

RID OUTS

SUMMER ROUND-UP

THE WEBINAR WILL BEGIN AT 10AM

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INTRODUCTION

JENNY WILDE – DIRECTOR/SOLICITOR

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29 JULY 2021

- The development of CQC's new strategy
- The issue of mandatory vaccinations in the health and social care sector

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CQC'S NEW STRATEGY: UPDATE & IMPACT

SAMANTHA BURGESS – ASSOCIATE SOLICITOR

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CQC STRATEGY UPDATE

- Overview of the CQC Strategy
- Update on developments since the launch
- How can Providers prepare?



CQC STRATEGY DEVELOPMENT 2021

- Public consultation – early 2021
- Launched 27 May 2021
- Ongoing public engagement
- CQC Board meeting updates
- Two months on...



CQC STRATEGY

Strategic themes and core ambitions

People and communities

Regulation that's driven by people's needs and experiences, focusing on what's important to people and communities when they access, use and move between services.

Smarter regulation

Smarter, more dynamic and flexible regulation that provides up-to-date and high-quality information and ratings, easier ways of working with us and a more proportionate response.

Assessing local systems: Providing independent assurance to the public of the quality of care in their area.

Tackling inequalities in health and care: Pushing for equality of access, experiences and outcomes from health and social care services.

Safety through learning

Regulating for stronger safety cultures across health and care, prioritising learning and improvement and collaborating to value everyone's perspectives.

Accelerating improvement

Enabling health and care services and local systems to access support to help improve the quality of care where it's needed most.

Outcomes from this strategy

- We're driven by people's experiences of care
- We provide a clear definition of quality and safety that is consistently used
- We develop how we work in partnership with people

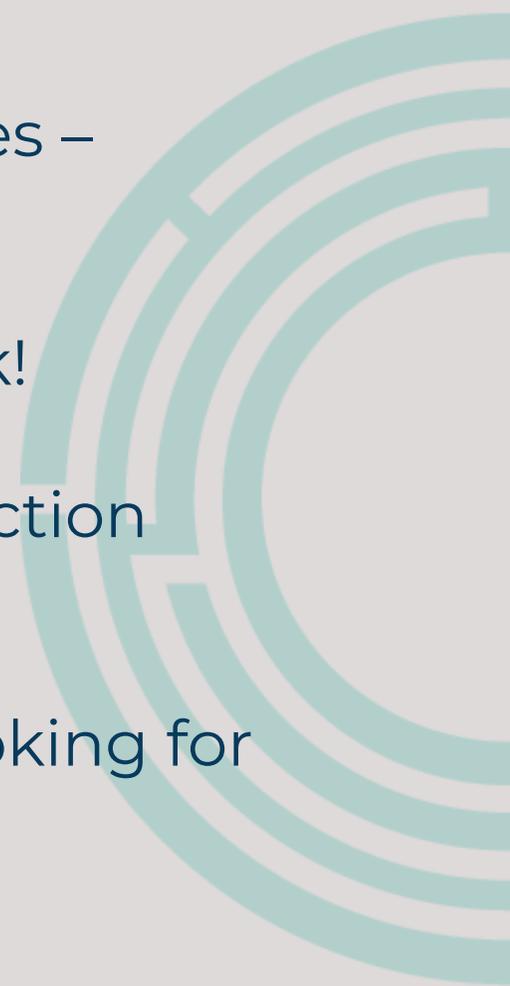
- We're an effective, proportionate, targeted and dynamic regulator
- We provide an up-to-date and accurate picture of quality
- It's easy to exchange information with us; our information is accessible, relevant and useful

- We've contributed to people getting better joined-up care
- We've influenced others to reduce inequalities in health and care

- We've contributed to improved safety cultures across health and care
- We've contributed to people receiving safer care

- We've accelerated improvements in the quality of care
- We've encouraged and enabled safe innovation

KEY POINTS ARISING FROM THE STRATEGY

- Regulation driven by people's needs and experiences – subjective opinion – where's the corroboration?
 - More remote data collection – get your data in check!
 - More frequent updates to ratings – not always inspection based
 - Move towards risk-based inspections – no longer 'looking for Good'
 - Move towards shorter reports
- 

CURRENT CHANGES AND ENGAGEMENT

- Monthly review & monitoring calls
 - Provider experiences sought on CQC document requests
 - Development of 'I', 'We' and Quality statements
 - Quality of life tool
 - Closed cultures research
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MONTHLY REVIEW & MONITORING CALLS

- July 2021 onwards for all services (except primary dental care & NHS Trusts)
- Move away from the Transitional Monitoring Approach
- Prioritise CQC activity
- If no concern: published statement on provider profiles:

“We carried out a review of the data available to us about [*service name*] on [*date*]. We have not found evidence that we need to carry out an inspection or reassess our rating at this stage.

This could change at any time if we receive new information. We will continue to monitor data about this service.

If you have concerns about [*service name*], you can [give feedback on this service.](#)”

MONTHLY REVIEW & MONITORING CALLS

- If potential concern: Monitoring calls for further information
 - These are NOT inspections and providers will not be rated afterwards
 - Published list of questions based on the KLOEs
 - Real-time oversight of services – update public on standards of care more promptly (*Smarter Regulation*)
- 

PROVIDER EXPERIENCES

- Currently seeking ASC Providers experiences of sharing information digitally with CQC when inspectors have requested records
- Intended to help the CQC consider how it can improve on its existing processes
- Short survey open on the Citizen Lab platform
<https://citizenlabco.typeform.com/to/VPsGnsDB>



'I', 'WE' & QUALITY STATEMENTS

- Developing a new assessment framework
 - Aim to remove duplication, aid understanding, simplify
 - Statements developed in line with existing KLOEs, prompts and ratings characteristics
 - Creation of a single new assessment framework that can be used across all sectors
 - The 5 key questions to remain
 - KLOEs and ratings characteristics to be simplified into quality statements
 - Direct link to the Regulations
 - See Citizen Lab public engagement platform
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QUALITY OF LIFE TOOL

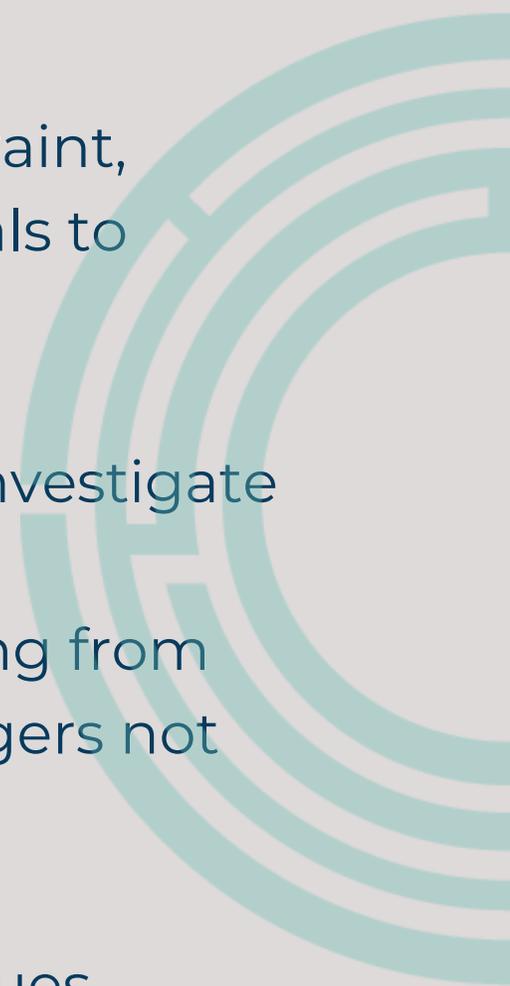
- Re: Inspecting services for those with learning disabilities and autism
- Link to closed cultures, the '*people and communities*' theme and the core ambition of equality
- Trying to understand what it feels like to receive care
- Being piloted in relevant hospitals and ASC services



IDENTIFYING & RESPONDING TO CLOSED CULTURES

- Eg's of 'closed cultures' – Whorlton Hall, Winterbourne View, Mid Staffs Hospital
 - Defined as '*a poor culture that can lead to harm, including human rights breaches, such as abuse*'
 - Raising awareness of warning signs so providers and managers can take action
 - Information reviewed – whistleblowings, feedback from staff, service user and their carers, notifications
 - Types of action taken – focused inspection, urgent notices restricting admissions, special measures, placement in alternative care services
- 

COMMON FEATURES OF CLOSED CULTURES

- Incidents of abuse and restrictive practices – unlawful restraint, blanket restrictions, undignified treatment, bullying, refusals to provide PPE at the beginning of the pandemic
 - Issues with staff competence and training
 - Cover-up culture – lack of transparency, unwillingness to investigate concerns and blame cultures
 - Lack of leadership and management oversight – no learning from incidents, failure to address poor staff performance, managers not accessible
 - Poor-quality care – not person-centred
 - Poor-quality reporting – deliberate attempts to conceal issues
- 

CLOSED CULTURES

The CQC is carrying out a year-long programme of work to transform the way it regulates services for people with a learning disability and autistic people. Making sure services are good with a focus on 3 key areas:

1. Registering the right services
2. Supporting providers to improve
3. Influencing the improvement of care pathways and ensuring that people are receiving the right care at the right time



HOW TO PREPARE?

- Know your service! Allocate the right people and resources
 - Data sharing: review your systems to ensure you can extract and present data clearly
 - Manage the inspection process – question, clarify, challenge
 - Regular recorded feedback and engagement with stakeholders
 - Keep up to date with strategy developments
- 

CONCLUSION

- Implementation moving fast – regular developments
- Keep up to date with developments – Provider participation platform, CQC website, CQC Board Meetings
- Ongoing public engagement – have your voice heard
- A learning curve for all



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MANDATORY VACCINATIONS

GEMMA NICHOLAS– SOLICITOR

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MANDATORY VACCINATIONS

- Change in legislation
- What does this mean for Providers?
- Human Resources



LAW CHANGE - CONSULTATION

- Government consultation on change to the law
 - Consultation ended in May
 - In June, announcement on mandatory vaccinations
 - Further consultation on the mandatory vaccinations in the wider social care sector
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REASON FOR PASSING NEW LAW

- SAGE advised that vaccine rates of 80% in staff and 90% in residents are needed for a minimum level of protection against coronavirus outbreaks
 - Only 65% of care homes in England met that threshold and the proportion was only 44% of care homes in London
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WHO DOES THE RULE APPLY TO?

- CQC registered care home not just care homes with residents aged 65 and over
- Anyone coming to the care home in a work capacity:
 - Full and part-time staff
 - Agency staff
 - Support staff
 - Healthcare workers
 - Tradespeople
 - CQC inspectors



THE NEW LEGISLATION

Health and Social Care Act 2008 (Regulated Activities)
(Amendment) (Coronavirus) Regulations 2021

AMENDS

Health and Social Care Act 2008 (Regulated Activities)
Regulations 2014



HEALTH AND SOCIAL CARE ACT 2008 (REGULATED ACTIVITIES) REGULATIONS 2014

Safe care and treatment

12.—1) Care and treatment must be provided in a safe way for service users.

2) Without limiting paragraph (1), the things which a registered person must do to comply with that paragraph include—

- a) assessing the risks to the health and safety of service users of receiving the care or treatment;
- b) doing all that is reasonably practicable to mitigate any such risks;
- c) ensuring that persons providing care or treatment to service users have the qualifications, competence, skills and experience to do so safely;
- d) ensuring that the premises used by the service provider are safe to use for their intended purpose and are used in a safe way;
- e) ensuring that the equipment used by the service provider for providing care or treatment to a service user is safe for such use and is used in a safe way;
- f) where equipment or medicines are supplied by the service provider, ensuring that there are sufficient quantities of these to ensure the safety of service users and to meet their needs;
- g) the proper and safe management of medicines;
- h) assessing the risk of, and preventing, detecting and controlling the spread of, infections, including those that are health care associated;**
- i) where responsibility for the care and treatment of service users is shared with, or transferred to, other persons, working with such other persons, service users and other appropriate persons to ensure that timely care planning takes place to ensure the health, safety and welfare of the service users.

HEALTH AND SOCIAL CARE ACT 2008 (REGULATED ACTIVITIES) REGULATIONS 2014 PARAGRAPH 12 (2) (H)

Safe care and treatment

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h) assessing the risk of, and preventing, detecting and controlling the spread of, infections, including those that are health care associated;

AMENDMENT OF REGULATION 12

(3) For the purposes of **paragraph (2)(h)**, a registered person (“A”) in respect of a regulated activity specified in paragraph 2 of Schedule 1 (accommodation for persons who require nursing or personal care) in a care home must secure that a person (“B”) does not enter the premises used by A unless—

- a) B is a service user residing in the premises used by A;
- b) B has provided A with evidence that satisfies A that either—
 - i. B has been vaccinated with the complete course of doses of an authorised vaccine; or
 - ii. that for clinical reasons B should not be vaccinated with any authorised vaccine;
- c) it is reasonably necessary for B to provide emergency assistance in the premises used by A;
- d) it is reasonably necessary for B to provide urgent maintenance assistance with respect to the premises used by A;
- e) B is attending the premises used by A in the execution of B’s duties as a member of the emergency services;
- f) B is a friend or relative of a service user and that service user is or has been residing in the premises used by A;
- g) B is visiting a service user who is dying;
- h) it is reasonably necessary for B to provide comfort or support to a service user in relation to a service user’s bereavement following the death of a friend or relative; or
- i) B is under the age of 18.

(4) A registered person provided with information as evidence in accordance with paragraph (3) may process that information.

(5) Nothing in this regulation authorises the processing of personal data in a manner inconsistent with any provision of data protection legislation.

AMENDMENT OF REGULATION 12

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- i. B has been **vaccinated with the complete course of doses** of an authorised vaccine; or
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HEALTH AND SOCIAL CARE ACT 2008: CODE OF PRACTICE ON INFECTION PREVENTION AND CONTROL AND RELATED GUIDANCE

- Providers must have regard to the [Code](#) when complying with their obligations under Regulation 12 of the Regulations
- [Annex A](#): proposed addition to the code of practice – criterion 10
- *For staff who are unable to be vaccinated due to health reasons, registered managers (or the equivalent person) will have completed risk assessments and taken appropriate actions to mitigate risks*

TIMESCALE



EXCEPTIONS / EXEMPTIONS

Exceptions

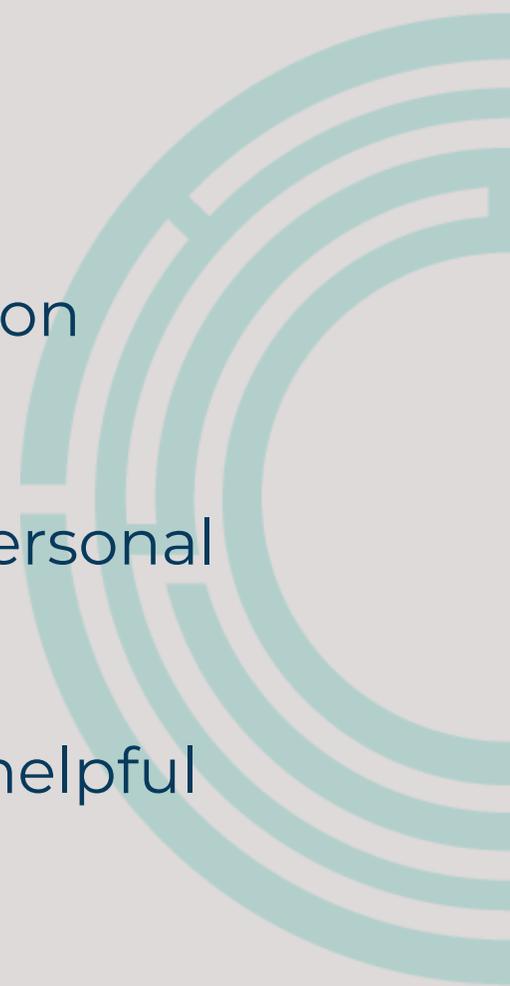
- Visiting family and friends
- Under 18s
- Emergency services
- People undertaking urgent maintenance work
- People providing emergency assistance

Exemptions

- Further details are yet to be outlined in guidance
- Guidance will reflect the Green Book on Immunisation against infectious disease (COVID-19; the green book, chapter 14a) and clinical advice from The Joint Committee of Vaccination and Immunisation (JCVI)



DATA PROTECTION

- How will you record proof of vaccination and medical exemptions?
 - Does your intended process comply with data protection legislation?
 - Medical information will amount to special category personal data and is subject to stricter regulations
 - The Information Commissioner's Office website has a helpful [guide](#) on special category personal data
- 

WHAT DOES THIS MEAN FOR PROVIDERS?

- Day to day impact
 - Logistics
 - CQC monitoring
 - Human Resources
- Long term impact



LOGISTICS

- “Logistical nightmare”
 - Ensuring existing staff have their vaccinations in time
 - Updating company policies and procedures
 - Updating contracts with external suppliers
 - Adapting recruitment processes
- “Unworkable door policy”
 - Checks on every person crossing the threshold
 - Keeping records on those coming into the care home
 - Evidencing compliance to CQC



CQC MONITORING

- The requirement for those working in a care home to be vaccinated will be monitored and enforced by the CQC
 - **Civil enforcement**
 - Warning Notice
 - Notice of Proposal/Decision to impose, vary or remove registration conditions
 - Notice of Proposal/Decision to suspend or cancel registration
 - Application to Court for urgent cancellation of registration
 - Urgent Notice of Decision to suspend or vary registration conditions
 - **Criminal enforcement**
 - Caution
 - Fixed Penalty Notice (Reg 12 breach - £4,000 Provider / £2,000 Registered Manager)
 - Prosecution
- 

HUMAN RESOURCES

Internal Audit

- What is your current uptake like:
 - How many staff are vaccinated?
- Which staff will be affected by the new legislation:
 - Which have not been vaccinated?
 - Which have only received one dose?
 - Which are likely to be exempt and how will this be evidenced?



HUMAN RESOURCES

Engagement

- Starting point is to encourage employees to get vaccinated
- Explain the potential consequences if a staff member chooses not to get vaccinated
- Vaccine enablement



HUMAN RESOURCES

Discrimination

- **Age** – younger workers may also be less inclined to be vaccinated due to the lower risk of hospitalisation and reported higher risk of blood clotting
- **Disability** – some vaccines may not be suitable for workers with allergies or suppressed immune systems and some workers may refuse it for mental health reasons.
- **Pregnancy or maternity** – while the government is now advising pregnant women to be vaccinated, this was not always the case. The change in advice may cause concern for employees who are pregnant or breastfeeding
- **Sex** – women may wish to delay vaccination due to concerns about the impact on fertility
- **Race** – ethnic minority groups have been more hesitant to receive the coronavirus vaccine
- **Religion or belief** – workers with strong religious or philosophical beliefs may object to the vaccine on moral or religious grounds. However whilst it is not an exemption within the legislation, the matter will need to be addressed sensitively and carefully

HUMAN RESOURCES

Dismissal

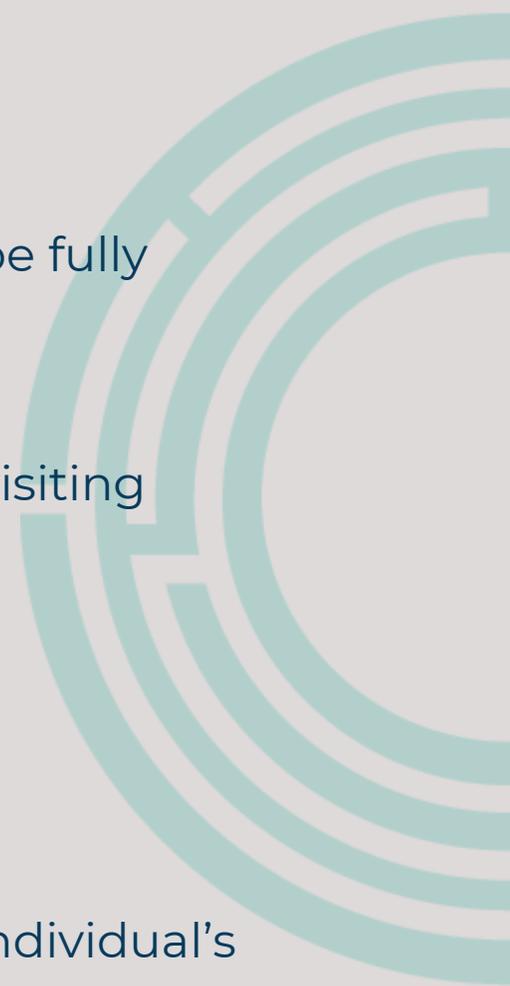
- Have a good reason for dismissal
 - Exercised a proportionate response
 - Taken account of the reasons behind any refusals
 - Considered alternatives to dismissal such as redeployment
 - Any concerns properly considered and documented
 - Followed a fair process
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LONG TERM IMPACT

- Over 60,000 people signed a petition against the plan by the Government to make the coronavirus vaccine mandatory for care home workers
 - Reports that many staff in the sector would rather quit than receive the vaccination
 - Issues with recruitment and retention in the sector will worsen
 - Puts Providers in a difficult position
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CONCLUSION

Key points

- Change in legislation
 - The Regulations come into force on 11 November
 - Deadline for first job is 16 September
 - Only staff with a prescribed medical exemption are not required to be fully vaccinated.
 - What does this mean for Providers?
 - Logistics of applying the new law to existing staff, new recruits and visiting professionals
 - Evidencing compliance to the CQC
 - Human Resources
 - Internal audit of your company
 - Use the grace period to engage with your staff
 - Aim for dismissal being a last resort
 - Operate a fair process, well-documented and ensures sensitivity to individual's concerns
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QUESTIONS?



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