad inspection stimulates bad inspection"

But:

> "People work in social care because that is who they are!"

In other words, people do not work in social care for the glamour, they work in social care primarily through a desire to do good things for others. They are motivated to do a good job just for its own sake, but feel threatened in that by the way the inspection regime is applied. Nobody questions the need for its existence, just the way it works in a combative rather than collaborative manner.

Emotional Impact

It perhaps should not need saying at this point but a brief section is required to explore the emotional impact of the inspection process on those inspected. The end of that sentence seems wrong? Surely if is the facility that is inspected?

Officially, may be, but that is not how our group characterised how they experienced it. Those key words bear repeating…

> 'personally' 'the individual not the system' 'lots of stress and pressure'
>
> 'I don't care' 'I don't give outstandings' 'nobody is listening'

…and what it comes down to is…

'Lack of trust'

Experienced, qualified, competent professionals feel abused by a system of inspection which they experience as being focused on them as individuals and which seems arbitrary in its judgements. Is it surprising that they are distressed by the process? That they consider alternative careers?

What is Inspection For?

Again, no participant questioned the need for an inspection system. Their challenges were focused on how that should be implemented. They suggested that an effective regime should fulfil the following purposes:

Audit
Control
Improve
Protect
Safeguard

These all appear appropriate, the aim being:

to establish (audit) that appropriate processes are in place and followed;

to regulate (control) key aspects e.g. medicines, infection management;

to enhance (improve) care, reduce costs, eliminate adverse events;

to protect and safeguard the interests of the vulnerable residents;

However, perhaps what the inspectorate should be doing through its audit is NOT seek to deliver those things but to ensure that the care facility has systems in place and being applied that deliver those things.

The characteristics of effective regulation then would be outcome-oriented requiring:

Comprehension of the product or service;

Objective, consistent, repeatable, lawful, evidence gathering;

Demonstrating acceptance of natural justice, particularly providing a process of defence;

Such an approach would ensure that the inspection is focused on the quality of the care not just the documentation, that the focus of work is on the delivery of the desired outcomes not 'just' compliance with the regime.

Next Steps

It is clear from the discussion that there is substantial concern and dissatisfaction with the way CQC inspections have been conducted in the past, at least among this group of participants. An immediate next step will be to share this document and see if it resounds with others.