

Changes to our policy on registration of services for people with a learning disability and/or autism

CQC's view on the likely impact on providers and people who use services

This document provides CQC's assessment of the likely impact of changes to policy on the registration and variations to registration for providers supporting people with a learning disability and/or autism.

This document provides a descriptive assessment of the potential cost and benefit impacts of the changes we have made to this guidance.

1. Summary

This document describes the likely costs and benefits of the changes that will affect providers of services to people with a learning disability and/or autism. We have revised our policy on the registration of services for people with a learning disability and/or autism. We made these revisions in light of feedback from the consultation held from December 2016 to February 2017. The revised policy statement sets out our position and clarifies the factors that will make it more likely that applications to register or vary registration will be granted. We clearly set our expectation that providers develop and design their services in line with the underpinning principles of choice, the promotion of independence and inclusion in line with the national service model (*Building the right support*). We intend to publish the revised policy in June 2017. Our policy guidance was developed and revised in consultation with stakeholders, including providers, people who use services, national organisations, commissioners and government organisations. The proposals also follow on from commitments made in our previously published signposting document titled: "*A fresh start for registration*".

2. Background to policy changes

The events at Winterbourne View raised serious questions about the human rights of people with a learning disability living in institutions. In 2012, the Department of Health and other national partners, including CQC, committed to the Winterbourne View Concordat to improve the quality of care and lives of people with a learning disability.

Since the Winterbourne View Concordat, a series of documents have reconfirmed the Government's policy intention, and national partners' commitment to delivering these improvements. In particular, this has included a real focus on moving people out of institutions and into community based support in small settings.

The Bubb reportⁱ and the Winterbourne View 1 Year On reportⁱⁱ both signalled the need for sustained efforts to improve health and social care services for people with a learning disability. In the Winterbourne View 1 Year On report, the government made a commitment that, "*The*

CQC would continue to apply rigorous standards to the registration of new services, and seek to ensure that inappropriate models of care are not registered'.

In October 2015, NHS England, the Local Government Association and the Association of Directors of Adult Social Care Services published a national plan (*Building the right support*) that stated the intention to develop community services and close inappropriate inpatient facilities for people with a learning disability and/or autism. This was accompanied by a service model for health and social care commissioners.

In December 2016, NHS England, ADASS and the LGA published a new housing guidance document, *Building the Right Home*ⁱⁱⁱ, which is intended to be supplementary to *Building the right support* and the accompanying service model. This is guidance for NHS and local authority commissioners on how to expand the housing options available for people with a learning disability and/or autism who display behaviour that challenges, including those with a mental health condition.

As a signatory to the *Winterbourne View Concordat*, we are committed to change the way we regulate and inspect learning disability services. In *A fresh start for registration* and our report *The state of health and adult social care in England 2014/15*.^{iv,v}, we made a commitment to take a firmer approach to the registration and variation of registration for providers who support people with a learning disability.

As a member of the transforming care delivery board, CQC is committed to using its legal powers of registration to support the new service model.

We developed Registering the right support as a means of setting out our policy position that we expected providers to have regard to the national plan and accompanying service model when developing services for people with a learning disability. The guidance also set out the factors that would make it more likely for applications to register, or vary registration to be refused. The guidance was published in February 2016.

As a learning organisation, we have used our experiences of applying this policy over the last 12 months, in addition to legal advice and some helpful challenge from providers, to develop the guidance to ensure providers are clear about our expectations and our commitment to the national plan and service model.

A review of the guidance we published in February 2016 found that while it clearly intended to encourage providers to make the right choices when developing services in accordance with national policy, the language used in the guidance did not make it sufficiently clear about the extent to which we expect providers to comply with the service model contained in national guidance. In addition, the February 2016 guidance was non-statutory. This left the Commission open to applications where providers had taken *Building the right support* into account in their decision making processes, but did not design their services to reflect the guidance because they did not consider that they were under an obligation to do so.

The consultation findings identified that the majority of respondents were positive about the revised guidance, they felt the guidance was fair and believed it would result in improved services for people with a learning disability and/or autism. There was also support for the clarity of the guidance in delivering a bespoke registration process for the sector. People also mentioned that the guidance would support person-centred care. However a minority of respondents expressed concern that the guidance was over prescriptive, which would stifle innovation. Additionally some stakeholders, including financial institutions, were concerned that our position in relation to the size of services would have an impact on providers' ability to secure funding to develop services for people with a learning disability and/or autism and the continuing viability of this type of service.

3. Summary of changes we have made to the guidance

We have changed the status of the guidance to statutory guidance which imposes a statutory duty on providers to take account of this policy and wider government guidance when designing and developing their service for people with a learning disability and or autism.

We have changed the guidance to;

- clarify the factors that will make it more likely that applications to register or vary registration will be granted.
- set out our expectation that the underpinning principles of choice, the promotion of independence and inclusion as set out in *Building the right support* and accompanying service model, should apply to any service that provides care, or that might provide care in the future, to a person with a learning disability and or autism.
- make clear that the impact of the application of the underpinning principles, is the expectation that providers develop and design services that are small scale and promote independence and community inclusion. This means that we are unlikely to support applications for campus style or congregate settings as they do not accord with the underpinning principles of *Building the right support*.
- make a commitment to implement systems that enable providers to discuss their proposals with us before they submit them for assessment.
- clarify our policy position in regards to the impact of the policy on existing services to assure providers and people who use services that we understand that the interests of some people may be best served, and this will be their choice, by remaining in their current service or home even though it does not meet the standards set out in the guidance.
- make it clear that we do not want to disrupt the lives of people who are currently residing in a service that is not small-scale, provided that the care is person-centred.
- set out our regulatory responsibilities and expectations in regards to the registration of supported living services for people with a learning disability and or autism.
- give assurances that we will be prepared to support genuinely innovative models of care, where providers are able to demonstrate that their model aligns with the national model and is underpinned by evidence based best practice.

The proposed changes to the guidance will ensure that we have a consistent approach to the registration of services for people with a learning disability and/or autism and that we make our expectations clear to registration applicants.

4. Description of what will happen if the status quo remains

If we do not align our policy with the national model we could be seen to be failing to meet our strategic objectives set out in section 3 of the 2008 Act^{vi} which requires us to consider the impact of registering services that do not meet government best practice policy when making registration decisions.

If we do not revise the existing guidance there is a risk that we will continue to receive applications that do not accord with the principles of national policy we would still need to consider the national policy as part of our registration assessments and include in our registration and inspection decisions. This is likely to result in providers continuing to develop

services with models that do not meet the underpinning principles and therefore do not promote the best possible outcomes for people who use services.

5. Groups affected by this policy

We think the following groups are affected by this change, and in the subsequent sections we describe how these groups are affected by the change.

- People with a learning disability and or autism who use services that are regulated by CQC.
- The guidance applies to aspirant providers wanting to register with CQC to provide services to people with a learning disability and existing providers who wish to expand or vary their existing registration. This includes providers who are:
 - Applying to provide regulated activity in specialist hospital provision, such as an assessment and treatment unit for people with a learning disability and/or autism;
 - Applying to provide regulated activity in other services specifically for people with a learning disability and/or autism; and/or
 - Applying to vary their conditions of registration by adding or removing a location, or increasing the number of places provided at a location.

We have worked with a number of Clinical Commissioners of services for people with a learning disability in producing this document. Commissioners have signed up to the recommendations in our document and as such the impact on commissioning is not discussed in this document.

6. Costs and benefits to providers

Costs

This section provides a description of the likely costs we think providers will experience as a result of our new guidance. It includes our estimate of the number of new and existing provider locations delivering services to people with a learning disability and/or autism; our estimate of the number of new provider locations likely to be affected by our guidance; and a description of the types of costs providers may experience.

We met with a range of providers and their representatives, including some of the lead banks involved in funding LD services throughout the consultation. Some expressed concerns about the affordability of meeting the standards set out in our revised guidance and the national guidance, but were unable to give exact figures of the impact of the guidance as these would vary depending on the extent to which each provider was already meeting the standards. Based on our current understanding of the care providers deliver, we have listed below the main groups of providers affected and what we think the main costs will be.

We anticipate that initially the main group of providers who will be affected are aspirant providers wanting to register with CQC to provide services to people with a learning disability and/or autism, in particular, those wanting to deliver services in a residential setting. We also think existing providers wishing to vary the conditions of their existing registration will be affected by the revised guidance.

Using historical numbers of registration for Adult Community and Residential Social Care locations, we estimate the number of locations applying to register will be around 66 per year. This is based on taking the median of new registrations for the last three years for all Adult Social Care locations (community based and residential). It only includes instances where

provider mentioned that learning disability and autism was the only service to be provided at the registered locations.¹

Our new guidance requires providers to develop models of care that are underpinned by the principles set out in *Building the right support*. The underpinning principles promote small scale services as being the most effective in promoting positive outcomes for people with a learning disability and/or autism. The impact on providers and any costs they experience will depend on the extent to which the plans for new Residential based locations, which we estimate to be around 39 per year, do not meet the standards set out in our new guidance. Our estimate of new residential care homes is based on the median number of residential care homes registering with us for the last three years.

Our new guidance recommends that businesses provide person-centred care in small-scale setting. For those providers wanting to deliver residential accommodation, the requirements may have a negative impact on the income and consequently profits generated. Small scale provision may mean that providers face higher costs of providing residential accommodation and therefore may not be able to achieve the economies of scale in smaller services. New providers may find their ability to secure funding for the development of new services negatively impacted, and the financial sector may apply rigid rules in relation to the size of services they are prepared to finance. We are unable to assess the cost of this.

If existing providers seek to change an element of their registration, they will be required to apply the underpinning principles of *Building the right support* and national evidence based best practice when designing and developing their services. Currently our data shows that there are around 2,500 provider locations, including NHS hospitals and Adult Social Care providers delivering services to people with a learning disability and/or autism.

Where providers are able to demonstrate that they are providing truly person-centred care and meeting the requirements of the HSCA, there will be no additional costs as a result of this policy.

Where people's needs are not being met, or where providers are unable to demonstrate that the care they provide is person-centred, and promotes choice, inclusion, control and independence, we will always take appropriate regulatory action to improve the quality and safety of these services. This is likely to result in additional costs to the providers. Costs cannot be quantified here as this will depend on the extent of the providers' non-compliance with the relevant regulations.

Benefits

- Compliance with nationally recognised evidence-based guidance when developing and delivering care will enable providers to show that their services meet the needs and experiences of people with a learning disability and/or autism. This will encourage commissioners to commission services that are in line with the national model and therefore providers delivering such services should see an increase demand for their services.

¹ Our estimate of number of new registrations counts only those locations delivering a learning disability/autism service. The limitation of this approach is that it may undercount the actual number of new locations, as those locations delivering a range of services, including learning disability and autism were excluded from our analysis.

- Providers will have clarity on what they need to do to have their applications granted and to maintain compliance once registered.
- Providers will have clearer guidance in relation to the issues and areas they need to consider before developing their services.
- The opportunity to discuss proposals in advance will give providers an opportunity to gain an understanding as to whether an application to undertake regulated activity complies with the service models in Building *the right support* and/or other key national policy or good practice guidance, or if the application does not comply, and why it may be likely to be refused.
- Providers of supported living services will have clarity on how this policy will be applied to their services.

Business Impact Target Assessment

As a regulator of health and care providers, CQC is legally required to assess the impact of any changes in the way we regulate that affects businesses. We are in the process of publishing the impact on businesses affected. Much of the funding for this sector comes from public funding via the NHS and Clinical Commissioning Groups which means the majority of this sector are not classed as businesses for the purposes of the Business Impact Target. There might be a small number of individuals who fund their treatment privately, and this is the aspect of providers' services that would be within the scope of the Business Impact Target assessment. So a very small number of providers would be classed as businesses. However, we do not have the right data to estimate the number of businesses providing services to private individuals who pay for their own care, and given that we expect such numbers to be small, it would be disproportionately costly to collect this information. So the assessment will not contain an estimate of the costs and benefits of this change.

7. Costs and benefits to people who use services

Costs

We do not anticipate any costs to people who use services as a result of the change to guidance.

Benefits

Poor providers with models of care that are not evidence based and do not accord with the underpinning principles will not be granted registration. This means that people who use services can be assured that where services are registered, that they accord with the principles of the national model and other best practice and therefore promote person-centred care and better outcomes.

Proposed changes will help to safeguard people as we act to prevent poorer providers from entering the sector and ensure that new entrants and those already in the market are developing their services in line with evidence based practice models of care. Where services are not aligned with best practice and are failing to provide person centred care, people who use services will be assured that CQC will take regulatory action where necessary to encourage improvement.

People who use services and their loved ones will have clarity on what “good” looks like in services for people with a learning disability and/or autism and will be better placed to hold providers to account and make informed choices about their care.

8. Conclusion

In revising the guidance, we have taken into account the views of more than 300 people as part of a public consultation. People who use services and their representatives were clear that the policy was necessary to improve existing services and to ensure that new services met their needs in accordance with best practice.

It is clear that maintaining the status quo will inevitably have a negative impact on the provision of services for people with a learning disability and/or autism and we would be failing to meet our strategic objectives set out in section 3 of the 2008 Act^{vii} which requires us to consider the impact of registering services that do not meet government best practice policy when making registration decisions.

Some providers have expressed concern about the perceived prescription in the current policy and their concerns are supported by the finance sector, specifically in relation to the application of the underpinning principles.

The current revisions will result in benefits to providers who will have clarity about what is required of them in order for their applications to be granted and for people who use services who will be assured that providers that are registered with CQC have models of care that are underpinned by the principles of choice, independence and inclusion and are providing truly person centred care which promotes the best possible outcomes.

ⁱ Bubb, Sir Stephen, Transforming Care and Commissioning Steering Group, Winterbourne View - Time for Change. Transforming the commissioning of services for people with learning disabilities and/or autism (November 2014). <http://www.england.nhs.uk/wp-content/uploads/2014/11/transforming-commissioning-services.pdf>

ⁱⁱ Department of Health, *Winterbourne View: Transforming Care One Year On* (December 2013). London: The Stationery Office https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265752/Winterbourne_View_One_Year_On_Report.pdf

ⁱⁱⁱ NHS England/LGA/ADASS, *Building the Right Home: Guidance for commissioners of health and care services for children, young people and adults with learning disabilities and/or autism who display behaviour that challenges*. 2016. <https://www.england.nhs.uk/learningdisabilities/wp-content/uploads/sites/34/2015/11/building-right-home-guidance-housing.pdf>

^{iv} Care Quality Commission, *A fresh start for registration: Improving how we register providers of all health and adult social care services*, 2015. http://www.cqc.org.uk/sites/default/files/20150810_freshstartregistration_2015_final.pdf

^v Care Quality Commission, *The state of health care and adult social care in England 2014/15*. October 2015. www.cqc.org.uk/content/state-care-201415

^{vi} Health and Social Care Act 2008 <http://www.legislation.gov.uk/ukpga/2008/14/contents>

^{vii} Health and Social Care Act 2008 <http://www.legislation.gov.uk/ukpga/2008/14/contents>