

Our response to feedback on our special measures engagement

Our engagement

Introduction

In 2013, following the recommendations from the Francis Inquiry and the Keogh review, special measures was introduced for NHS trusts and foundation trusts. We have recently re-issued our joint special measures guidance for NHS trusts and foundation trusts with Monitor, the NHS Trust Development Authority on our website. NHS trusts and foundation trusts are therefore excluded from the rest of this document.

In July 2014, the Secretary of State announced the intention to introduce special measures for adult social care from April 2015. In August 2014, we announced our intention to introduce special measures for NHS GP practices. Subsequently, through engaging with providers and other stakeholders, we have developed a special measures protocol for all other services regulated, rated and inspected by CQC, including independent healthcare providers.

This document summarises the feedback that we received through this engagement, and how we have taken it into account.

How we engaged and who we heard from

Adult social care

Since the announcement last summer there has been ongoing work and co-production to develop the approach to special measures in adult social care. We also undertook an engagement exercise to seek people's views about our proposals from December 2014 to January 2015. We received 75 individual responses, with most respondents supportive of our proposals.

NHS GP practices

We are currently piloting special measures for NHS GP practices, and we have engaged with the sector on our proposals for it, including discussion about the criteria for placing a practice in special measures and the length of special measures. We launched a further engagement exercise early in January 2015, highlighting some amendments to our proposals for special measures, particularly focusing on the entry

criteria. We received 14 written responses. Most respondents agreed with the entry and exit criteria and commented positively on the support that would be offered to practices, from NHS England. There was some negative feedback from some, highlighting the negative impact on the practice and neighbouring practices, of placing a practice in special measures.

Independent healthcare

We consulted on our high level approach to special measures for independent hospitals, ambulances, dentists and community health services as part of the consultations for handbooks covering these areas, as well as the consultation on our new enforcement policy. We carried out a further short online engagement exercise with independent healthcare providers in early February.

Engagement across the sectors

To gather feedback about our special measure proposals we discussed it at:

- Four adult social care co-production meetings.
- Eight adult social care trade association meetings
- Four GP advisory group meetings
- One GP co-production meeting
- One meeting of our Children and Young People's group
- One independent healthcare advisory group meeting.

These meetings were attended by external stakeholders, including service providers, Experts by Experience (who have experience of services) and CQC staff. Generally, the meetings were hosted by senior members of CQC staff and included presentations followed by table discussions focusing on different aspects of the special measures protocol.

Public engagement

To gather public feedback about our special measures approach, we asked our Public Online Community members to answer a task focused on our GP special measures proposal.

We also consulted with Local Healthwatch representatives on special measures during our advisory group meeting in September 2014.

Special measures proposals – summary of our approach

Purpose

The purpose of special measures for CQC is to:

- Ensure that providers found to be providing inadequate care significantly improve.
- Provide a framework within which we use our enforcement powers in response to inadequate care and work with, or signpost to, other organisations in the system to ensure improvements are made.
- Provide a clear timeframe within which providers must improve the quality of care they provide or we will seek to cancel their registration (or in the case of NHS trusts, if cancellation is not appropriate, escalate to the Secretary of State).

Our proposed approach

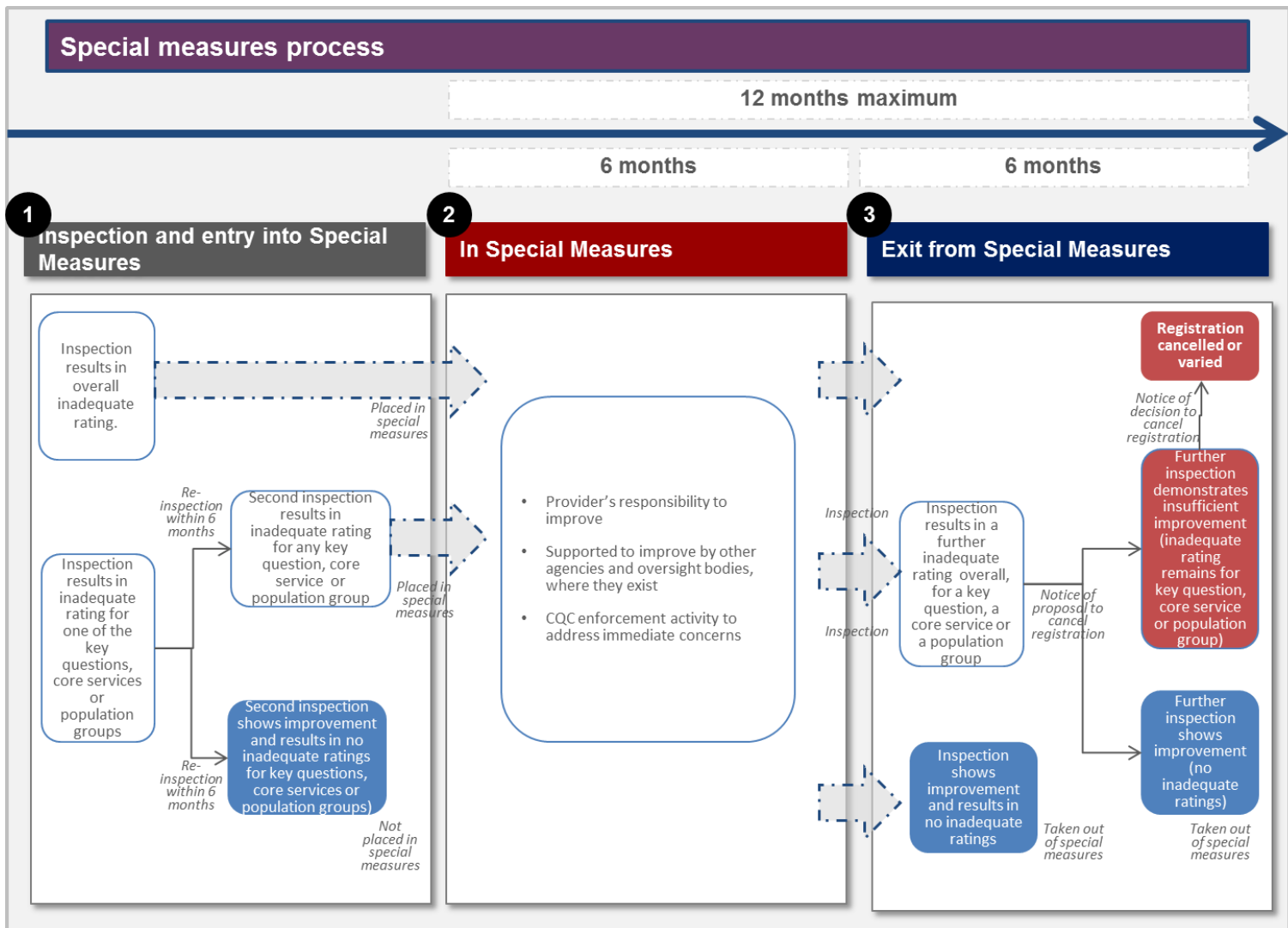
CQC's authoritative and independent view on the quality of care is key in identifying which providers are providing inadequate care and should be placed in special measures.

There are two routes into special measures:

- If a service is rated as inadequate overall it will be placed straight in special measures.
- If a service is rated as inadequate for one of the key questions, core services or population groups, it will have six months to improve. We will inspect it again within six months. If the service is rated as inadequate for a key question, core service or population group at the second inspection, it will be placed in special measures.

Further guidance is being published on our website.

Figure 1: Special measures process for all providers (excluding NHS trusts and foundation trusts)



Working with other oversight bodies

In all sectors, when a service is in special measures it is the provider's responsibility to improve. CQC is not responsible for ensuring improvement and not responsible for supporting the provider to improve.

The role of other organisations (for example commissioners) during special measures varies across different sectors. This is mainly due to differences between the sectors, such as the different commissioning and oversight arrangements and whether services are publicly funded or not. Also, the level of external support the provider is given from other organisations will be different depending on the sector they are in. For example:

- **NHS GP practices** will be working closely with their commissioners (the NHS England Area Team) and their local Clinical Commissioning Group during the period they are in special measures. They will also be able to access a support package from the Royal College of GPs, although this will require funding from both the practice and the Area Team.
- Within **adult social care**, there is no recognised single national improvement body. There is ongoing work with the Department of Health to oversee and guide the development – by Skills for Care, the Social Care Institute for Excellence and the Think Local Act Personal partnership, – of a new on-line resource designed to enable all adult social care providers registered with CQC to improve the quality of their services and improve outcomes for people using those services. The development of the first phase of the free support offer will be completed with a soft launch by the end of April 2015.
- Within **independent healthcare**, as with adult social care, there is no recognised single national improvement body. The CQC inspection report will clearly identify the area(s) of care that need to improve. The provider is responsible for accessing the appropriate support, relative to their particular clinical arrangements, and organise any relevant oversight body to provide support.

In all sectors, we will ensure that we identify and inform relevant oversight bodies that we are placing the service in special measures. We will do this before the inspection report is published, with our decision to put them in special measures. The details of how we do this and who we inform will be set out in the guidance we publish for each sector and will be worked through with the relevant stakeholders for the sector. For example, we are working closely with NHS England in relation to GP practices. In some sectors, for example independent healthcare, we will need to carefully consider who we discuss our decision with after the period when the provider can comment on the factual accuracy of the inspection report, but before publication of the report. Relevant oversight bodies, such as Clinical Commission Groups (CCGs) or Monitor, may have a legitimate need to be made aware that special measures are being used with a provider, such as when the service undertakes a significant amount of NHS work.

However, we will always need to balance the need to make our concerns about a service known to relevant third parties, with the provider's right to challenge our findings. A provider always has the right to make factual accuracy comments about the contents of a report, to challenge our ratings, and to challenge certain enforcement action. Sometimes in the course of such challenge, our decisions are revised. Where this occurs, we will need to make any third parties aware of changes.

It is also relevant to remember that when we serve certain notices under the Health and Social Care Act 2008, we are obliged to send copies to third parties such as commissioners anyway. At all times, we must be aware of the provider's right to challenge our decision to share information about them, and to claim damages for any losses arising from reputational damage.

Exit criteria for being taken out of special measures

If a service has demonstrated improvements and is no longer rated as inadequate for any of the key question, core service or population groups we will take it out of special measures. A service does not have to be rated as good to be taken out of special measures; there may be areas that require improvement at this point and it is possible that there will be ongoing enforcement action.

If the service has not made sufficient progress and remains inadequate overall, or for any key question, core service, or population group for GP practices, they will not be taken out of special measures.

Where no improvement is made by providers in special measures

When a service is placed in special measures we will inspect them again within six months. At this point we expect the service to receive no ratings of inadequate: either overall or for any key question (core service, and for a population group in GP practices).

At this stage, if the service has any ratings of inadequate, we will begin the process of taking action to prevent the provider from operating the affected service, for example by proposing to cancel their registration or to vary the terms of their registration. In some instances we may do this urgently, depending on the circumstances we find, and the level of risk to people who use services.

Within six months of this second inspection, we will carry out a further inspection to determine whether it is appropriate to complete the process of varying or cancelling the provider's registration, with the result that the affected service will be closed. If there remains an inadequate rating at key question, core service or population group we will take this step.

The use of enforcement

Special measures is not a form of enforcement. Our normal enforcement powers will continue to be used in accordance with our enforcement policy.

In some cases, it may be more appropriate to move straight to cancel or vary a provider's registration rather than placing them in special measures. It may also be necessary to take action to vary or cancel a provider's registration immediately, once the service is in special measures, rather than waiting the full 12 months before we do so. Where this is the case, this will be done in line with our published enforcement policy on our [website](#).

Overall timescales for special measures

The purpose of special measures is to provide a time-limited framework within which providers of inadequate care must improve, or have their registration cancelled.

The overall timescales from being placed in special measures to the service being closed will usually be no more than 12 months.

In some cases we will extend the time before the initial inspection, following placing a service in special measures. This may be appropriate in a small number of cases and we have provided guidance on when this will be the case. However, the overall timescales will be up to 12 months from the start of special measures.

Our approach to services that we do not rate

We are not proposing to introduce special measures for the services that we do not rate. This includes dentists, prison health services and some independent health services that we do not initially intend to rate.

While ratings are not an absolute requirement to allow a special measures regime, ratings provide clarity and a comprehensive assessment of the quality of the care provided.

For those services that we do not rate, we will respond to poor care provided by these providers in line with our enforcement policy in order to protect people from poor care and hold providers to account. In doing this we will work with other organisations to ensure that improvements are made. For example, for dentists we have established the Regulation of Dental Services Programme Board comprising the General Dental Council, CQC, NHS England, NHS Business Services Authority, Healthwatch, and the Department of Health.

What you told us and our response

Key themes that have arisen throughout our engagement are:

1. Understanding of methodology and concerns around consistency

What you said:

- People expressed concerns regarding the objectivity of inspectors and consistency of judgements, and how CQC would ensure continuity. The policy should outline how CQC would manage consistency throughout the process, including personnel.
- Concerns were raised that CQC had insufficient resources to provide support services, or to continually monitor services placed in special measures.
- Respondents felt that a service's previous history should be considered: for example, a pattern of improving one inadequate rating only for another aspect of care to then become inadequate might indicate systemic management failure; it is essential the record of improvement or organisational learning (or lack of) must also be considered.
- People felt that if an organisation is not financially viable, there is no point in attempting to drive improvement. There should be no further chances for a business that rates inadequate. There should be a financial action plan as a primary requirement before special measures are followed up.
- People sought greater clarity on the 'exit criteria'.
- The public expressed concerns about staffing and resources available at services to improve.

Our response:

More than a year of extensive engagement has informed the development of our new methodology. We started with the framework that CQC applies to health and care services:

- **The five key questions** – is a service safe, effective, caring, responsive to people's needs and well-led?
- **The ratings** – to judge whether a service is outstanding, good, requires improvement, or is inadequate.

We have developed our special measures approach in co-production with people who use services, their carers and families, local communities, commissioners, our staff and other stakeholders. The external and internal coproduction groups as well as the round table discussions and workshops, the outcome of consultation and two phases of testing have all helped to shape the final design of the methodology.

The overall framework, including our five key questions, key lines of enquiry, characteristics of ratings and ratings principles will remain the same until we have rated every service at least once. To direct the focus of the inspection, our inspection teams use a standard set of key lines of enquiry (KLOEs) that directly relate to the five key questions.

Our ratings are always based on a combination of what we find at inspection, what people tell us, our Intelligent Monitoring data and information from the provider and other organisations. A pattern of poor performance would therefore lead to the inspection testing whether there could be systemic failings. Our enforcement policy from April 2015 includes a 'decision tree' that explicitly considers a provider's track record, so that persistent failings can move a provider up the enforcement tariff.

We have strengthened the detail about consistency of approach in our published provider handbooks that have just been republished. We also have strong internal quality control and assurance mechanisms. Reports and ratings are subject to a peer review and manager review, and inadequate ratings are reviewed by a Management Review Panel.

We will continue to listen and learn as the approach is put into practice. We will need to monitor its impact and revise the policy if necessary.

2. Further clarification required on how special measures fits with enforcement policy

What you said:

- Some respondents felt that CQC already has sufficient powers and did not feel a special measures regime necessary

Our response:

CQC will not tolerate poor care. The purpose of introducing special measures is to ensure that providers are not able to continue to provide inadequate care after they have been rated as inadequate. It provides a clear timeframe within which services must improve, or further action will be taken. This gives providers a clear incentive to improve, and a reputational incentive to avoid services going into special measures in the first place.

Special measures are an intervention tool that sits alongside CQC's enforcement policy which helps us to respond to services that are failing to comply with their legal requirements and require a higher than usual level of regulatory supervision. For these services, special measures assist us to deliver our statutory functions. The principles of special measures and potential enforcement action we may take is outlined further in our enforcement policy.

In some cases, it may be more appropriate to move straight to cancel or vary a service's registration rather than placing it in special measures. It may also be necessary to take action to vary or cancel a provider's registration immediately, once the service is in special measures, rather than waiting for the full 12 months before we do so. Where this is the case, this will be done in line with our published enforcement policy. We will work closely with other organisations or oversight bodies in the system to ensure that providers do not continue to provide inadequate care and that they improve services during the special measures period. It is the provider's legal responsibility to improve the service and we will work with the provider towards that goal. CQC and others will continue to monitor the service while it is in special measures and can take urgent action at any time if we think people are at risk.

We use our enforcement powers to protect people who use regulated services from harm and the risk of harm. And to hold locations and individuals to account for failures in how the service is provided.

Our enforcement policy describes our powers and our general approach to using them. Information on managing a service during an appeal to the Tribunal can be found in our Representations and appeals guidance. Further detail on each of the specific sectors published on our website.

3. Concerns regarding transparency of appeals process/lack of special measures appeals process

What you said:

- Providers felt that more detail should be available for locations who wish to challenge their inspection rating and their entry into the special measure regime.
- Some providers and members of the public felt that there should be an appeal process.

Our response:

As special measures are triggered by a rating, any concerns regarding special measures should follow the ratings review procedure shown in our provider handbooks, and summarised here:

- The only grounds for requesting a review is that the inspection team did not follow the process for awarding them properly.
- A review will be undertaken by CQC staff who were not involved in the relevant inspection and a report presented to the Rating Review Panel.
- The panel will be chaired by someone from outside CQC, who will provide wholly independent advice.
- The panel will consider the report and the Chair will make recommendations to the relevant Chief Inspector or Deputy Chief Inspector, who will make a final decision.
- The review process is the final CQC process for challenging a rating. Locations can challenge our decisions elsewhere – for example by complaining to the Parliamentary and Health Services Ombudsman or by applying for judicial review

4. Concerns regarding involving people in process and impact on them

What you said:

- Providers and the public strongly felt that the views of people using services, residents and relatives must be taken into account if the cancelling of registration occurs or is being considered. They also felt that people's welfare compared to the impact of closure should be considered. The public felt that CQC should provide information of other practices the public could attend if theirs was placed in special measures.

- Respondents felt that greater emphasis, in general, should be placed on the views of people who use services and their relatives and carers. The public also felt they should be involved and informed in a practice's improvement plan to exit special measures.

Our response:

People using services, their families and carers are at the heart of what we do. Concerns raised by them and staff help to inform when, where and what we inspect. And if serious concerns are raised outside the standard inspection process, by a member of staff for example, we could conduct a focused inspection.

During the inspection, we ask questions that matter to them and listen to their views. And we refer to these in making judgements about the service.

It is the provider's responsibility to inform people who use the service, their families and carers that it is in special measures. The onus is on the provider to make the necessary improvements. Feedback will be sought from people who use the service throughout the process. From 1 April 2015 there will be a new legal requirement on locations to display their CQC rating, both within their premises and on their website (if they have one).

Where, following the start of special measures, cancellation of registration is considered we would engage closely with the relevant oversight bodies so that plans can be made to ensure people who use the service continue to receive care.

5. Clarification and concern regarding timescales

What you said:

- People told us that more clarity was needed around entry (exactly when 'day 1' commences), and the three stages.
- Respondents sought greater clarity about when escalation of the procedure will be expedited.
- Providers and the public felt that there should be an 'earlier re-assessment' for a service that has made the necessary improvements early in the six months.
- The public felt that six months was too short a time for a practice to set and achieve realistic improvement plans. They thought 9 to 12 months would be more realistic

Our response:

We set out outline timescales in more detail in our sector specific guidance documents.

We have introduced a flowchart that more clearly identifies the process through the entry, review and exit process. We have amended our guidance to more clearly clarify the stages of the process.

The special measures process starts from the date the inspection report and rating are published on our website. This is as soon as possible after completion of our quality assurance process.

Once a decision has been made to place a service in special measures we will inform any relevant local organisations, such as local authorities and clinical commissioning groups before we publish the inspection report. Safeguarding issues will be reported through our protocol so issues of safety will be notified as soon as they are identified.

The published inspection report will include a statement about our decision to place the service in special measures.

6. Concerns about the impact on the market and differences across the sectors

What you said:

- Providers and the public were concerned about local capacity, and the impact of cancelled registrations. This could put additional strain on other local services in areas where there are already issues, as well as exacerbate any existing local recruitment and retention issues with staffing.
- There were also concerns of unintended consequences. It was felt that special measures in social care could lead to local authorities placing a suspension on new placements resulting in loss of income and forcing the service into closure when actually given a chance they might have improved.
- Some respondents felt that when a provider is placed in special measures it will be crucial for them to be signposted to improvement support, from the right place, when they need it. This was echoed by the public.

Our response:

We have developed our special measures approach in co-production with people who use services, their carers and families, locations, commissioners, our staff and other stakeholders. We will continue to listen and learn as the approach is put into practice. We will be monitoring its impact and revise the policy if necessary.

We have developed a consistent and common approach to special measures across all sectors to ensure a fair and equal approach to responding to services that provide inadequate care. In all sectors there is a clear link to inspections and ratings and being placed in special measures. However, we acknowledge that there are some significant differences in the provider landscape, the role of the commissioners and other oversight bodies across the different sectors. As a result there are some necessary differences in the approach we have developed, particularly in relation to the role of other organisations when services are put in special measures.

We recognise that the level of external support the provider is given from other organisations will be different depending on the sector they are in.

In all sectors when a service is in special measures it is their responsibility to improve. CQC is not responsible for ensuring improvement and not responsible for supporting the service to improve. However, as part of our protocol we will ensure that providers are signposted to relevant support and improvement bodies.

In all sectors, we will ensure that we identify and inform relevant oversight bodies that we are placing the service in special measures. We will do this before the inspection report is published, with our decision to put them in special measures. The details of

how we do this and who we inform will be set out in the guidance we publish for each sector and will be worked through with the relevant stakeholders for the sector.

A key principle of special measures is to set a maximum timeframe for improvement. If inadequate care persists we will take the appropriate action to ensure people are protected. If a service persistently provides inadequate care over a time-limited period we will cancel their registration. This message is clearly stated in sector-specific guidance and is in line with our enforcement policy.