





Market Oversight Guidance

Consultation

October 2020

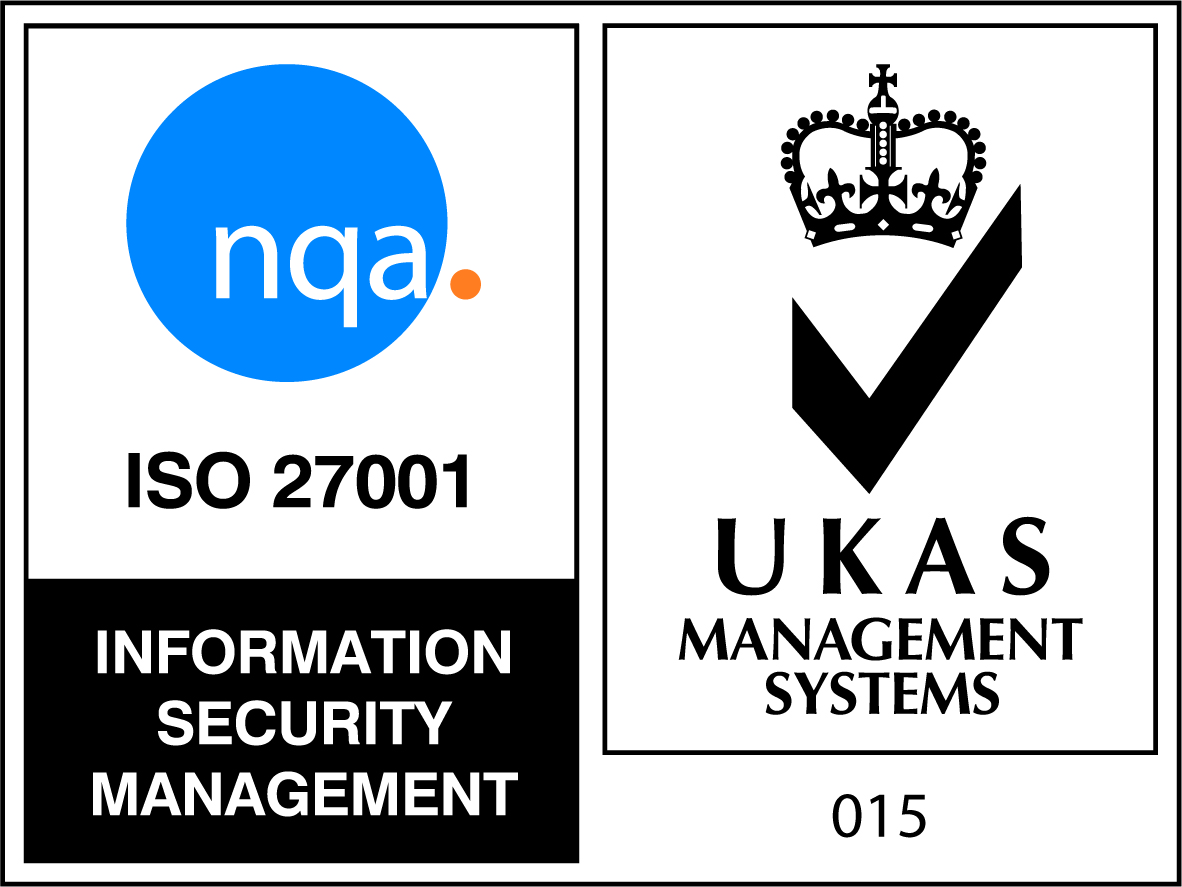
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| **Author(s)** | Jane Simon, Remco van der Stoep |
| **Quality Assurance by** | Dan Barrett |
| **Main point of contact** | Dan Barrett |
| **Telephone** | 07702 515709 |
| **Email** | info@traverse.ltd |

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contact us.

|  |  |
| --- | --- |
| t. 0207 239 7800 | p. 2 Angel Square, London EC1V 1NY |
| e. info@traverse.ltd | w. www.traverse.ltd |



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1. Introduction

From 24th August 2020 to 19th October 2020, Care Quality Commission (CQC) consulted on its proposed changes to the guidance on the Market Oversight scheme.

The purpose of this consultation was to seek public and stakeholder views on the proposal to inform CQC’s development of the final guidance document.

#### Purpose of this report

This report provides a summary of the responses received to the consultation.

#### Feedback received

A total of 14 responses were received during the consultation period.

The consultation questionnaire contained eight open questions using a text box and nine closed questions where respondents could select from a list of options. An additional eighteen questions sought demographic information about the respondent. Table 1 below sets out the questions asked, and the number of responses received to each question.

It should be noted that respondents do not always provide an answer to every question from the questionnaire, as such the total number of responses to each question is usually lower than the total number of responses to the consultation.

|  |  |
| --- | --- |
| Question | No. Responses |
| Q1a. To what extent do you agree with the proposed revised interpretation of “likely”? | 14 |
| Q1b. Please give reasons your answer | 12 |
| Q2a. To what extent do you agree that this interpretation of the conditions for notification will better protect people using services by aiming to give local authorities more time to consider implementing contingency plans? | 14 |
| Q2b. Please give reasons your answer | 10 |
| Q3a. To what extent will this have an impact on providers? | 14 |
| Q4b. Please give reasons for your answer | 11 |
| Q5a. Do the proposed revisions to this section clarify the conditions for notification to local authorities? | 14 |
| Q5b. Please give reasons for your answer | 10 |
| Q6a. To what extent do you agree that the revised guidance sets the right balance between our duties to respect the commercial sensitivity of information submitted by providers and our statutory duties, particularly the protection of service users? | 12 |
| Q6b. Please give reasons for your answer | 7 |
| Q7a. To what extent do you agree with this proposed change? | 14 |
| Q7b. Please give reasons for your answer | 11 |
| Q8. Are the provider obligations clearly explained? | 14 |
| Q9. Are the steps we may take against uncooperative providers clearly explained? | 11 |
| If you wish to add any comments, please do so here. | 7 |
| Non-Fitting | 7 |

Table 1. Number of responses to each question

#### Focus groups

Seven online focus groups were held by CQC in September 2020. There was one focus group on each of the following dates: 8th, 9th, 10th, 16th, and 18th of September. Two focus groups were held on 21st September.

All providers in CQC’s Market Oversight (MO) Scheme were invited to a focus group and in total 51 providers were represented at the focus groups.

Notes of feedback received at each of the 7 focus groups were included in the analysis of responses. The ‘Non-Fitting’ question in Table 1 above corresponds with these submissions. Findings from the focus group summaries are reported under the relevant consultation themes, integrated into the analysis of consultation responses.

* 1. Processing and analysis

#### Receipt and processing of feedback

CQC provided written feedback from focus groups and responses to the online questionnaire to Traverse for processing and analysis. All data were imported into Traverse’s bespoke analysis system, Magpie. This enabled all data to be stored in the same place and presented in the same format to analysts and report writers.

#### Analysis of open text responses

A coding framework was created to analyse responses to open text questions. This comprised natural language phrases reflecting the full range of comments and themes provided in responses. The purpose of the framework was to enable analysts to identify and group the themes and issues raised in responses, to capture and report on the full range, detail and nuances of responses.

A multi-tier approach was taken to coding, starting with high-level themes and then developing specific codes within these themes reflecting the range of issues and views on that theme. The top-level themes are listed in table 2 below.

|  |
| --- |
| Theme |
| Market oversight general |
| Interpretation of ‘likely’ |
| Conditions for notification |
| Commercially sensitive information |
| Consent and engaging with third parties |
| Providers’ obligations |
| Other |

Table 2. Themes used in the coding framework

The application of a code to part of a response was done by highlighting the relevant text and recording the selection. A single submission could receive multiple codes. Where similar issues were raised, care was taken to ensure that these were coded consistently.

The coding process enabled all responses to be indexed according to the issues raised, supporting the reporting process.

Each code represents a specific issue or argument raised in responses. Natural language codes (rather than numeric sets) are applied as this allows analysts to suggest refinements and additional issues and aids quality control and external verification.

* 1. Reading this report

#### Structure of the report

Each chapter reports on responses to particular questions (and relevant comments from non-fitting/focus group notes) breaking the issues down by key themes emerging, supportive or opposing comments and suggestions for changes to the proposals. The themes used to group responses within each chapter reflect the issues raised in responses, rather than a standard set of sub-headings within each chapter.

* Chapter 2 summarises feedback on the CQC’s duty to notify local authorities - interpretation of “likely”. This chapter is informed by questions 1 to 4 of the consultation questionnaire
* Chapter 3 summarises feedback on the conditions for notification. This chapter is informed by question 5
* Chapter 4 summarises feedback on how CQC will handle commercially sensitive information and engage with third parties. This chapter is informed by question 6
* Chapter 5 summarises feedback on the proposal to engage with third parties in the absence of provider’s consent. This chapter is informed by question 7
* Chapter 6 summaries feedback on provider’s obligations. This chapter is informed by questions 8 and 9
* Appendix A provides a summary of responses to questions from the ‘About you’ section of the consultation questionnaire
* Appendix B provides a summary of responses to questions from the ‘Equality, diversity and human rights monitoring’ section of the consultation questionnaire.

#### Use of numbers and quantifiers in the report

When summarising qualitative feedback under each section of the report, quantifiers such as ‘several’, or ‘a few respondents’ have been used to provide a sense of the frequency within which issues have been raised in relation to other issues within a given question to give a sense of proportion and balance.

The following considerations should be kept in mind when interpreting numbers in this report:

* As a consultation process is self-selecting (that is anyone is free to respond or not as they choose), those who respond cannot be considered a representative sample
* Even within the subset of respondents who responded using the questionnaire, some respondents choose not to answer some of the closed questions on the questionnaire. Likewise, these responses are not included in the sections which report on those closed questions

1. Interpretation of “likely”

This chapter addresses responses to questions 1 to 4 of the consultation questionnaire as well as comments on the CQC’s duty to notify local authorities - interpretation of “likely” raised in other questions.

#### Q1a. To what extent do you agree with the proposed revised interpretation of “likely”?

A total of 14 respondents answered this closed question. Six of these respondents agreed with the proposed revised interpretation of “likely”, four of whom agreed strongly. Eight respondents disagreed, five of whom disagreed strongly.

Among respondents who were responding on behalf of adult social care providers (a subset of the 14 above), six out of seven indicated they disagreed with the proposed revised interpretation.

#### Q2a. To what extent do you agree that this interpretation of the conditions for notification will better protect people using services by aiming to give local authorities more time to consider implementing contingency plans?

14 respondents answered this closed question. As with the first question, these responses showed a mixed picture.

Five respondents indicated that they agreed with the question, four of whom agreed strongly. Six respondents indicated that they disagreed, five of whom disagreed strongly. Three respondents chose the option ‘neither agree nor disagree’.

Of those responding on behalf of adult social care providers, one agreed, four disagreed (three disagreed strongly) and two neither agreed nor disagreed.

#### Q3a. To what extent will this have an impact on providers?

Again, 14 respondents answered this closed question. All respondents indicated that they expected the proposed revised interpretation would have an impact on providers: seven respondents indicated that it would have ‘some’ impact and the other seven respondents indicated that it would have ‘significant’ impact.

Looking at those who responded on behalf of adult social care providers, three respondents selected ‘some’ and four respondents selected ‘significant’ impact.

#### Q4a. To what extent will this have an impact on local authorities?

A total of 14 respondents answered closed question 4a. Of these, 13 indicated that they expected the proposed revised interpretation would have an impact on local authorities; seven respondents expected that would be ‘some’ impact and six thought the impact would be ‘significant’. One respondent thought there would not be an impact at all.

* 1. Support

Where respondents wanted to clarify their responses to the closed consultation questions about the proposed revised interpretation of “likely” they were invited to do so. Each of the closed questions 1a-4a was accompanied by an open question 1b-4b for that purpose.

Several respondents as well as some participants at focus groups made comments to emphasise or clarify their agreement with the proposed revision.

A few respondents commented that in their view the current market oversight scheme involves local authorities too late in situations where a care service is at risk of being discontinued. Respondents thought the proposed revised interpretation of “likely” would see earlier CQC notifications which in turn would allow more time for local authorities to work with providers and others to ensure the continuity of care.

Some respondents who expressed support also argued that through sharing information about risks at an earlier stage, the proposed revision would help create better conditions for joint working between local authorities, providers and others to achieve the best possible outcome for the people who use a service. Respondents believed that the proposed change to the interpretation of “likely” would make the guidance more clearly focussed on the interests of people who use care services.

“I think this will also help with issues of trust and a greater feeling that all parties are working to achieve the same aim and are sharing information that will support this.” - Respondent 19132

One respondent supported the proposed revision because in their view it offered greater flexibility. Another praised CQC’s market oversight expertise and expressed confidence in its ability to assess when a risk would require it to intervene.

* 1. Concerns and suggestions

Several consultation respondents as well as participants at focus groups expressed concern about the proposed revised interpretation of “likely”. This section summarises the range of issues raised by respondents and participants, expressed in responses to the consultation questions 1b, 2b, 3b and 4b.

A few comments asked for a clearer rationale for the proposed changes, asking what had prompted CQC to decide that the existing interpretation of “likely” in its guidance had been inadequate. Some respondents argued that in their view the current interpretation is adequate and would not need updating.

Respondents who were critical of the proposed revision thought that greater clarity was needed as to how CQC would use the revised interpretation of “likely”. Some argued that CQC should provide a clearer definition of how it would interpret "a real possibility of business failure” and requested that such a definition would be accompanied by worked examples to support it.

Respondents emphasised that the current interpretation of “likely” implied a 50% probability of failure threshold and expressed concern about the absence of such a probability marker in the proposed revised interpretation. They thought this would make the guidance less transparent and CQC less accountable.

“CQC’s proposed alternative definition of “likely” as meaning “a real possibility” is wholly inappropriate and can be open to many different interpretations: for example, when drawing a card at random from a deck, there would be a “real possibility” of it being the five of diamonds, although chances of this occurring would only be 1 in 52.” - Respondent 19130

Comments stating concern about the clarity of the proposed revision were sometimes linked to concerns that a broader interpretation of “likely” would give greater weight to the judgement of the regulator. Some respondents and focus group participants believed that this would bring more subjectivity into the process, which to them was a concern.

Respondents said that if providers felt that CQC’s interpretation of the guidance was subjective, this would impact on relationships and potentially damage CQC’s reputation and the trust in enjoys among the provider community. In one focus group a participant suggested that the proposed revised interpretation would allow CQC to avoid legal scrutiny about its decisions on issuing Stage 6 Notifications.

“Such levels of subjectivity also have the potential to produce high levels of scepticism of CQC interventions.” - Respondent 19129

To address the potential risks of subjectivity, some respondents suggest that safeguards should be adopted to mitigate against subjective judgements. For example, respondents argue that the guidance should include clear objective criteria to underpin CQC’s interpretations, as well as transparent industry benchmarks. A few respondents thought the proposed changes would require independent oversight over CQC’s market oversight decisions.

Questions 2, 3 and 4 asked about potential impacts of the proposed revised interpretation of “likely” on local authorities, providers, and people who use services. Some of the comments in which respondents reflected on such impacts included concerns about potential negative impacts. The next paragraphs discuss these comments for each category in turn.

Respondents who expressed concern about impacts on local authorities generally did so from an assumption that the proposed changes to the guidance would result in an increase of Stage 6 Notifications issues by CQC. They thought this could translate in an increased workload for local authorities, which they argued would be unwelcome given local authorities’ stretched resources.

Some respondents argued that the potential additional administrative burden that local authorities would encounter as a result of the proposed revision would be unnecessary or unwarranted. One respondent thought it would contribute to a culture of over-scrutiny. A few respondents believed that local authorities’ contingency planning could become less effective if the risks it would be addressing would be relatively low, or longer-term.

“A model based on less than 50% chance of failure will have the effect of placing local authorities on 'standby' for every provider […] - if contingencies are overly planned for they become ineffective.” - Respondent 19103

As with impacts on local authorities, respondents commenting on potential impacts on providers generally understood the proposed revised interpretation of “likely” to imply that CQC would end up issuing Stage 6 Notifications more often. Respondents as well as focus group participants believed such a development could affect providers negatively.

According to respondents who expressed such concerns, Stage 6 Notifications have the potential of causing or accelerating the failure of care services, as a notification would reduce confidence in a provider’s ability to turn a situation around. Respondents argued that once a notification is issued, it is likely to hamper a provider’s relationship with commissioners, lenders, suppliers, clients and staff - especially if the information would end up in the public domain. In their view, this would further undermine a provider’s recovery prospects.

“This approach will precipitate the failure of businesses that would otherwise not fail.” - Respondent 19131

In related comments, a few respondents expressed concern that if CQC would issue Stage 6 Notifications more frequently, more providers would be required to respond to these. According to respondents, this could take resources away from securing the continuity of care, in particular if a notification had been issued where the risk of business failure wasn’t imminent. Respondents also expressed concern that Stage 6 Notifications, if issued too easily or early, could impact on relationships between providers and local authorities.

A few respondents argued that the care sector was facing deep uncertainty because of the Covid-19 pandemic and other societal issues, expressing concern that the uncertainty could result in a surge of situations where CQC’s market oversight could decide to intervene. Respondents thought that providers would need to be able to focus on the provision of care as much as possible in these circumstances and cautioned against an overly intrusive regulatory practice.

Some respondents expressed concern that providers would not be able to challenge or appeal a Stage 6 Notification. In their view, the proposed changes to the guidance would make CQC’s judgement central to whether a notification is issued, and they argue that providers should have an opportunity to object to such a decision, considering the potential impact of a notification on a provider.

“In light of the introduction of such subjectivity, we must ask what oversight is there of the subjective judgements that will be made around when such a threshold may be met?” - Respondent 19129

Where respondents expressed concern about the potential impact on people who use services, this was often intertwined with their concerns about the potential impact on providers. Some respondents who argued that the proposed revised interpretation of “likely” could have the unintended consequence of causing or accelerating business failures added that this would also affect service users.

According to these respondents, people who use care services would be impacted firstly by an increase in the number of care services that are closed following a business failure and secondly by the effect of service closures on local care markets, which would result in less choice.

“Despite the intentions of the change it may lead to the degradation of the likelihood of turning a service around. Ultimately, this has the potential to actually adversely impact the service users involved.” - Respondent 19129

Some respondents expressed general concern about the proportionality and/or legality of the proposed revision.

A few respondents argued that the proposed revised definition would go against the intention of parliament as stated in the Care Act 2014 in regard of the interpretation of “likely”. They argued that the proposed revision would therefore be unlawful.

A few respondents expressed concern that the revised interpretation would erode providers’ rights, while giving the regulator a disproportionate amount of power and/or responsibility. As mentioned above, respondents argued that because of this, a route to recourse for providers was needed.

According to one respondent, the lower threshold for regulator action as implied in the proposals would not be consistent with thresholds for regulatory action in other fields of regulation.

“In other fields of regulation, this threshold is generally only used as a trigger for further assessment and not as a basis for action with serious consequences such as a Stage 6 notification.” - Respondent 19131

1. Conditions for notification

This chapter addresses responses to question 5 of the consultation questionnaire as well as comments on the conditions for notification raised in other questions.

#### Q5a. Do the proposed revisions to this section clarify the conditions for notification to local authorities?

A total of 12 respondents answered this closed question. Of them, eight indicated that they believed the proposed revisions did clarify the condidions for notification to local authorities, while four indicated that they did not.

* 1. Support

Question 5b invited respondents to clarify their response to question 5a. Several of those who answered ‘yes’ to question 5a also provided comments.

These respondents mostly stated that in their view the proposed revisions made the guidance simpler, clearer, and/or easier to understand.

“This seems streamlined and concise to me.” - Respondent 19103

One respondent praised the proposed revision for making the conditions more streamlined and another thought that the revisions would make it easier for CQC to justify issuing notifications.

* 1. Concerns and suggestions

Only a few respondents made comments in response to question 5b to express specific concerns about the proposed revisions to the guidance section about the conditions for notification.

One respondent argued that the conditions for notification lacked transparency; another was concerned that the conditions were too loose and could lead to more litigation if used to justify a premature intervention.

“The issue of less transparency of how subjective judgements will be made is unhelpful.” - Respondent 19122

Participants of focus groups also discussed questions around the topic of conditions for notification. Where participants expressed concerns, these were often about the implementation of the guidance, rather than the specific revisions referenced in question 5.

Some focus group participants emphasised that a Stage 6 Notification can have a detrimental impact on the chances of a provider or service being able to continue and argued that CQC’s guidance should be formulated and implemented with that in mind.

Participants sought clarification from CQC around:

* How CQC would address a situation where some, but not all, of a provider’s services might cease;
* Whether and how CQC distinguishes between “administration” and “business failure”;
* How CQC interprets other indicators for potential business failure, such as cash flow issues or providers handing back contracts;
* How CQC would engage with providers and stakeholders in stages prior to a potential Stage 6 Notification.

1. Commercially sensitive information

This chapter addresses responses to question 6 of the consultation questionnaire as well as comments on *how CQC will handle commercially sensitive information and engage with third parties* raised in other questions.

#### Q6a. To what extent do you agree that the revised guidance sets the right balance between our duties to respect the commercial sensitivity of information submitted by providers and our statutory duties, particularly the protection of service users?

14 respondents answered this closed question. Six of them agreed that the revised guidance sets the right balance, including two respondents who strongly agreed. Five respondents indicated that they disagreed, four of them disagreeing strongly. Three respondents chose the option ‘neither agree nor disagree’.

* 1. Support

Question 6b allowed respondents to make further comments to their answer to question 6a. Several respondents made supportive comments in response to this question. A few participants at focus groups also expressed support for this proposed revision.

Participants and respondents who commented on this topic believed that the revised guidance achieved a good balance between the regulator’s duties and providers’ commercial interests. Some emphasised that they thought it was ‘proportional’, ‘reasonable’ or ’fair’. One respondent thought that the scenarios in Appendix E looked reasonable.

|  |
| --- |
| “it is a good balance of conflict management and statutory responsibility.” - Respondent 19097 |

A few respondents thought it was particularly important that the revised guidance would give greater priority to protecting the interests of people who use care services. One respondent believed that the current guidance was weighted towards commercial sensitivity, another said they thought it was right for CQC to have ‘these powers’. One respondent emphasised the social responsibility of providers and funders of care.

* 1. Concerns and suggestions

Several respondents and focus group participants made comments expressing concern about the revised guidance on how CQC will handle commercially sensitive information.

A few respondents thought that the proposed revision would give CQC too much discretionary power with regard to the disclosure of providers’ commercially sensitive information. They argued that the potential impacts of disclosures on providers would be substantial and that therefore checks and balances would be needed to ensure that CQC’s handling of commercially sensitive information is appropriate and proportionate. One respondent expressed concern about the message that the perceived absence of checks and balances would send to the sector.

According to respondents, the proposed revision would lack a mechanism for providers to dispute decisions by CQC to disclose providers’ commercially sensitive information. They argue that it would be appropriate given the potential consequences of CQC’s decisions that providers would have an ability to appeal.

|  |
| --- |
| “Members have proposed that when an objection is made by a provider to such a disclosure that there should be some route for recourse.” - Respondent 19129 |

One respondent added that providers should be able to seek financial compensation if they would incur damage resulting from CQC’s decision to disclose commercially sensitive information.

A few respondents emphasised their concerns that commercially sensitive information about providers, once disclosed by CQC, could be used improperly by third parties and/or end up in the public domain, which they believed could further harm providers’ prospects.

According to a few respondents, the proposed revision could result in CQC disclosing commercially sensitive information for reasons beyond those explicitly permitted by relevant legislation. One respondent referred to the Care Act 2014, the Health and Social Care Act 2008 and the CQC (Registration) Regulations 2009 and claimed that CQC’s proposed revision would not be in keeping with these. They argue that this would make the proposed revision of the guidance ‘unlawful’.

“The CQC’s proposals to circumvent the limits intended by Parliament are therefore unlawful, in that they propose sharing of information that is not necessary for any of the purposes set out in the draft guidance.” - Respondent 19131

At focus groups, participants highlighted examples of types of commercially sensitive information that providers are contractually prohibited from disclosing. They argued that the disclosure of such information could have unintended repercussions for providers and asked to work with CQC to address such eventualities, for example through establishing a clause that could be inserted into commercial contracts with third parties.

One respondent expressed doubt about whether disclosing providers’ commercially sensitive information has led to more effective regulation. Another expressed concern that the proposed revision would discourage “reports where there are concerns from employees”.

1. Engaging with third parties in the absence of provider’s consent

This chapter addresses responses to question 7 of the consultation questionnaire as well as comments on the *proposal to engage with third parties in the absence of provider’s consent* raised in other questions.

#### Q7a. To what extent do you agree with this proposed change?

A total of 14 respondents answered this closed question. Half of them, seven, indicated that they agreed with the proposed change, including three respondents who strongly agreed.

Six respondents indicated that they disagreed with the proposed change, five of them strongly disagreed. One respondent indicated that they neither agreed nor disagreed.

* 1. Support

Several respondents submitted comments to clarify their response to question 7a. Respondents who supported the proposed change thought that it would strengthen the regulator’s position and make it easier for CQC to fulfil its duty independently.

A few respondents emphasised that they thought the proposed change would be in the public interest, or benefit people who use health and social care services.

“This change would appear very helpful in achieving the overall outcome of best supporting service users in situations where the provider is at risk of closure / failure.” - Respondent 19132

One respondent thought that the proposed change was appropriate, because in their view providers and funders should not be able to prevent CQC from carrying out its duties by withholding consent.

* 1. Concerns and suggestions

Several respondents as well as focus group participants made comments expressing concern about the proposal to engage with third parties in the absence of provider’s consent.

Some respondents believed that the proposed change would be detrimental to the relationship between CQC and providers. They emphasised the importance of a collegiate atmosphere in dealings between the regulator and care providers.

“CQC rightly expect providers to operate on the basis of consent in all their activities so CQC should operate on a similar basis. Providers will then feel more involved and empowered.” - Respondent 19103

Respondents expressed concern that the proposed change would undermine the sense of equality in provider-regulator relationships, which they said could affect providers’ willingness to cooperate as well as providers’ trust in CQC. A few respondents believed it could lead to legal action from providers against CQC.

A few respondents highlighted issues specific to one category of third parties that CQC could engage with: lenders. Respondents argued that if CQC were to engage with lenders without a provider’s consent, this could harm the relationship between the lender and provider in question and ultimately cause the provider to fail. One focus group participant thought that engaging with lenders without provider consent would be ineffective, arguing that lenders would only want to cooperate with CQC if a provider has consented to this.

“Agree but to approach lenders without consent could make a dodgy situation much worse, so care is needed.” - Respondent 19098

Echoing comments in response to other consultation questions, one respondent expressed concern that the proposed changes would be a departure from the legislation and regulations that determine CQC’s remit. According to this respondent, the Care and Support Regulations 2014 make no allowance for CQC to seek information from third parties.

Participants to the focus groups asked for some clarifications about the proposed changes, including the rationale for the proposal to engage with third parties in the absence of provider’s consent and the nature of the ‘third parties’ envisaged by the proposal.

One focus group participant suggested that it would be appropriate for CQC to ensure that providers receive a copy of any correspondence and information exchanged between CQC and third parties.

“I think it would be beneficial if, when you have to share information with a third party or a local authority, the provider in question gets a copy of exactly what you are sharing so that everyone is trying to resolve issues from the same angle.” - Focus group participant

1. Provider’s obligations

This chapter addresses responses to question 8 and 9 of the consultation questionnaire as well as comments on *provider’s obligations* raised in other questions.

#### Q8. Are the provider obligations clearly explained?

14 respondents answered this closed question. Seven respondents thought that the provider obligations had been clearly explained; the other seven thought that they had not.

#### Q9. Are the steps we may take against uncooperative providers clearly explained?

Here too, 14 respondents gave an anwer to the closed question. Of them, nine indicated that the steps CQC might take agains uncooperative providers had been clearly explained. Four respondents thought the steps had not been clearly explained and one respondent indicated that they weren’t sure.

* 1. Support

One respondent made a comment to clarify their support for the proposed steps CQC may take against uncooperative providers. They emphasised that providers need to clearly understand their responsibilities and the potential consequences of non-compliance, and were satisfied that this section of the guidance was clear on that.

“The provider needs to understand clearly their legal responsibilities under the scheme, how non compliance will reflect on their overall assessment of fitness and the legal and operational implications. This section makes this clear.” - Respondent 19133

* 1. Concerns and suggestions

A few respondents highlighted their concerns about the proposed steps CQC may take against uncooperative providers. They thought that the proposed steps failed to outline CQC’s own responsibility to act appropriately and proportionately, and as such created a power imbalance in the relationship between the regulator and providers. Respondents added that this would be exacerbated by the absence of a mechanism for providers to challenge CQC’s actions or demands.

“The proposed guidance lacks balance insofar as it lacks clarity as to any requirement for CQC to act reasonably and proportionately. It makes no provision for providers to be able to query / dispute what is being required of them by CQC.” - Respondent 19130

Appendix A – About you

The online response form asked respondents to answer a number of questions about themselves. The responses to these questions are summarised below.

Please note that only respondents to the online consultation questionnaire were asked to complete these questions; the figures below do not include participants at the focus groups.

|  |  |
| --- | --- |
| Are you completing this form as a... | Count |
| Provider / professional | 7 |
| Carer | 1 |
| Member of the public / person who uses health or social care services | 1 |
| Provider trade body or membership organisation | 1 |
| Other | 4 |

Table 1. Number of respondents by respondent type

Respondents who selected ‘Other’ included two relatives of people who use health or social care, one membership organisation and one staff member of another regulator.

|  |  |
| --- | --- |
| Are you a current member of the Market Oversight scheme? | Count |
| No | 11 |
| Yes | 3 |

Table 2. Number of respondents by Market Oversight scheme membership

|  |  |
| --- | --- |
| Which of the following options best describes the sector you are interested in? | Count |
| Adult social care | 1 |
| No answer | 13 |

Table 3. Number of respondents by sector of interest

This question was *not* put to respondents if they indicated in an earlier question that they were responding as a provider.

#### 

|  |  |
| --- | --- |
| Which of the following options best describes the sector you work in or are associated with? | Count |
| Adult social care | 7 |
| No answer | 7 |

Table 4. Number of respondents by sector of work

This question was *only* put to respondents if they indicated in an earlier question that they were responding as a provider.

|  |  |
| --- | --- |
| Are you answering on behalf of an organisation, a provider or a service? | Count |
| Yes | 7 |
| No | 7 |

Table 5. Number of respondents by whether representing an organisation

Appendix B – Equality, diversity, and human rights monitoring

The online response form included a list of questions for equality, diversity and human rights monitoring. The tables below summarise the responses to these questions.

Please note that only respondents to the online consultation questionnaire were asked to complete these questions; the figures below do not include participants at the focus groups.

|  |  |
| --- | --- |
| How old are you? | Count |
| 18-24 | 1 |
| 25-34 | 1 |
| 35-44 | 2 |
| 45-54 | 2 |
| 55-64 | 4 |
| 65+ | 1 |
| Rather not say | 3 |

Table 6. Number of respondents by age range

|  |  |
| --- | --- |
| How would you describe your ethnic origin? | Count |
| Black or Black British & Caribbean | 1 |
| White English | 10 |
| Rather not say | 3 |

Table 7. Number of respondents by ethnic origin

|  |  |
| --- | --- |
| Do you consider yourself to have a disability? | Count |
| Yes | 1 |
| No | 10 |
| Rather not say | 3 |

Table 8. Number of respondents by disability status

|  |  |
| --- | --- |
| How would you describe your gender? | Count |
| Female | 6 |
| Male | 5 |
| Rather not say | 3 |

Table 9. Number of respondents by gender

|  |  |
| --- | --- |
| Is your gender identity the same one you were assigned at birth? | Count |
| Yes | 11 |
| No | 0 |
| Rather not say | 3 |

Table 10. Number of respondents by whether gender same as birth gender

|  |  |
| --- | --- |
| Which of the following options best describes how you think of yourself? | Count |
| Bisexual | 1 |
| Gay man | 1 |
| Heterosexual | 8 |
| Rather not say | 4 |

Table 11. Number of respondents by sexual orientation

|  |  |
| --- | --- |
| Which religion or belief to you most identify with? | Count |
| Atheism | 1 |
| Christianity | 6 |
| No religion | 2 |
| Quaker | 1 |
| Rather not say | 4 |

Table 12. Number of respondents by religion or belief

|  |  |
| --- | --- |
| Do you look after, or give help or support to family members, friends or neighbours? | Count |
| Yes | 4 |
| No | 5 |
| Rather not say | 5 |

Table 13. Number of respondents by carer status

