

# Listening, learning, responding to concerns

A review to identify improvements in how we learn from, respond to and act on concerns

## Foreword

In my role as Director of this review, maintaining a sense of openness and impartiality has remained my priority. An undertaking of this scale and focus is significant and has benefitted from the skill and knowledge of colleagues with a long history of working at CQC. It has also been vital to take on board the contemporary perspectives of the independent review board members and external experts who have helped me to get to the heart of the key issues raised. My position sits between these two groups. I had only been working at CQC for a fortnight when I was asked to undertake this report. I made a conscious effort to maintain a level of distance from the organisation during the writing process to strengthen its objectivity.

CQC's role is to make sure health and social care services provide safe, effective, compassionate, high-quality care and it also encourages care services to improve. Intelligence from all parts of the health and care system is critical to help deliver on this mandate. Intelligence-led health and care inspection relies heavily on an inclusive and trusted culture where concerns can be raised with confidence and acted on promptly. Those who speak up must feel safe to engage with CQC positively and honestly, working together to achieve its core purpose.

Last year, several cases demonstrated occasions where CQC fell short of its obligation to support people who were speaking up. This risks damaging people's confidence in the process of speaking up and can lead to harm if issues go unidentified or cannot be addressed in a timely way. Ultimately, this impacts CQC's ability to regulate effectively and without gaps or failure.

Reviewing the case of Mr Shyam Kumar, a consultant orthopaedic surgeon, has highlighted the impact of CQC's actions on Mr Kumar as an individual, his family, his clinical standing and the wider population. CQC has also needed to consider the impact of the case on people's confidence in the organisation and to ensure that it remains a regulator and employer that listens inclusively, is supportive, acts appropriately and learns.

The best-led organisations are ones that recognise their success, quickly identify and acknowledge their failings, and respond humanely and openly. These organisations are accountable for and, importantly, lead in addressing their own problems. This review looks at CQC's culture, practice and values. Rather than focusing on a particular moment in time, most of the areas reviewed explore what CQC does daily to keep people safe and how engrained processes can be improved. This includes CQC's Speak Up policy and how it responds to concerns and the experiences of those who raise concerns.

Part of the review looks at how CQC dealt with an instance of organisational change, which coincided with Mr Kumar's tribunal case. This section examines CQC's decision-making process and the impact on culture, and may have limited relevance with external readers, but it was important to include all the issues of decision making and underpinning culture.

The approach that CQC took in commissioning this review and committing to full public candour should be recognised for leading in a way that looks for truth, not blame, and looking to improve and learn. Ultimately, this is about CQC understanding the impact of its actions, how it can be better, and crucially, how it can cement that learning to deliver improvement that yields tangible results.

In line with current reforms of the UK health and care system, it is important to acknowledge that structural and procedural changes must be accompanied by changes in culture, if improvements in performance and quality of care, inspection, regulation and practice are to be achieved. CQC therefore recognised the need for a better understanding of the nature of organisational culture and how it can be improved.

This review looks at a number of areas relating to CQC's handling of cases, processes and culture, and the impact of its actions on numerous stakeholders. These include whistleblowing and its response to people raising concerns and speaking up. I have used these terms throughout the review and have defined them in the [terminology section](#).

At the outset of this review, there was a clear need for a deep exploration of both CQC's intentions and the impact of its actions. This was done with full recognition that the absence of intent does not negate the impact.

Working with external experts has been integral to maintain the independence and integrity of this review. It has also helped to ensure transparency and build confidence. Special acknowledgment must go to Mr Shyam Kumar, who has engaged with the review in a way that has demonstrated his commitment to patient safety and care. Mr Kumar has always shown his compassion and desire for improvements that make a difference to patients.

As this review also examined impact on CQC's workforce, I would like to thank all trade union representatives, internally and nationally, who have supported the review and created a co-designed, positive working relationship now with CQC, that I hope may continue in developing the response to this review.

I would also like to thank all CQC staff equality networks for their openness, honesty and passion in helping to inform this review and supporting CQC to deliver on the recommendations.

Finally, I would like to thank all people who courageously speak up. I hope to work towards a future where everyone in the health and care system feels empowered to raise concerns, and speaking up is seen by all as a positive act to keep patients safe, is part of professional practice, and is an important indicator of the health and care culture and standards that support CQC to keep people safe and free from harm.

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# Summary of findings and improvement actions

The concerns that health and care workers and the public share with CQC about health and care services are critical to its work. It is also vital that CQC listens to its own staff.

This review seeks to explore whether there are areas of culture or process within CQC that need to be improved in relation to listening, learning, and responding to concerns. The review focused on these key areas:

- [Organisational findings](#)
- [1. Reviewing how well we listen to whistleblowing concerns](#)
- [2. Reviewing our Freedom to Speak Up policy](#)
- [3. Learning from the tribunal case](#)
- [4. Reviewing how we listen to our staff](#)
- [5. Reviewing the expectations and experiences of people who raise concerns with us](#)

The review has a set of aims, which show the intended outcomes and impact that should result from CQC's response to this report. The aims have been mapped to multiple recommendations, so are not necessarily presented in order throughout the report.

These aims are:

1. The public, workers of services registered with CQC, and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner.
2. CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, listened to, and responded to well.
3. CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, or respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination.
4. CQC works well with partners and providers when concerns about care are raised.

5. CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010, ensuring:
  - there is a clear understanding of best practice, where discrimination is identified, addressed and, wherever possible, prevented using anticipatory measures
  - the handling of concerns about CQC raised by colleagues, including advisory and complementary staff, are free from institutional or interpersonal discrimination
  - CQC makes reasonable adjustments for CQC colleagues and CQC applicants in a timely manner and in line with best practice.
6. Relevant CQC colleagues feel confident, skilled, empowered and supported to handle whistleblowing and information of concerns about care.
7. Relevant CQC colleagues feel confident, skilled, empowered and supported to respond to concerns raised by other staff, including advisory and complementary staff, about CQC.
8. CQC has a culture, underpinned by best practice policy, processes and practices, where staff, including advisory and complementary staff, feel empowered to make a meaningful and timely contribution during change to support improvement and transformation. This should include ensuring there is learning from, and an adequate response to, feedback from formal consultation and informal engagement.
9. CQC's appointment, contracting, engagement, deployment and disengagement processes relating to advisory and complementary staff are non-discriminatory, consistent with the values of CQC and ensure employment rights are maintained.
10. Relevant CQC colleagues feel confident, skilled and empowered to deal with employment litigation, including working with internal and external lawyers.

## Organisational findings

## Understanding race

There was clear evidence, during the scoping, design phase and throughout the review, of a widespread lack of competence and confidence within CQC in understanding, identifying and writing about race and racism.

Within the limitations of this review both in time and scope, neither direct nor indirect race discrimination was able to be identified in phase 1 or phase 2 of the review as described in the Equality Act. There was however evidence identified that could correlate to systemic patterns affecting ethnic minority people, which does need further examination to be addressed. There is also a linked lack of understanding about the requirements placed on CQC under the public sector equality duty, and a need to have a wider understanding of the Equality Act 2010 and [its requirements](#). These are issues that, from recent public events, appear to be prevalent across the public sector and health and care.

This is important because CQC, as the health and care regulator, has a regulatory [Memorandum of Understanding](#) (MoU) with the Equality and Human Rights Commission (EHRC) which, at the start of the review, was not widely understood across CQC, including at senior levels. Neither was it addressed or governed appropriately and, with the lack of competence and confidence observed, urgent consideration needs to be made with regard to how the MOU delivery is assured. It is recognised that, as a result of the review, work with the EHRC has already started to address some of the shortfalls in process.

## Policy, processes and practice

Within its limitations and focus, it became evident during the early stages of the review across the 5 workstreams that CQC's policies, process and practices have evolved and been added to over time in a somewhat transactional nature.

This has caused quality problems and, at times, undermines the purpose of the policy or process. A number of the processes identified didn't have robust governance or oversight, with some having no clear ownership. These issues are often found in organisations that have gone through a number of transactional iterations in policy and practice.

## Confidence in taking action

During the research for this review, a number of staff highlighted that previous reviews had been undertaken, yet they were not clear what had changed as a result. Examples started from a 2013 report into [Bullying and harassment in CQC](#) through to more recent examples, such as a 2019 report by Roger Kline into [Inequality in recruitment outcomes](#) and the CQC Board Effectiveness Report 2021.

This review found that recommendations from these reports did inform a range of appropriate actions, such as Kline's report significantly informing the Equality and Diversity strategy and actions within the Workforce Race Equality Standard plan. However, staff expressed that they wanted more transparency about who is doing what and by when in response to these reviews and reports; also, to see that there are some active measures to confirm that the desired outcomes have been delivered successfully.

CQC's evaluation approach within this particular review gives some confidence that there will be more robust governance around monitoring recommendations. However, the implementation of this, and how this is then communicated to staff, will be critical to win back some of their confidence.

## Recommendations for action

- CQC should review and improve the provision, delivery and governance of the public sector equality duty in its strategic and operational activities.



- CQC should look to commission an external specialist to guide and oversee a development programme to ensure that across operations, inspection report writing gateways and governance of the supporting processes there is a programme of enhanced training, skills and knowledge in issues of race, racism and wider protected characteristic discrimination as described within the Equality Act 2010. This should be delivered to the Board and the senior leadership team as priority.
- CQC should examine evidence-based and academically sound anti-racism training for all its staff (in addition to the specific training above) involving the staff Race Equality Network.
- The MoU with the Equality and Human Rights Commission should have an executive sponsor, and reporting of issues should feature at Board at a frequency deemed necessary by the outcomes of inspections and assessments.
- A programme of 'lean' methodology should be used to map all processes, policies and practice that fell within the remit of this review. This should look to reduce the steps, therefore reducing the opportunities for error in delivery, while improving and clarifying the governance.
- CQC should ensure that clear evaluation criteria are drawn up against each Listening, learning, responding to concerns review recommendation. These should be reviewed and tracked at pre-agreed intervals, which should then be shared with staff.

## 1: Reviewing how well we listen to whistleblowing concerns

As a result of this review, we have developed aims to improve how we listen and respond to workers raising concerns, which will lead to improvements in the safety and quality of care for people using regulated services. They will also support how we evaluate the delivery of the improvements to help build confidence that they can be achieved.

**Aim 3: CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, or respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination.**

### **Findings:**

Our review found that:

- The way 'whistleblowing' is defined (see [appendix A](#)) and understood within CQC has become overly complex and there is not a common and shared understanding across our staff. **In this report we will use the term 'speaking up' to describe concerns raised by workers, with 'whistleblowing' referring to when workers have shared information that meets the definition of a 'qualified disclosure'.**
- Most information is currently received and handled by the National Customer Service Centre (NCSC). Our process if information is received by another route is to send to NCSC to be processed. If information is not handled in this way, there is an increased risk of poor record keeping and insufficient evidence of the action we took.
- We are not collecting data about workers' protected characteristics and whether we knew the identity of the worker.
- Our initial action in response to concerns raised by workers is consistently taking place within 5 days. However, we do not have performance measures in place to provide assurance that the action has mitigated any presenting risk or to consider how well concerns were handled.
- Our closed cultures work programme has increased staff awareness and provided improved intelligence and tools for our staff, but this is not fully embedded in our work.

- Workers often tell us when they have experienced poor treatment or victimisation in response to their attempts to speak up to their employer. We do not always ask whether the worker has raised their concerns with the provider and, if so, what their experience has been.

We recommend that CQC should:

- Promote a common understanding of definitions of workers speaking up and when this means they are 'whistleblowing' through a revised policy, updated systems, and associated training and guidance.
- Gather equality demographics on workers speaking up and where possible on anonymous reporting to identify themes and trends; then take action to address them to improve how we support and protect workers.
- Measure both the timeliness of how workers' concerns are responded to, and whether the action has mitigated the presenting risk; and implement an effective quality assurance governance system.
- Develop systems so staff have contextual information and information from our closed cultures dashboard available in one place when they are handling information of concern.
- Capture information and flag cases where workers have said they experienced victimisation. This should be made visible for inspectors to inform regulatory decision-making including follow up on inspection.

**Aim 1: The public, workers of services registered with CQC, and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner.**

Our review found that:

- Our reporting of whistleblowing concerns, which is a requirement of our role as a prescribed body, has been limited, which means workers who speak up in services and the public have not had enough information about how we have been handling concerns raised with us by workers.
- We do not gather information to understand enough about the barriers workers experience in raising concerns with us, or their confidence in us to respond well to their concerns.
- Only a small number of workers who raised concerns with us made a complaint about CQC's response. The outcome of most complaints found that CQC acted appropriately. A common theme was a difference in understanding between the worker and CQC about how concerns should be handled, and that we have not contacted them to let them know what was happening with the information they had shared.
- CQC staff reported that information reported anonymously often contained limited detail. This makes it more difficult to follow up those concerns effectively.

We recommend that CQC should:

- Publish a standalone Annual Prescribed Persons Report from 2023/24 to clarify and raise confidence in CQC's response to whistleblowers and all workers who speak up to us.
- Develop a system to gain feedback from workers when they have contacted us to raise concerns with an initial focus on recognising and overcoming the barriers experienced by ethnic minority workers.
- Commission research and engage with external organisations with expertise in speaking up to understand workers' confidence in CQC to handle their concerns. Specific attention should be given to workers from ethnic minority groups; other marginalised groups; and the role held by the worker within the service. This must lead to action to address the findings.

- Commission research to explore the implications of an increased level of workers speaking up from deprived areas.
- Review guidance on our website, and web forms for workers speaking up to ensure they clearly communicate how CQC will handle and act on their information, including for anonymous reporting.

**Aim 6: Relevant CQC colleagues feel confident, skilled and empowered to handle whistleblowing and information of concerns about care.**

Our review found:

- An unacceptable level of variation in our practice and some concerns had been handled poorly.
- Evidence of positive intention from CQC staff, and examples of good practice.
- Staff did not always feel they were able to act on the concerns raised by workers in the way they wanted to. For example, not carrying out an inspection in response to a concern because this was not in line with organisational priorities at the time; or because there are capacity issues in an area where there are higher risks.

We recommend that CQC should:

- Revise guidance and training for staff to provide clear principles of how to:
  - handle concerns raised by workers
  - keep in touch effectively with those speaking up
  - define what good practice looks like
  - raise awareness of the issues faced by the ethnic minority workforce and other marginalised groups and understand why and how we need to modify our approaches.

- Ensure high-risk cases are regularly discussed and recorded during inspectors' supervision with their manager through to closure.
- Review available staff resources to make sure these are sufficient to enable both effective monitoring of services and responsive on-site inspections when there are early indications of deterioration in quality or of the emergence of a closed culture (shared recommendation with section 5).

**Aim 4: CQC works well with partners and providers when concerns about care are raised.**

Our review found that:

- Effective partnership working with local authorities is important when responding to workers' concerns. We found we were not consistently following the progress of safeguarding investigations.

We recommend that CQC should:

- Routinely follow up referrals proceeding to a safeguarding investigation, and the outcomes of any investigation undertaken.

## 2: Reviewing our Freedom to Speak Up policy

Our review found that:

- The CQC Freedom to Speak Up Policy had not been updated to reflect the new national policy and guidance published by NHS England in 2022.
- A revised policy prepared in 2022 and rejected by the Board in 2022 did not reflect the national guidance in significant ways.

- There had been a lack of proactive support for the CQC Guardian, for example 2 of the 3 Guardians left and were not replaced and administrative support had been withdrawn. The remaining Guardian has continued to support people within the limitations of the available resource.
- The non-executive lead for Freedom to Speak Up at CQC left the organisation in December and has not been replaced. We are currently exploring options to cover this role.
- Our latest CQC staff survey, and feedback received from the engagement carried out for workstream 4 of this review (see [section 4](#)) show a lack of confidence in speaking up. The positive responses to the statement "I think it is safe to challenge the way things are done here" fell from 49% overall in 2021 to 29% overall in 2022.
- There is therefore work to be done to ensure that everyone working at CQC, including specialist professional advisors, experts by experience, contractors and people seconded into CQC are aware of the arrangements and the support available.
- While the national policy position deliberately uses the term 'speaking up' as opposed to 'whistleblowing', it is important that training and support is provided to ensure that a protected disclosure is recognised when it is made.
- A new policy will be an important first step and further work will be needed to build a vibrant speak up culture. This should be seen as part of the wider work on culture at CQC.

**Aim 2: CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, inclusively listened to, and responded to well.**

We recommend that CQC should:

- Adopt the proposed new Freedom to Speak Up policy (being presented separately).
- Take immediate steps to implement the new policy, including:
  - the appointment of an executive lead for Freedom to Speak Up
  - the recruitment of additional guardians
  - the allocation of additional resources, including ring-fenced time and administrative support.
- Use the Freedom to Speak Up 'reflection and planning tool' to inform a further programme of development and improvement, reviewing our position against all 8 principles.
- Explore and align the above development work with the wider work on culture.
- Ensure that barriers to speaking up, including ethnicity and disability, are considered and addressed, taking account of relevant guidance, including the National Guardian Office publication, [Inclusive Freedom to Speak Up](#).
- Ensure a summary of the actions identified from the above exercise is captured and reported back to Board jointly by the executive lead and lead guardian.
- Ensure effective standard operating procedures to support the policy are devised and implemented.
- Implement a programme of regular review of the effectiveness of Speak Up arrangements using the Freedom to Speak Up Quality Statement and the joint National Guardian and NHS improvement tool.

### 3: Learning from the tribunal case

The independent review commissioned by us to examine specifically the handling of the Mr Kumar case found that:



- There is the potential for multiple investigations in a whistleblowing scenario because other bodies have review/regulation functions, in addition to us. For example, in Mr Kumar's case there was a separate review by the Royal College of Surgeons into surgeries and clinical decisions where Mr Kumar raised concerns. This can lead to inconsistent conclusions.
- There wasn't a clear management structure for the flexible workforce, nor was there a clear process for determining the allegations against Mr Kumar. The letter of disengagement sent to Mr Kumar did not detail the behaviour in question and was used by the Tribunal as a fact from which they could infer that the protected disclosures had a material influence on the detrimental treatment of Mr Kumar. The Tribunal did not make any finding of any behaviour of concern on the part of Mr Kumar.
- Mr Kumar assisted with inspections within the region of his employer NHS trust but he did not inspect any hospital that he worked in, or was part of the trust that employed him, nor one which was in the same clinical pathway. It is foreseeable allegations and counter-allegations may be made where individuals are part of inspections in the local area in which they work.
- It was not clear who in CQC was in charge of the early conciliation process, nor where the instructions to the Government Legal Department came from. The CQC response to Mr Kumar's employment claim at the outset appeared to be led by CQC's witness in the case but although witnesses will potentially be the point of contact for the facts of the case they should not be the point of contact for instructions on litigation strategy.
- Opportunities were missed to assess the case merits at an early stage and there was a limited interpretation of Mr Kumar's pleaded case. There was a heavy reliance on the Government Legal Department.
- CQC's focus appears to have been on the financial side of the settlement but Mr Kumar was clear he was seeking recognition by CQC of their actions and where they had fallen short of expected standards.

**Aim 10: Relevant CQC colleagues feel confident, skilled and empowered to deal with employment litigation, including working with internal and external lawyers.**

The independent review commissioned by us recommended that CQC:

- Considers whether we need to enter into Memorandums of Understanding with other bodies that have review or regulation functions (for example, Royal Colleges) to ensure they are notified of any parallel investigations being undertaken by us.
- Clearly identifies who in CQC has responsibility for managing our flexible workforce and ensure they understand our legal duties (with training provided), including the need for a fair process for managing allegations, the need to give clear and detailed reasons for decisions and the need to be clear and transparent when we have not acted as we should. Provide specialised training to our HR team on whistleblowing legislation.
- Does not use specialist professional advisors in inspections within the local area where they work in their substantive post.
- Clearly identifies who in CQC has responsibility for providing instructions to the Government Legal Department in employment litigation, including early conciliation – this should be someone sufficiently senior with the necessary skills and knowledge. It should not be a witness, nor should it be the HR professional who supported the matter before litigation.
- Undertakes a full assessment of the pleaded case straightaway and take legal advice on the merits at an early stage in order to build a litigation strategy. Discovery of documents should take place as soon as a claim is made and factual evidence assessed accordingly. The case timeline should factor in time to obtain Treasury approval for any settlement and consideration should be given to the possibility of making admissions where appropriate.

- Puts in place a programmed dialogue with the Government Legal Department to deepen its understanding of us and our priorities. When workplace disputes arise, recognise when mistakes have been made and take steps to rectify them as soon as possible.

We have looked at these internal review findings and recommendations and, in order to take them forward, we also recommend that we:

- Widen CQC's 'conflicts policy' for specialist professional advisors so that it covers all services within their own integrated care system or in relation to clinical pathways which might cross multiple integrated care systems including their own.
- Where an employment tribunal claim is lodged against CQC, set up a team in CQC to respond to the claim, including case preparation, litigation strategy and instructing external employment solicitors and counsel, as appropriate. The team should not include CQC witnesses. The Director of Governance and Legal Services and the Director of People should have oversight of the team and ultimate responsibility for CQC's handling of the claim.
- Ensure that CQC's Executive Team is notified of any high-profile or complex employment tribunal claim that has been lodged against CQC.
- Ensure that employment tribunal claims lodged against CQC are represented in CQC's Risk Register.

## 4: Reviewing how we listen to our staff

### Managing organisational change

This review found that:

- Overall, CQC did not follow its own best practice policies in respect of Management of Change (MOC) and the Trade Union Recognition and Facilities Agreement which could have prevented the breakdown in trust, confidence and communication which followed. This led to the collective grievance and a letter to the Secretary of State, with stories in the Health Service Journal.
- MOC had most recently been reviewed in May 2021 just prior to this reorganisation process, so it was current. Failing to follow MOC resulted in failing to apply CQC values which are set out clearly at the beginning of the MOC.
- It is important to recognise that there is a significant cultural understanding needed as to why these policies are important and ought not to be disregarded.
  - clause 1.1 of the MOC policy states, "It is important that our approach to managing organisational change is consistent with our core values. The relevance of those values to managing organisational change is demonstrated in the following ways...Excellence, Integrity, Caring and Teamwork..."
  - the policy also incorporates flexibility. Clause 3.2 of MOC states, "Structural change and staffing reorganisation exercises that might potentially involve redundancies and/or have a significant impact on employees (regardless of numbers) must be conducted in accordance with this procedure and the principles that underpin it. However, the procedure does allow for the necessary flexibility and management discretion to accommodate particular circumstances, including, but not limited to, localised and small-scale organisational change."
  - MOC procedure fulfils best practice and legal requirements
- The review has highlighted a need for CQC's Senior Leadership Team (SLT) and Executive Team (ET) to read the policies and understand why they exist. They aim to maintain strong relationships, they enshrine CQC's values, they build trust and better communication with the workforce and by using them they address legal requirements, thereby safeguarding CQC.

- CQC had a good intention around not following the MOC Procedure, believing following it would increase staff anxiety by unnecessarily putting staff at risk of redundancy.
- As of 31 January 2023 ongoing concerns from staff on the lack of detail and how proposed changes will be put into practise will be addressed by the new roles of 'Deputy Directors of Transition'.
- Only 9% of staff surveyed in the September 2022 Pulse Survey believed CQC effectively implemented change; key concerns included a lack of staff involvement, not listening when concerns were raised, and changes being rushed through which was felt to be against CQC's values.
- Some equality impact assessments (EIAs) were undertaken at key stages, but they did not consistently inform decision making. Some equality impacts also appeared to have not been adequately assessed or mitigated.
- There is evidence that public sector equality duties were not fully understood by all critical parties involved in EIAs.
- In the Grade B reorganisation, some staff felt compelled to state a preference for a role they may not have wanted due to a lack of information; however, over 95% of workers did get the preference they requested.

**Aim 2: CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, inclusive, listened to, and responded to well.**

It is recommended that CQC:

- Updates the MOC Procedure so there is a named Executive owner to receive a 'formal dispute', such as the Chief People Officer. However, if one or more Executive Directors have already been significantly involved, the dispute should be referred to a named non-executive director, such as the 'Senior Independent Director'.
- Updates the MOC procedure to consider pausing future significant organisational change activity where there is a significant impact on employees and when unions raise a formal dispute and request that the 'status quo' be applied; this should only continue once the dispute is resolved. CQC should consider engaging a senior legal officer to provide guidance to Senior leaders in the case of significant reorganisations.
- Improves the grievance resolution timeline in line with ACAS guidance on grievance procedures. This states that if there are 2 or more related grievances there is some flexibility in how to run the grievance procedure.

**Aim 5: CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010.**

It is recommended that CQC:

- Ensures equality impact assessments (EIAs) are conducted in a timely manner, include all protected characteristics and actively inform planning and decision-making during the change process, as well as after the changes have been implemented.
- Undertakes EIAs for outstanding areas specifically in relation to all the Grade A changes including voluntary and compulsory redundancy.
- Considers positive action regarding the needs of the 1 disabled worker who was not given their first preference in the Grade B reorganisation. Also review workforce equalities data utilised with EIA to identify any disparity of outcome by age.

**Aim 8: CQC has a culture, underpinned by best practice policy, processes and practices, where staff, including advisory and complementary staff, feel empowered to make a meaningful and timely contribution during change to support improvement and transformation. This should include ensuring there is learning from, and an adequate response to, feedback from formal consultation and informal engagement.**

It is recommended that CQC:

- Applies the MOC process in full in all circumstances where significant organisational change "might potentially involve redundancies or have a significant impact on employees". If there is a desire or need to deviate, this should be mutually agreed with trade unions or staff directly involved (and staff forum if appropriate).
- Offers formal 'trial periods' to staff who are taking up the newly created role of Assessor, and engage in co-design arrangements to be put in place for those who do not believe this is a suitable alternative employment.
- Ensures that key decision makers, such as the Executive Management Team and People Directorate, understand collective consultation and redundancy legislation requirements in detail and with proficiency.
- Ensures the Board is made aware and, via Board Briefings, is encouraging a focus on strategy, oversight and assurance on people-related issues, and considers having a non-executive director or independent member on the people committee for greater assurance.
- Updates existing and future transformation programme governance, management and delivery plans.
- Ensures the lead for transformation engagement is a full member of relevant programme groups where proposals and decisions are being made.
- When managing organisational change, ensures change management best practice is followed and embedded.

- Ensures that equality networks are involved as a key stakeholder in co-creation of engagement strategies.
- Carries out actions to contribute to staff feeling that 'change is effectively implemented at CQC', when managing organisational change.
- Improves staff experience on feedback. Indicate the time that Grade B Inspector and Assessor roles will work at and away from their contractual base and share this with staff. CQC should then enable staff to change their preference if they decide.

## Reasonable adjustments

This review found that:

- CQC's general approach to reasonable adjustments was founded on strong strategic aims, governed by policies and processes that advocated good practice, and were currently subject to quality improvement projects.

However:

- these processes were not consistently applied
- the overall approach was unstructured and did not always meet the needs of staff
- the level of ambition to improve reasonable adjustments did not match the time and resources available.
- there were a number of common criticisms from staff.

**Aim 5: CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010.**

It is recommended that CQC:



- Updates the Reasonable Adjustments Policy to incorporate comments from the Disability Equality Network group.
- Modernises the Flexible Working, and Critical Illness Policy and Procedures to recognise reasonable adjustments and make the tone more supportive. Approve them through groups, including staff networks.
- Revises the Workforce Disability Equality Standard 2022/23 action plan relating to 'reasonable adjustments'.
- Improves the process for agreeing reasonable adjustment requests, looking for alternatives if the request is impractical, unaffordable, or could cause harm.
- Ensures that the proposed means for tracking reasonable adjustments across CQC (as per the Workforce Disability Equality Standard Action Plan) is accessible to managers, who are enabled to access and review the adjustments for any new team members they are responsible for. The Disability Equality Network should support and inform what 'good' looks like from their perspective.
- As part of the onboarding and welcome process before all new staff start, including those on flexible contracts, any specific reasonable adjustments should be discussed and agreed to be shared with the line manager. However, CQC should also allow any disability to be kept confidential. All new staff should be referred to the Reasonable Adjustments policy and tailored adjustment agreement approach during induction – both new starters and new managers, so they understand what is available to them, and what they are required to do if relevant.
- Reviews and reduces the timeframe agreed, in partnership with the Disability Equality staff network, from when reasonable adjustments are requested to the supportive involvement of occupational health and the adjustments being delivered. There should be a centrally held record of all reasonable adjustments and requests to enable monitoring and tracking to deliver more rapidly, and to ensure, in organisational change, adjustments can be anticipated.

- Offers support and advice from occupational health when it is not known what adjustments may be helpful, or there is a concern on practicality, affordability or if it could harm the health and safety of others. 'Interim adjustments' should be agreed while this advice is being sought on the original request.
- Asks questions about a need for reasonable adjustments sensitively, understanding that it may have been difficult for the person to broach the subject. Although staff members only need to share information they are comfortable providing, they should understand CQC only needs to make a decision based on the information it is given.
- Agrees and delivers a minimum standard that ensures reasonable adjustment skills, knowledge and responsibility is delivered to all those with line management responsibility.

## Contracting advisory and complementary staff

This review found that:

- Before September 2022, there were no comprehensive policies or processes in place governing the appointment, contracting, deployment and disengagement of advisory and complementary staff.
- Since this time, a wide range of improvements have taken place, such as drafting an advisory and complementary workforce strategy and guidance, and establishing a working group to support these staff. However, there are some missing elements to the strategy and unclear governance and resources.
- Outside the more recent guidance, there was concern that current approaches were not aligned with CQC values and did not appropriately safeguard employment rights.

- When considering equalities workforce data for this group of staff:
  - there were high rates of 'Not Declared' against all other protected characteristics, so no significant conclusions could be drawn
  - the contract documentation for these staff appeared clear and in line with legal requirements, with the possible exception of annual leave entitlements.

**Aim 5: CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010.**

It is recommended that CQC:

- Comprehensively reviews equalities workforce data for advisory and complementary staff by:
  - investigating drivers for high 'Not Declared' statuses and reducing levels of non-disclosure to below 5%
  - actively monitoring equalities data to inform planning and decision making to ensure no disadvantage occurs.

**Aim 7: Relevant CQC colleagues feel confident, skilled, empowered and supported to respond to concerns raised by other staff, including advisory and complementary staff, about CQC.**

**Aim 9: CQC's appointment, contracting, engagement, deployment and disengagement processes relating to advisory and complementary staff (non-substantive) are non-discriminatory, consistent with the values of CQC and ensure employment rights are maintained.**

It is recommended that CQC:

- Updates the advisory and complementary workforce strategy.

- Ensures a 'handbook' or similar suite of policies or processes are created to cover all advisory and complementary staff.
- Ensures that contracts being offered to staff (including extensions) are in line with each business need. They should not be tailored to avoid milestones that accrue key employment rights.
- Ensures measures are taken to recognise the skills, knowledge and organisational benefit of the advisory and complementary workforce in line with CQC's values, rather than simply a resource. This should include gathering insight into the experience of advisory and complementary staff (such as through a survey) to ensure they feel valued or to inform actions.
- Reviews and audits all staff members' appropriate entitlements, including leave and contracts, to ensure they are compliant.

## 5: Reviewing the expectations and experiences of people who raise concerns about care with us

### Expectations of people who use services and workers when they raise concerns about care with us

Our review found that:

- CQC is not generally meeting the expectations of the public or people who work in care services when they raise concerns with us. We do not meet expectations in terms of the follow-up service people receive and the action taken as a result. This demonstrably affects public confidence in CQC.
- CQC's role in handling concerns raised by members of the public is inherently confusing. CQC invites feedback from the public about their experiences of care, but is not able to resolve their concerns or investigate their complaints. This is because we do not have the powers to do so, except for complaints made under the Mental Health Act.

- The public understands our role once it is clarified with them. However, when someone shares a concern with CQC, they can be frustrated that we can't resolve it. This can undermine their trust and motivation for sharing feedback with us. People from ethnic minority groups and disabled people, who are more likely to have a poorer experience of care and face discrimination, highlighted the impact of this frustration and undermining of trust with us.
- Some people from ethnic minority groups and some disabled people who use services told us they felt they were unlikely to trust CQC with their concerns because they had no knowledge of CQC or our role. Health and care workers who had less knowledge about CQC said they were unsure about whether they could trust CQC with their concerns.
- When the public and health and care workers raise concerns with CQC, they see this as a serious matter. It can also often be a last resort following a lack of response with the provider or other parts of the health and care system. They are often distressed by their experiences, and may fear reprisals by the service, such as being evicted.
- Members of the public with disabilities were concerned about whether CQC would understand that people with protected characteristics are disproportionately affected by discrimination.
- Health and social care workers from ethnic minority groups had low expectations of CQC responding to concerns about discrimination. Our research did not provide evidence about what drives these low expectations, including whether or not they are specific to CQC, but research in [Workforce Race Equality Standards reports](#) states that more people from Black and minority ethnic backgrounds have personally experienced discrimination compared to their White colleagues.

People's experiences of raising concerns about care with us

- CQC's channels for providing feedback are easy to find and easy to use and generally meet the public's and health and care workers' expectations. Some improvements could be made for people who are fearful or traumatised, whose first language is not English, who face communication barriers due to disability or sensory impairment, who have low literacy skills or who are digitally excluded.
- Most people who contacted us by phone had a positive experience of the way the call was handled. They felt listened to, with only a small number not feeling heard. People generally described our call handlers as 'sympathetic' and 'concerned' about their experiences, especially since they were often distressed or angry. Overall satisfaction with the service provided by telephone is 4.6 out of 5 (from a total of 19,954 responses).
- However, overall people who took part in our research generally did not have a good experience of raising concerns about care with us. This was driven by people expecting that CQC would investigate and resolve their concern and that CQC would provide clear and frequent communication once people had raised their concern.
- While anyone raising a concern receives a generic response from CQC, further follow-up is at the discretion of the inspector and is therefore inconsistent. People who do have their concerns followed-up and are contacted have a better experience.
- The lack of follow-up provided to people who raise a concern with CQC means that they could not necessarily know whether or not they had been discriminated against. A small number of the public who had raised a concern with CQC felt the lack of follow-up from CQC was due to racial or other discrimination. However, most participants felt that there was no discrimination or unfairness in the way they were treated.

What does the information we collect tell us about how we listen and respond to concerns?

- CQC does not collect demographic or protected characteristic information from people who raise concerns. This means we can't use this information to show whether certain groups are experiencing poorer care or discrimination. It also means we cannot currently check whether people experience discrimination when we handle their concerns.
- We are unable to easily or confidently report on how many concerns we have received from members of the public and how we have acted on them, as we do not accurately or consistently collect this data. For example, where there is an option to record action taken in response to information received through our 'Give Feedback on Care' service, the most common option chosen is 'unspecified'.
- Most concerns raised with us by members of the public are categorised as Priority 3 meaning there may have been a breach of fundamental standards (see [Receiving information and triage](#) for more information on how we prioritise information of concern). Where data is available to indicate how CQC has responded to those concerns, the most common response is either 'unspecified' or 'no further action'. This means that we do not have assurance that some Priority 3 concerns about potential breaches of fundamental standards are being acted on appropriately.
- Our capacity and capability to analyse qualitative information from the public is not fully developed, although plans are in place to make this possible.
- CQC does not collect or monitor levels of satisfaction among the public and care workers about the process of raising a concern.

## Recommendations

**Aim 1: The public, workers of services registered with CQC, and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner.**

We recommend that CQC should:

- Make clear how our Contact Transformation programme will deliver on the commitments in the CQC and the Public Engagement Strategy relevant to this review. This includes improvements in how information of concern is captured, prioritised, stored and analysed, and the customer service we provide back to individuals who raise concerns with CQC.
- Develop and publish externally an agreed organisational approach to the customer service the public and organisations that represent them, and people working in care services can expect when they share concerns about care with us. This includes all direct channels (webform, telephone, email, letter, face-to-face), as well as how we will offer a feedback loop to keep them informed about how their concern is being assessed and acted on.
- Consider offering different levels of customer service response, depending on the severity of concerns being raised, the vulnerability of the person raising them, and the type of service involved.
- Develop a clear, transparent, easily reportable process for tracking how each concern raised by members of the public and organisations that represent them, and people working in care services has been triaged, assessed and acted on. This will enable a feedback loop to individuals, effective reporting, accountability and quality assurance.
- Introduce a process to understand the public's experiences of sharing concerns about care with us, so we can continually improve this key area of our work.
- Measure both the timeliness of how concerns raised by members of the public are responded to, and whether the action has mitigated the presenting risk, and implement a quality assurance system for this.
- Based on the above new processes and protocols, develop new, clear information for the public to enable them to understand what they can expect when they raise concerns with us, as well as our response.



- Consider further investment to increase public awareness and understanding of CQC's role in this area, particularly among people from ethnic minority groups and disabled people. This will help establish and maintain public trust and confidence and increase CQC's access to people's experiences of care.

**Aim 3: CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, and respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination.**

We recommend that CQC should:

- Review and improve our information capture and prioritisation processes to help us better understand and report on the volumes and types of concerns about care received from members of the public and the action we have taken in response. This includes capture of demographic and protected characteristics. This work also includes introducing an audit process to make sure this information is accurately recorded.
- Urgently address the constraints on how we can analyse concerns raised by the public and workers in care services, including how the data is captured and stored. This will support the above recommendations and ensure all information of concern is appropriately assessed and acted on.

**Aim 6: Relevant CQC colleagues feel confident, skilled and empowered to handle whistleblowing and information of concerns about care.**

We recommend that CQC should:

- Review available staff resources to make sure these are sufficient to enable both effective monitoring of services and responsive on-site inspections when there are early indications of deterioration in quality or of the emergence of a closed culture (shared recommendation with [section 1](#)).

- Review internal guidance, training and wider activity to create a stronger positive culture across the organisation that enables us to deliver outstanding customer service to members of the public raising concerns about care with us. This work should include specific focus on discrimination recognising different approaches that may be needed. This is in line with our strategic ambition for regulation that advances equality and protects people's human rights.

# Introduction

The Care Quality Commission's Listening, learning, responding to concerns review has a strong independent voice to identify improvements to how the organisation learns from, responds to, and acts on concerns that are shared with it.

## CQC's purpose, values and history

Care Quality Commission's (CQC) purpose is to make sure health and social care services provide people with safe, effective, compassionate, high-quality care and encourage care services to improve.

CQC was established in April 2009 as the independent regulator of health and adult social care in England, replacing 3 former regulatory bodies.

The organisation's values are:

- Excellence – being a high-performing organisation
- Caring – treating everyone with dignity and respect
- Integrity – doing the right thing

- Teamwork – learning from each other to be the best it can.

## CQC's operating environment and significant learning events

CQC has played a pivotal role to help keep people safe in health and care, through its regulatory functions, interventions and subsequent improvements across health and care. On occasion, however, there have been notable failures, in practice, policy and action resulting in unacceptable human impact. This includes failures to listen to workers' concerns. Some of these incidents are mentioned below, and briefly describe how CQC is learning from them, and how they have helped shape CQC.

### Winterbourne View

Winterbourne View was an independent hospital for the assessment and treatment of people with learning disabilities and other complex needs.

In 2011, CQC carried out an internal management review in response to the serious issues raised about Winterbourne View.

The hospital closed in June 2011 following a BBC Panorama investigation that exposed the systemic abuse of patients at the hospital. The investigation also raised concerns about the failure of the health and social care system to protect some of the most vulnerable individuals in its care.

The management review, which considered the regulation of the hospital from its registration to its closure, showed failings in the way that CQC involved staff who speak up, and how CQC processed the information it was given.

Following this review, CQC adopted 13 recommendations for improvements to systems and working practices. It also carried out 150 unannounced inspections of services for people with learning disabilities, which showed some serious concerns, but no evidence of abuse on the scale uncovered at Winterbourne View.

## Mid Staffordshire

In 2013, the report of Sir Robert Francis KC's inquiry into the failings at Mid Staffordshire NHS Foundation Trust was published, which described that "conditions of appalling care were able to flourish" between 2005 and 2008 in Stafford Hospital, which was run by the Trust. The report made wide-ranging recommendations for the NHS and the wider health system, including CQC.

CQC's response was to bring forward changes to the way it works, including the appointment of a chief inspector of hospitals. It also committed to changing its approach to inspections to focus on the key areas that are most important to people: safety, caring, effectiveness, responsiveness and how well services are led.

It introduced expert inspection teams that included specialist inspectors, clinical and other experts, and people with experience of care.

CQC also committed to using data, intelligence, and evidence in a more sophisticated way to identify, predict and respond to varying standards of care more quickly.

## Hillgreen Care Ltd

Hillgreen Care Ltd operated a care home for younger adults with learning disabilities. In 2017, CQC commissioned an independent investigation into the regulation of this care home.

The resulting investigation report found that there was no evidence that CQC covered up an allegation of a serious offence at the home in 2015. However, the review made 14 recommendations to improve CQC's consistency, policies, processes and training, which were fully accepted by the CQC Board.

## Whorlton Hall

Whorlton Hall was a specialist hospital in County Durham. In May 2019, the BBC broadcast evidence of abusive treatment of people with a learning disability and autistic people there.

In 2020, CQC published independent reviews of the regulation of Whorlton Hall between 2015 and 2019. The review looked at whether the abuse at this independent hospital could have been recognised earlier by CQC's regulation.

The first report in March 2020 concluded that, although CQC followed its procedures, a number of improvements, described in 6 recommendations, were needed to strengthen its inspection and regulatory approach.

The second report in December 2020 outlined the progress that CQC had made to implement the recommendations. The second report also made a further 5 recommendations relating to our ratings, and the trialling of tools and the development of guidelines to better identify [closed cultures](#) and improve outcomes for people using services.

## About this review

In designing and delivering this review it has been important to start with connecting the aims of the review to the core purpose of the organisation and the values which it holds. There has been a clear focus on examining the impact and, wherever possible, the experience of CQC colleagues, NHS and care workers and the wider public in line with the aims of this review.

All providers are required by law to meet standards of quality and safety. CQC is responsible for regulating against these standards and taking appropriate action when they are not met. This could include using enforcement powers.

In 2021/22 CQC received 17,937 enquiries categorised as whistleblowing. This was a 13% increase from 2020/21. Using and acting on this information is a critical part of how CQC delivers its role as a regulator.

Incidents which reduce the likelihood of people raising concerns risk damaging the ability of the organisation and the staff who come to work to make a difference in delivering the core purpose of the organisation.

In the summer of 2022, a number of high profile issues were raised. These issues are now understood to have had a material impact on people in a way that is not compatible with CQC's values. These issues were highlighted by:

- the Employment Tribunal findings of [Mr S Kumar -v- CQC in Sept 2022](#)
- the Letter from the CQC trade union representative bodies to the then Secretary of State on 13 September 2022 relating to a major organisational change programme and how staff involved were feeling from the experience
- during 2022, internal concerns regarding the application and availability of reasonable adjustments for staff had become more frequent and being heard by CQC's executive.

In September 2022, the Executive decided an independent review made up of 2 phases was necessary. Phase 1 was the independent review which Zoë Leventhal KC was appointed to lead into the handling of protected disclosures shared by Mr Shyam Kumar, alongside a sample of other information of concern shared with CQC by health and care staff. Phase 2 was made up of 5 workstreams that addressed areas that were deemed critical by the CQC Board to address.

Mr Kumar is a consultant orthopaedic surgeon who worked part-time for CQC as a Specialist Professional Advisor. Specialist Professional Advisors are health and social care professionals who offer particular knowledge and expertise to CQC inspections when this is needed. Mr Kumar worked on hospital inspections between 2014 and 2019 and during this time, he raised concerns to CQC, including about patient safety. In 2019, Mr Kumar was disengaged by CQC from his role as Specialist Professional Advisor. He took this decision to an employment tribunal, which found that:

- the emails and concerns raised by Mr Kumar in the form of protected disclosures between 2015 and 2018 had an influence on the decision to disengage him
- the decision to disengage Mr Kumar had a serious impact on his reputation.

The outcome of the employment tribunal judgment was a concern to CQC internally and was fully accepted. The findings generated considerable negative media coverage and social media comment. It also led to expressions of a lack of confidence in CQC by professional bodies as well as by individual professionals. This erosion of trust clearly had the potential to impact on the confidence of people who use and work in health and care services to raise concerns with CQC.

CQC accepted all of the findings of the tribunal and recognised that the process of disengaging Mr Kumar was not in line with the CQC values. CQC apologised to Mr Kumar in writing in a letter, and subsequently in public; it is recognised that this second, but public apology, may not have articulated an understanding of the impact of the case, as well as Mr Kumar's experience adequately, unlike the letter. CQC also thanked him for the concerns he raised, which were used in our ongoing regulation of the University Hospitals of Morecambe Bay NHS Foundation Trust.

## Phases of this review

Zoë Leventhal's report forms [phase 1 of this review can be found here](#).

At the same time, CQC committed to carry out a wider review (phase 2) to explore whether, in relation to the issues raised above, there are areas of culture or process within CQC that need to be improved. CQC recognises the importance of ensuring that it is able to effectively listen and to act on what it hears when information of concern is shared with it. It also committed to looking at whether race or any other protected characteristic has any impact on how it treats information of concern, reflecting on findings from Mr Kumar's employment tribunal.

Running throughout the review will be a focus on detriment in treatment or experience of disparity across the protected characteristics. This includes understanding whether race or any other protected characteristic has had any impact on how CQC treats information of concern or impacts on organisational culture and its ability to fulfil the obligations placed upon it pursuant to the Equality Act 2010.

The review's phase 1 was fully independent. Phase 2 was overseen by a review board with 3 independent members to support the governance and assurance of the review as well as build confidence and credibility with stakeholders.

## What are the aims of the review?

The concerns that health and care workers and the public share with CQC about health and care services are critical to its work. It is also vital that CQC listens to its own staff.

It is clear from the events listed last year that CQC needs to make improvements to ensure that it has a culture that values speaking up. The recommendations listed in this report seek to make those improvements. These recommendations will be tracked to understand the degree to which CQC has taken the action expected of it to adequately respond to the review.

The evaluation will then seek to understand the impact of CQC's response to the review. It will do this by investigating whether the following aims of the review have been met:

1. The public, workers of services registered with CQC, and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner.
2. CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, listened to, and responded to well.



3. CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, or respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination.
4. CQC works well with partners and providers when concerns about care are raised.
5. CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010, ensuring:
  - there is a clear understanding of best practice where discrimination is identified, addressed and, wherever possible, prevented using anticipatory measures
  - the handling of concerns about CQC raised by colleagues, including advisory and complementary staff, are free from institutional or interpersonal discrimination
  - CQC makes reasonable adjustments for CQC colleagues and CQC applicants in a timely manner and in line with best practice.
6. Relevant CQC colleagues feel confident, skilled, empowered and supported to handle whistleblowing and information of concerns about care.
7. Relevant CQC colleagues feel confident, skilled, empowered and supported to respond to concerns raised by other staff, including advisory and complementary staff, about CQC.
8. CQC has a culture, underpinned by best practice policy, processes and practices, where staff, including advisory and complementary staff, feel empowered to make a meaningful and timely contribution during change to support improvement and transformation. This should include ensuring there is learning from, and an adequate response to, feedback from formal consultation and informal engagement.
9. CQC's appointment, contracting, engagement, deployment and disengagement processes relating to advisory and complementary staff are non-discriminatory, consistent with the values of CQC and ensure employment rights are maintained.

10. Relevant CQC colleagues feel confident, skilled and empowered to deal with employment litigation, including working with internal and external lawyers.

## How this review was carried out

CQC's wider review to explore whether there are issues of culture and process that need to be improved were designed across 5 workstreams. While workstreams 1, 2, and 5 were led by CQC staff with expertise in each area, it was ensured that these individuals had no conflicts of interest. As this was not possible for workstreams 3 and 4, a decision was made to employ an independent barrister and an external expert. The review was then overseen by an independent review board.

The review approach for each workstream is summarised below.

### **1. Reviewing how well CQC listens to whistleblowing concerns**

This workstream reviewed how well CQC listens when workers raise concerns. This workstream built on previous work carried out in this area that included improvements to processes and staff training. The workstream:

- carried out an analysis of data
- undertook checks of CQC's response to speaking up which had been triaged as high risk
- contacted workers who have raised concerns with CQC
- reviewed complaints from workers who were dissatisfied with how CQC had handled their concerns
- engaged with various CQC teams through focus groups
- spoke to external advisors and a representative of a whistleblowing charity.

### **2. Reviewing how CQC supports people at CQC to speak up**

This workstream reviewed the current arrangements to support people to speak up at CQC. It looked at how well CQC's Speak Up policy and practice reflected the latest national guidance.

It considered the national policy and accompanying guidance published by NHS England. Working with and through the National Guardian's Office it reviewed exemplar policies in the NHS and other arm's length bodies. It also aimed to ensure that the role of the National Guardian is clear to support people speaking up at CQC.

Discussions were held with a number of stakeholders, including the National Guardian for Freedom to Speak Up, CQC's Guardian and Guardian team at NHS England.

Recognising that there is often confusion, cross-over and interdependency between speaking up and whistleblowing, the review ensured that the policies align and complement each other, avoiding duplication and ensuring there are no gaps.

The review has led to a new draft policy being developed and shared within CQC (including following the usual consultation process with Trade Unions and Staff Networks) and externally with the National Guardian's office and NHS England.

### **3. Learning from the tribunal case raised by Mr Shyam Kumar**

This workstream reviewed our internal case handling processes, as well as how CQC instructs and communicates with the Government Legal Department and Counsel and its internal processes.

To complete this workstream, CQC commissioned a review by a specialist employment barrister to identify areas of improvement.

### **4. Reviewing how CQC listens to its staff**

This workstream reviewed how CQC listens and responds to feedback from its staff.

It was led by an HR expert with substantial experience working in the health and social care sector, overseen and supported by a senior independent Chief People Officer. The workstream looked at 3 main areas, which were refined through engagement with CQC's staff equality networks and trade union representatives. These areas were:

- how CQC makes reasonable adjustments for applicants and CQC staff at recruitment and employment stages
- CQC's 2021/22 Operational Directorate change process
- CQC's appointment, contracting, deployment and disengagement processes relating to advisory and complementary staff.

These areas were reviewed through:

- analysis of CQC's staff survey
- focus groups and 1-to-1 interviews with staff
- review of relevant communications reports and policies.

## **5. Reviewing the expectations and experiences of people who raise concerns about care with us**

In order to understand the expectations of people who raise concerns with us, this workstream:

- reviewed existing insight CQC holds on sentiment and expectations from people who use and people who work in care services in relation to raising concerns about care direct with CQC
- gathered additional insight through a survey on its online platform
- used an external organisation to carry out additional research with samples of people who use and work in care services who have a range of demographic and protected characteristics.

In order to understand the experiences of people who raise concerns with us, this workstream:

- analysed CQC's own performance data to identify any gaps in our data which inhibit this understanding
- carried out semi-structured interviews with people who have shared concerns with us to find out about their experiences of doing this.

# Organisational findings and recommendations

In this section there are organisation-wide findings and findings that cut across the workstreams. These findings came to light during the design and early stages of this review or became evident from the work of the workstream areas and the review's strategic oversight.

## What we found

### Understanding race

There was clear evidence, during the scoping, design phase and throughout the review, of a widespread lack of competence and confidence within CQC in understanding, identifying and writing about race and racism.

Within the limitations of this review both in time and scope, neither direct nor indirect race discrimination was able to be identified in phase 1 or phase 2 of the review as described in the Equality Act. There was however evidence identified that could correlate to systemic patterns affecting ethnic minority people, which does need further examination to be addressed. There is also a linked lack of understanding about the requirements placed on CQC under the public sector equality duty, and a need to have a wider understanding of the Equality Act 2010 and its requirements. These are issues that, from recent public events, appear to be prevalent across the public sector and health and care.

It is important because CQC, as the health and care regulator, has a regulatory [Memorandum of Understanding \(MoU\) with the Equality and Human Rights Commission \(EHRC\)](#) which, at the start of the review, was not widely understood across CQC including at senior levels. Neither was it addressed or governed appropriately and, with the lack of competence and confidence observed, urgent consideration needs to be made with regard to how the MOU delivery is assured. It is recognised that, as a result of the review, work with the EHRC has already started to address some of the shortfalls in process.

## Policy, processes and practice

Within its limitations and focus, it became evident during the early stages of the review across the 5 workstreams that CQC's policies, process and practices have evolved and been added to over time in a somewhat transactional nature.

This has caused quality problems and, at times, undermines the purpose of the policy or process. A number of the processes identified didn't have robust governance or oversight, with some having no clear ownership. These issues are often found in organisations that have gone through a number of transactional iterations in policy and practice.

## Confidence in taking action

During the research for this review, a number of staff highlighted that previous reviews had been undertaken, yet they were not clear what had changed as a result. Examples started from a 2013 report into [Bullying and harassment in CQC](#) through to more recent examples, such as a 2019 report by Roger Kline into [Inequality in recruitment outcomes](#) and the CQC Board Effectiveness Report 2021.

This review found that recommendations from these reports did inform a range of appropriate actions, such as Kline's report significantly informing the Equality and Diversity strategy and actions within the Workforce Race Equality Standard plan. However, staff expressed that they wanted more transparency about who is doing what and by when in response to these reviews and reports; also, to see that there are some active measures to confirm that the desired outcomes have been delivered successfully.

As well as giving confidence to staff, ongoing evaluation of this Listening, learning, responding to concerns review will be critical to ensure desired outcomes are achieved. For instance, themes on 'inclusive culture' and 'empowerment' from both 2013 and 2018 reports were still found to be evident from this review, such as:

- a fear of repercussions (Bullying and harassment, p.9; Kline, p.40)
- latent potential of staff being untapped, and opportunity missed in motivating and enthusing people working towards common objectives (Bullying and harassment, p.20-21; Kline, p.45)
- not only relying on compliance with processes and policies to encourage and embed inclusive behaviours (Bullying and harassment, p.31; Kline, p.6)
- considerations for when reorganisations take place, including opportunities needed for staff to 'grieve' for the old organisation, and ensuring sufficient attention is given to whether outcomes might disproportionately impact on certain groups of staff (Bullying and harassment, p.19; Kline, p.23)
- an opportunity to shift from formal command and control structures toward one that builds connections and motivates teams through a shared common purpose (Bullying and harassment, p.32)

- a need to set 'targets that are ambitious yet realistic' and where progress is monitored 'every six months, with detailed analytics' (Kline, p.34)
- for cultural change to be achieved, there needing to be 'multiple strategies at organisational, workplace, interpersonal, and intrapersonal levels used simultaneously over a long period' (Kline, p.8).

Similarly, discussions with CQC senior staff suggested the following matters raised within the Board Effectiveness Report 2021 were at least relevant to their experiences of Executive Team Design Authority (ETDA) meetings in relation to the transformation programme where there is cross-over of membership:

- "There is scope to focus the Board a little more actively on its role in risk management." (CQC Board Effectiveness Report 2021, p.8)
- "The majority of the Board's time and focus was directed at receiving information... there was a proportionately low volume of Board contribution during the meeting." (CQC Board Effectiveness Report 2021, p.10)
- "It is important for the Board to have a clear view about what kind of metrics and KPIs offer assurance around CQC's people and culture, particularly against the background of big organisational changes." (CQC Board Effectiveness Report 2021, p.15)
- There was a tendency for the Board to "focus on process rather than outcomes. The Board should determine a set of clear and meaningful KPIs (focused around budget, timescales, benefits and risks) to be used as a basis for Board reporting in future." (CQC Board Effectiveness Report 2021, p.23)

CQC's evaluation approach within this particular review gives some confidence that there will be more robust governance around monitoring recommendations. However, the implementation of this, and how this is then communicated to staff, will be critical to win back some of their confidence.

## Recommendations for action



- CQC should review and improve the provision, delivery and governance of the public sector equality duty in its strategic and operational activities.
- CQC should look to commission an external specialist to guide and oversee a development programme to ensure that across operations, inspection report writing gateways and governance of the supporting processes there is a programme of enhanced training, skills and knowledge in issues of race, racism and wider protected characteristic discrimination as described within the Equality Act 2010. This should be delivered to the Board and the senior leadership team as priority.
- CQC should examine evidence based and academically sound anti-racism training for all its staff (in addition to the specific training above) involving the staff Race Equality Network.
- The MoU with the Equality and Human Rights Commission should have an executive sponsor, and reporting of issues should feature at Board at a frequency deemed necessary by the outcomes of inspections and assessments.
- A programme of 'lean' methodology should be used to map all processes, policies and practice that fell within the remit of this review. This should look to reduce the steps, therefore reducing the opportunities for error in delivery, while improving and clarifying the governance.
- CQC should ensure that clear evaluation criteria are drawn up against each Listening, learning, responding to concerns review recommendation. These should be reviewed and tracked at pre-agreed intervals, which should then be shared with staff.

## Evaluation

These organisational recommendations will be evaluated to identify and understand the outcomes and impact of CQC's response to this report – see the [section on Evaluation](#).

# 1: Reviewing how well we listen to whistleblowing concerns

## Key findings and recommendations

As a result of this review, we have developed aims to improve how we listen and respond to workers raising concerns, which will lead to improvements in the safety and quality of care for people using regulated services. They will also support how we evaluate the delivery of the improvements to help build confidence that they can be achieved.

**Aim 3: CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, or respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination.**

### Findings:

Our review found that:

- The way 'whistleblowing' is defined (see [appendix A](#)) and understood within CQC has become overly complex and there is not a common and shared understanding across our staff. **In this report we will use the term 'speaking up' to describe concerns raised by workers, with 'whistleblowing' referring to when workers have shared information that meets the definition of a 'qualifying disclosure'.**

- Most information is currently received and handled by the National Customer Service Centre (NCSC). Our process if information is received by another route is to send it to NCSC to be processed. If information is not handled in this way, there is an increased risk of poor record keeping and insufficient evidence of the action we took.
- We are not collecting data about workers' protected characteristics and whether we knew the identity of the worker.
- Our initial action in response to concerns currently categorised as whistleblowing is consistently taking place within 5 days. However, we do not have performance measures in place to provide assurance that the action has mitigated any presenting risk or to consider how well concerns were handled.
- Our [closed cultures work programme](#) has increased staff awareness and provided improved intelligence and tools for our staff, but this is not fully embedded in our work.
- Workers often tell us when they have experienced poor treatment or victimisation in response to their attempts to speak up to their employer. We do not always ask whether the worker has raised their concerns with the provider and, if so, what their experience has been.

We recommend that CQC should:

- Promote a common understanding of definitions of workers speaking up and when this means they are 'whistleblowing' through a revised policy, updated systems, and associated training and guidance.
- Gather equality demographics on workers speaking up and where possible on anonymous reporting to identify themes and trends; then take action to address them to improve how we support and protect workers.

- Measure both the timeliness of how workers' concerns are responded to, and whether the action has mitigated the presenting risk; and implement an effective quality assurance governance system.
- Develop systems so staff have contextual information and information from our closed cultures dashboard available in one place when they are handling information of concern.
- Capture information and flag cases where workers have said they experienced victimisation. This should be made visible for inspectors to inform regulatory decision-making including follow up on inspection.

**Aim 1: The public, workers of services registered with CQC, and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner.**

Our review found that:

- Our reporting of whistleblowing concerns, which is a requirement of our role as a prescribed body, has been limited, which means workers who speak up in services and the public have not had enough information about how we have been handling concerns raised with us by workers.
- We do not gather information to understand enough about the barriers workers experience in raising concerns with us, or their confidence in us to respond well to their concerns.

- Only a small number of workers who raised concerns with us made a complaint about CQC's response. The outcome of most complaints found that CQC acted appropriately. A common theme was a difference in understanding between the worker and CQC about how concerns should be handled, and that we have not contacted them to let them know what was happening with the information they had shared.
- CQC staff reported that information reported anonymously often contained limited detail. This makes it more difficult to follow up those concerns effectively.

We recommend that CQC should:

- Publish a standalone Annual Prescribed Persons Report from 2023/24 to clarify and raise confidence in CQC's response to whistleblowers and all workers who speak up to us.
- Develop a system to gain feedback from workers when they have contacted us to raise concerns with an initial focus on recognising and overcoming the barriers experienced by ethnic minority workers.
- Commission research and engage with external organisations with expertise in speaking up to understand workers' confidence in CQC to handle their concerns. Specific attention should be given to workers from ethnic minority groups; other marginalised groups; and the role held by the worker within the service. This must lead to action to address the findings.
- Commission research to explore the implications of an increased level of workers speaking up from deprived areas.
- Review guidance on our website, and web forms for workers speaking up to ensure they clearly communicate how CQC will handle and act on their information, including for anonymous reporting.

**Aim 6: Relevant CQC colleagues feel confident, skilled and empowered to handle whistleblowing and information of concerns about care.**

Our review found:

- An unacceptable level of variation in our practice and some concerns had been handled poorly.
- Evidence of positive intention from CQC staff, and examples of good practice.
- Staff did not always feel they were able to act on the concerns raised by workers in the way they wanted to. For example, not carrying out an inspection in response to a concern because this was not in line with organisational priorities at the time; or because there are capacity issues in an area where there are higher risks.

We recommend that CQC should:

- Revise guidance and training for staff to provide clear principles of how to:
  - handle concerns raised by workers
  - keep in touch effectively with those speaking up
  - define what good practice looks like
  - raise awareness of the issues faced by the ethnic minority workforce and other marginalised groups and understand why and how we need to modify our approaches.
- Ensure high-risk cases are regularly discussed and recorded during inspectors' supervision with their manager through to closure.

- Review available staff resources to make sure these are sufficient to enable both effective monitoring of services and responsive on-site inspections when there are early indications of deterioration in quality or of the emergence of a closed culture (shared recommendation with section 5).

#### **Aim 4: CQC works well with partners and providers when concerns about care are raised**

Our review found that:

- Effective partnership working with local authorities is important when responding to workers' concerns. We found we were not consistently following the progress of safeguarding investigations.

We recommend that CQC should:

- Routinely follow up referrals proceeding to a safeguarding investigation, and the outcomes of any investigation undertaken.

## Why we looked at this area of our work

The purpose of this part of the review was to consider how well we listen and respond to the workers of providers registered with CQC.

The information we receive from workers of providers registered with CQC can shine a powerful light on the culture and practice within an organisation. It can also help us to identify when the quality and safety of care provided by a service has started to deteriorate. The importance of us listening well when workers raise concerns must not be underestimated. The impact of us failing to do this effectively and inclusively can lead to missed opportunities to protect people who use health and care services, and to us letting down the workers who have spoken up to us.

The links between workers' ability to raise concerns within an organisation and its culture are clear. An organisation with a learning culture recognises speaking up as a gift and engages with that worker openly to drive change. An organisation with a poor or closed culture will seek to silence voices of dissent and to retaliate and victimise.

As highlighted in the introduction to this report, it would be hard to find a major health or social care report covering failings that did not reference workers' concerns. For example, in the [Ockenden report into failings of maternity services](#) staff told the reviewers about being fearful of speaking up, and reviewers found repeated concerns raised about safe staffing levels.

Our failure to respond well to the concerns raised by a whistleblower at [Winterbourne View](#), an independent hospital for people with a learning disability, in 2010 played a key part in the delay to identifying the abuse taking place. Following this, extensive work was undertaken to improve our organisational response to speaking up information.

More recently, the experiences of Mr Kumar highlighted wider questions about our own organisational culture and behaviours in both handling speaking up concerns about services we regulate, and in our own processes for staff to raise concerns about CQC.

It is critical that when people working in services registered with CQC are concerned about things they have seen or experienced, they have confidence to contact us. They need to be able to trust that their concerns will be handled sensitively, that we will be clear about how we will use the information, and that we will take the right action.

Speaking up can be a difficult and distressing process, often involving real or perceived personal risk to the individual raising the concerns. We recognise that we need to better understand the barriers to workers raising concerns, and to proactively work to build trust that concerns will be acted upon.



Through this work, we need to strive to be aware of our current practice, understand how we engage with workers who raise concerns with us, and to continuously seek to improve. Our staff within CQC tell us they want to get this right and are committed to working towards best practice. We need to ensure staff have the right resources, guidance, training and systems to enable them to be confident in their approach.

During the review process, we experienced challenges with our methodology which meant that our efforts to speak directly to health and care staff about their experiences of raising concerns were unsuccessful (see section on listening to the experiences of workers who raise concerns).

## What we looked at

In forming this section of the report and our findings, we used the following sources of evidence:

- Information available on our website – for the public, providers and employees of services registered with CQC about how we handle information from workers speaking up.
- Internal guidance – for our staff about workers speaking up and safeguarding.
- Data analysis – of 8,126 speaking up records (1 April 2022 to 30 September 2022).
- Records check – of a sample of 65 'high risk' whistleblowing cases taken from the 8,126 records, where the person involved had indicated we could contact them when they had raised their concerns.
- Internal staff focus groups – 3 focus groups involving 36 members of staff from across CQC who routinely manage information of concern, including those raised by workers speaking up.
- Annual provider survey – review of themes and trends relating to what providers had told us about whether CQC managed concerns from health and social care professionals in an inclusive manner.

- Complaints – from April to September 2022, from workers about how CQC handled their concerns.
- Interview process – we wanted to speak with workers who had raised concerns with us, to understand how well we had listened when they raised their concerns. To do this, we contacted 41 people by telephone to ask them if they would be willing to speak with us. Of these people, most did not answer the phone. We spoke with 6 people, of which 5 declined to speak with us as part of this review, and 1 person didn't respond to an email follow up.
- Stakeholder engagement – we engaged with a range of internal staff, external advisors, the Parliamentary and Health Service Ombudsman and the whistleblowing charity, Protect.

## What we found from our internal review of how we handle concerns raised by workers

### Contextual information from data analysis

Between 1 April 2022 and 30 September 2022, we received 8,126 contacts that were categorised as whistleblowing across 4,757 services. Of the 8,126 records:

- most related to adult social care services
- proportionately more enquires were received about services rated as requires improvement
- services in the most deprived areas were twice as likely to have whistleblowing concerns raised as those in the least deprived areas of the country.

Findings and recommendations for aim 3: CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, or respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination.

### Receiving information and triage

All information that comes into CQC through our National Customer Service Centre (NCSC) is triaged. NCSC triage all incoming concerns into priority levels. This is based on the level of risk present within the information shared. Priority 1 information is the highest risk level through to priority 4, which is a low risk level. Priority 1 and 2 information contain safeguarding information. Priority 3 (medium risk) information indicates a concern that could include a breach of fundamental standards, or a significant concern.

The analysis of the data indicates that the level of risk within the 8,126 records varies (see figure 1).

**Figure 1: Concerns categorised as whistleblowing received by sector by priority assigned 1 April 22 to 30 September 2022**

Sector priority	ASC no.	ASC %	Hosp no.	Hosp %	PMS no.	PMS %	Unsp no.	Unsp %	Total	%
1-ASAP	157	2%	9	1%		0%		0%	<b>166</b>	<b>2%</b>
2-High	3187	48%	328	26%	49	19%	2	40%	<b>3566</b>	<b>44%</b>
3-Med	3220	49%	930	73%	208	80%	3	60%	<b>4361</b>	<b>54%</b>
4-Low	19	0%	10	1%	4	2%		0%	<b>33</b>	<b>0%</b>
<b>Total</b>	<b>6583</b>	<b>100%</b>	<b>1277</b>	<b>100%</b>	<b>261</b>	<b>100%</b>	<b>5</b>	<b>100%</b>	<b>8126</b>	<b>100%</b>

ASC: Adult social care

Hosp: Hospitals

PMS: Primary medical services

Unsp: Unspecified

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As a prescribed body, we have a responsibility to decide whether we accept protected disclosures only or also accept wider information. We accept all information of concern from workers and use it to inform our regulation of health and social care services. We found our staff had differing views about the definition of a 'qualified disclosure'.

Across the staff focus groups there was a consensus that a common understanding, language and terminology was needed. This has previously been identified and clarified within the production of the internal policy 'Handling concerns raised by workers registered with CQC', which was agreed by the Executive Team. The policy will be reviewed against the findings from this review for any required changes prior to implementation. A new IT system is under development; as part of this, the way information from workers speaking up is triaged and recorded is being streamlined. This includes ensuring we have a consistent approach to identifying and acting on 'qualified disclosures'.

**Recommendation:** CQC should promote a common understanding of definitions of workers speaking up including 'whistleblowing' through a revised policy, updated systems, and associated training and guidance.

Most information of concern raised by workers of providers registered with CQC (99.1%) was received and logged onto the system by NCSC. This process is outlined in CQC's current internal guidance for handling information of concern. In the case of Mr Kumar we found his disclosures were not consistently logged through the usual route through NCSC. We have concluded that if information is not logged correctly, there is an increased risk of poor record keeping and insufficient evidence of the action we took. We have responded to this by issuing a communication to all staff, highlighting this part of the guidance and the expectation for all information to be logged on to the system. This will be monitored following the implementation of quality assurance (see section on performance and quality assurance).

## Data collection

CQC does not collect any demographic information about the workers who contact us, such as people's protected characteristics or role within the service. This means we have been unable to provide an analysis of the demography of the workers who contact us.

We have been carrying out a project since early 2022 to address the absence of this demographics data. This is being developed using Office for National Statistics demographics definitions.

Many workers who contact CQC do not disclose their identity to us. Of those that do, some directly tell us they don't want their identity shared with the provider or other organisations such as the local authority. We do not collect this information in a format where it can be reported on; this means we do not know the proportion of 'qualified whistleblowing' where the worker has shared their identity with us.

**Recommendation:** CQC should gather equality demographics on workers speaking up and where possible on anonymous reporting to identify themes and trends; then take action to address them.

## Responding to concerns: performance and quality assurance

We monitor all records that are currently categorised as whistleblowing for timeliness of action taken as a corporate key performance indicator. The initial action taken to mitigate risk to people within the service must be recorded by the inspector within 5 working days of receipt of the information. When the information is received, we may take a variety of actions, for example, contacting the provider or local authority, triggering a regulatory response such as an inspection or direct monitoring activity or liaising with other external stakeholders such as infection control teams or district nurses. The percentage of cases being actioned within 5 working days has improved throughout 2022 (see figure 2).

**Figure 2: Percentage of whistleblowing actioned within 5 working days 1 January to 31 December 2022**



The 5-day measure is important as this demonstrates concerns are reviewed and action taken in a timely manner. There is no measure in place to monitor what takes place after the initial action is taken. It is important that we can confirm the action we took did mitigate the presenting risk. For example, if the action taken was to contact the provider and to ask for information, then the response needs to be received, reviewed and a decision taken and recorded as to whether the risk has been managed. If the risk has not been managed, then further follow-up action should be evident. The introduction of a measure would provide oversight and assurance and allow the tracking of the time taken to gain this assurance.

Quality monitoring to review how concerns from workers are being handled is not embedded into routine practice. Putting this in place is of key importance, as our review of records continue to show variation in practice, which requires improvement (see section on reviewing the quality of how CQC staff handle concerns raised by workers). A Quality Management Framework is currently under development within CQC; this is intended to establish and measure how concerns from workers are being handled, with quality principles and standards that define the cultural approach and definition of 'good'.

**Recommendation:** CQC should measure both the timeliness of how workers' concerns are responded to, and whether the action has mitigated the presenting risk; and implement an effective quality assurance governance system.

### **Responding to concerns: Using information to identify early warning signs of closed cultures or a deterioration of quality in a service**

The voice of workers is of immense value in understanding the culture and quality of care within a service, and this was consistently recognised by staff in our focus groups.

Our [closed culture work](#) has promoted awareness among staff of what features can place a service at higher risk of a poor culture developing. There is also a closed culture dashboard that staff can use to look at the intelligence held about a service for signs of a closed culture. However, this is held separately to the main system used to handle incoming enquiries, which means it requires additional steps to access this information. One staff member said:

"I think the work that has been done in terms of the closed culture approaches and the sort of tools we have there now, I don't know whether or not that could be more closely linked into the whistleblowing guidance."



In the case study below, more focus should have been given to the contextual information. This service is inherently higher risk for developing a closed culture, and there are early warning signs of a potential deterioration in quality, or of a closed culture developing when the whole picture is considered. In cases like these, where we haven't recently entered the service, inspection must be prioritised to gain assurance.

### **Case study – Residential service**

In 2022, CQC received information of concern from a worker about the care provided to people at this service. There was no call back made to the worker who had raised concerns. This information was shared with the local authority safeguarding team. Contact was made with the provider for assurance, and their response was accepted by the inspector, who noted the information would be used for monitoring purposes.

At the time the concerns were received, the service was rated as good overall with the last inspection taking place in 2017. An off-site desktop review had been carried out shortly before the concerns were received with no further regulatory action indicated. As part of this review, when we looked at wider information held about the service, we identified there had been other concerns raised by workers at the service over time, and the local authority had shared that there had been organisational safeguarding concerns. The intelligence held overall showed warning signs of a potential closed culture that should have prompted an inspection taking place. We raised this with the inspection team. On inspection, we found that the quality of care fell below what people had a right to expect. The evidence is under review to consider our regulatory response to make sure improvements are made.

**Recommendation:** CQC should develop systems so staff have contextual information and information from our closed cultures dashboard available in one place when they are handling information of concern.

## Victimisation of workers raising concerns in the workplace

The Employment Rights Act 1996 as amended by the Public Interest Disclosure Act (PIDA) 1998 provides protection in employment law; however only 4% of cases brought to tribunal are successful. This does not however provide immediate protection to workers against any retaliation from their employer. In addition, only the Employment Tribunal can determine if the worker is a '[whistleblower](#)'. Victimisation in response to raising concerns can make it difficult for workers to carry out their role. We recognise that across health and social care, when staff contact us, they may have had poor experiences and be fearful of their employer's actions.

Services with a positive learning culture in place would encourage and support their staff to raise concerns. Those with a poor culture can seek to suppress or dismiss concerns being raised. Therefore, when a worker has experienced poor treatment or victimisation this highlights potential concerns about the culture within a service and how well-led the service is.

It is important that our staff can easily identify victimisation when workers are reporting it. Currently, while these questions are often asked, they are not recorded and flagged in a way that makes this easily visible to inform regulatory decision making or for external reporting. We also found it was difficult to track how any concerns of victimisation were being taken through to, and examined, on inspection.

Out of the 65 records we looked at, we found 7 cases where the worker had said they had raised concerns, but their employer has ignored them or taken no action. In 2 cases, workers said their employer had implied they would suffer detriment if they continued to raise concerns. An example of our response can be seen in case study 2.

## Case study: Nursing home

CQC received information of concern from an ex-employee of the service. This included neglect of named individuals, poor moving and handling, lack of personal care and weight loss. They also said if anybody 'spoke up' the managers made it difficult for employees.

This information was shared with the local authority safeguarding team by the inspector. Contact was made with the provider as the manager had been implicated in the concerns.

At the time the concerns were received, an inspection had been carried out a few weeks earlier and the home had been rated as inadequate. The inspection report referred to the service showing signs of a 'closed culture' and highlighted safeguarding concerns that had been raised. It also highlighted the failure of the provider to address issues raised. This service has since been inspected again and progress has been seen.

In our focus groups, there were a couple of comments made about being particularly aware of the risk of indirectly identifying a person if they had already been victimised. For example, one staff member said:

"I think in my experience, if somebody says they've already been victimised, or they're worried about what they've said because they feel like they would be victimised in the future over it, you are very, very much more cautious about how you might process that information or go back to the provider about certain things."

Currently, workers' 'freedom to speak up' is considered as a part of 'well-led' inspections in NHS trusts. We are developing a Single Assessment Framework as part of our new approach to regulation. This will apply to providers, local authorities and integrated care systems. Within this framework, 'freedom to speak up' is a [quality statement within the well-led key question](#). In addition, this approach involves making judgments about the quality of a service more regularly. This includes acting responsively when we receive information that indicates an immediate risk, concern or change in quality, such as concerns raised by workers including whistleblowing disclosures.

**Recommendation:** CQC should capture information, and flag cases where workers have said they experienced victimisation. This should be made visible for inspectors to inform regulatory decision-making including follow up on inspection.

Findings and recommendations for aim 1: The public, workers of services registered with CQC, and other stakeholders trust CQC to listen and act on their feedback and concerns in an inclusive manner.

### **Reporting on concerns raised by workers including whistleblowing**

CQC is a prescribed body. This means we can be contacted by workers outside of their workplace to report suspected or known wrongdoing. This can be if the worker doesn't feel able to report directly to their employer, or as a route to escalate if their employer has ignored their concerns or not acted on them. This information is of high value to us as a regulator as it provides an insight into regulated health and social care services.

As a prescribed body we are required to publish information externally each year on the number of qualified disclosures received. Of these, we should also report on the action we have taken and provide a summary of actions taken. This is currently included within our Annual Report and Accounts. The All Party Parliamentary Group (APPG) for Whistleblowing has raised concerns about the wider quality of Prescribed Persons Reports across all prescribed bodies, and states, "examination of these reports exposes failures to adhere to required standards."

Our last 2 published annual reports show the number of 'qualified disclosures' alongside data taken from the key performance indicators. This high-level performance information is also routinely shared with CQC's Board. The information shared is limited. During the Covid-19 pandemic the recommendations for performance analysis were reduced, which also had an impact on the amount of information shared about whistleblowing. There is now an opportunity to increase transparency to workers of providers registered with CQC and the public by more comprehensive reporting and analysis.

We have a responsibility to decide whether we accept protected disclosures only or accept wider disclosures, and to clearly communicate this. As a prescribed body, we do not hold responsibility for determining whether any workers' disclosure would qualify for protection under PIDA. This falls under the role of an Employment Tribunal if a worker was to bring a claim under PIDA. However, it is important for us set out publicly how we categorise concerns and subsequently act on them.

**Recommendation:** CQC should publish a standalone Annual Prescribed Persons Report from 2023/24 to clarify and raise confidence in CQC's response to whistleblowers and all workers who speak up to us.

## Listening to the experiences of workers who raise concerns

This part of the review has been limited by the lack of information we gather about the demographics of the workers who contact us. This has also meant the data analysis and records review we carried out could not be used to consider if our staff handle concerns from people with protected characteristics differently.

Our intention was to speak with workers who had raised their concerns and, as part of this conversation, to ask whether any of their concerns had related to discrimination or poor experience due to any protected characteristics. We attempted to contact 41 people. Most people did not answer the phone, and voicemails were left. We had an initial conversation with 6 people to outline the request; of these, 4 declined on the call. Two people received further information by email; of these, 1 then declined to take part and the other did not come back to us. This highlights gaps in our understanding of how to engage with workers about their experiences of raising concerns with CQC.

The results from the [latest NHS Staff Survey](#) indicate falling confidence amongst workers to speak up within their organisations. This highlights the importance of us proactively building confidence and trust within the workforce, by listening well and handling and acting on workers concerns effectively.

Findings from published reports particularly highlight the barriers workers from ethnic minority groups can face when considering raising their concerns. It is important that we proactively build a receptive culture to hearing workers concerns well, to build confidence for workers from these groups to speak up to us. Sir Robert Francis KC in the [Freedom to Speak Up Report](#) found there can be a reluctance to speak up due to fear of factors such as being blamed, bullied or afraid of wider consequences for their career. Section 3.3 of the report sets out a survey of workers from a Black and minority ethnic background conducted for the Francis Report and includes the following conclusions:

- A higher proportion of Black and minority ethnic staff reported fear of being victimised as a result of raising a concern.
- Black and minority ethnic staff were more likely to have reported concerns about harassment and bullying than white staff.
- After raising a concern Black and minority ethnic staff were more likely to report being victimised or ignored by management than workers from a white background.

Despite this evidence of differential experience, we have not recognised that discrimination can be an issue to speaking up within the health and social care sector; and / or of contacting us as the regulator. We do not adequately understand the barriers experienced by the ethnic minority workforce or other marginalised groups. This needs to be addressed and there is an important opportunity for us as an organisation to be aware of and work to remove these barriers throughout all the changes we make.

**Recommendation:** CQC should develop a system to gain feedback from workers when they have contacted us to raise concerns with an initial focus on recognising and overcoming the barriers experienced by ethnic minority workers.

**Recommendation:** CQC should commission research and engage with external organisations with expertise in speaking up to understand workers' confidence in CQC to handle their concerns. Specific attention should be given to workers from ethnic minority groups; other marginalised groups; and the role held by the worker within the service.

**Recommendation:** CQC should commission research to explore the implications of an increased level of workers raising concerns from deprived areas.

## Understanding expectations from workers about how CQC handled their concerns

We looked at information about complaints we received to help us understand workers' experiences. In the 6 months from 1 April to 30 September 2022, we received 172 complaints about CQC; of these, 7 (6%) were from workers who were dissatisfied with how we handled their concerns. Of these, 6 were not upheld (CQC was found to have acted appropriately) and 1 was partially upheld. While the number of complaints was low, these do highlight important areas for consideration.

For the complaint that was partially upheld, the worker told us the inspector had taken their email to CQC and shared it almost 'word for word' with the manager of the service where they worked. They felt the manager suspected they had shared the concerns, and this was having an impact on them at work. The review of the complaint found that the information had been shared anonymously with CQC, but not enough care had been taken to summarise the information to reduce the likelihood of the service indirectly identifying the worker.

The main theme from the complaints that were not upheld was that CQC was not 'investigating' concerns or not making contact to explain our actions. These cases were not upheld because CQC does not investigate individual concerns. All cases had information about how the concerns had been acted upon, so we need to do more work to improve how we communicate these actions to the person making the complaint.

These cases highlight the difference in expectation between what workers expect CQC to do with the concerns they have raised, and how the information is used in practice. This was also mentioned by inspectors in the focus groups held for this review. One staff member said:

"I think sometimes you're stuck in a difficult dilemma; you know they want us to go and inspect the following day sometimes. It's managing that expectation if we feel that the risk level or other information we have doesn't merit that."

### **CQC staff perspectives on handling concerns raised by workers**

We accept anonymous reporting from workers as a valuable source of intelligence into the quality and culture of services. Staff in our focus groups had mixed views about the credibility of information that is received when the worker does not share their identity. For example, one staff member said:



"I've seen this over the years that inspectors may treat an anonymous whistle-blower differently to named ones. I don't know how you solve that problem, but it's almost like someone's been mischievous if they don't give their name and I think that's probably down to our culture and training."

However, others did not agree with this and said they treat anonymous information with the same credibility:

"I wouldn't treat an anonymous whistleblower any different, other than to think to myself, actually they are probably more scared than someone saying their name."

There was consensus that anonymous information could often be more difficult to handle, as it was not possible to have further contact for clarification or to ask for more details. Sometimes the information contained allegations of abuse but without any specific details about when this occurred or who was harmed. This meant the local safeguarding team would be unable to investigate this.

All staff were aware of the importance of, wherever possible, protecting the identity of the person making the disclosure from the provider, but we heard this can be difficult with anonymous feedback. For example, we often summarise the information to ask the provider for assurance. Inspectors told us they felt more concerned about the risk of indirectly identifying the worker when they didn't know who they were. Staff working within NCSC said they were trained when taking phone calls to support workers to share information in a way that minimised the potential for indirect identification.

Staff suggested we could improve how we engage with workers, for example by providing more information to explain the limitations of reporting anonymously and a process that allows anonymous reporting but does not encourage it.

**Recommendation:** CQC should review guidance on our website, and web forms for workers raising concerns to ensure they clearly communicate how CQC will handle and act on their information, including for anonymous reporting.

Findings and recommendations for aim 6: Relevant CQC colleagues feel confident, skilled, empowered and supported to handle whistleblowing and information of concerns about care.

### **Reviewing the quality of how CQC staff handle concerns raised by workers**

Within our focus groups, staff told us they needed more support and training in how to handle information of concern from workers. One staff member said:

"CQC should be really clear about what we're supposed to do and how we're supposed to react to certain types of information; because it's kind of left up to our judgement at the moment, and obviously not all of us have the same level of experience."

During our review of whistleblowing records, we found all had initial action taken. However, we identified issues with how concerns were handled, including the following themes:

- Sharing information with the provider about a worker's concerns in a way that could 'indirectly' identify the worker –  
Inspectors regularly ask providers for assurance about issues that have been raised. This needs to be done carefully to minimise the chance of the worker being indirectly identified. We found cases where this didn't happen. In 1 case, the call log taken by the contact centre team had been shared almost 'word for word' with the provider.

- Asking a provider or registered manager to investigate concerns about themselves –  
When concerns are raised about a registered manager or provider, it is not appropriate to seek assurances from the person the concerns are about. We identified 2 cases where this had taken place. Instead, different approaches should be considered, such as contacting the nominated individual in a larger provider, liaising with the local authority or by carrying out an on-site inspection.
- Lack of further contact with the worker raising concerns –  
CQC's internal guidance states: "We assess, prioritise and act appropriately on all information we receive when people speak up. This always involves thanking the person who tells us about their concern, ensuring they receive feedback on the actions taken where this is possible, and asking for feedback from them about how the matter was handled."

Having ongoing contact with workers is often positive when they have told us they are willing to be contacted by the inspector, as it means we can tell them what we are doing with the information, as far as is possible.

In our focus groups, staff told us they used their judgment on whether to call the worker back about their concerns. This was often linked to whether they thought they had enough information to respond to the concerns. This was reflected in the records, with approximately half being contacted, or contact attempted and half with no contact made.

- Not identifying and following up on all the concerns raised –  
The information within workers' concerns can be wide-ranging. It is important that we seek assurance and follow up on all issues raised. We found cases where it was unclear whether all the concerns had been considered and assurance received.

- Lack of scrutiny of, or no evidence recorded of follow up of the provider response –

When we request assurance from the provider, we need to follow this up and review it to ensure any risk to people has been appropriately managed. There were cases where responses had not come back promptly, or assurance had been accepted without sufficient scrutiny as to whether the provider had looked at the issues thoroughly.

- Poor recording –

We expect our staff to record all action taken in response to concerns raised.

Where we followed up cases for this review, we found examples of more follow up or actions taken than had been recorded on the system. This was sometimes linked to workload pressures.

In addition to these themes, we found examples where we could have given more consideration to responding by carrying out an on-site inspection as opposed to asking the provider for assurance (see previous section on Using information to identify early warning signs of closed cultures are deterioration of quality in a service).

**Recommendation:** CQC should revise guidance and training for staff to provide clear principles of how to:

- handle concerns raised by workers
- keep in touch effectively with those speaking up
- define what good practice looks like
- raise awareness of the issues faced by the ethnic minority workforce and other marginalised groups and understand why and how we need to modify our approaches.

**Recommendation:** CQC should ensure high risk cases are regularly discussed during inspector's supervision with their manager through to closure.

## **Barriers to responding to concerns from workers experienced by CQC staff**

Participants in our staff focus groups discussed the pressure of resources and time, with many feeling that they did not have the ability to respond to risk in the way they would like to.

We have set our priorities centrally and, over the course of the pandemic, this has led to a predominately risk-based approach – both of known risks and to respond to serious emerging risks. There have also been periods where we have focused on infection prevention control inspections and inspecting for improvement within adult social care to support capacity in the system. Staff told us that work was also often led by known risks. For example, services that were inadequate and that required a follow up inspection; or where monitoring activity indicated an inspection was required. This meant they didn't have flexibility to use their judgement to carry out an on-site inspection unless there was clear evidence of risk.

Our staff also said that thresholds for action, such as inspection, were not clear, resulting in variation, and that this was also influenced by resources and capacity.

"But again, with the priorities, it does limit you. You want to get in before people are at serious risk. It would make more sense to us to do that."

"It's no surprise for anyone to hear that we can't get out and inspect all the services where there are bubbling risks happening. We just don't have the resources."

Some staff highlighted having limited options if the threshold to inspect isn't met. Therefore, having contact with the provider is important, as we need to take action to gain assurance the concerns are being responded to.

Inspection staff also talked about their portfolios (the services they are responsible for having oversight of). They highlighted that having a consistent portfolio of services made it easier to identify signs of deterioration in the quality of care. There were also comments made about the impact of the size of portfolio. One said:

"The size of the portfolio is too big to have that type of oversight or relationship building where you can pick up the subtle differences or when a dynamic has changed. When you have a smaller portfolio, you get to know those relationships. Those little warning signs become quite obvious quite early on."

Some inspectors felt there was a benefit to not knowing services as well, as that made them look at the issues more carefully. One inspector said:

"If I don't know the service, I am more attentive to anything that's raised. The fear of missing something and not knowing the service actually makes me think a little bit more and think, 'is there something I need to do straight away about this? Who do I need to speak to?'"

**Recommendation:** CQC should review available staff resources to make sure these are sufficient to enable both effective monitoring of services and responsive on-site inspections when there are early indications of deterioration in quality or of the emergence of a closed culture.

Findings and recommendations for aim 4: CQC works well with partners and providers when concerns are raised

**Engaging with providers when concerns are raised**

Our Annual Provider Survey indicated that providers were concerned that we are overly focused on negative feedback and do not consider positive practice enough. When responding to concerns, providers also felt we are quick to accept the feedback as fact. For example, a few providers shared experiences when ex-employees had made 'vindictive' comments in response to losing their position. Other providers were not confident that we always act on complaints, whistleblowing and concerns, which some feel is resulting in a risk of harm to people who use services.

A small number of providers also felt that inspection staff were overly critical and had a 'pre-determined' view of their service.

Our staff in the focus groups had a range of opinions on engagement with providers when concerns are raised by workers. One staff member said:

"I share these concerns with [providers], because we need to make providers aware if we are receiving concerns, because they've got legal accountability for people's health and safety in their service. If we're not informing them of the concerns that we've received, whether they're from whistleblowers or not, how are they assuring themselves that they're listening and taking action?"

Another staff member shared,

"I have always been concerned about how much assurance we take from the provider when we become aware of concerns. It has always been difficult for us to explore the issues any other way and arranging inspections has got harder than when I first started. From a whistleblower, service user or family's perspective we can appear to take too much adherence from the views of the provider or registered manager, which can make us appear to be on their 'side' so to speak. I have definitely found this when speaking to families and staff after specific incidents."

This highlights the range of perspectives when concerns are raised.

## **Working in partnership with the local authority**

Our staff focus groups discussed the ways we can work together with local authorities to get the best result for people receiving care. One inspector highlighted worries about receiving information of concern about people who are placed out of area, as the local contract teams do not monitor these people and the placing authority rarely do compliance visits. This means the burden of protection rests with CQC.

A common issue identified in the review of the 65 whistleblowing records was that outcomes from safeguarding referrals were either not received or were not visible within the original record. This would include whether the local authority progressed this to a safeguarding investigation and, if they did, whether it was substantiated. During our review of records, it was often difficult to find safeguarding outcomes on the system; these often came in some time after the initial referral was made and were not consistently linked back to the originating matter.

Inspectors recognised this as a problem and highlighted the difficulty they can experience both in trying to find out outcomes from safeguarding referrals, and from barriers in CQC's system that make matching up and tracking cases complicated. This is also linked to the need for inspectors to routinely seek assurance from the provider in parallel to sharing with the local authority. One inspector told us:

"We have totally limited options really. So, say the whistleblower comes through and raises some significant concerns. We can obviously raise a safeguarding [referral] about that. So, we will do that but the question I always ask is – well what have we done?"

Without following through referrals to outcomes, whether that be through provider or local authority investigation, we cannot be assured that people have been protected. In addition, the quality of provider investigations should also be used to inform our regulatory response.



There must be better communication between CQC and local authorities to enable a shared view of quality about services. Otherwise there is the risk of delays to acting on concerns. For example, the [Whorlton Hall Safeguarding Adults Review](#) recommended that there needs to be closer working between CQC and local authorities to improve outcomes from organisational safeguarding in specialist hospitals. The report said that without such collaboration there can be "repetitive cycles of organisational safeguarding enquiries, which result in them telling providers to do what they should already be doing, and which have little sustained effect on improving the experiences of patients".

**Recommendation:** CQC should routinely follow up referrals proceeding to a safeguarding investigation, and the outcomes of any investigation undertaken.

## Evaluation

CQC should undertake a thorough evaluation of how well it listens to concerns from workers of providers registered with CQC including whistleblowing following the implementation of recommendations from this review. This should seek to understand whether CQC has improved its practices against the following aims in this review:

- The public, workers of services registered with CQC, and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner. [Aim 1]
- CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, or respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination. [Aim 3]
- CQC works well with partners and providers when concerns about care are raised. [Aim 4]
- Relevant CQC colleagues feel confident, skilled and empowered and supported to handle whistleblowing and information of concerns about care. [Aim 6]

Six months after this review is published, CQC should look at progress against the implementation of the recommendations. After 12 months there should be an evaluation report on the outcomes of CQC's response and this should mark the formal close of the review. The evaluation should then continue to understand the full impact of the recommendations in achieving the aims set out.

To evaluate how this review has impacted CQC's ability to listen to whistleblowing concerns, possible methods include:

- recommendation tracking
- a survey of people who have provided feedback or raised a concern about care
- focus groups with those responsible for handling whistleblowing and information of concern about care
- interviews with partners and providers about how well we have worked with them when concerns about care are raised
- analysis of whether CQC has acted on information of concern about care, and how this varies by protected characteristics.

## 2: Reviewing our Freedom to Speak Up policy

### Key findings and recommendations

Our review found that:

- The CQC Freedom to Speak Up Policy had not been updated to reflect the new national policy and guidance published by NHS England in 2022.
- A revised policy prepared in 2022 and rejected by the Board in 2022 did not reflect the national guidance in significant ways.
- There had been a lack of proactive support for the CQC Guardian, for example 2 of the 3 Guardians left and were not replaced and administrative support had been withdrawn. The remaining Guardian has continued to support people within the limitations of the available resource.
- The non-executive lead for Freedom to Speak Up at CQC left the organisation in December and has not been replaced. We are currently exploring options to cover this role.
- Our latest CQC staff survey, and feedback received from the engagement carried out for workstream 4 of this review (see [section 4](#)) show a lack of confidence in speaking up. The positive responses to the statement "I think it is safe to challenge the way things are done here" fell from 49% overall in 2021 to 29% overall in 2022.
- There is therefore work to be done to ensure that everyone working at CQC, including specialist professional advisors, experts by experience, contractors and people seconded into CQC are aware of the arrangements and the support available.
- While the national policy position deliberately uses the term 'speaking up' as opposed to 'whistleblowing', it is important that training and support is provided to ensure that a protected disclosure is recognised when it is made.

- A new policy will be an important first step and further work will be needed to build a vibrant speak up culture. This should be seen as part of the wider work on culture at CQC.

**Aim 2: CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, inclusively listened to, and responded to well.**

We recommend that CQC should:

- Adopt the proposed new Freedom to Speak Up policy (being presented separately).
- Take immediate steps to implement the new policy, including:
  - the appointment of an executive lead for Freedom to Speak Up
  - the recruitment of additional guardians
  - the allocation of additional resources, including ring-fenced time and administrative support.
- Use the Freedom to Speak Up 'reflection and planning tool' to inform a further programme of development and improvement, reviewing our position against all 8 principles.
- Explore and align the above development work with the wider work on culture.
- Ensure that barriers to speaking up, including ethnicity and disability, are considered and addressed, taking account of relevant guidance, including the National Guardian Office publication, [Inclusive Freedom to Speak Up](#).

- Ensure a summary of the actions identified from the above exercise is captured and reported back to Board jointly by the executive lead and lead guardian.
- Ensure effective standard operating procedures to support the policy are devised and implemented.
- Implement a programme of regular review of the effectiveness of Speak Up arrangements using the Freedom to Speak Up Quality Statement and the joint National Guardian and NHS improvement tool.

## Why we looked at this area of our work

We recognised a need to update the arrangements for Freedom to Speak at CQC before this review was launched. The Board had considered and rejected a new draft policy in 2022, requesting that further work be undertaken.

The circumstances that led to this review raised questions about the level of awareness of 'Speaking Up' as a concept and of the support available to people at CQC. This question of awareness applies equally to people who want to speak up, the people (usually managers or leaders) who are spoken up to and those whose role includes providing advice when issues are raised. Without a good level of awareness, opportunities to sign post colleagues to the support available may be missed.

Given CQC's role in assessing and making judgements about the effectiveness of Speaking Up arrangements in the organisations that we regulate, it is important that we lead by example. Our new Single Assessment Framework includes a quality statement called "Freedom to speak up" which states, "we foster a positive culture where people feel that they can speak up and that their voice will be heard." We should hold ourselves to account for the standards that we set for others.

As well as putting a spotlight on our own arrangements, we took the opportunity to review the arrangements with the National Guardian's Office to ensure that the role of the National Guardian is clear in respect of support to people speaking up at CQC.

## What we looked at

We looked at the following sources of information when reviewing our Freedom to Speak Up policy:

- Guidance and resources provided by NHS England and the National Guardian's office. The [NHS England guidance](#) includes a standard policy for organisations including arm's length bodies. The [National Guardian for Freedom to Speak Up](#) refers to this as a basic minimum and it comes with the expectation of key consistency of approach across organisations.
- Policies from other organisations that National Guardian's Office considered to be exemplar. Contact was made with these organisations.
- Information from discussions with the likes of the National Guardian for Freedom to Speak Up, CQC's Guardian and Guardian team at NHS England. Internally the team attended 2 meetings with the Trade Unions to explain the background and approach and after the draft policy was issued. Meetings were held with 2 non-executive directors with a special interest in Freedom to Speak Up and their comments played into the review.
- The latest CQC staff survey results and the feedback from discussions held as part of workstream 4. This left no doubt of the need for a significant reset of approach and the need to rebuild confidence in Speak Up, both in terms of process and importantly, in speak up culture.

We also considered 3 elements which emerged across the wider review. Consideration of a 'protected disclosure' in the context of whistleblowing was the first aspect, which covered how people are supported to recognise it and respond appropriately. Secondly we also considered the need for good communication with specialist professional advisors, and those working with them, to ensure they were aware of the arrangements for speaking up. Finally, we considered the need to recognise and address the impact of ethnicity on speaking up. This is explored in [research commissioned by the National Guardian's Office](#) and conducted by Roger Kline and Ghiyas Somra, which informed the National Guardian publication [Inclusive Freedom to Speak Up: Appreciating how what we bring to the workplace impacts on speaking up](#).

We noted the Joint National Guardian and NHS improvement tool [Freedom to Speak Up – A reflection and planning tool](#). This is designed to identify strengths and areas for development and is recommended to be completed every 2 years. The tool identifies 8 principles:

1. Value speaking up
2. Role model speaking up and set a healthy Freedom to Speak Up culture
3. Make sure workers know how to speak up and feel safe and encouraged to do so
4. When someone speaks up, thank them, listen and follow up
5. Use speaking up as an opportunity to learn and improve
6. Support guardians to fulfil their role in a way that meets workers' needs and National Guardian's Office requirements
7. Identify and tackle barriers to speaking up
8. Continually improve our speaking up culture.

We also noted the current arrangements for the National Guardian's Office in relation to CQC. The National Guardian's Office provides support to the CQC Guardians on the same basis as with NHS providers. Consideration of any changes to formal governance arrangements is a matter for the Department for Health and Social Care and sits outside this review.

## What we found from our review

This review highlighted that CQC's Freedom to Speak Up Policy had not been updated to reflect the new national policy and guidance published by NHS England in 2022. This has now been done in line with our established procedures for revising policies, and proposed updates will be presented to the CQC Board for approval in March.

A new policy will be an important first step and further work will be needed to build a vibrant speak up culture. This should be part of the wider work on culture at CQC.

We also identified a lack of proactive support for the CQC Guardian, for example 2 of the 3 Guardians left and were not replaced, and administrative support had been withdrawn. The remaining Guardian has continued to support people within the limitations of the available resource.

The non-executive lead for Freedom to Speak Up at CQC left the organisation in December and has not been replaced. We are currently exploring options to cover this role.

Our latest CQC staff survey, and feedback received from the engagement carried out for workstream 4 of this review (see section 4) showed a lack of confidence in speaking up. The positive responses to the statement "I think it is safe to challenge the way things are done here" fell from 49% overall in 2021 to 29% overall in 2022.



There is therefore work to be done to ensure that everyone working at CQC, including specialist professional advisors, experts by experience, contractors and people seconded into CQC are aware of the arrangements and the support available. While the national policy position deliberately uses the term '[speaking up](#)' as opposed to 'whistleblowing', it is important that training and support is provided to ensure that a protected disclosure is recognised when it is made.

The need for rapid and significant improvement was recognised and accepted as the current policy, practice and governance was so far from best practice.

## Recommendations for action

Improvements are needed to ensure that CQC is leading by example and that people working at CQC feel that speaking up is encouraged, supported, valued and that it makes a difference. We recommend that CQC should:

- Adopt the proposed new policy (being presented separately).
- Take immediate steps to implement the new policy, including:
  - the appointment of an executive lead for Freedom to Speak Up
  - the recruitment of additional guardians
  - the allocation of additional resources, including ring-fenced time and administrative support.
- Use the Freedom to Speak Up 'reflection and planning tool' to inform a further programme of development and improvement, reviewing its position against all 8 principles.
- Explore and align the above development work with the wider work on culture.
- Ensure that barriers to speaking up, including ethnicity and disability, are considered and addressed, taking account of relevant guidance, including the National Guardian Office publication, [Inclusive Freedom to Speak Up](#).

- Ensure a summary of the actions identified from the above exercise is captured and reported back to Board jointly by the executive lead and lead guardian.
- Ensure effective standard operating procedures to support the policy are devised and implemented.
- Implement a programme of regular review of the effectiveness of Speak Up arrangements using the Freedom to Speak Up Quality Statement and the joint National Guardian and NHS improvement tool.

This will be evaluated through the deployment of the reflection and planning tool described and further enhanced by assessment against the Freedom to Speak Up Quality Statement. Progress will additionally be measured through our staff surveys.

## Evaluation

There should be a thorough evaluation of how well CQC supports people at CQC to Speak Up following the implementation of recommendations from this review. This should seek to understand whether CQC has improved its practices against the following aims in this review:

- CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, listened to, and responded to well. [Aim 2]

Six months after this review is published, CQC should look at progress against the implementation of the recommendations. After 12 months there should be an evaluation report on the outcomes of CQC's response and this should mark the formal close of the review. The evaluation should then continue to understand the full impact of the recommendations in achieving the aims set out.

To evaluate how this review has impacted CQC's ability to support people at CQC to Speak Up, possible methods include:

- recommendation tracking
- a survey of all CQC colleagues including those who have raised a concern
- a survey for all advisory and complementary staff exiting CQC
- focus groups with CQC colleagues to understand whether they feel safe to raise their concerns
- focus groups with CQC colleagues who have requested reasonable adjustments to understand their experiences
- focus groups with those responsible for handling whistleblowing and information of concern about care
- focus groups with those responsible for responding to concerns about CQC raised by CQC colleagues. The groups will include advisory and complementary staff, People Directorate colleagues, Complaints Team and the guardian(s)
- focus groups with advisory and complementary staff about their appointment, contracting and deployment
- analysis of whether CQC has responded to or acted on information of concern about CQC, and how this varies by protected characteristics.

## 3: Learning from the tribunal case

Key findings and recommendations

The independent review commissioned by us to examine specifically the handling of the Mr Kumar case found that:

- There is the potential for multiple investigations in a whistleblowing scenario because other bodies have review/regulation functions, in addition to us. For example, in Mr Kumar's case there was a separate review by the Royal College of Surgeons into surgeries and clinical decisions where Mr Kumar raised concerns. This can lead to inconsistent conclusions.
- There wasn't a clear management structure for the flexible workforce, nor was there a clear process for determining the allegations against Mr Kumar. The letter of disengagement sent to Mr Kumar did not detail the behaviour in question and was used by the Tribunal as a fact from which they could infer that the protected disclosures had a material influence on the detrimental treatment of Mr Kumar. The Tribunal did not make any finding of any behaviour of concern on the part of Mr Kumar.
- Mr Kumar assisted with inspections within the region of his employer NHS trust but he did not inspect any hospital that he worked in, or was part of the trust that employed him, nor one which was in the same clinical pathway. It is foreseeable allegations and counter-allegations may be made where individuals are part of inspections in the local area in which they work.
- It was not clear who in CQC was in charge of the early conciliation process, nor where the instructions to the Government Legal Department came from. The CQC response to Mr Kumar's employment claim at the outset appeared to be led by CQC's witness in the case but although witnesses will potentially be the point of contact for the facts of the case, they should not be the point of contact for instructions on litigation strategy.

- Opportunities were missed to assess the case merits at an early stage and there was a limited interpretation of Mr Kumar's pleaded case. There was a heavy reliance on the Government Legal Department.
- CQC's focus appears to have been on the financial side of the settlement but Mr Kumar was clear he was seeking recognition by CQC of their actions and where they had fallen short of expected standards.

**Aim 10: Relevant CQC colleagues feel confident, skilled and empowered to deal with employment litigation, including working with internal and external lawyers.**

The independent review commissioned by us recommended that CQC:

- Considers whether we need to enter into Memorandums of Understanding with other bodies that have review or regulation functions (for example, Royal Colleges) to ensure they are notified of any parallel investigations being undertaken by us.
- Clearly identifies who in CQC has responsibility for managing our flexible workforce and ensure they understand our legal duties (with training provided), including the need for a fair process for managing allegations, the need to give clear and detailed reasons for decisions and the need to be clear and transparent when we have not acted as we should. Provide specialised training to our HR team on whistleblowing legislation.
- Does not use specialist professional advisors in inspections within the local area where they work in their substantive post.

- Clearly identifies who in CQC has responsibility for providing instructions to the Government Legal Department in employment litigation, including early conciliation – this should be someone sufficiently senior with the necessary skills and knowledge. It should not be a witness, nor should it be the HR professional who supported the matter before litigation.
- Undertakes a full assessment of the pleaded case straightaway and take legal advice on the merits at an early stage in order to build a litigation strategy. Discovery of documents should take place as soon as a claim is made and factual evidence assessed accordingly. The case timeline should factor in time to obtain Treasury approval for any settlement and consideration should be given to the possibility of making admissions where appropriate.
- Puts in place a programmed dialogue with the Government Legal Department to deepen its understanding of us and our priorities. When workplace disputes arise, recognise when mistakes have been made and take steps to rectify them as soon as possible.

We have looked at these internal review findings and recommendations and, in order to take them forward, we also recommend that we:

- Widen CQC's 'conflicts policy' for specialist professional advisors so that it covers all services within their own integrated care system or in relation to clinical pathways which might cross multiple integrated care systems including their own.

- Where an employment tribunal claim is lodged against CQC, set up a team in CQC to respond to the claim, including case preparation, litigation strategy and instructing external employment solicitors and counsel, as appropriate. The team should not include CQC witnesses. The Director of Governance and Legal Services and the Director of People should have oversight of the team and ultimate responsibility for CQC's handling of the claim.
- Ensure that CQC's Executive Team is notified of any high-profile or complex employment tribunal claim that has been lodged against CQC.
- Ensure that employment tribunal claims lodged against CQC are represented in CQC's Risk Register.

## Why we looked at this area of our work

It was clear from the [employment tribunal judgment](#) in Mr Kumar's case that mistakes had been made and we needed to take learning from it for future employment tribunal cases. We want to know what improvements we can make to our management of these cases to reduce any negative impact they have on those involved, as far as we can and to ensure we get to the right outcome in the best way.

We therefore engaged an independent specialist employment barrister (separate from the independent review carried out by Zoë Leventhal KC) to undertake a review of our handling of Mr Kumar's employment tribunal case and provide us with a report of their case review.

## What we looked at

The focus of the independent barrister's review was the way we handled Mr Kumar's case internally and how we worked on Mr Kumar's case with the Government Legal Department (GLD), who conduct employment litigation on our behalf, as well as government departments and other non-departmental public bodies. The review also looked at our management of our flexible workforce (including specialist advisers such as Mr Kumar).

## Independent barrister case review report

**Note:** The rest of this section contains the independent barrister's case review report in her own words unedited and unredacted.

### **Review into the decision of the employment tribunal in Mr S Kumar v The Care Quality Commission (case number 2410174/2019)**

#### Introduction

This is a review of the case of Kumar v CQC (case number 2410174/2019). The review considered both the decision and preparation leading up to the decision of the Employment Tribunal. The purpose of the review is to identify lessons that can be learned in terms of how the CQC manages its obligations to those who make protected disclosures and cases in the employment tribunal that concern the same.

The review is divided into two-time phases, prior to the employment tribunal claim being lodged and post the claim being lodged. Within each time period specific issues are considered. Where I have identified there is scope for learning, this is set out and discussed within the body of this report.

#### Factual background



The claim was heard in Manchester Employment Tribunal in November 2021 and then again in June 2022. Both parties were represented by Counsel. The tribunal found the claim that the Claimant suffered a detriment on the grounds of having made a protected disclosure well founded. It ordered a sum of £23,000 to be paid as compensation for injury to feelings.

## Pre claim in the employment tribunal

### **Concurrent reviews**

As the CQC is not the only statutory body with a remit to review and regulate the work of the NHS, there will always be the potential for concurrent reviews of cases. A protected disclosure may have also been made to other bodies who are also tasked with investigation and ensuring the quality-of-service provision within the health sector. For example, as was the case in this matter, the Royal Colleges. However, this could also apply to other regulatory bodies such as the Charity Commission etc. As with any situation where there are multiple fact finding or investigative bodies this can lead to inconsistent conclusions, which undermines both legal certainty and ultimately the conclusions that are reached. When a whistleblowing scenario has been identified, the potential for multiple investigations should always be a consideration. The CQC may wish to consider entering into Memorandum of Understandings with relevant bodies in order to ensure they are notified of any concurrent investigations.

If the CQC becomes aware of a concurrent investigation consideration should then be given as to how to manage the parallel proceedings. And whether this necessitates a change of approach, for example staying the publication of any conclusions pending the results of the parallel investigation.

### **HR role/responsibility and management of flexible workers**

There needs to be a clear division of responsibility regarding the management of the flexible workforce and contract workers. The request to remove Mr Kumar from the list of contractors appears to be received an insufficient level of scrutiny. And there appears overall to have been a lack of clarity about the management of his role.

The lack of clear line of management of the flexible workforce and those undertaking the role that Mr Kumar fulfilled meant there was no clear route by which allegations against him were to be determined. In the event to some degree the HR department stepped into fulfil this role. However, the HR department was not ideally placed to do this. The HR department are not party to the alleged conduct or any of the relationships involved in the work the specialist professional advisors undertake, nor do they have the clinical or operational knowledge necessary to undertake the broader management role.

Ownership of decision making and understanding of where responsibility lies must be clarified in respect of the management of the flexible workforce and contract workers. Whoever holds management responsibility for this group must have a sufficient understanding of the legal duties the CQC is under, including the need for fair process.

The lack of clarity in who was decision making is demonstrated by the fact concerns were raised internally regarding the draft letter which communicated the decision to place Mr Kumar's secondment on hold. This suggests a recognition of the risk involved in the decision to place Mr Kumar's secondment on hold, however steps were not taken to mitigate this risk by changing course. It may be that HR department did not feel sufficiently resourced or empowered to refuse or challenge the request to put Mr Kumar's secondment on hold. The lack of clear management structure is very likely to have impacted on this.

## **Investigation and process around allegations made against contract workers**

It follows on from the above point, that there should be fair, clear and robust processes in place for managing allegations made against flexible contract workers.

## **Understanding of legal duties to contract workers**

The legal responsibilities owed to those who are contract workers, as opposed to employees should be fully understood. It may be helpful to have a periodic review of all contractors the CQC works with to consider their employment status and the relevant duties that are owed.

All those who are working with or managing individuals who have contractor or worker status should have a good understanding of the relevant legislation. Training should be provided to ensure that the duties owed to workers are understood. In turn this should ensure that all legal obligations are complied with.

### **Detailed reasons for decisions**

The tribunal found that the letter of disengagement did not detail the behaviour that was of concern [para 145 b of their reasons] and the tribunal did not make any finding of any behaviour of concern on the part of Mr Kumar. The tribunal used this as a fact from which they could infer that the protected disclosures had a material influence on the detrimental treatment. It is always good practice to set out clear and detailed reasons for decisions that are taken contemporaneously.

### **Localised inspections**

In this instance Mr Kumar was employed on a secondment as part of a flexible workforce. His work responsibilities included assisting with inspections within the region of the NHS trust he was employed in. Although he did not inspect any hospital that he worked in, or was part of the trust that employed him, nor one which was in the same clinical pathway. It is my view foreseeable that allegations and counter allegations may be made where individuals are part of inspections in the local area in which they work.

I would advise that specialist professional advisors are not used in inspections within the local area in which they work in their substantive post. By this I mean, that specialist professional advisors should not be used in inspections within their own integrated care system or in relation to clinical pathways which might cross multiple integrated care systems including their own. Not only will this ensure a greater level of independence for inspections, but it will also create a degree of separation between those being inspected and the inspectors. This will provide a level of protection to those who are part of inspection teams, as it will minimise the likelihood of localised politics or allegations being raised. It also is likely to have other benefits, such as the ability to share knowledge more widely across the nation and to learn from the practices of others from a much wider network.

Post ET claim 16 July 2019 onwards

### **Early consideration of the merits of the claim**

Opportunities were missed in this case to assess the merits of the claim at an early stage. The CQC, as with any public body, should always take all reasonable steps to ensure it is acting lawfully. This includes compliance with its duties under employment law. Where workplace disputes arise it is necessary for the CQC to consider whether or not it has acted in line with expected practice and to be clear and transparent where it has not. In certain circumstances the first opportunity to do this may be when formal legal proceedings are initiated by a worker or employee. Within the Employment Tribunal almost every claim must go through the early conciliation process which is managed by ACAS. This may be the first opportunity for the CQC to assess the claims that are being made against it, and to reflect on whether or not there is merit in any criticism. In this case it is not clear to me who was in charge of the early conciliation process and it may be that an opportunity to reflect, review and manage the litigation was missed at this point.

### **Named individual with conduct of the claim**

In this case it is not clear to me where instructions came from. The response appears to some degree at the outset to be witness led as the subject of the allegations are the people who appear to be providing instructions to the GLD.

There needs to be a clear line of responsibility for providing instructions within the CQC. The named contact person needs to be sufficiently senior and have the necessary authority to take decisions regarding the litigation and its outcome. Increasing the level of knowledge and skills of the point of contact for instructions and having a clear line on how and when to escalate up the chain of seniority is essential. The individual will need to be comfortable with the responsibility and accountability that this entails. Further, the person who has responsibility for providing instructions, must be sufficiently knowledgeable of the case and the strategy to be able to do this.

Instructions must be considered and provided following an analysis of the specific evidence and policy considerations in each individual case.

Although the witnesses will potentially be the points of contact for instructions as to the facts of the case they should not be the point of contact for instructions on litigation strategy. As understandably, most witnesses of fact will not be best placed to assess their own conduct in the light of a claim that scrutinises their actions. This will ensure a greater degree of independence of mind feeds into the assessment of the merits of the claim and any strategic decisions that have to be made.

Thought should be given as to who the point of contact for instructions should be, particularly when a member of human resources has managed the process that is now the subject of the employment tribunal claim. In my view, where human resources have been involved in a process or provided advice, it would be sensible if a different individual took over conduct of the issue once litigation has commenced. Not least because, as occurred in this case, the human resources professional dealing with the matter pre-litigation may end up becoming a witness of fact.

## **Ownership and responsibility for decision making within litigation**

In this case the early consideration of the case appears to have been led by the GLD, who ask for a variety of documents and speak to witnesses. There is a heavy reliance upon the GLD and there does not appear to be any internal assessment of the documents for disclosure or the merits of the claim.

Responsibility for decisions regarding conduct of the case must remain with the CQC. An adequately trained person of sufficient seniority must be tasked with this role and they must be suitably skilled so they are able to determine when it is necessary to escalate decisions and to do so in a timely manner.

The GLD can and should advise and assist in decision making. However, as the client it is for the CQC to ultimately make decisions as to how the litigation is run. From the GLD's side this means they should be referring all decision making back to the CQC for instructions. From the CQC's side if advice from the GLD is not understood, or not fully explained in a comprehensible manner then it should be queried.

### **Full interrogation of the pleaded case**

There was a limited interpretation of Mr Kumar's pleaded case. Mr Kumar advanced the arguments in his case in two different ways. First that he had suffered the detriments due to the protected disclosures combined. And second that he was subject to detriment as a result of his knowledge of the Respondent's inaction in response to him having raised concerns, essentially an extended causation argument. The tribunal dealt with this at paragraph 18 of their written reasons onwards.

Although objection was raised to the extended causation argument, the tribunal accepted Mr Kumar's submissions that this was part of his pleaded case. And in any event, the tribunal concluded that '*causation is always a matter of fact for the tribunal*' and '*It would be hugely detrimental to any claim of this nature if limited pleadings on causation were to act against a claimant, given that the knowledge behind taking action and/or the motive rests with the respondent (which explains s.48(2) of the Employment Rights Act 1996)*'.

There was therefore a misunderstanding of the shape and scope of the case the CQC had to meet. The case was not simply the straightforward detrimental consequences of making the disclosure but there was also said to be a detriment because of disclosure and knowledge of the subsequent failure to act on the disclosure.

Early full interrogation of the pleaded case in order to ensure that the evidence marshalled meets every aspect of the claim is essential. This will form the basis upon which a review of merits and the litigation strategy is built.

## **Disclosure**

On 29 October 2019 a request was made to undertake a disclosure exercise. Discovery of all documents should take place as soon as a claim is made within the employment tribunal. Having sight of all relevant documents will ensure that a strategic assessment of the evidence can be made at the earliest possibility. This will in turn ensure that disputes are resolved in the most resource efficient manner.

## **Policy documents**

Disclosure should always include the relevant policy documents. The CQC should include these as part of the evidence that it wants to rely upon in any employment tribunal claim. These will also help provide guidance as to the assessment of risk in any claim. If a policy has not been followed that should raise a question in terms of liability. As any actions taken outside of the guidance provided by a policy will need to be justified and this will have to be addressed by evidence.

## **Taking draft proofs of evidence**

Again, it is always helpful to have a clear idea of the factual evidence in a case at an early stage. In this case I understand the factual witnesses assisted with the response to the claim. Their instructions as to the facts of the claim should always feed into the decision-making process about the best course of action within the litigation.

## **Early advice**

It is advisable to take legal advice on the merits of a claim at an early stage. Having an early conference maybe with both counsel and the solicitor with conduct of the litigation will provide an opportunity to obtain legal advice. This will also afford an opportunity to decide upon an overall litigation strategy. Including, whether or not the CQC wishes to settle a claim. It will also provide an opportunity for the individual with conduct within the CQC to give instructions to their legal team.

### **Legal advisors' understanding of the CQC and its priorities**

A regulatory body is always likely to have a low tolerance for the risk of losing a case regarding this type of protected disclosure. It may be helpful for the GLD and CQC to open a programmed dialogue in which the CQC's policy objectives, statutory duties and remit are discussed. This will help develop the CQC's understanding of their role as decision-maker, as set out above, and the options open to them in light of any legal advice provided. It will also help the GLD deepen their understanding of current issues that are going to be significant to the CQC, which in turn means they are better able to identify them and tailor their advice accordingly.

### **Consideration of wider consequences of defending meritorious claims**

There are numerous consequences to defending meritorious claims. The first is the cost of the litigation. The CQC like all public bodies is under a duty to spend the public purse prudently. Secondly, the need to act transparently as a public body and ensure good governance. This includes recognising where there are areas of concern, where different action should have been taken and accepting that. There is also the impact on reputation that must be considered and the need to maintain public confidence in the regulatory process. This again includes recognising when mistakes or errors have been made and taking steps to rectify them as soon as possible.

### **General litigation strategy, over individualised consideration of a claim**

It may be that a general view of litigation strategy influenced decision making in this matter. Or it may have persuaded those who were making the decisions. I would advise that an individualised approach on a case-by-case basis is always adopted.



## **Enhanced understanding as to parameters of whistleblowing legislation**

It would be helpful to have an individual or small group of individuals within the Human Resources team who have specialised training on the legal framework surrounding protected disclosures given its importance to the work of the CQC and the NHS.

## **Speed in gaining Treasury approval for settlement negotiations**

Once the decision had been made to attempt to settle the claim there was a delay in getting approval for this from the Treasury. As it can take time to gain approval from the Treasury it is necessary to factor this into the timeline of managing any claim. This underscores the need for early review and for an early decision about litigation strategy to be made. Obviously there is always the possibility for unexpected or unforeseen events in litigation, for example witnesses saying something unexpected in their evidence, or new documents being provided in disclosure. And these may necessitate in seeking late approval of a settlement. However, a clear litigation strategy from the outset should minimise the circumstances in which this issue occurs.

## **Understanding the motivation of Mr Kumar**

When negotiating with the other party in any litigation, it is essential to listen carefully to what they want to ensure that if there is any room for negotiation or settlement it can be achieved in the easiest and most effective way possible.

In July 2020 Mr Kumar through his representatives set out what he wanted in order to bring the claim to a conclusion.

To some degree the focus appears to have been on the financial side of settlement and gaining the necessary departmental approval. However, Mr Kumar was clear through his representatives that what he was seeking was a recognition by the CQC of their actions and where they had fallen short of the expected standards. Consideration should always be given to the possibility of making admissions where appropriate as this is part of good governance.

## Evaluation

There should be a thorough evaluation of how well CQC learns from the tribunal case following the implementation of recommendations from this review. This should seek to understand whether CQC has taken learning from the tribunal case for future employment tribunal cases against the following aims in this review:

- CQC works well with partners and providers when concerns about care are raised. [Aim 4]
- CQC's appointment, contracting, engagement, deployment and disengagement processes relating to advisory and complementary staff are non-discriminatory, consistent with the values of CQC and ensure employment rights are maintained. [Aim 9]
- Relevant CQC colleagues feel confident, skilled and empowered to deal with employment litigation, including working with internal and external lawyers. [Aim 10]

Six months after this review is published, CQC should look at progress against the implementation of the recommendations. After 12 months there should be an evaluation report on the outcomes of CQC's response and this should mark the formal close of the review. The evaluation should then continue to understand the full impact of the recommendations in achieving the aims set out.

To evaluate how this review has impacted CQC's ability to learn from the tribunal, possible methods include:

- recommendation tracking
- a survey of people who have provided feedback or raised a concern about care
- focus groups with CQC staff to understand whether they feel safe to raise their concerns

- interviews with partners about how well we have worked with them when concerns about care have been raised
- CQC employment tribunals case reviews.

## 4: Reviewing how we listen to our staff

### Key findings and recommendations for action

#### Managing organisational change

This review found that:

- Overall, CQC did not follow its own best practice policies in respect of Management of Change (MOC) and the Trade Union Recognition and Facilities Agreement which could have prevented the breakdown in trust, confidence and communication which followed. This led to the collective grievance and a letter to the Secretary of State, with stories in the Health Service Journal.
- MOC had most recently been reviewed in May 2021 just prior to this reorganisation process, so it was current. Failing to follow MOC resulted in failing to apply CQC values which are set out clearly at the beginning of the MOC.

- It is important to recognise that there is a significant cultural understanding needed as to why these policies are important and ought not to be disregarded.
  - clause 1.1 of the MOC policy states, "It is important that our approach to managing organisational change is consistent with our core values. The relevance of those values to managing organisational change is demonstrated in the following ways...Excellence, Integrity, Caring and Teamwork...."
  - the policy also incorporates flexibility. Clause 3.2 of MOC states, "Structural change and staffing reorganisation exercises that might potentially involve redundancies and/or have a significant impact on employees (regardless of numbers) must be conducted in accordance with this procedure and the principles that underpin it. However, the procedure does allow for the necessary flexibility and management discretion to accommodate particular circumstances, including, but not limited to, localised and small-scale organisational change."
  - MOC procedure fulfils best practice and legal requirements.
- The review has highlighted a need for CQC's Senior Leadership Team (SLT) and Executive Team (ET) to read the policies and understand why they exist. They aim to maintain strong relationships, they enshrine CQC's values, they build trust and better communication with the workforce and by using them they address legal requirements, thereby safeguarding CQC.
- CQC had a good intention around not following the MOC Procedure, believing following it would increase staff anxiety by unnecessarily putting staff at risk of redundancy; however, that does not follow best practice and ACAS guidance.

- As of 31 January 2023 ongoing concerns from staff on the lack of detail and how proposed changes will be put into practise will be addressed by the new roles of 'Deputy Directors of Transition'.
- Only 9% of staff surveyed in the September 2022 Pulse Survey believed CQC effectively implemented change; key concerns included a lack of staff involvement, not listening when concerns were raised, and changes being rushed through which was felt to be against CQC's values.
- Some equality impact assessments (EIAs) were undertaken at key stages, but they did not consistently inform decision making. Some equality impacts also appeared to have not been adequately assessed or mitigated.
- There is evidence that public sector equality duties were not fully understood by all critical parties involved in EIAs.
- In the Grade B reorganisation, some staff felt compelled to state a preference for a role they may not have wanted due to a lack of information; however, over 95% of workers did get the preference they requested.

**Aim 2: CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, inclusive, listened to, and responded to well.**

It is recommended that CQC:

- Updates the MOC Procedure so there is a named Executive owner to receive a 'formal dispute', such as the Chief People Officer. However, if one or more Executive Directors have already been significantly involved, the dispute should be referred to a named non-executive director, such as the 'Senior Independent Director'.
- Updates the MOC procedure to consider pausing future significant organisational change activity where there is a significant impact on employees and when unions raise a formal dispute and request that the 'status quo' be applied; this should only continue once the dispute is resolved. CQC should consider engaging a senior legal officer to provide guidance to Senior leaders in the case of significant reorganisations.
- Improves the grievance resolution timeline in line with ACAS guidance on grievance procedures. This states that if there are 2 or more related grievances there is some flexibility in how to run the grievance procedure.

**Aim 5: CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010.**

It is recommended that CQC:

- Ensures equality impact assessments (EIAs) are conducted in a timely manner, include all protected characteristics and actively inform planning and decision-making during the change process, as well as after the changes have been implemented.
- Undertakes EIAs for outstanding areas specifically in relation to all the Grade A changes including voluntary and compulsory redundancy.

- Considers positive action regarding the needs of the 1 disabled worker who was not given their first preference in the Grade B reorganisation. Also review workforce equalities data to identify any disparity of outcome by age.

**Aim 8: CQC has a culture, underpinned by best practice policy, processes and practices, where staff, including advisory and complementary staff, feel empowered to make a meaningful and timely contribution during change to support improvement and transformation. This should include ensuring there is learning from, and an adequate response to, feedback from formal consultation and informal engagement.**

It is recommended that CQC:

- Applies the MOC process in full in all circumstances where significant organisational change "might potentially involve redundancies or have a significant impact on employees". If there is a desire or need to deviate, this should be mutually agreed with trade unions or staff directly involved (and staff forum if appropriate).
- Offers formal 'trial periods' to staff who are taking up the newly created role of Assessor, and engage in co-design arrangements to be put in place for those who do not believe this is a suitable alternative employment.
- Ensures that key decision makers, such as the Executive Management Team and People Directorate, understand collective consultation and redundancy legislation requirements in detail and with proficiency.
- Ensures the Board is made aware and, via Board Briefings, is encouraging a focus on strategy, oversight and assurance on people-related issues, and considers having a non-executive director or independent member on the people committee for greater assurance.

- Updates existing and future transformation programme governance, management and delivery plans.
- Ensures the lead for transformation engagement is a full member of relevant programme groups where proposals and decisions are being made.
- When managing organisational change, ensures change management best practice is followed and embedded.
- Ensures that equality networks are involved as a key stakeholder in co-creation of engagement strategies.
- Carries out actions to contribute to staff feeling that 'change is effectively implemented at CQC', when managing organisational change.
- Improves staff experience on feedback. Indicate the time that Grade B Inspector and Assessor roles will work at and away from their contractual base and share this with staff. CQC should then enable staff to change their preference if they decide.

## Reasonable adjustments

This review found that:



- CQC's general approach to reasonable adjustments was founded on strong strategic aims, governed by policies and processes that advocated good practice, and were currently subject to quality improvement projects.

However:

- these processes were not consistently applied
- the overall approach was unstructured and did not always meet the needs of staff
- the level of ambition to improve reasonable adjustments did not match the time and resources available
- there were a number of common criticisms from staff.

**Aim 5: CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010.**

It is recommended that CQC:

- Updates the Reasonable Adjustments Policy to incorporate comments from the Disability Equality Network group.
- Modernises the Flexible Working, and Critical Illness Policy and Procedures to recognise reasonable adjustments and make the tone more supportive. Approve them through groups, including staff networks.
- Revises the Workforce Disability Equality Standard 2022/23 action plan relating to 'reasonable adjustments'.
- Improves the process for agreeing reasonable adjustment requests, looking for alternatives if the request is impractical, unaffordable, or could cause harm.

- Ensures that the proposed means for tracking reasonable adjustments across CQC (as per the Workforce Disability Equality Standard Action Plan) is accessible to managers, who are enabled to access and review the adjustments for any new team members they are responsible for. The Disability Equality Network should support and inform what 'good' looks like from their perspective.
- As part of the onboarding and welcome process before all new staff start, including those on flexible contracts, any specific reasonable adjustments should be discussed and agreed to be shared with the line manager. However, CQC should also allow any disability to be kept confidential. All new staff should be referred to the Reasonable Adjustments policy and tailored adjustment agreement approach during induction – both new starters and new managers, so they understand what is available to them, and what they are required to do if relevant.
- Reviews and reduces the timeframe agreed, in partnership with the Disability Equality staff network, from when reasonable adjustments are requested to the supportive involvement of occupational health and the adjustments being delivered. There should be a centrally held record of all reasonable adjustments and requests to enable monitoring and tracking to deliver more rapidly, and to ensure, in organisational change, adjustments can be anticipated.
- Offers support and advice from occupational health when it is not known what adjustments may be helpful, or there is a concern on practicality, affordability or if it could harm the health and safety of others. 'Interim adjustments' should be agreed while this advice is being sought on the original request.

- Asks questions about a need for reasonable adjustments sensitively, understanding that it may have been difficult for the person to broach the subject. Although staff members only need to share information they are comfortable providing, they should understand CQC only needs to make a decision based on the information it is given.
- Agrees and delivers a minimum standard that ensures reasonable adjustment skills, knowledge and responsibility is delivered to all those with line management responsibility.

## Contracting advisory and complementary staff

This review found that:

- Before September 2022, there were no comprehensive policies or processes in place governing the appointment, contracting, deployment and disengagement of advisory and complementary staff.
- Since this time, a wide range of improvements have taken place, such as drafting an advisory and complementary workforce strategy and guidance, and establishing a working group to support these staff. However, there are some missing elements to the strategy and unclear governance and resources.
- Outside the more recent guidance, there was concern that current approaches were not aligned with CQC values and did not appropriately safeguard employment rights.

- When considering equalities workforce data for this group of staff:
  - there were high rates of 'Not Declared' against all other protected characteristics, so no significant conclusions could be drawn
  - the contract documentation for these staff appeared clear and in line with legal requirements, with the possible exception of annual leave entitlements.

**Aim 5: CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010.**

It is recommended that CQC:

- Comprehensively reviews equalities workforce data for advisory and complementary staff by:
  - investigating drivers for high 'Not Declared' statuses and reducing levels of non-disclosure to below 5%
  - actively monitoring equalities data to inform planning and decision making to ensure no disadvantage occurs.

**Aim 7: Relevant CQC colleagues feel confident, skilled, empowered and supported to respond to concerns raised by other staff, including advisory and complementary staff, about CQC.**

**Aim 9: CQC's appointment, contracting, engagement, deployment and disengagement processes relating to advisory and complementary staff (non-substantive) are non-discriminatory, consistent with the values of CQC and ensure employment rights are maintained.**

It is recommended that CQC:

- Updates the advisory and complementary workforce strategy.
- Ensures a 'handbook' or similar suite of policies or processes are created to cover all advisory and complementary staff.
- Ensures that contracts being offered to staff (including extensions) are in line with each business need. They should not be tailored to avoid milestones that accrue key employment rights.
- Ensures measures are taken to recognise the skills, knowledge and organisational benefit of the advisory and complementary workforce in line with CQC's values, rather than simply a resource. This should include gathering insight into the experience of advisory and complementary staff (such as through a survey) to ensure they feel valued or to inform actions.
- Reviews and audits all staff members' appropriate entitlements, including leave and contracts, to ensure they are compliant.

## Why this area of work was looked at

In summer of 2022 a number of high-profile issues occurred that are now understood to have had a significant impact on some people in ways that were deemed inconsistent with the [CQC values](#).

The issues that were highlighted included:

- Concerns being raised by Trade Union (TU) officials that the management of **organisational change** for Grade A and Grade B structure levels did not include meaningful consultation with those it affected. These concerns were escalated internally within CQC, involved formal mediation with the Advisory, Conciliation and Arbitration Service (ACAS) and culminated in a letter being written to the national Secretary of State for Health and Social Care.
- Concerns being raised by some staff regarding the application and availability of **reasonable adjustments**.
- The Employment Tribunal findings of Mr Shyam Kumar Vs CQC. This highlighted that the process by which CQC disengaged Mr Kumar from undertaking future work was poorly handled, without proper explanation and at least in part influenced by protected disclosures he had made. This prompted interest in the **contracting** arrangements and procedures governing other workers on non-substantive contracts.

This section was led by an independent HR expert with substantial experience working in the health and social care sector, overseen and supported by a senior independent Chief People Officer.

## What was looked at

The terms of reference for this workstream were developed by considering the employment tribunal judgement and holding 2 initial focus group discussions. These group discussions were held with key stakeholders from CQC's equality networks and staff forum, and then with trade union representatives. A series of one-to-one interviews were then held with key management stakeholders to understand the highlighted issues in more depth.

The following were then agreed by the Listening, learning, responding to concerns review board to represent the critical questions that needed answers:

**1) Managing organisational change:** Regarding the 2021/22 Operational Directorate change process, which includes formal consultation and wider, informal engagement:

- a. what process(es) did we follow, and were they fit for purpose?
- b. was there a clear escalation and governance route understood by all?
- c. do we have effective procedures to learn from and respond to colleague feedback (both informal and formal)?
- d. to what extent did the changes account for the diverse needs of different staff?

**2) Reasonable adjustments:** To what extent is the current approach to making reasonable adjustments for applicants and CQC workers at recruitment and employment stages:

- a. applied fairly and consistently in line with the Equality Act?
- b. considered during management of change?
- c. implemented so no discrimination takes place?

**3) Contracting advisory and complementary staff:** To what extent are the appointment, contracting, deployment and disengagement processes relating to advisory and complementary staff (non-substantive):

- a. aligned to CQC values?
- b. consistent with processes for substantive staff?
- c. have appropriate safeguards to ensure decisions are made that do not infringe on employment rights?

It was acknowledged that, although there was a focus on policies and procedures, an equivalent focus needed to be given to staff experience and what is often called the 'psychological contract'. According to [CIPD](#), this relates to "the relationship between employers and workers and influences how people behave from day to day... built on the everyday actions and statements made by one party and how they are perceived and interpreted by the other." This was important to gain an understanding of the underlying culture of CQC, which was deemed a significant factor in the escalation of the issues. The term 'culture' can mean many different things, but in this context a broad sense of the term is used, summarised simply as "how things are done around here".

## Inputs

To inform this review and the findings, the following sources of evidence were relied upon:

- CQC's 'Our People Pulse Survey September/October 2022' findings, where 2,370 substantive staff participated, including free-text comments.
- Experiences from 165 staff, including:
  - 118 staff contributing through 13 focus groups
  - 47 staff contributing through one-to-one interviews.
- 332 pieces of documentation, totalling over 2,000 pages. This included: email correspondence; equality impact assessments; formal papers and minutes of meetings / committees; individual grievances and their associated documentation; previous review reports undertaken on related topics; contracts, policies and procedures; organisation change documents.
- Anonymised workforce data extracted from the Electronic Staff Record (ESR) system.



A 'mixed methods' approach was taken to research, using quantitative and qualitative information to understand the breadth and depth of issues. The reviewer's knowledge, skills and experience as a People Director were then used to determine probable links between areas and to arrive at the findings and recommendations below.

## Limitations

All reviews and research are limited in some way. The key limitations in this review were:

- Part of this phase review ran in parallel with Phase 1, which informed the 'contracting' element of this workstream; risks of gaps and duplication were mitigated by a key check-point meeting between the independent reviewers to share emerging themes.
- A qualitative, inductive approach was taken to data analysis which is a time-consuming process. It required in-depth reading and rereading of material to identify key themes. This limited the total number of people that could be engaged through focus groups and one-to-one interviews given the time available. Themes were corroborated from more than one source, and staff experiences were used to provide general examples of how things were perceived by them.
- This review commenced approximately 6 weeks later than most other workstreams, due to initial difficulty finding a suitable, independent reviewer external to CQC. This shortened the length of time available to gather direct experiences from staff. This was mitigated as far as possible by a thorough review of free-text comments from the Pulse Survey already available, as well as other comments from additional sources such as those shared during 'all staff calls' (which were captured as part of normal processes by CQC's engagement team [part of the 332 additional documents reviewed]).

## What was found from this review

### Managing organisational change

This area of the review sought to answer:

- Regarding the 2021/2022 Operational Directorate change process, which includes formal consultation and wider, informal engagement:
  - what process(es) did we follow, and were they fit for purpose?
  - was there a clear escalation and governance route understood by all?
  - do we have effective procedures to learn from and respond to colleague feedback (both informal and formal)?
  - to what extent did the changes account for the diverse needs of different staff?

## Context

To support the implementation of the Single Assurance Framework (SAF) and CQC's new organisational strategy, '[Our strategy from 2021](#)', the Executive team approved a substantial programme of projects that was to take place over several years. As part of this, the Executive agreed that a reorganisation would be needed.

Preliminary steps were taken in 2020 to lay foundations for this transformation programme, including placing limits on permanent recruitment. There were significant efforts at engagement during 2021 to understand the perspectives of internal and external stakeholders, and what would be important to them.

A 'Portfolio Programme' business case was written and approved in May 2021. This outlined the extent of the aspiration, the potential challenges and the level of resource that would be needed to bring about anticipated benefits. The following points were noted, which are relevant to this review:

- Key risks included 'culture change' and 'capacity', where "strong and consistent change management" would be needed, along with "effective resource plans" and staff engagement would need to be monitored through "temperature checks throughout design, delivery and implementation".

- Critical success factors included 'communications and engagement' and 'capacity for change delivery', requiring "both involvement in design and clear consistent messages are delivered to the stakeholders who are impacted by the operating model change" and "expert change and implementation resource to shape and deliver the new capabilities will help the organisation move through the transition smoothly".

During 2021, the CQC transformation programme started its staged approach to restructuring, beginning with the Executive team. Executive levels 1 to 3 were reorganised, which fall outside of the scope of this review.

Toward the end of 2021 discussions started to focus on the design of the Operations directorate, scheduled for implementation during 2022. This directorate comprises the majority of CQC's workforce (approximately 2,000 people) and staff deliver CQC's inspection activity. The reorganisation of Grade A Inspection Manager and Grade B Inspector roles are the focus of this section.

What process(es) did CQC follow, and were they fit for purpose?

### **Requirements when managing redundancy situations**

In law, a redundancy scenario includes when there is an agreement to ['change the types or number of roles needed to do certain work'](#). Authority is given to the Advisory, Conciliation and Arbitration Service (ACAS) [guidance](#), that states when more than 20 employees are 'at risk of redundancy', before beginning consultation, [CQC] must provide trade union or employee representatives with the following in writing:

- why you need to make redundancies
- how many redundancies you're considering
- roles at risk of redundancy (in a 'selection pool')
- your current ideas for how to select employees for redundancy
- your planned timeframes

- how you'll calculate redundancy pay.

Critically, this includes those who may be redeployed or moved to alternative roles and not just those who may be dismissed for reason of redundancy.

Further ACAS [guidance](#) also states that "you might have a workplace policy or agreement that says you must collectively consult a trade union or employee representatives, no matter how many redundancies you're planning", and it is still "good practice to collectively consult even if you do not have to".

## CQC procedure

CQC has a comprehensive CQC Management of Change (MOC) procedure. This is in line with best practise and fulfils all legal requirements above. The opening of the Procedure (v3, May 2021) outlines a commitment to approaching organisational change in a way that "is consistent with our core values". Also, in line with ACAS guidance, it states, "We aim to work closely with our employees and the trade unions in managing such changes, including undertaking timely and meaningful consultation with a view to reaching agreement on key issues, in accordance with all legal requirements and commence consultation as early as is reasonably practicable."

This MOC Procedure also states, "Structural change and staffing reorganisation exercises that might potentially involve redundancies and/or have a significant impact on employees (regardless of numbers) **must** be conducted in accordance with this procedure and the principles that underpin it." **[reviewer's emphasis]**.

## Grade A reorganisation

The CQC Management of Change (MOC) procedure (v3) was said by CQC management to have been enacted. Evidence showed that the reasons why CQC was proposing changes were well known and understood. Focus groups showed a high level of staff agreeing with the strategic direction. However, the evidence shows the following requirements within CQC's procedure were not performed:

- The evidence shows that on 28 April 2022, the Executive Team Design Authority (ETDA) agreed a reduction in budgeted establishment at Grade A. This should have been the time from when the unions needed to have been collectively consulted with.

**Figure 3: Proposed changes at Grade A – details taken from ETDA paper, 28 April 2022**

Role	Original budgeted WTE	Planned WTE	WTE at risk of redundancy
Grade A inspector manager	196.06	0	all
Operations managers	* new role *	119	
Senior specialists	* new role *	48	
Delivery managers	* new role *	7	

- Unions were not then provided with a plan and proposed timetable for the detailed consultation process.
- Unions were not consulted on "proposals for job assimilation and ring-fencing arrangements for appointments to post in the new structure". For example, unions were not consulted on proposals to ring-fence Operations Manager positions, but not 48 WTE 'Senior Specialist' roles.
- Unions were not consulted on the use of a voluntary redundancy scheme, or the selection criteria for voluntary redundancy.
- Individuals were not provided with a clear structure that included the number of roles available.

- There was no clear evidence that it was explained to staff that they were at risk of redundancy, and how many redundancies were being considered in total.

## **Grade B reorganisation**

For Grade B Inspectors, all evidence confirms that the MOC procedure was not followed. However, the evidence suggests that it should have been.

In January 2022, the ETDA approved the creation of multi-disciplinary teams, where the responsibilities of the Grade B Inspector role would be devolved into 2 roles. The job matching form indicates the intention that, "All the current activities of the role will continue but differently weighted between 2 roles". One role would keep the title of 'Inspector' with a revised focus "to deliver cross the threshold elements of assessment, (including inspection) and civil enforcement". The other would be a new role entitled 'Assessor', which would focus on an "ongoing view of quality, safety and risk through ongoing assessment, taking decisions to initiate regulatory activities".

Job descriptions for these roles were created and preliminarily assessed as Grade B on 3 March 2022 by a member of the People Directorate. This person judged the revised role of Inspector to be 'significantly similar' to the original, but not the Assessor role.

There was a clear commitment made at Executive level that there would be no compulsory redundancies at Grade B. This was shared in an announcement to staff on 3 March 2022. This was a noble commitment that was aimed to provide reassurance to the biggest cohort of staff at CQC (approximately a third of the workforce) about the upcoming changes.

To secure this desired outcome of no staff being dismissed for reason of redundancy, a proposal went to ETDA in March 2022 to suggest that the MOC procedure should not be followed. Instead, it was suggested that the revised roles be "socialised" in May and June, which would then be followed by a "preference exercise". This preference exercise would be a form that staff would be asked to complete to choose which of the two roles they would prefer to be placed into. This was agreed at a meeting on 10 March 2022.

A proposal was agreed at a meeting of the ETDA on 28 April 2022 to reduce the budget of Grade B level staff by 88.27 whole time equivalent (WTE), reducing that part of the budget by -£4.6million. It was agreed that this money would go toward the creation of 119 WTE new Grade C 'Co-ordinator' positions (+£4.97million).

Evidence suggests that at this time there were 1027.57 WTE in the position of Grade B Inspector, which suggests this proposal put 25.77 WTE staff at risk of redundancy.

**Figure 4: Planned roles at Grade B and C – ETDA paper, 28 April 2022**

Role	Original budgeted WTE	Original contracted WTE	Planned WTE	WTE at risk of redundancy
Grade B inspector	1090.07	1027.57	1001.8	25.77
Grade C coordinator	* new role *		119	

During interviews with CQC management it appears there were some verbal discussions about 'redundancy' around this time, but there was no written evidence of:

- a meaningful discussion about a number of potential risks (financial, legal and reputational risks) involved in not following the MOC procedure to reorganise a third of CQC's workforce
- a clear timeline associated to implementing the proposed reduction at this level of the budgeted establishment being discussed with unions.

There is no documented evidence that provides the reasons for why the MOC procedure, or collectively consulting with unions at this stage, was considered not to be appropriate in the circumstances. This was contrary to the principles of the MOC procedure and CQC's Recognition Agreement, which commits to 'partnership working' and seeking mutual agreement on proposed workforce changes.

Verbal accounts provide 2 reasons for this decision:

1. A belief that to follow the MOC procedure would mean higher staff anxiety, as that procedure could lead to compulsory redundancies. This compares to the preference exercise approach that was designed to ensure all staff were allocated a role, given they were deemed 'significantly similar'.
2. It was believed that the typical 10% annual turnover rate at this grade meant the required workforce reduction was achievable within an acceptable time frame. This would mean there would be no need to dismiss staff for reason of redundancy.

In practice, the MOC Procedure should have been followed. It provides for other options other than dismissing for reasons of redundancy, including 'direct assimilation' or 'ring-fencing' as alternatives, and would have provided a structured approach to consult with unions and individual staff regarding how the proposed changes would be implemented. In fact, the aims of the MOC policy and the stated intent of the organisation to avoid compulsory redundancies are the same.



Additionally, the evidence states the role of 'Assessor' was **not** significantly similar to the original 'Inspector' role. This undermines the position presented in a 'frequently asked questions' document stating, "Our assessment is that the new roles are sufficiently close to the existing Inspector role to not trigger a Management of Change." There was no alternative evidence to suggest the role of Assessor was 'significantly similar'. This means that the role should likely have been deemed a redeployment opportunity. This highlighted a need for CQC's Senior Leadership Team (SLT) and Executive Team (ET) to read the policies and understand why they exist. They aim to maintain strong relationships, they enshrine CQC's values, they build trust and better communication with the workforce and by using them they address legal requirements, thereby safeguarding CQC.

**Recommendation:** Apply the MOC process in full in all circumstances where organisational change "might potentially involve redundancies and/or have a significant impact on employees". This is in line with the current wording of the procedure and ensures there is meaningful consultation. If there is a desire or need to deviate, this should be mutually agreed with trade unions (and staff forum if appropriate – see below section on governance).

**Recommendation:** Offer formal 'trial periods' to staff who are taking up the newly created role of Assessor, and engage in co-design arrangements to be put in place for those who do not believe this is a suitable alternative employment.

## Likely cause

In Grade A the TU and individual consultation was commenced. However, this was impacted by the actions at Grade B which led to the TU dispute and this brought the discussions to a halt. The Grade B was not viewed as MOC and this impacted the relationship with the TU. There is evidence that there were positive intentions, however the decisions made at ETDA and the speed of change did not support best practice and Grade B reorganisations. Although steps were then taken to share information with union colleagues and staff at appropriate times, there appeared to be a lack of technical understanding of collective redundancy requirements, and the speed that CQC was trying to make changes meant choices were made against best practice.

**Recommendation:** Ensure key decision makers such as the Executive Management Team and People Directorate understand collective consultation and redundancy legislation requirements in detail and with proficiency. In particular, the difference between an organisational scenario where there is a risk of redundancy, which is distinct from managing an individual at risk of redundancy.

Was there a clear escalation and governance route understood by all?

### Early warning signs

It was possible for CQC to have quantified the level of upset the reorganisations were causing staff before things got escalated formally by the unions:

- CQC had been having regular 'pulse surveys' (staff surveys) up until November 2021. An 'engagement plan' suggested that these would be a key, quarterly measure of engagement. However, they were not undertaken between November 2021 and September 2022. This reason given for this was due to delays caused by changing contracted providers for the survey.

- The transformation programme governance did not appear to utilise any 'people metrics' to track changes to staff engagement, despite it being a recommendation in the Portfolio Business Case. Other people metrics, such as staff absence and turnover figures within the affected parts of the organisation, were also not considered. These metrics were being presented to the People Committee, however commentary appeared limited and with inconsistent referral to trends. This is despite increasing trends in both areas during 2022 that may have been a crude measure to prompt further examination. It is noted that there is no non-executive director membership at this committee who may have been looking for assurance that changes were not adversely impacting staff.

**Recommendation:** The People Committee should consider including non-executive director representation and should have a focus on strategy and oversight.

## Governance routes

Some of the difficulties mentioned above may have been picked up if there was more integrated governance. It is understood that when the Programme structure was being established, it was agreed that 'People Directorate matters' such as consultation and culture would be run through 'business-as-usual' arrangements. This is despite project investment, such as for a dedicated 'Management of Change' team. There was no evidence that the risks of this approach were appropriately assessed or mitigated, meaning that staff-related matters had limited oversight or constructive challenge in the way they were conducted.

A key example where more scrutiny could have made a difference was the decision to not follow the MOC Procedure. Evidence suggested that some members of the People Directorate questioned the approach being taken to the Grade B reorganisation, but this was not appropriately logged on a risk-register or similar, or otherwise considered in a substantial way which may have prompted further advice to be sought.

The governance framework for managing organisational change is clear within the relevant terms of references for the Staff Forum and the Joint Negotiating and Consultation Committee (JNCC), where it states these groups should be consulted on any proposed changes to the work and structure of the organisation and its staff. However, there were no links between the transformation programme and these groups, so they were effectively by-passed during these management of change activities and were not consulted prior to decisions being made.

The roles and responsibilities of the People Committee includes a need for the committee to "oversee Management of Change proposals to ensure they are affordable and the implications of change for people who work at CQC are properly considered; agree new role types and pay and grading changes". There was no evidence of this being undertaken, though it is accepted that the Executive Team Design Authority may be an appropriate substitute for the People Committee, given that the People Committee is a sub-group of the Executive team. However, given the recommendation for non-executive director oversight of the People Committee, this should be incorporated in future.

**Recommendation:** Updates existing and future transformation programme governance, management and delivery plans so that:

- people-related issues have clear oversight and are included in programme management
- there is consultation with Staff Forum and the Joint Negotiating and Consultation Committee in line with their terms of reference
- there are clear flows of information between the programme and the People Committee.

## Escalation routes

The Trade Union Facilities and Recognition Agreement has a clear escalation route if there is a dispute. Union representatives made a reasonable attempt to resolve matters informally during May and June 2022. On 29 June 2022 full-time union officers sent CQC notification that they deemed themselves in formal dispute. However, the escalation route was not followed fully as follows:

- The Chair (or Vice Chair) of the JNCC should have nominated a person (who must be acceptable to both sides linked to the dispute) to act as "conciliator/mediator" before referring the matter to ACAS. Instead, because the dispute already involved members of the Executive Team, union officers asked for the dispute to be referred directly to ACAS.
- When full-time union officers notified CQC management they were in formal dispute, they required the "status quo" to be maintained in line with the Facilities and Recognition Agreement. This meant that any change processes should have been paused while the dispute was being resolved. This was not enacted by CQC leadership.
- Union officers wrote a letter to the Secretary of State for Health and Social Care, and the Chair of the Health and Social Care Committee on 12 September 2022. This was to raise their concern about the management of organisational change at CQC and a lack of resolution to their formal dispute they had raised in June. The following reasons are understood to have played a significant factor in them taking this action:
  - when they attempted to arrange a meeting with a non-executive director to share concerns, this was declined as the dispute was deemed a matter for the executive
  - a lack of perceived progress in the first ACAS meeting held in August
  - the status quo not being applied, which meant union members were having to make decisions about their jobs.

There was a change in CQC Executive representation at the second ACAS meeting held on 12 October 2022. In this meeting significant progress was deemed to be made by both parties and the dispute was lifted as a result. Although the preference / selection phases of Grade A and B reorganisations had been concluded, actions were agreed that satisfied the unions that some critical matters would be reviewed.

**Recommendation:** Update the MOC procedure to consider pausing future significant organisational change activity where there is a significant impact on employees and when unions raise a formal dispute and request that the 'status quo' be applied; this should only continue once the dispute is resolved. CQC should consider engaging a senior legal officer to provide guidance to Senior leaders in the case of significant reorganisations.

**Recommendation:** Update the MOC Procedure so there is a named Executive owner to receive a 'formal dispute', such as the Chief People Officer. However, if one or more Executive Directors have already been significantly involved, the dispute should be referred to a named non-executive director, such as the 'Senior Independent Director'.

### **A consequence of unclear escalation: individual grievances**

The unions raised a collective grievance under the Conflict Resolution Policy that was rejected. Following this, union representatives encouraged individuals to consider submitting an individual grievance related to their own personal circumstances. Approximately 90 of these were received by the People Directorate in September 2022. These were also initially rejected; the rationale was given that they did not meet "the threshold for the conflict resolution policy".

The policy does not allow for a 'threshold' or triaging of grievances; the policy states if an employee believes that informal attempts at resolution of their issue has not resolved matters, they have the right to raise a formal grievance. This evidence suggests that individual level escalation processes were not enacted appropriately originally.

It is noted however that following the second ACAS meeting in October 2022 these grievances have been re-acknowledged and an approach is being agreed for these to be appropriately heard.

**Recommendation:** Improves the grievance resolution timeline and resolve any outstanding and future grievances in a timely manner in line with [ACAS guidance on grievance procedures](#). This states that if there are 2 or more related grievances there is some flexibility in how to run the grievance procedure; however, in all cases CQC should:

- follow a formal procedure, for all grievances
- keep information confidential
- consider what each employee wants
- explain to the employees how it is dealing with the grievances.

Do we have effective procedures to learn from and respond to colleague feedback (both informal and formal) during change?

CQC recommenced its Pulse Survey in September 2022. Results suggest that procedures to learn from and respond to feedback were not effective; only 25% felt they had the opportunity to contribute views before decisions are made generally, and 23% agreed they felt informed about changes specifically from the transformation programme.

**Figure 5: CQC Pulse Survey results, October 2022**



There was evidence of a busy 'transformation engagement' team, established separately from the normal engagement team, consisting of 11 members of staff. Evidence shows a significant engagement plan that included weekly bulletins, all-staff calls, Senior Leadership Team 30 group sessions / weekly calls, 'team task' groups, and directorate meetings/calls. Throughout virtual meetings, the engagement team collated and analysed comments and questions to give CQC management 'key themes' arising, that then periodically informed 'frequently asked questions' documents.

However, the evidence suggested that this team were positioned so they were receivers and conveyors of information, rather than a strategically aligned resource that shaped the approach to engagement.



**Recommendation:** Ensure the lead for transformation engagement is a full member of relevant programme groups where proposals and decisions are being made. This is to ensure there is an opportunity to influence approaches to be taken, and to enable best use of transformation engagement team members.

## Approach to learning and responding

The Portfolio Programme Business Case had the involvement of "stakeholders who are impacted by the operating model change" as a critical success factor during design. There was evidence of this in some of the original strategic design principles in 2021 (such as through 'Connect and Explore' sessions), but little evidence when it came to how work would be done in practice and activities undertaken during 2022. The evidence that did exist during 2022 was predominantly related to technical system testing and the 'super-user' group.

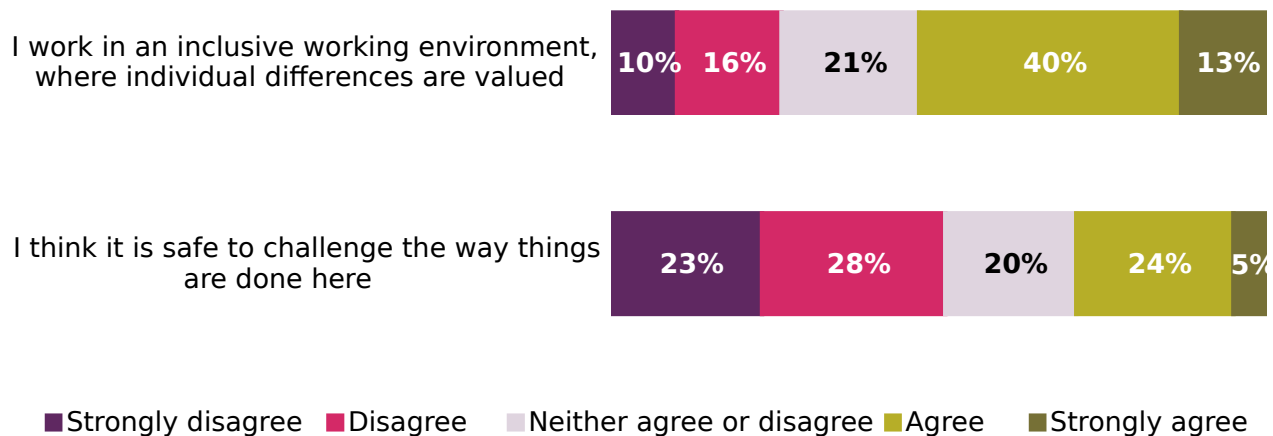
Staff focus groups as part of this review frequently said they felt being talked at, rather than involved during change. In total, 98 out of 118 (83%) staff referred to this, which was also a theme referred to frequently in the Trade Unions Survey results. When talking about this, numerous issues were raised.

- Staff spoke of communications being broadcast and lacking detail of what things meant in practice.
- When staff asked questions, often there was not an answer because details were still being 'worked through'.
- When staff attempted to give feedback, the responses they received typically felt like justifications, rather than management considering what could be done differently to help improve things.
- When staff began to express frustrations because of the above, some reported feeling reprimanded for sharing their thoughts. This led to staff feeling like it was not safe to speak.

- Senior management representatives believed some communication channels were facilitating poor behaviours from staff in some instances. This led to communications becoming more broadcast and one-directional; in virtual meetings, comment functionality became moderated. This left staff feeling 'censored'.

The likely impact of this was on staff not feeling it was safe to challenge the way things are done (only 29% of staff surveyed) in the September 2022 Pulse Survey. Only 53% of staff felt they were working in an inclusive working environment, where individual differences were valued.

**Figure 6: CQC Pulse Survey results, October 2022**



There was a mutual understanding that by the nature of their job roles, Inspectors and Inspection Managers were likely to be forensic in their search for understanding. However, the approach to change was not adjusted to take this into account, either in the means of involving them or the level of detail being provided to them. Information continued to be periodically shared to 'socialise' concepts with a good intent to inform, but as key details were unavailable and there was no means to involve staff to work those details through, this led to staff feeling disengaged as their knowledge, skills and experience were not being utilised.

**Recommendation:** When managing organisational change, ensure change management best practice is followed and embedded. This must include:

- involving staff in designing how new ways of working will work in practice
- providing safe spaces for staff to ask questions, so they can understand the impact on them and process their emotions (recognising some may need to 'grieve' for the organisation they are leaving behind).

CQC makes a commitment across its [equality objectives](#) and its Diversity and inclusion strategy (Our Inclusive Future 2020-2023) to ensure "our 5 staff equality networks are built into engagement processes about strategy and decision making." However, there was no evidence of the transformation programme engaging with the equality networks.

**Recommendation:** Ensure that equality networks are involved as a key stakeholder in co-creation of engagement strategies.

## Enabling learning and responding

When considering the extent of the challenge in delivering a portfolio transformation programme at this scale (organisation-wide delivery, with costs estimated around £34 million during 2021/22) evidence suggested a lack of investment in specialist organisational development and change management resource. A limited case for investment was sent to People Committee in July 2021, but the requested £145,000 was more focused on backfilling 2 roles to enable advancements to CQC's Diversity and inclusion strategy than to enable dedicated support to the transformation programme. The only dedicated resource was 20% of backfill to the Chief People Officer to oversee as a Senior Responsible Officer, and to provide 1 dedicated Learning Consultant to develop learning and development programmes.

One 'cultural workstream' highlight report in July 2022 raised a red/amber risk about "the cultural interventions which underpin the new ways of working will not be embedded". This led to the appointment of 1 dedicated, interim Change Consultant, who created a more detailed 'culture plan', including some structured interventions to influence culture change.

Unfortunately, this individual left within 2 months, and it was left to existing members of the People Directorate to implement as best as they could alongside their normal duties.

There was limited evidence seen that the nature of this risk, the extent to which mitigating actions were challenged and ultimately the potential impact was appropriately assessed, escalated and managed. The evidence suggests that the cultural workstream was not meaningfully embedded within the core delivery of the programme and was inadequately resourced. Had there been an increased level of resource in OD capacity and capability, it is likely that there would have been stronger attempts at getting staff involved in design.

**Recommendation:** Staff should feel that 'change is effectively implemented at CQC'. There should be evidence-based measures in place that assess the impact the transformation programme is having on staff, both as part of this transformation and any future management of change.

More than half of staff involved in focus groups highlighted concern that what was being designed was not ready to put into practice (66/118 staff, 56%).

In January 2023, resources from the Operations directorate budget were redirected to create 4 temporary 'Deputy Directors of Transition' to help with this problem. These roles are intended to work with the programme design team and staff within the Operations directorate to work through the details of 'operationalising' the proposed programme design; ensuring what is designed is able to be put into place. It is noted that this was not part of the programme design and appears to follow several months of senior management colleagues echoing concerns about the extent of change required within limited timescales, and insufficient focus on 'operationalising' the model.

This evidence supports other evidence that when a problem materialises CQC has a tendency to create and deploy a new group of individuals to tackle the issue, rather than evaluate existing opportunities. Other examples included establishing a change network, culture influencers and pulse survey feedback group; these groups all appeared to support the need for more cultural interventions. However, they did not appear aligned or working collaboratively.

**Recommendation:** To contribute to staff feeling that 'change is effectively implemented at CQC', when managing organisational change, CQC ensures:

- organisational development, change management and culture change expertise is secured to support the delivery of programme aims
- operational resources are allocated so that designs are tested, and staff feel that 'change is effectively implemented at CQC'
- available groups and resources are reviewed to support cultural transformation and involvement work to ensure effective use of these staff.

## Learning and responding in line with CQC values

The third strongest theme from focus groups was a sense that the current approach to learning and responding to feedback did not reflect CQC values (53/118, 45% of participants; this also correlated with feedback from the Trade Unions Survey) particularly not demonstrating 'teamwork', then 'caring' and 'integrity'. Of those 53, more than half perceived this showing a disconnect between CQC Executives and the rest of the staff body (31/118, 28%). The evidence suggests this was not intentional, given a key commitment early on to "enabling empowerment, accountability and trust".

Staff gave the following advice to improve feedback so it was in line with CQC values:

**Recommendation:** For CQC to enable better feedback from staff by ensuring staff are:

- listened to with empathy
- involved meaningfully
- informed of what feedback has been acted upon and how; for example, 'you said, we did' was mentioned frequently.

To what extent did the changes account for the diverse needs of different staff?

### Grade A reorganisation

An equality impact assessment was undertaken at the beginning of the Grade A MOC process. This is in line with normal practice when formally implementing CQC's 'Management of Change' procedure. When a voluntary redundancy process was later created, an additional equality impact assessment was undertaken. This is good, initial evidence of CQC proactively considering the diverse needs of different staff.

However, there was limited evidence that equality impact assessments were regularly reviewed or meaningfully informed decision making throughout the change process. This is the requirement for [meaningful and robust equality impact assessments](#).

**Recommendation:** Ensure equality impact assessments are conducted in a timely manner, include all protected characteristics and actively inform planning and decision-making during the change process, as well as after the changes have been implemented.

For instance, the voluntary redundancy assessment noted that "10% of colleagues have disclosed a disability" and stated that CQC would "monitor carefully the numbers who apply, are successful and who are unsuccessful for voluntary exit at the end of each MoC to ensure there is no impact". This had not been undertaken at the time of this report, by which time some redundancy decisions had already been sent for approval to the Department of Health and Social Care.

**Recommendation:** Undertakes EIAs for outstanding areas specifically in relation to all the Grade A changes including voluntary and compulsory redundancy.

As no assessment was conducted to inform decision making or had yet been completed as part of the 'closedown assessment', data was requested to compare a snapshot of those Grade A Inspector Managers remaining in employment at 31 December 2022 to those employed at 31 December 2021. It was hoped that this may give an early indication of any areas of potential concern in advance of the workforce system being updated to reflect the new changes.

Data requested showed the total number of staff employed between December 2021 and December 2022 reduced by 19. When considering the change in the percentage of the workforce they accounted for, the profile of this workforce changed so the following characteristics reduced compared to others: males, those declaring as lesbian, gay, and bisexual.

**Figure 7: Percentage point increase/decrease in Grade A staff between December 2021 and December 2022**



From the limited data available it is not possible to determine the significance of these differences at this stage, but attention should be given to these factors in later equality impact assessments to understand if there is a wider pattern emerging. However, it is positive to see the 'Not Declared' rate for ethnicity reducing.

**Recommendation:** Further investigate Grade A reorganisation workforce equalities data to understand potential disparities on the protected characteristics of age, Lesbian/Gay/Bisexual status and of gender.

## Grade B reorganisation



Evidence shows that an equality impact assessment was not undertaken in the initial planning stages of this reorganisation. The reason given was that the reorganisation was not occurring under CQC's formal management of change procedure (see [section on CQC procedure](#)). However, after feedback from staff, equality networks and unions raising concerns on the impact of the proposed changes, one was drafted in July 2022. This was shared with equality networks for further input. It is noted from discussion with members of the Disability Equality Network (DEN) that they believed they had limited opportunity to discuss and feedback because of requested timescales.

**Recommendation:** Ensure equality impact assessments involve the equality networks with sufficient time before a policy or process is enacted so they meaningfully inform the assessment.

The equality impact assessment created in July 2022 noted concerns about lack of available information to inform Grade B staff deciding which of the Assessor or Inspector roles they should choose. As mitigation, it was stated that "Inspectors will not need to be out every day, but will still have significant elements of home-based work... The role is still intended to allow colleagues to have the flexibility to balance their on-site activity with work at home, or in an office and with their responsibilities outside work, such as caring for others. The mitigation is (1) to be clearer, as this is a concern that is founded in a misunderstanding of the role; (2) to share data that enables colleagues to see the reality."

When this review asked how (1) was enacted to make things clear, "clearer communications", nothing could be evidenced that suggested a quantifiable measure was communicated that might enable individuals to make more of an informed decision. In terms of (2), 'data that enables colleagues to see the reality', the following was stated: "the creation of the model team was supposed to test roles however due to lack of data this was not possible".

This equality impact assessment confirmed there would be "a review of who gets their first preferences, disaggregated by equality characteristics before final decisions are made". Evidence suggested this was planned for October 2022. Disability, ethnicity, sexual orientation and gender characteristic data was emailed to an Executive Director on 5 December 2022. This email contained no narrative or interpretation. An analysis now shows that:

- 1,030 of 1,087 individuals received their first preference (57 did not)
- of the 101 out of 1,087 having declared a disability (9.29%), only 3 of 57 did not get their first preference (5.26%), a positive finding
- proportions of staff were comparable based on ethnicity
- the low numbers (n = 6) of those declaring they were Lesbian, Gay or Bisexual means there is no significant finding
- although male staff were less likely to obtain their first preference, given the low number involved (n = 17) again it is difficult to determine any statistical significance.

When this email was forwarded to be part of this review, it was stated that there were several iterations of this data during the time staff were expressing preferences and being allocated to teams. However, this was not evidenced.

A more up to date run of the data was shared to highlight what had changed since this time. This highlighted some minor changes in these groups, including that there was now only 1 disabled staff member not being assigned their preference. The continued reduction in the proportion of disabled staff not getting their first preference is indicative of positive action.

**Recommendation:** Considers positive action regarding the needs of the 1 disabled worker who was not given their first preference in the Grade B reorganisation.

It is noted that the original data shared in December 2022 did not consider age as another protected characteristic. The newer version of the data shared in January 2023 highlighted that, although those under the age of 46 made up 45% of this workforce (n = 489), they made up 62.7% of those who did not get their first preference. This compares to those aged 46 or over who made up 55% of the workforce (n = 598) where only 37.3% did not get their first preference.

When a question was asked on this, CQC's response was that its focus was on "under-represented groups", of which those under the age of 46 were not deemed one. However, the purpose of the [Equality Act 2010](#) is to ensure appropriate consideration of the needs of all groups, and not just those that may be deemed 'under-represented'.

Although there is only a small sample size (51) of staff not receiving their preference, each individual accounts for ~2% change.

**Recommendation:** Investigate Grade B reorganisation workforce equalities data to understand potential disparity upon the protected characteristics of age.

There was no evidence of an equality impact assessment examining the total numbers choosing the role of Assessor compared to the role of Inspector. Some staff within focus groups expressed their preference for the role of Assessor was predominantly due to a lack of supporting information on how the future role of Inspector could be undertaken given their personal circumstances. That includes staff with disabilities and caring responsibilities (16/118, 14%). This was foreseen in the July 2022 equality impact assessment, but the mitigating actions were not implemented in a way that gave staff the level of information they requested. Therefore, this warrants further investigation. It will be important for CQC to demonstrate staff had the right level of detail to make informed choices.

**Recommendation:** Indicate the amount of time that Grade B Inspector and Assessor roles will work at and away from their contractual base and share this with staff. CQC should then enable staff to subsequently change their preference if they decide.

## Reasonable adjustments

This area of the review sought to answer:

- To what extent is the current approach to making reasonable adjustments for applicants and CQC workers at recruitment and employment stages:
  - applied fairly and consistently in line with the Equality Act?
  - considered during management of change?
  - implemented so no discrimination takes place?

## Context

There was evidence of a strategic commitment and framework underpinning equality in the workplace at CQC. It was aware of its responsibilities under the Equality Act 2010 as well as those under the Public Sector Equality Duty as an organisation funded by public monies. On its website, CQC shares its equality objectives (2021 – 2025) and cites its ambition to achieve an inclusive CQC over 3 years as part of 'Our Diversity and Inclusion Strategy' (2020). Within this are 4 overarching priorities:

- Inclusive leadership and accountability
- Inclusive culture
- Inclusive engagement
- Inclusive policies and practices.

CQC [notes](#) that, although it is not "an NHS organisation, we report on WDES (Workforce Disability Equality Standard) and WRES (Workforce Race Equality Standard) and publish action plans to show our commitment to providing a fair and inclusive environment for our colleagues". [WDES standards](#) consist of a set of 10 metrics that enable NHS organisations to compare the workplace and career experiences of disabled and non-disabled staff. Organisations use the metrics to develop and publish an action plan.

Part of CQC's duty is to make 'reasonable adjustments'; to remove or reduce a disadvantage that disabled workers and job applicants may face related to their disability. In line with [ACAS guidance](#), what is reasonable "depends on each situation. The employer must consider carefully if the adjustment:

- will remove or reduce the disadvantage – the employer should talk with the person and not make assumptions
- is practical to make
- is affordable
- could harm the health and safety of others."

The duty to make reasonable adjustments includes an '[anticipatory duty](#)'. This means CQC cannot wait until a disabled person makes a request; it must think in advance (and on an ongoing basis) about what disabled "people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability".

Workforce equalities data from the Electronic Staff Record system as of 31 December 2022 highlighted that approximately 9% of CQC's workforce had declared a disability. Therefore, there are at least 283 staff who may be eligible to request and receive reasonable adjustments in the workplace. This figure may be higher due to the 'Not Declared' rates, but this could not be considered further due to time limitations within this review.

## To what extent are reasonable adjustments applied fairly and consistently in line with the equality act?

Overall, there was evidence of some good practice and policies being in place. However, the experience of some staff highlighted these were not being implemented consistently. Around the time of the Grade A and Grade B reorganisation of staff, there were issues within the Operational Directorate on how reasonable adjustments should be applied.

### **Policies**

A standalone policy regarding 'Reasonable Adjustments in the Workplace' had been in place since 2017. This encompassed legal requirements, the relevance of CQC values on making adjustments, as well as practical guidance on things such as roles and responsibilities. It also included a CQC specific approach to workers having a 'tailored adjustment agreement' to best support disabled staff in the workplace.

Other CQC policies and procedures included references to Reasonable Adjustments, though there is scope to expand on these so that they are more fully inclusive. Longer term, this may remove the need to have a separate Policy. The following are important points of principle found within other policies:

- Recruitment and Selection Policy provided a guaranteed interview scheme and expectation for candidates to contact the recruitment team to request any adjustments.
- Sickness Policy and Procedure potentially provided for a higher trigger point before formal absence management.
- Critical Illness Policy and Procedure referred to support for those with long term conditions.
- Flexible Working Policy referred to 'reserving of a right' for disabled staff to make a flexible working request from their first day service.
- Probation procedure referred to the extension of a probation period to allow for a period where reasonable adjustments have been requested but not yet provided.

- Special Leave Policy referred to a right to 'disability leave'.

Newer policies such as the Special Leave Policy (2021), were found to be written in a more supportive, people-centred tone compared to older policies that appeared more compliance and process focused (eg, Flexible Working Policy [2015]).

**Recommendation:** Regarding workforce policies:

- Update the Reasonable Adjustments Policy to incorporate comments from the Disability Equality Network group.
- Modernise the Flexible Working, and Critical Illness Policy and Procedures to recognise reasonable adjustments and make the tone more supportive. Approve them through groups, including staff networks.

### **WDES action plan 2022/23: reasonable adjustments**

The WDES Action Plan for 2022/23 appeared comprehensive and stretching, with associated timescales for delivery. This included a particular workstream dedicated to improving "colleagues' experience with obtaining Reasonable Adjustments". However, there seemed an over-reliance on multiple 'leads', which can mean a lack of clarity on a single owner responsible for overseeing improvements. Additionally, timescales and outcome measures were also not always clear, and there was limited evidence that progress was being tracked and reported along appropriate governance channels. Specifically, this includes the following 2 actions pertinent at the time of this review in quarter 4 2023:

- There is an action for HR and the WDES Project Group to "investigate ways to track reasonable adjustments across the CQC in order to make sure people's reasonable adjustments are kept up to date"; this agreed action has no clear outcome measure, timescale or owner, and evidence suggested that no progress had been made.

- The Reasonable Adjustment Policy was due for review by March 2019; in the plan it is indicated that this would be finalised and published by quarter 1 2022; however, it had not been completed.

**Recommendation:** Revise the Workforce Disability Equality Standard 2022/23 action plan, relating to 'reasonable adjustments' so that:

- a single responsible person / job role is named to improve accountability
- wherever possible they have clear measurable outcomes and timescales
- it is clear what group within CQC's governance structure is responsible for monitoring progress. A non-executive director representative should be considered to ensure executive directors are held to account for progress being made toward equality objectives.

## Staff experience during recruitment

The Resourcing team shared that they had been supporting arrangements during recruitment and selection process for years, such as providing extra time during assessments, sourcing special equipment and so on. Work stemming from the WDES action plan during 2022/23 (see above section) prompted a strong focus on increasing applicant awareness that they could request adjustments during the recruitment and selection process.

The staff spoken to all believed they could talk constructively with colleagues within the People Directorate about their reasonable adjustments. The evidence suggested that historically it was harder to obtain adjustments, and the responsibility for organising some requests (such as for an interpreter) had been unclear. However, since October 2022 it was felt there had been an increasing proactivity in enabling reasonable adjustments, with examples given that showed senior members of the People Directorate were taking personal responsibility for 'unblocking' any areas where staff believed limited progress had previously been made.



In an audit, the Resourcing Team could evidence a high demand, with 58 requests being made between August – December 2022. 53 were fully met (91%), with the remaining 5 partially met (9%). However, staff shared that what was agreed with the Resourcing team were not always put into practice by the recruiting managers. The handling of the 5 'partially met' adjustments by the Resourcing team was also a cause of significant distress for these candidates, which is the focus of the following case study on 'interview questions'.

### **Case study: interview questions being provided in advance**

Five staff requested interview questions being sent to them in advance of interviews during August – December 2022. The timeframe for 'in advance' varied from 1 to 7 days before their interview. This type of request was said to be new to the Resourcing team, so further advice was sought about what would be a 'reasonable' timeframe. Legal advice was given that suggested 1-hour in advance might be sufficient. This then became a consistent standard that was then applied to multiple cases in an attempt at fairness.

In at least 2 instances it was suggested that this triggered significant anxiety symptoms affecting candidates' mental health (the reason for the initial request). This prompted some candidates to complain. The period was extended slightly for these candidates, but still less than the timeframe they had requested. Afterward, the Resourcing team did an internal review, seeking involvement from a member of the DEN neurodiversity sub-group. This has led to a change in practice at CQC and it will typically now send a minimum 48-hours in advance.

It is positive that CQC took this opportunity to review and learn from complaints. However, a similar, previous formal complaint was lodged with CQC at the end of 2021, so it appears there was a missed opportunity at reviewing this earlier.

It is understood that the Resourcing team are also keen to embark on a full review of selection processes to consider other appropriate means of selection other than a traditional competency-based interview, which may prompt further inclusivity.

It is noted that this initial review only received contributions from a neurodiversity perspective, so there is an opportunity to ensure agreed actions are also the right interventions to support those with other disabilities.

Some newer starters highlighted that information on their disabilities was not passed from recruitment stages to their new line manager. There was however an assumption that this would be done.

**Recommendation:** As part of the onboarding and welcome process before all new staff start, including those on flexible contracts, any specific reasonable adjustments should be discussed and agreed to be shared with the line manager. However, CQC should also allow any disability to be kept confidential. All new staff should be referred to the Reasonable Adjustments policy and tailored adjustment agreement approach during induction – both new starters and new managers, so they understand what is available to them, and what they are required to do if relevant.

## Staff experience during employment

Evidence was mixed about the extent to which line managers were fairly and consistently making reasonable adjustments. This review took into account the lived experience of 43 CQC workers, which included cases where some reported a responsive process while with others there was considerable, emotional upset relating to their challenge in accessing their adjustments.

Not all staff, particularly those newer in role, were aware of the Reasonable Adjustments Policy and the embedded 'Tailored Adjustment Agreement' process.

A high usage of fixed term contracts (linked to the extended period of organisational change) meant that there were groups of employees who have had a significant number of managers over a relatively short period (e.g. several had more than 10 managers over a 3 year period). The existence of adjustment agreements for staff was not typically included in any handover, meaning the onus was on the staff-member to raise attention to their particular needs. Staff understood they had responsibility to advocate for themselves to an extent; however, in some instances the nature of their condition(s) meant every time they had to raise matters it triggered undesirable symptoms, and for some, to relive a trauma.

**Recommendation:** CQC should ensure that the proposed means for tracking reasonable adjustments across CQC (as per the WDES Action Plan) is accessible to managers, who are enabled to access and review the adjustments for any new team members they are responsible for; the Disability Equality Network should support and inform what 'good' looks like from their perspective.

Some staff perceived too much focus on complying with a process. In some cases, discussions took place over several months without being concluded, which to the staff did not feel like their needs were being put first.

**Recommendation:** Review and reduce the timeframe agreed, in partnership with the Disability Equality staff network, from when reasonable adjustments are requested to the supportive involvement of occupational health and the adjustments being delivered. There should be a centrally held record of all reasonable adjustments and requests to enable monitoring and tracking to deliver more rapidly, and to ensure, in organisational change, adjustments can be anticipated.

Some staff perceived their simple requests were being overly formalised, that there was a reliance on outsourced occupational health services, and during the months of discussions there were a lack of 'interim' adjustments to support them.

**Recommendation:** Offer support and advice from occupational health when it is not known what adjustments may be helpful, or there is a concern on practicality, affordability or if it could harm the health and safety of others. 'Interim adjustments' should be agreed while this advice is being sought on the original request.

There was some evidence to suggest some occupational health information about staff was being shared by the outsourced provider to a representative of the People Directorate, who would then forward on to managers to be acted upon without full awareness and involvement of the staff member.

**Recommendation:** Staff should be the main recipient of any Occupational Health outcome letter / report. They need to provide consent for this to be shared with managers and any other relevant parties (in line with the Access to Medical Reports Act 1988).

Given the potential for more than 283 staff within CQC needing reasonable adjustments, the fact that there were only 2 formal complaints / grievances during 2022 was deemed low. However, there were other examples of emotional upset in how issues had been handled.

**Recommendation:** Ask questions about a need for reasonable adjustments sensitively, understanding that it may have been difficult for the person to broach the subject. Although staff members only need to share information they are comfortable providing, they should understand CQC only needs to make a decision based on the information it is given.

For CQC to truly live its 'caring' value, further intervention is required to support staff requiring reasonable adjustments, particularly around the consistency of experience with different managers and the time taken to implement adjustments. Improved management awareness may be delivered through training and coaching, but in the short term will likely need a representative from People Directorate to proactively support managers in discussions on adjustment.

**Recommendation:** Agree and deliver a minimum standard that ensures reasonable adjustment skills, knowledge and responsibility is delivered to all those with line management responsibility.

To what extent are reasonable adjustments considered during management of change?

The focus of this review is on the Grade A and Grade B levels who were going through management of change during 2022 (see [section on Managing organisational change](#)).

In employment law, there is a requirement to make [reasonable adjustments](#) during reorganisation or redundancy processes to remove or reduce a disadvantage related to someone's disability. Depending on the individual's circumstances, this may include making adjustments to selection criteria, or coming up with alternatives to interviews when selecting staff for job roles. This is illustrated in the case of [London Borough of Southwark v Charles](#).

## Grade A Inspector Managers

For Grade A Inspector Managers, evidence showed that those who were notified of being in a "competitive ring-fence for the role of Operations Manager" were scheduled to have an assessment to judge suitability. The invitation for this included a clear prompt to inform the management of change team at a given email address if they required any reasonable adjustments. This was reiterated in a 'frequently asked questions' document. Evidence showed requests being made in line with this, with no evidence suggesting requests were denied in their entirety. However, in 5 cases interview questions were requested one or more days in advance, but were only provided 1 hour in advance (see case study above). These staff perceived that they were disadvantaged by not receiving questions as far in advance as they requested.

**Recommendation:** Improve the process for agreeing reasonable adjustment requests, looking for alternatives if the request is impractical, unaffordable, or could cause harm.

The evidence suggests that responsibility for reasonable adjustments was delegated to local managers when it came to staff being allocated their new regions, without a structured process to follow. This resulted in staff experiencing a varied approach dependent on their region or directorate. Some individuals shared that they were explicitly asked what location would be best for them to work in, regardless of their disability status. In other areas this was not requested, even if difficulty travelling was listed as part of a tailored adjustment agreement.

## Grade B Inspectors

For those originally employed as Inspectors, they were asked to engage in a 'preference exercise' and complete a form citing a preference between 2 job options. The preference form provided no place for reasonable adjustments information to be shared, and there was no evidence of a structured process to support decision making. Evidence shows that some staff were invited to share information about their adjustments while others were not; for those that were invited to share, the method for this being captured was inconsistent between areas and not done in a way that allowed for transparency.

As with Grade As, it is understood that the responsibility for considering any reasonable adjustments was given to decision makers based on their local knowledge of individuals and their needs. Feedback from focus groups, which included previous managerial 'Heads of' roles, said they were asked to be involved in the decisions, but talked of varying approaches to acquire this information (particularly when local knowledge was limited). Group participants involved in decision making raised concern about missing 'hidden disabilities', and participants who were affected themselves by the changes spoke of not knowing what information was considered when decisions were made.

**Recommendation:** When undertaking a reorganisation affecting staff from more than 1 team, CQC should provide a structured means to capture and fulfil requests for reasonable adjustments at each part of the process.

### To what extent are reasonable adjustments implemented so no discrimination takes place?

The focus of this review was the possibility of direct or indirect discrimination having occurred. There is a relation between a failure to make reasonable adjustments and indirect discrimination, so that is reflected in this section.

#### Direct discrimination

There was evidence of staff experiencing considerable upset at times. However, none of the evidence shared as part of this review, including the lived experiences of 35 staff involved in personal discussions, and a further 8 in group discussions, contained any substantial evidence of direct discrimination.

## **Indirect discrimination**

Indirect discrimination is where a rule or practice is in place that has a disproportionate, negative impact on those with a disability. There is a [legal defence](#) that can be applied in such circumstances, which is if there is a clear objective justification that is 'proportionate, appropriate and necessary'.

### **Risk: requests for interview questions in advance**

There was evidence of reasonable adjustments being requested but not granted in full. The key theme emerging related to interview questions, as outlined in the case study above; this was during the time when there was a rule of providing these 1 hour in advance. If 1 or more of these individuals were able to establish that they had suffered a disadvantage due to a disability that may require more than an hour for adequate processing, it is possible for this to lead to a claim of indirect discrimination.

CQC has since adapted practises to provide interview questions in advance at least 48 hours when requested as part of a reasonable adjustment. This additional time may be helpful, however each request should always be assessed on its own merit. Only requests that are impractical, unaffordable, or could harm the health and safety of others are likely to be easily deemed unreasonable in the eyes of the law. Alternatively, CQC needs to be confident there was a good business reason that was proportionate, appropriate and necessary.

### **Risk: redeployment following reorganisation**



Another possible risk found related to staff being deployed to a different place of work. This is most clear in the example of Grade A and Grade B reorganisations, where there was a potential impact for staff to be redeployed to another contractual base, despite 1 or more individuals having a difficulty in travelling to the new place of work. This is noted within an equality impact assessment, with mitigation cited as "as a default, we will deploy colleagues within their home geography to support the needs of colleagues with a disability or carer responsibilities... We have also built in space for colleagues to express if this is not the best outcome for them."

The implementation of this will be key if there is a staff member who has a tailored adjustment agreement in place that limits the amount of travel needed for work purposes and that is not followed. CQC should assess any such complaint brought to its attention and check whether there's an alternative can be taken that does not place disabled people at a disadvantage.

**Recommendation:** When undertaking a reorganisation affecting staff from more than one team, CQC should provide a structured means to capture and fulfil requests for reasonable adjustments at each part of the process. Decisions should take into account existing tailored adjustment agreements.

### **Other areas examined**

Data regarding overall disabled worker representation, the use of fixed-term contracts and grievances was examined to see whether there were other possible indicators of unfavourable treatment. Overall, it was found that disabled staff were represented equally or more favourably than non-disabled staff in these areas. This supported the findings within the limitations of this review of no evidence of direct discrimination on the basis of disability was uncovered.

## **Contracting advisory and complementary staff**

This area of the review sought to answer:

- To what extent are the appointment, contracting, deployment and disengagement processes relating to advisory and complementary staff (non-substantive):
  - consistent with processes for substantive staff?
  - aligned to CQC values?
  - have appropriate safeguards to ensure decisions are made that do not infringe on employment rights?

## Context

Alongside its more than 3,000 substantive workforce, CQC frequently uses additional skills, knowledge and experience from a range of specialist staff on 'zero-hours' or 'casual worker' contract types. For clinical advisory roles, these workers are required to inform CQC if they cease to work clinically as the arrangement is to be reviewed 2 years from that date to see if it would continue. Available records suggest there are approximately 2,000 of these workers, which for the purposes of this review are referred to as the 'advisory and complementary' staff.

Phase 1 of the Listening, learning, responding to concerns review examines what occurred in the lead up to Mr Shyam Kumar bringing a claim to employment tribunal, the outcome of which was published in September 2022. This section considers what procedures were found to be in place following this date, with a view to understand how this can be improved further.

Following the tribunal it was clear that CQC took some immediate steps to change its approach to 'disengagement'. A thorough assessment had also been undertaken into how some casual and zero-hours worker types were being utilised. This was followed by an agreement from the Executive Team in December 2022 to focus some time and attention on how these workers were to be meaningfully utilised in the future.

To what extent are they consistent with processes for substantive staff?

Up until September 2022, there were no comprehensive policies or processes in place governing the appointment, contracting, deployment and disengagement of this section of the workforce.

## **Disengagement in contentious circumstances**

After September 2022, HR colleagues proactively created draft 'Flexible Workforce Guidance' (awaiting formal sign off, as of 24 January 2023). This guidance is applicable when dealing with "complaints, potential conduct issues or whistleblowing concerns". It outlines an approach to be taken to investigate matters, a formal approach to disengagement where it is required, and provides a right of appeal. This is largely consistent with similar formal processes for substantive staff when issues arise. It includes required steps for a worker to be marked as 'Do Not Deploy' if it is in response to a complaint being received. It also includes the utilisation of a senior independent manager as a decision maker, and the use of human resources advice as may be necessary.

## **Advisory and complementary strategy**

In line with the ongoing transformation work to deliver the Single Assessment Framework (SAF), a scoping exercise had been undertaken by members of the Transformation Programme team in relation to Specialist Professional Advisors (SPAs), National Professional Advisors (NPAs), Bank Inspectors and Experts by Experience. They created a 'Advisory and Complementary Workforce Strategy' from this outlining key drivers for change, strategic outcomes and anticipated benefits. From this information and from talking with existing advisory and complementary staff, it is understood that:

- **Specialist Professional Advisors**

- Previously they could be recruited by referral or submitting a CV with a limited selection process to provide assurance around suitability. More recently, SPA opportunities go through a workforce approval process, are advertised, shortlisted and interviewed in a way that is consistent with substantive staff and managed by the Resourcing team.
- There were no standard procedures governing their deployment. There was no central management of engagements, leading to inconsistent matching of skills to required tasks. Local arrangements were often in place to gain access to SPAs, which may not consider potential conflicts of interest. Although some individuals had been registered as specialist workers for several years, some had never been contacted to make use of their specialist area knowledge (though they had been utilised more generally to support inspections).
- There are other reasons for disengagement other than 'complaints or conduct issues' that are covered in the new 'Flexible Workforce Guidance'. This included an unwritten rule for disengagement to be undertaken when the SPA has not practised clinically for more than 2 years; it was unclear how this was enacted in practice.

- **Experts by Experience**

- This is an outsourced service, with little information known about how to make best use of this resource, or what to do if a complaint was received about one of those workers.

- **Bank Inspectors**

- Recruitment appeared predominantly to be from referral when substantive Inspectors were leaving CQC employment.
- There were no standard procedures around their deployment. There was no central management of engagements, leading to inconsistent matching of skills to required tasks; local arrangements were often in place to gain access to Bank Inspectors.
- In some areas, there was some management oversight provided by an Inspector Manager.

- **National Professional Advisors**

- NPA opportunities go through a workforce approval process, are advertised, shortlisted and interviewed in a way that is consistent with substantive staff and managed by the Resourcing team.
- There was variation in contractual terms offered for these roles.
- There were no standard procedures around their deployment. There was evidence of more central management of engagements, reporting into Directors, though not all were aware of who their Director was.

Discussions with staff highlighted other work was underway to improve various areas, including the following:

- The establishment of a potential programme to improve the consistency and strategic use of these workers. However, the following was unclear:
  - prioritisation of this programme given the substantial other transformation work being undertaken at CQC
  - who was responsible for delivering the strategy and how this would be overseen from a governance perspective
  - the additional resource needed to meaningfully deliver the anticipated benefits put forward in the programme design
  - to what extent the programme was to consider Executive Reviewers, Bank Mental Health Act Reviewers and other Second Opinion Appointed Doctors as examples of other advisory and complementary workers.
  
- After September 2022, the People Directorate commenced an improvement project into some of the issues arising from the case. Disengagements were halted and potential cases managed in line with the draft 'Flexible Workforce Guidance', alongside an Operations lead. Thirty cases had been closed, with a further 43 live cases in progress. However, it was noted that there were over 400 SPAs who had been marked as 'Do Not Deploy' and unable to work, where there was no clear plan to review and progress.

**Recommendation:** Review the list of Specialist Professional Advisors (SPAs) marked as 'Do Not Deploy', ensuring they are appropriate. Where the individual has not instigated this status themselves (through maternity or sickness etc), CQC should agree a plan to address each case within the next 3 months. This should include notifying individuals and giving them a right of response. Frequent equality impact assessments should take place to identify potential bias.

- The People Directorate identified potential gaps in collecting declarations of interest for this part of the workforce and had completed some actions to mitigate that, including updating a policy and improving data capture on the Cygnum system. They were also reinforcing the requirement for all scheduling requests to be managed centrally through the Scheduling Team, escalating any requests that were being made for a named individual.
- There was an agreement to transfer the Scheduling Team from the People Directorate to the Operations Directorate to improve operational ownership and oversight.
- A Director of Operations was leading a 'Flexible Working Office' work-group with representatives from the People Directorate regarding SPAs; target actions included standardised communications, complaint handling and the creation of a 'handbook' to outline expectations and processes that apply to them.

**Recommendation:** Ensure a 'handbook' or similar suite of policies or processes are created to cover all advisory and complementary staff, which should cover:

- how appointments are made and how they are inducted to CQC
- how they can access work opportunities and how decisions around scheduling and deployment are made
- what is required to stay 'active' as a registered worker, including professional registration and ongoing minimum standards of training
- how either side may pause eligibility for work or stop work completely.

To what extent are they aligned to CQC values?

Due to the lack of written processes (as found in above sections), this section focuses on how the current state reflects CQC values.

Process mapping undertaken by the transformation team project group highlighted that some current (unwritten) processes have multiple examples of 'over-processing', 'waiting' and 'defects' that could be streamlined. This is contrary to the desired value of '**Excellence** – being a high-performing organisation'.

The lack of a structured approach in using this part of the workforce, including how they support the application of the Single Assessment Framework, means there was little evidence of '**Teamwork** – learning from each other to be the best we can'. This section of the workforce were not clearly aligned to CQC's strategic purpose. However, it is noted that a proposal to examine the use of SPA, NPA, Bank Inspector and Experts by Experience roles had been developed and agreed by the Executive Team Design Authority. The proposed programme approach to examine and improve the approach taken to these roles was an example of greater teamwork.

**Recommendation:** Update the advisory and complementary workforce strategy so it:

- is clear whether other casual and zero-hour workers at CQC are in its scope; this includes Executive Reviewers, Bank Mental Health Act Reviewers and Second Opinion Appointed Doctors
- has an implementation plan that has assigned governance and resourcing.

Some steps taken since September 2022 indicated increasing '**Integrity** – doing the right thing', particularly around ensuring workers are afforded the right to respond if a complaint with their work is highlighted, regardless of their contractual position. However, there was evidence of a lack of proactivity in other areas, particularly reviewing the list of those SPAs marked as 'Do Not Deploy' who were unable to access work. As of 30 January 2022 there was no clear plan on who was doing what, and by when to resolve those ongoing restrictions to work.



There was also one example where evidence suggested an active step was being taken to limit a staff contract to 23 months, with the stated purpose of avoiding 'advisor colleagues becoming substantive'. Although it may be appropriate to consider the impact the length of contract time has on employment rights, decisions should be driven by business needs, not the avoidance of workers accumulating additional employment rights (such as the right to redundancy pay or bring an unfair dismissal claim). This example is not one of integrity, but the fact that it was challenged at the time and alternative arrangements made is an example of such. However, it is unclear from this example how widespread this practise was, and within the time limitations of this review this could not be investigated further.

**Recommendation:** CQC should ensure that contracts being offered to staff (including extensions) are in line with each business need. They should not be tailored to avoid milestones that accrue key employment rights.

There was limited evidence of current approaches being '**Caring** – treating everyone with dignity and respect'. There was no evidence of consistent management or support being available to these staff. There was no evidence that any group had access to development, which would be a good opportunity to grow talent and enable these staff to potentially become part of the substantive workforce (where appropriate). There was no clear communication or engagement plan for these staff; although some received bulletins or CQC updates, this was stated as having little bearing on them and not being particularly informative. It was also noted that there had been no survey or similar consideration of their staff experience.

**Recommendation:** Ensure measures are taken to recognise the skills, knowledge and organisational benefit of the advisory and complementary workforce in line with CQC's values, rather than simply a resource. This should include gathering insight into the staff experience of advisory and complementary staff (such as through a survey) to ensure they feel valued or to inform actions.

To what extent have appropriate safeguards ensured decisions are made that do not infringe on employment rights

### Terms of engagement

The contract / terms of engagement documents for these workers were reviewed and appeared in line with legal requirements, with the possible exception related to annual leave arrangements. In all cases annual leave arrangements were linked to an increased fee payment, calculated at a rate of 12.07% of fees received. Given the Supreme Court's decision in [Harpur Trust v Brazel](#) [2022] that challenged the way annual leave is calculated for workers who have an atypical work schedule, this previously common practise should be reviewed.

**Recommendation:** Review and audit all staff members' appropriate entitlements, including leave and contracts, to ensure they are compliant.

### Disengagement processes

The newly created 'Flexible Workforce Guidance' document outlines a structured approach to disengagement in known contentious circumstances. This will provide an appropriate structure for times when difficult decisions need to be made on potential disengagement. This helps to safeguard CQC in making such decisions, and early evidence suggests it is already making a difference, with one worker known to have successfully utilised the right of appeal, and 5 other advanced cases being de-escalated and avoiding litigation.

## Other processes

The involvement of the Resourcing team in the recruitment and selection of some roles helps provide structure and transparency in those instances. However, as they are not consistently used, the safeguards only apply to those times when their expertise is utilised.

The lack of any other written and consistently used appointment, contracting and deployment processes means there was little evidence of appropriate safeguards being in place to ensure decisions are made that do not infringe on employment rights.

## Workforce equalities data

A sample of workforce equalities data was requested for Specialist Professional Advisors and Bank Inspectors to consider whether there may be issues impacting on equalities. These 2 groups were chosen as they are the 2 largest CQC had data for.

In a comparison of data between December 2021 and December 2022, the data revealed a reduction in the number of workers with 'not declared' for disability, ethnicity and sexual orientation characteristics; however, 'not declared' numbers were still high in these categories (ranging between 19.3% to 34.8%), meaning it is not possible to draw significant conclusions from the data. This may hide risk(s) in these areas.

When comparing movement between 2021 to 2022, there was an overall increase in the number of Bank Inspectors and SPAs, driven by an increase in workers under the age of 51 (+113); however, there was a reduction in the number of workers aged 51 and above (-69). This is against the [national trend](#), where there was an increase of workers aged 50-64 (+0.1%) and over the age of 65 (+0.4%).

### **Figure 8: Age data – net change between December 2021 and December 2022**

Age band	21-30	31-40	41-50	51-60	61+	Total change
Bank inspector	1	4	3	5	-12	1
SPA	10	39	56	-7	-55	43
<b>Grand total</b>	<b>11</b>	<b>43</b>	<b>59</b>	<b>-2</b>	<b>-67</b>	<b>44</b>

This is consistent with changes in the age distribution within the substantive Inspector and Inspector Manager workforce numbers over the same period. Equalities data was requested for the cohort of 480 SPAs originally listed as 'Do Not Deploy'. It is understood that this list is continually changing, as it includes those unable to work for any reason, including maternity leave and sickness absence, and not just those prevented from working due to a complaint (or similar) being received. A breakdown of data was received for the 466 workers remaining. This data had high 'Not Declared' rates impacting on the ability to draw significant conclusions.

Despite there being some attention on equality and decisions being made around this cohort of workers after September 2022, there had been no proactive consideration of this information. An action had, however, been agreed to review requests for a SPA to be marked as 'Do Not Deploy' where the reason given is vague before taking any action.

**Recommendation:** Comprehensively review equalities workforce data for this cohort of staff by:

- investigating drivers for high 'Not Declared' statuses and reducing levels of non-disclosure to below 5%
- actively monitoring equalities data to inform planning and decision making to ensure no disadvantage occurs.

## Evaluation

There should be a thorough evaluation of CQC's ability to listen, learn and respond to staff following the implementation of recommendations from this review. This should seek to understand whether CQC has improved its practices against the following aims in this review:

- CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, listened to, and responded to well. [Aim 2]
- CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding, the Equalities Act 2010, ensuring:
  - there is a clear understanding of best practice, where discrimination is identified, addressed and, wherever possible, prevented using anticipatory measures
  - the handling of concerns about CQC raised by colleagues, including advisory and complementary staff, are free from institutional or interpersonal discrimination
  - CQC makes reasonable adjustments for CQC colleagues and CQC applicants in a timely manner and in line with best practice. [Aim 5]

- Relevant CQC colleagues feel confident, skilled, empowered and supported to respond to concerns raised by other staff, including advisory and complementary staff, about CQC. [Aim 7]
- CQC has a culture, underpinned by best practice policy, processes and practices, where staff, including advisory and complementary staff, feel empowered to make a meaningful and timely contribution during change to support improvement and transformation. This should include ensuring there is learning from, and an adequate response to, feedback from formal consultation and informal engagement. [Aim 8]
- CQC's appointment, contracting, engagement, deployment and disengagement processes relating to advisory and complementary staff (non-substantive) are non-discriminatory, consistent with the values of CQC and ensure employment rights are maintained. [Aim 9]

Six months after this review is published, CQC should look at progress against the implementation of the recommendations. After 12 months there should be an evaluation report on the outcomes of CQC's response and this will mark the formal close of the review. The evaluation should then continue, in order to understand the full impact of the recommendations in achieving the aims set out.

To evaluate how this review has impacted CQC's ability listen, learn and respond to staff, possible methods include:

- recommendation tracking
- a survey of all CQC colleagues including those who have raised a concern
- a survey of job applicants who declare a disability
- a survey for all advisory and complementary staff exiting CQC
- focus groups with CQC colleagues to understand whether they feel safe to raise their concerns

- focus groups with CQC colleagues who have requested reasonable adjustments to understand their experiences
- focus groups with those responsible for handling whistleblowing and information of concern about care
- focus groups with those responsible for responding to concerns about CQC raised by CQC colleagues. The groups will include advisory and complementary staff, People Directorate colleagues, Complaints Team and the guardian(s).
- focus groups with advisory and complementary staff about their appointment, contracting and deployment
- analysis of whether CQC has responded to or acted information of concern about CQC, and how this varies by protected characteristics
- analysis of proportion of reasonable adjustment requests met and the length of time to implement them.

## 5: Reviewing the expectations and experiences of people who raise concerns with us

### Key findings and recommendations

Expectations of people who use services and workers when they raise concerns about care with us

Our review found that:

- CQC is not generally meeting the expectations of the public or people who work in care services when they raise concerns with us. We do not meet expectations in terms of the follow-up service people receive and the action taken as a result. This demonstrably affects public confidence in CQC.
- CQC's role in handling concerns raised by members of the public is inherently confusing. CQC invites feedback from the public about their experiences of care, but is not able to resolve their concerns or investigate their complaints. This is because we do not have the powers to do so, except for complaints made under the Mental Health Act.
- The public understands our role once it is clarified with them. However, when someone shares a concern with CQC, they can be frustrated that we can't resolve it. This can undermine their trust and motivation for sharing feedback with us. People from ethnic minority groups and disabled people, who are more likely to have a poorer experience of care and face discrimination, highlighted the impact of this frustration and undermining of trust with us.
- Some people from ethnic minority groups and some disabled people who use services told us they felt they were unlikely to trust CQC with their concerns because they had no knowledge of CQC or our role. Health and care workers who had less knowledge about CQC said they were unsure about whether they could trust CQC with their concerns.
- When the public and health and care workers raise concerns with CQC, they see this as a serious matter. It can also often be a last resort following a lack of response with the provider or other parts of the health and care system. They are often distressed by their experiences, and may fear reprisals by the service, such as being evicted.



- Members of the public with disabilities were concerned about whether CQC would understand that people with protected characteristics are disproportionately affected by discrimination.
- Health and social care workers from ethnic minority groups had low expectations of CQC responding to concerns about discrimination. Our research did not provide evidence about what drives these low expectations, including whether or not they are specific to CQC, but research in [Workforce Race Equality Standards reports](#) states that more people from Black and minority ethnic backgrounds have personally experienced discrimination compared to their White colleagues.

## People's experiences of raising concerns about care with us

- CQC's channels for providing feedback are easy to find and easy to use and generally meet the public's and health and care workers' expectations. Some improvements could be made for people who are fearful or traumatised, whose first language is not English, who face communication barriers due to disability or sensory impairment, who have low literacy skills or who are digitally excluded.
- Most people who contacted us by phone had a positive experience of the way the call was handled. They felt listened to, with only a small number not feeling heard. People generally described our call handlers as 'sympathetic' and 'concerned' about their experiences, especially since they were often distressed or angry. Overall satisfaction with the service provided by telephone is 4.6 out of 5 (from a total of 19,954 responses).

- However, overall people who took part in our research generally did not have a good experience of raising concerns about care with us. This was driven by people expecting that CQC would investigate and resolve their concern and that CQC would provide clear and frequent communication once people had raised their concern.
- While anyone raising a concern receives a generic response from CQC, further follow-up is at the discretion of the inspector and is therefore inconsistent. People who do have their concerns followed-up and are contacted have a better experience.
- The lack of follow-up provided to people who raise a concern with CQC means that they could not necessarily know whether or not they had been discriminated against. A small number of the public who had raised a concern with CQC felt the lack of follow-up from CQC was due to racial or other discrimination. However, most participants felt that there was no discrimination or unfairness in the way they were treated.

## What does the information we collect tell us about how we listen and respond to concerns?

- CQC does not collect demographic or protected characteristic information from people who raise concerns. This means we can't use this information to show whether certain groups are experiencing poorer care or discrimination. It also means we cannot currently check whether people experience discrimination when we handle their concerns.

- We are unable to easily or confidently report on how many concerns we have received from members of the public and how we have acted on them, as we do not accurately or consistently collect this data. For example, where there is an option to record action taken in response to information received through our 'Give Feedback on Care' service, the most common option chosen is 'unspecified'.
- Most concerns raised with us by members of the public are categorised as Priority 3 meaning there may have been a breach of fundamental standards. Where data is available to indicate how CQC has responded to those concerns, the most common response is either 'unspecified' or 'no further action'. This means that we do not have assurance that some Priority 3 concerns about potential breaches of fundamental standards are being acted on appropriately.
- Our capacity and capability to analyse qualitative information from the public is not fully developed, although plans are in place to make this possible.
- CQC does not collect or monitor levels of satisfaction among the public and care workers about the process of raising a concern.

## **Recommendations**

**Aim 1: The public, workers of services registered with CQC, and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner**

We recommend that CQC should:

- Make clear how our Contact Transformation programme will deliver on the commitments in the CQC and the Public Engagement Strategy relevant to this review. This includes improvements in how information of concern is captured, prioritised, stored and analysed, and the customer service we provide back to individuals who raise concerns with CQC.
- Develop and publish externally an agreed organisational approach to the customer service the public and organisations that represent them, and people working in care services can expect when they share concerns about care with us. This includes all direct channels (webform, telephone, email, letter, face-to-face), as well as how we will offer a feedback loop to keep them informed about how their concern is being assessed and acted on.
- Consider offering different levels of customer service response, depending on the severity of concerns being raised, the vulnerability of the person raising them, and the type of service involved.
- Develop a clear, transparent, easily reportable process for tracking how each concern raised by members of the public and organisations that represent them, and people working in care services has been triaged, assessed and acted on. This will enable a feedback loop to individuals, effective reporting, accountability and quality assurance.
- Introduce a process to understand the public's experiences of sharing concerns about care with us, so we can continually improve this key area of our work.
- Measure both the timeliness of how concerns raised by members of the public are responded to, and whether the action has mitigated the presenting risk, and implement a quality assurance system for this.

- Based on the above new processes and protocols, develop new, clear information for the public to enable them to understand what they can expect when they raise concerns with us, as well as our response.
- Consider further investment to increase public awareness and understanding of CQC's role in this area, particularly among people from ethnic minority groups and disabled people. This will help establish and maintain public trust and confidence and increase CQC's access to people's experiences of care.

**Aim 3: CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, and respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination.**

We recommend that CQC should:

- Review and improve our information capture and prioritisation processes to help us better understand and report on the volumes and types of concerns about care received from members of the public and the action we have taken in response. This includes capture of demographic and protected characteristics. This work also includes introducing an audit process to make sure this information is accurately recorded.
- Urgently address the constraints on how we can analyse concerns raised by the public and workers in care services, including how the data is captured and stored. This will support the above recommendations and ensure all information of concern is appropriately assessed and acted on.

**Aim 6: Relevant CQC colleagues feel confident, skilled and empowered to handle whistleblowing and information of concerns about care**

We recommend that CQC should:

- Review available staff resources to make sure these are sufficient to enable both effective monitoring of services and responsive on-site inspections when there are early indications of deterioration in quality or of the emergence of a closed culture (shared recommendation with [section 1](#)).
- Review internal guidance, training and wider activity to create a stronger positive culture across the organisation that enables us to deliver outstanding customer service to members of the public raising concerns about care with us. This work should include specific focus on discrimination recognising different approaches that may be needed. This is in line with our strategic ambition for regulation that advances equality and protects people's human rights.

## Why we looked at this area of our work

Information from members of the public and from health and social care workers about the quality of care is vital to our regulatory work. Unlike any other data, this feedback can offer near real time information about how the quality of care may be changing for the better or the worse. We know that if we don't listen well to the people who use services and people working in health and care we will not be able to regulate effectively.

Evidence about how we need to improve in this area has informed CQC's Strategy from 2021, our imminent Public Engagement Strategy from 2023 and our published [People's Experiences Principles and Frameworks](#). Our expectation is that CQC's Transformation Programme will deliver on these improvements. We looked in more detail at this area for this review because we wanted to know more about how well we listen when people raise concerns with us to deepen our understanding of the improvements we need to make.

We wanted to develop our understanding of:

- the expectations of people who use services and workers when they raise concerns about care with us
- the experiences of people who use services when they raise concerns about care with us
- what the information we collect tells us about how well we listen and respond to concerns.

## What we looked at

We reviewed existing insight we held in CQC that would help us to answer the questions defined by the review.

In understanding expectations of people who use services and the public we reviewed existing focus group research and surveys. This research was carried out as part of our ongoing work to deliver our strategic commitment to regulation driven by people's experiences of services and [published principles](#) in this area. The existing insight we reviewed included:

- focus group research with 23 members of the public and 3 organisations that represent people who use services into the expectations and experiences of sharing information with CQC about health and care; participants included people with a long-term health condition or disability, and people and carers with a range of digital confidence
- different methods of research into the barriers to digital inclusion and sharing experiences of care with 5 seldom heard groups who are more likely to be digitally excluded

- engagement with 212 people to explore their expectations of sharing feedback about care directly with CQC: 151 people with a learning disability, 18 people who care for an autistic person or someone who has a learning disability, 43 autistic people, and 3 people who are Deaf who have a learning disability or who are autistic
- insight from national organisations that represent people who use services
- annual public awareness and sentiment tracking survey results.

We carried out further work to fill the gaps in our insight as follows:

- An online survey to give us quantitative insight. The survey was sent to 2,000 people, with a particular focus on people from ethnic minority groups, disabled people and health and social care workers.
- 6 online focus groups comprising 39 participants and including a mix of health and social care workers and people who use services, including people from ethnic minority groups and disabled people.
- We commissioned 1-to-1 semi-structured telephone interviews with 40 members of the public who raised a concern about care directly with CQC through our Give Feedback on Care (GFoC) webform, via email or telephone in the period between April and September 2022. We had target numbers of interviews set by gender, age and ethnicity.
- We analysed CQC information to understand what it can tell us about how we respond to concerns about care raised with us by the public. We looked at information from 41,128 enquiries, categorised as Information of Concern from members of the public between April and September 2022.

## What we found from our review

Expectations of the public, health and care staff and organisations that represent the public when they raise concerns about care with us



## What the general public expect

### Methods to contact CQC and raise concerns about care

Our review has found that, in general, people feel that CQC's channels for raising concerns about care (telephone, email and our Give Feedback on Care webform) meet their expectations and are sufficient to meet their needs. Some improvements could be made for people who are fearful or traumatised, whose first language is not English, who face communication barriers due to disability or sensory impairment, who have low literacy skills or who are digitally excluded.

Digital exclusion is complex and uneven and there is not a single solution to enabling people who are digitally excluded to share their experiences of care. Even within seldom heard groups, our review of existing insight showed there was variation in the type of communication people would feel comfortable using. Therefore, it is important that there is diversity in the channels for people to share their experiences of care.

Channels that involve a human element, such as a telephone call or face-to-face conversation with an inspector, were perceived to be more accessible, particularly for those who may struggle to share information in a written format. In addition, human interaction was felt to make it easier to convey feelings and emotions, as well as explain complex situation.

### Expectations of CQC's role

There is a fundamental disconnect between the general public's expectation of CQC in relation to raising concerns about care and our statutory abilities in this area. The idea that CQC want to hear concerns about care but can't take up complaints on behalf of individuals was confusing to general public participants of our focus group research. This creates frustration. The frustration is that CQC is asking for feedback about care but doesn't offer an individual resolution of a complaint. But it is also frustrating that CQC is expecting people to tell their story twice – once to the provider for a response to their complaint, and then to CQC.

Our 1-to-1 interviews with people who raised a concern about care direct with CQC in the past 12 months found that many participants expected that we have the power to investigate or resolve a concern on their behalf, and the ability to personally intervene on behalf of a person who might be at risk of significant abuse or neglect. A small number of participants did not expect an immediate investigation. They instead just wanted their concern logged or fed into the next CQC scheduled inspection. This smaller group tended to have had previous interactions with CQC, either in a professional capacity or having raised a concern before. Crucially, however, almost all still expected to receive feedback from CQC about the outcomes of their concern.

Our review has found that there are some differences in public expectations of CQC depending on the type of service feedback is provided about and the seriousness of the concerns being shared. For example, when people are raising concerns about a service where people live, the need for CQC to create a sense of safety is paramount and the fear of reprisals by the service is strong.

A review of our existing insight showed that the fear of retribution by the service as a result of submitting feedback to CQC is a clear theme. This was especially true for groups already disproportionately discriminated against, such as Gypsy, Traveller and Roma communities, leading them to be reluctant to submit feedback to CQC. Reluctance to submit feedback for fear of backlash was not limited to these groups but was common, with some people who use services not submitting feedback until the point of desperation or not submitting any feedback at all despite experience of poor care.

For some people the need for anonymity from the beginning of any interaction with CQC was highlighted, with concerns raised over the requirement to provide identifying information such as room numbers at a care home. Eviction from care homes or restrictions on visitors as a result of supplying feedback were noted as particular concerns and issues.

In our online survey of the public, in response to the question 'how likely are you to raise a concern about care directly with CQC?':

- 47% gave a neutral response stating that they were neither likely or unlikely to do so
- 33% said they were either somewhat likely or very likely
- 20% said they were either somewhat unlikely or very unlikely to raise a concern about care.

People that identify as Black or Black British were the most likely (very/somewhat likely) to report a concern to CQC (60%). Twenty-eight per cent of people surveyed that identified as having a disability indicated that they did not know where to raise concerns. This was higher than other groups.

**Figure 9: How likely or unlikely are you to raise a concern about care directly with CQC?**

How likely are people from an ethnic minority group to raise a concern with CQC	Total of all respondents	White	Asian or Asian British	Black or Black British	Mixed / Multiple	Other ethnicity	Prefer not to say
Very likely	10%	10%	7%	9%	17%	0%	6%

Somewhat likely	23%	23%	18%	51%	12%	0%	25%
Neither likely nor unlikely	47%	46%	62%	33%	50%	67%	44%
Somewhat unlikely	13%	13%	7%	4%	17%	17%	13%
Very unlikely	7%	8%	6%	3%	5%	17%	13%

### **Expectations of initial response from CQC after concerns about care have been raised**

Our focus group research found that most general public participants who understood CQC's role with complaints, once it had been explained, expected that an initial response from CQC would include:

- an acknowledgement/confirmation of receipt
- a timescale for any further response
- information about how to make a complaint.

Participants also wanted to receive a copy of what they had sent via the online feedback form, explaining that they were unlikely to save the text separately and would want a copy for future reference.

Disabled people who participated in the focus group research were particularly concerned that anybody sending feedback to CQC should be made aware of how to make a complaint. This was based on an assumption that the public would primarily be motivated to make a complaint and that any report to CQC would be a secondary concern. Participants from ethnic minority groups were particularly concerned that CQC should reassure people that their concerns would be reviewed, so that people feel that CQC valued their feedback.

For a small minority of focus group participants, there was a continued expectation of a response to their specific feedback and a named case handler, even after CQC's inability to investigate and resolve concerns had been explained. This illustrates that, even when our role has been explained, for some people this will never be acceptable as it does not meet their expectations.

Before raising their concern with CQC, most participants in our 1-to-1 interviews had already reported the issue to their health or social care provider, but had not been satisfied with the outcome. This is because CQC was often perceived as being a higher authority, or an escalation point. Many participants asserted that they had no desire to spend their time contacting CQC to raise concerns, and that they were not the 'type' to complain over nothing. There was, therefore, an expectation that we would take their concern extremely seriously and really listen to what they were saying.

Participants tended to be upset and distressed when they raised their concern to CQC. They often felt like their voice, or their complaint was not being heard by the provider and therefore they escalated their concern to us.

In our 1-to-1 interviews, people who had raised a concern about care with CQC had expected us to continue to provide clear and frequent communication with them. This expectation, and CQC's perceived failure to meet it, led to much of the feelings of frustration later in the process.

### **Expectations of prioritisation**

Participants in our focus groups assumed that CQC would prioritise action based on the number of complaints about a particular service. Participants with disabilities suggested that we could look at concerns associated with particular groups, such as people who use health and social care services most frequently. This suggestion is likely to be influenced by this group's awareness that some people are more likely to have poor experiences of services than others.

Forty per cent of respondents to our online survey expected us to look at the nature of the concern reported in order to determine how serious that concern is. And 18% thought that the seriousness of the concern may be categorised based on who has reported it.

### **Expectations of the action CQC would take**

In our focus groups, the general public struggled to answer the question about what action we'd take because of a lack of knowledge of CQC and our role. The smaller group of public participants who wished that CQC would pursue individual complaints wanted CQC to initiate an inspection of the service that was the subject of the feedback. These findings suggest that meeting public expectations for a small, but significant minority of people, will not be possible. This is because we do not have the statutory ability to resolve complaints.

The larger group of public participants who understood CQC's role once it had been explained, suggested that CQC would check that the service had addressed the issues raised, or that we would risk-assess incoming feedback and investigate the most serious concerns. When focus group participants were given information about the potential actions CQC may take in response, the larger group felt that the process for responding to a concern was better than they had expected. In particular, participants from ethnic minority backgrounds who wanted reassurance that CQC would review their concerns were satisfied by a description of the potential actions CQC may take in response.

### **Expectations of feedback about action taken by CQC**

The smaller group of focus group participants who wished that CQC would pursue individual complaints, even after CQC's role had been explained, wanted to know if their feedback had led to any direct action and, if not, how it had contributed to CQC's work.

The larger group of general public participants who understood CQC's role once it had been explained, indicated that their expectations varied depending on the perceived seriousness of the feedback provided:

- If the information was perceived to be serious or urgent, there were higher expectations of more prompt, personalised feedback.
- If the feedback was not perceived to be serious or urgent, there was a more general expectation that CQC would offer reassurance that the information provided had been useful.

## **What workers in regulated health and social care services expect**

### **Methods to contact CQC and raise concerns about care**

Our focus group research with health and social care workers found that our existing channels for raising a concern about care reflected their expectations and were enough to meet their needs. Thirty-one per cent of health and social care professionals who completed an online survey suggested that CQC should gather concerns from Freedom to Speak Up Guardians.

### **Expectations of CQC's role**

Our focus groups found that workers have high expectations of CQC's response to reported concerns. They felt that sharing concerns with CQC was a very serious matter and they would not do so unless all other internal options had been exhausted. This heightened their expectations of CQC's response. Health and social care workers reported that they were much more likely to use internal complaints or whistleblowing processes rather than raise concerns to CQC. Not all health and social care staff understood CQC's role, although most had heard it.

## **Expectations of initial response from CQC after concerns about care have been raised**

Workers believed that sharing concerns with CQC was a very serious thing to do and would be taken seriously. There was an expectation that CQC would respond to all concerns reported, regardless of how it was reported, with a non-automated email and reference number.

Health and care workers had clear expectations about the content and purpose of the acknowledgement email. This was expected to be tailored to workers by:

- including information about what those reporting concerns can expect to happen
- communicating that the feedback is being taken seriously
- providing an assurance of confidentiality.

Overall, health and care workers' expectations of CQC's initial response were higher than the general public (once CQC's role had been explained).

## **Expectations of prioritisation**

Health and social care workers expected CQC to assess and prioritise incoming feedback based on seriousness and urgency, similar to medical 'triage'.

They also suggested we would analyse the evidence they receive, such as by identifying 'clusters' of complaints from patients in the same population group, or about specific services or specific locations.

Health and social care workers had high expectations that we would take their reports particularly seriously, because they have the knowledge, understanding and experience to be able to identify the most important concerns.

## **Expectations of the action CQC would take**



Health and social care workers expected us to initiate investigatory activity, such as asking clarification questions, gathering evidence or carrying out unannounced inspections. Overall, they thought a lengthy process was likely to start because of their feedback to CQC.

### **Expectations of feedback about action taken by CQC**

When asked how they would expect CQC to inform them about what has been done with their concern, health and social care workers in our focus group research indicated they expected to be kept up to date throughout our investigatory process, as well as at its conclusion. Participants expected CQC to be discreet with the details of the case, given their understanding of patient confidentiality and data protection. While they did not expect detail, they expected their contribution to be acknowledged by an email of reassurance that CQC had acted on the information provided.

### **Perceptions of how well CQC listens and acts on concerns about care**

#### **General public**

People's trust in CQC and confidence in how well we will listen to their concerns is directly related to how effective CQC is in raising public awareness, knowledge and understanding of the organisation. Some members of the public from ethnic minority groups and some members of the public with disabilities who took part in our research felt they were unlikely to trust CQC with their concerns because they had no knowledge of the organisation or its role. People from ethnic minority groups felt that CQC needed to build public confidence before expecting people to trust them with their feedback.

Disabled people in our focus groups were also concerned about whether CQC would understand that people with protected characteristics are disproportionately affected by discrimination. This was prompted by their perception that CQC's feedback about any concerns raised would be generic.

Our review of existing insight demonstrated that a lack of awareness of CQC and understanding of our role was a common theme in focus group research around giving feedback about care experiences. Participants in focus groups and interviewees highlighted that awareness of CQC's role and remit was particularly low among ethnically diverse communities, people with low digital confidence, and other marginalised groups that tend to have minimal involvement with governmental or regulatory bodies. There was a shared lack of clarity as to what falls within CQC's remit. Lack of awareness about CQC is a barrier to people raising a concern about care with us.

### **Workers in regulated health and social care services**

CQC's independent status is key. Some workers have a perception that CQC is part of the NHS system and too 'close' to the providers it regulates. Where CQC has not raised awareness, knowledge and understanding of its role, including among some health and social care workers from ethnic minority groups, people are less likely to believe that CQC listens to concerns or reports them.

For health and social care workers in our focus groups, trust and confidence in CQC was directly related to how well CQC had built awareness and knowledge among them. It was suggested that increasing knowledge and understanding of CQC's work would be likely to encourage health and care workers to trust CQC to respond to their concerns.

Health and social care workers from ethnic minority communities had low expectations of CQC responding to concerns about discrimination. These low expectations were not specific to CQC: one participant described how they had not raised an issue about discrimination (internally) due to a perception that it would not be addressed. However, another described receiving a staff feedback form before an inspection, reporting evidence of discrimination, and not receiving any personal response from CQC.

To encourage workers from ethnic minority groups to share any concerns about discrimination with CQC, it was suggested that we should:

- Create more of an understanding about how workers' feedback informs CQC's regulatory work in order to build confidence and encourage them to trust us with their feedback.
- Appreciate that the act of reporting discriminatory issues to CQC reflects a hope that they will be addressed. To foster this sense of hope, the trust implicit in the act of reporting concerns needs to be recognised and acknowledged.

## **Organisations that represent people who use services**

The perception of some organisations that represent people who use services is that there is an increasing lack of confidence in CQC due to previous mishandling or lack of feedback following people sharing experiences of care. In our annual survey of national organisations that represent people who use services, concern that CQC does not always follow up on concerns and complaints contributed to more negative impressions of CQC.

Organisations that represent people who use services have told us that the lack of response from CQC encourages representatives to bypass the established feedback channels and opt for using their professional network to directly contact CQC staff, as they believe this provides more assurance that their feedback will be acknowledged.

An internal report shared with us by the charity Relatives and Residents Association suggests that there is a perception that services will take negative action against people who raise concerns, and that CQC cannot protect people from these reprisals (including eviction from residential services).

"In services where people live many are afraid to speak out to challenge due to fear of reprisals (including, ultimately, eviction). The power imbalance is so vast and people using services are placed in such a vulnerable position, they are afraid to rock the boat. Despite CQC's assurances that issues can be raised anonymously, and people's identities protected wherever possible, many remain afraid that services will be able to identify them. This might be because the family have raised issues with the home previously, or they are the only family in a particular situation or due to the size of the home."

(Relatives and Residents Association)

## People's experiences of raising a concern about care direct with CQC

Our research found the experience people have when they raise concerns about care with CQC is mixed. Where the experience was negative the main reported concern was a lack of response to submitted feedback. This was linked to feelings of dismissal and frustration. A lack of clarity about expected next steps, estimated deadlines and potential outcomes was a consistent issue for people.

Where the experience was positive, this was driven by receiving a quick and detailed response from CQC. Those who were pleased with how CQC handled their concerns reported that they knew their feedback had led to clear and actionable learnings.

Our findings suggest we do not offer a consistent experience when members of the public raise concerns about care with us. How we respond may depend on how an inspector chooses to handle the concern, as opposed to following an agreed organisational approach.

The absence of a consistent feedback loop, that tells people how we have acted after concerns about care have been shared with us, is a major barrier to people having a good experience when they share concerns with us.

### **Context in which people raise concerns with CQC**

People were often frustrated, angry and upset due to the significant emotional distress caused by the concern they were raising, or because they had already tried other avenues of raising their concern and saw CQC as their last port of call. They tended to expect CQC to have power over the service provider in their own particular case.

In addition, several of the participants in the 1-to-1 interviews were experiencing mental health conditions or struggling with disabilities. This group felt the role of CQC was to help protect them.

### **Process of raising concerns with CQC**

Generally, participants in the 1-to-1 interviews were satisfied with the process of contacting CQC with a concern. They liked that they had the choice of the email, webform, and telephone and saw the process as very straightforward and clearly signposted. Few participants struggled to raise a concern. Some suggested, however, that certain members of the public might be excluded from raising a concern because of factors including, but not limited to literacy, a basic understanding of English, or not having the time to contact CQC.

Most participants who used the telephone service had a positive experience of raising a concern and felt listened to. Feedback about the call handlers was generally very positive, with only a small number of participants not feeling heard.

Participants generally described the call handlers as "sympathetic" and "concerned" about their experiences. Since they were often distressed or angry, they appreciated the empathetic feedback from call handlers. This was particularly the case when call handlers fed back their experiences in an affirming way, for example by agreeing that the care described was inadequate and needed to be investigated.

Call handlers were generally perceived to appear interested and participants recalled that they demonstrated a sense of urgency. Participants also noted that CQC staff had excellent listening skills, for example call handlers appeared interested, allowed participants to finish their sentences, and reflected back to participants with relevant questions.

Participants felt that call handlers knew what process to follow and how to deal with their concerns in the right way. Participants were made to feel that they had "done the right thing" and that their concern was important to CQC.

A small number of participants reported a more negative experience of reporting a concern via the phone, and recalled the call handlers as being disengaged, or not actively listening. They felt that the call handler was recording things accurately but not engaging with them about their concerns.

## **Follow up contact from CQC**

Members of the public often appeared to misunderstand the role of CQC regarding what the next steps of raising their concern would be. Many thought that CQC would investigate their case and most thought that there would be some form of dialogue and follow up with CQC, in addition to the confirmation of receipt emails. Many were therefore surprised or distressed when this didn't happen.

Almost all participants in our research felt that they would have liked to have heard back from CQC so that they could be assured that their concerns were acted upon. However, most reported that they had not heard anything further from CQC. Where this was the case, they felt the concern had gone unaddressed and felt let down by CQC as a result. Some participants were concerned that other people would continue to experience the poor care that they themselves had experienced. As a result, participants reported that they felt disappointed and let down, and some reported feeling angry. These feelings of distress were particularly strong in people who had raised more serious safeguarding concerns, or concerns about vulnerable people.

A small number of participants said they would be unlikely to report another concern in the future, as they had lost trust in CQC. A small number of participants did see positive action taken directly as a result of raising a concern with CQC, for which they were grateful, and they reported a good experience overall.

## **Follow up action**

The majority of participants were not aware of, or informed of, any action that was taken as a consequence of them raising concerns. Participants who were aware that actions were taken were mainly those who were contacted by providers to resolve issues following their contact with CQC.

Many participants were unsure if any action had been taken as a result of them raising a concern. This was because they were not informed of whether this had happened. They described their feelings about this using words such as "helpless", "annoyed", "upset" and "worried". Participants felt that they had tried to 'do their bit' but wasted their time in raising concerns.

A few participants believed that action had been taken because they observed changes themselves; others were informed by a third party that changes had occurred.

A very small number of participants understood that the service they contacted CQC about had been inspected following their concerns being raised but noted this might simply have been coincidence as they had received no follow-up communication from CQC. These participants felt this was not good enough and they were also disappointed not to have been informed about the results of the inspection.

Some participants were informed by CQC that their information had been passed onto the provider, and the provider subsequently contacted these participants to resolve things directly with them. Generally, these participants were more positive about their overall experience than participants who did not know whether any action had been taken. However, some felt that the action was not sufficient, and a couple of participants felt that services should have been 'closed down'.

## **Discrimination**

### **Discrimination by CQC**

The lack of follow up provided to people who raise a concern with CQC means that they would not necessarily know whether or not they have experienced discrimination. A small number of members of the public who had raised a concern about care with CQC who took part in our research felt the lack of follow up was due to racial or other discrimination. However, most participants in the 1-to-1 interviews felt that there was no discrimination or unfairness in the way they were treated.

One participant felt that their concerns were not taken as seriously as they might have been because they were mentally unwell at the time. This participant felt listened to by CQC when they first contacted them to raise concerns, but did not hear anything back following this. They felt frustrated and annoyed as a consequence. They considered that they would have been reassured that they were being taken seriously if they had heard back and been informed that their concerns were being looked into.

A further participant was very dissatisfied with the way that their concern had been handled by CQC – both in the way they had been treated by CQC and the fact that we had not initially intervened to address the issue, as had been expected. In the absence of any explanation for this, the participant thought they may have experienced racial discrimination.

### **Discrimination by health and social care services**

Some of the concerns raised with CQC were about issues relating to discrimination. Participants raised concerns that they (or the person that was receiving care) experienced disability, racial, sexuality and religious discrimination.

One common theme among participants who had raised issues of discrimination was that they were disappointed not to receive follow up from CQC. This was particularly marked in comparison with those raising concerns not linked to discrimination. Many felt that follow up would have been appropriate and reassure them that their concerns had been acted upon.

As almost all felt that they had been listened to in their original contact with CQC, this lack of follow-up was unexpected, as they felt they had been right to raise the issues but then felt unsure whether any investigation or action was taken as a result. This was particularly strongly felt by participants who had raised concerns that they felt were serious.

Participants who felt they experienced racial discrimination included someone who was advocating for a person who did not speak English, and had been left without services or information in their language.



Several people stated that they had been discriminated against by staff from mental health services, including participants who:

- felt they were not treated 'as a human'
- had homophobic comments made about them
- received negative comments about their faith
- were autistic and receiving treatment under the Mental Health Act
- felt the service was prioritising higher-risk patients
- felt they were not taken seriously as they were a young mum.

What does the information we collect tell us about how we listen and respond to concerns?

We receive concerns about the quality of care in regulated services through a variety of sources, but primarily through telephone calls or emails to our National Customer Contact Centre and through our online Give Feedback on Care service. All information of concern is recorded as an 'enquiry' in our systems.

Most enquiries are categorised and prioritised by our National Customer Contact Centre and allocated to an inspector. Everyone who shares information of concern with CQC who provides email contact details receives an automated email response thanking them and informing them that the information will be shared with appropriate CQC staff.

We looked at information from 41,128 enquiries, categorised as Information of Concern from members of the public between April and September 2022:

- 38.7% were received through our online Give Feedback on Care webform
- 36.3% by telephone
- 24.1% by email.

CQC does not routinely capture, in a reportable way, the action taken in response to all information of concern. This includes information of concern we receive from members of the public. The exceptions to this are action taken for:

- enquiry records that have safeguarding records created
- information of concern received through our online Give Feedback on Care service.

The actions captured against information of concern that have safeguarding records created are different to the actions captured against concerns received via our Give Feedback on Care service. There is no audit undertaken to quality assure that the 'action taken' captured in our contact management system accurately reflects what the inspector did or didn't do in response to the information received.

Of the 41,128 enquiry records, 19,705 reviewed as part of our sample have generated at least 1 safeguarding record. For those 19,705 records, the most common action was 'no further action':

- 45.7% prompted 'other actions' taken of which 54.3% were 'no further action'
- 25.8% prompted a safeguarding referral
- 14.6% prompted contact with the provider
- 11.5% prompted no action (note, there is no difference between 'no action' and 'no further action')
- 1.3% prompted an inspection to be brought forward
- 1.2% prompted a Management Review Meeting.

The most common action for concerns received via our Give Feedback on Care webform was 'unspecified' (29.9%) meaning the inspector did not select an option from the structured list to confirm what action, if any, they took. The second most common action (27.9%) was to use the information to inform inspection planning; the third most common was to contact the provider (15.9%). Only 0.2% prompted a responsive inspection.

Most concerns raised with us by members of the public are categorised as Priority 3 meaning there may have been a breach of fundamental standards (see [Receiving information and triage](#) for more information on how we prioritise information of concern). However, where data is available to indicate how CQC has responded to those concerns, the most common response is either 'unspecified' or 'no further action'. This means that we do not have assurance that some Priority 3 concerns about potential breaches of fundamental standards are being acted on appropriately.

Our review has found that our current information capture processes make it challenging to confidently report on both the volume of information received from members of the public about concerns about care and the action we have taken in response.

CQC does not collect demographic or protected characteristic information from people who raise concerns with us. This means that we are unable to identify from those concerns whether or not poorer care or discrimination is being experienced by people from different demographic groups or people with protected characteristics, and we cannot provide evidence of action or reporting in this area. Also, we cannot currently check whether people experience discrimination when we handle their concerns.

In addition, it is not possible to accurately report on:

- whether CQC had any further contact with the individual who shared concerns with us, including what that follow-up contact involved, as this data is not captured in a reportable way
- themes and trends on what members of the public are sharing with us when they raise a concern, as this data is not captured

- what action CQC has taken in response to concerns about care received from members of the public. Some information is captured for enquiries with a safeguarding record, and for enquiries made through our Give Feedback on Care webform, but this is not consistent across all concerns (for example, across all contact channels and across all prioritisation levels)
- whether individuals who shared concerns about care were satisfied with the process of sharing their concerns, including any response they received from CQC, satisfaction levels with the action taken by CQC, and what would have improved people's experience.

We do carry out some customer satisfaction tracking for contact by telephone and for ease of use of the Give Feedback on Care webform.

People who contact CQC by telephone report a high degree of satisfaction with the experience. In 2022, we received 19,954 responses to at least one of four questions. People were asked to select a number 1 to 5, with 5 being 'extremely satisfied':

- 4.60 out of 5: 'Overall how satisfied are you with the service you received today?'
- 4.78 out of 5: 'How satisfied are you with the way our advisor spoke to you today?'
- 4.53 out of 5: 'How satisfied are you that when you called us today we were able to answer and resolve your enquiry?'
- 4.44 out of 5: 'How easy it was it to contact us today?'

The survey findings are not reported by type of enquiry, such as whether the enquiry is from a member of the public raising a concern about care, a registered provider asking a question, or someone asking about registering to deliver regulated services.

People who share an experience of care with us through our Give Feedback on Care webform are invited to complete a short satisfaction survey on ease of use of the form. In January 2023, 517 people completed this short survey. The total satisfaction score for ease of completing the Give Feedback on Care webform was 95.55%. There is currently no equivalent survey for people who contact CQC via email or our general enquiries webform.

## Evaluation

There should be a thorough evaluation of how well CQC listens and acts on concerns about care raised with us by people who use services, following the implementation of recommendations from this review. This should seek to understand whether CQC has improved its practices against the following aims in this review:

- The public, workers of services registered with CQC and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner. [Aim 1]
- CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, or respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination. [Aim 3]
- Relevant CQC colleagues feel confident, skilled, empowered and supported to handle whistleblowing and information of concerns about care. [Aim 6]

Six months after this review is published, CQC should look at progress against the implementation of the recommendations. After 12 months there should be an evaluation report on the outcomes of CQC's response and this should mark the formal close of the review. The evaluation should then continue to understand the full impact of the recommendations in achieving the aims set out.

To evaluate how this review has impacted CQC's ability to listen and act on concerns about care raised with CQC by people who use services, possible methods include:

- recommendation tracking
- a survey of people who have provided feedback or raised a concern about care
- focus groups with those responsible for handling whistleblowing and information of concern about care
- interviews with organisations that represent people who use services about how well CQC listens to and acts on feedback and concerns in an inclusive manner
- analysis of whether CQC has acted on information of concern about care, and how this varies by protected characteristics
- analysis of the public awareness and sentiment tracking survey.

# Evaluation

CQC should undertake an evaluation that will identify and understand the outcomes and impact of CQC's response to this review.

## Evaluation scope

The review was undertaken in line with agreed terms of reference. These terms were then used to identify 10 agreed aims of the review. These aims are an articulation of the intended outcomes and impact that is hoped will arise from CQC's response to the review. Throughout the report recommendations have therefore been mapped to these aims. These aims are:

1. The public, workers of services registered with CQC, and other stakeholders trust CQC to listen to and act on their feedback and concerns in an inclusive manner.

2. CQC has a culture, supported by effective policies, processes and practices, to listen to, act on, or respond to concerns raised by colleagues, including advisory and complementary staff, about CQC. This means staff feel safe to speak up and that speaking up is invited, welcomed, celebrated, listened to, and responded to well.
3. CQC has a culture in place, supported by effective policies, processes and practices, to listen to, act on, or respond to information of concerns about care from workers of services and others. It does this in a way that is free from institutional or interpersonal discrimination.
4. CQC works well with partners and providers when concerns about care are raised.
5. CQC's culture, processes including governance, decision-making and outcomes comply with, and look to lead best practice regarding the Equalities Act 2010, ensuring:
  - there is a clear understanding of best practice, where discrimination is identified, addressed and, wherever possible, prevented using anticipatory measures
  - the handling of concerns about CQC raised by colleagues, including advisory and complementary staff, are free from institutional or interpersonal discrimination
  - CQC makes reasonable adjustments for CQC colleagues and CQC applicants in a timely manner and in line with best practice.
6. Relevant CQC colleagues feel confident, skilled, empowered and supported to handle whistleblowing and information of concerns about care.
7. Relevant CQC colleagues feel confident, skilled, empowered and supported to respond to concerns raised by other staff, including advisory and complementary staff, about CQC.
8. CQC has a culture, underpinned by best practice policy, processes and practices, where staff, including advisory and complementary staff, feel empowered to make a meaningful and timely contribution during change to support improvement and transformation. This should include ensuring there is learning from, and an adequate response to, feedback from formal consultation and informal engagement.

9. CQC's appointment, contracting, engagement, deployment and disengagement processes relating to advisory and complementary staff are non-discriminatory, consistent with the values of CQC and ensure employment rights are maintained.
10. Relevant CQC colleagues feel confident, skilled and empowered to deal with employment litigation, including working with internal and external lawyers.

The scope of the evaluation should include tracking the recommendations to understand the degree to which CQC has taken the action expected of it to adequately respond to the review.

It should also seek to understand the impact of CQC's response to the review by investigating whether the 10 review aims have been met.

While the focus of evaluation should be on the degree to which CQC's response has achieved the aims, it should also look to understand why these have or have not been realised. This should include where recommendations have not been implemented. Where possible, the impacts of individual recommendations for action should be identified to inform future practice.

Where there is already a substantial change underway within CQC this should typically be out of scope of the evaluation. However, where the recommendations from this review significantly impact an ongoing change, their impact should be explored. If other programmes have a negative effect on the ability of the review aims to be realised, this should be recognised in evaluation findings.

Following the publication of this review, it is recommended that CQC bring in the Independent Review Panel at month 6 and 12 to receive their feedback on the progress of the evaluation and recommendation tracking. This would support in the independent overview of CQC's progress and build confidence in CQC's determination for both delivery of recommendations and continuous improvement and evaluation of the impact.

## Timescale and reporting



There should be a report on CQC's progress on acting on recommendations 6 months after this review is published.

There should be an evaluation report setting out the outcomes of CQC's response to this review 12 months after this review is published. This should mark the formal close of this Listening, learning, responding to concerns review.

The full impact of the review is expected to take longer to deliver than 12 months. For example, cultural changes arising from changes to policy and practice will take time to emerge. Some elements of the evaluation should therefore be extended beyond the formal lifetime of the review to understand the degree to which the aims have been realised. Overall, it is expected that the evaluation should take 18 months to complete.

## Methodology

Evaluation should use mixed methods and include qualitative and quantitative analysis. It should consider involving understanding the feedback and experiences of:

- Workers in regulated health and social care services (surveys)
- CQC staff (surveys, focus groups, interviews, case reviews)
- Advisory and complementary staff at CQC (surveys, focus groups)
- CQC job applicants (surveys)
- Public (surveys)
- Partners and providers (interviews)
- Organisations that represent people who use services (interviews).

The evaluators should make sure that people contributing their feedback and experiences have their identities protected. Reporting of surveys, focus groups and interviews should ensure that no individuals can be identified.

## Methods

## Recommendation tracking

As part of our corporate performance CQC should track the delivery of the recommendations made as part of this review, alongside tracking of wider recommendations from our publications.

Monthly updates on progress and confidence should be provided to Regulatory Leadership Board, and at least quarterly updates to board sub-committees.

CQC has committed to its tracking recommendations in the corporate business plan and to provide an update in public board at the end of each quarter.

## Surveys

Where surveys are already established, for example CQC's staff 'Pulse Survey', the evaluation should use this to support the suggested methods below.

- A survey of people who have provided feedback or raised a concern about care in the 6 months preceding the publication of this review, to provide a baseline. This survey could be repeated one year after publication of the review, for people who have provided feedback or raised a concern between 6 and 12 months after publication, to understand how experiences have changed. [Aims: 1, 3, 4]
- A survey of CQC staff within 3 months of publication of the review to provide a baseline across a number of aims. This survey could include questions for those who have raised a concern about CQC in the 6 months preceding publication of the review. This survey could be repeated with all CQC staff a year after publication of the review, to understand how experiences have changed. [Aims: 1, 2, 5, 8]
- A survey of job applicants who declare a disability to understand their experiences of reasonable adjustments. The survey could be live between 3 and 12 months after the publication of this review. Analysis could be completed in 3 month tranches to understand if experiences change over this period. [Aim: 5]

- A survey for all advisory and complementary staff exiting CQC from 6 to 12 months after the publication of this review, to help identify whether processes are fair and consistent with the values of CQC and ensure employment rights are maintained. This could be sent 12 months after the publication of the review. [Aims: 2, 5, 9]

## Focus groups

- Focus groups with CQC staff to understand whether they feel safe to raise their concerns between 9 and 15 months after the publication of the review. [Aims: 1, 2, 3, 4, 5, 8]
- Focus groups with CQC colleagues who have requested reasonable adjustments to understand their experiences, 6 to 12 months after the publication of the review. [Aims: 2, 5, 8]
- Focus groups with those responsible for handling whistleblowing and information of concern about care, between 6 and 9 months after the publication of the review. [Aims: 2, 3, 6]
- Focus groups with those responsible for responding to concerns about CQC, including People Directorate colleagues, Complaints Team, and the guardian(s), raised by CQC colleagues including advisory and complementary staff(s), between 9 and 15 months after the publication of the review. [Aims: 2, 5, 7]
- Focus groups with advisory and complementary staff about their appointment, contracting, deployment, between 6 and 12 months after the publication of the review. [Aims: 1, 2, 3, 4, 5, 9]

## Interviews

- Interviews with partners and providers about how well we have worked with them when concerns about care are raised, between 12 and 15 months after the publication of the review. [Aims: 4]

- Interviews with organisations that represent people who use services about how well CQC listens to and acts on feedback and concerns in an inclusive manner, between 12 and 15 months after the publication of the review. [Aims: 1]

## Case reviews

For CQC employment tribunals concluding between 6 and 15 months after publication of review there could be case reviews by legal and HR colleagues. These case reviews could assess whether the learning from Mr Kumar's tribunal case has resulted in appropriate changes to CQC's culture, policies, processes and practices relating to employment litigation. [Aims: 4, 9, 10]

## Analysis of CQC data

- Leading indicators should be identified and tracked.
- Analysis of whether CQC has acted on information of concern about care, and how this varies by protected characteristics. This could be undertaken at 6 months and 12 months after report publication. This will look at month change and comparison to the original analysis undertaken for this review. [Aim: 3]
- Analysis of whether CQC has responded to or acted on information of concern about CQC, and how this varies by protected characteristics. [Aims: 2, 5]
- Analysis of proportion of reasonable adjustment requests met and the length of time to implement them. [Aims: 5]
- Analysis of the public awareness and sentiment tracking survey. [Aims: 1]

## Evaluation reference group

A reference group should be set up to help ensure evaluation findings hold CQC to account in achieving the aims of the review. This should include people who have been impacted by the areas of focus within the review and those responsible for implementing the recommendations.

## Limitations

There are limitations in the evaluation being able to reach those who speak up or raise concerns. This is particularly the case where concerns are raised anonymously, or contact details are inaccessible or not up to date. Hopefully action to implement this review's recommendations will help mitigate this risk.

Some quantitative measures may not reflect impact at the formal close of this review, 12 months after the review publication. Consequently, the evaluation should continue for up to 6 months beyond the end of the review to understand the longer-term impact and to support ongoing improvement. However, some of the impacts may still not have been realised by the end of the evaluation period, which could limit evaluation findings.

# Appendix A – Terminology used in this report

**Advisory and complementary staff:** In this report, we refer to advisory and complementary staff as CQC colleagues who are not fully contracted employees, but who work with us on terms of engagement. We also have Experts by Experience who we work with through a third party contract.

**Closed culture:** We define a [closed culture](#) as 'a poor culture that can lead to harm, including human rights breaches such as abuse'. In these services, people are more likely to be at risk of deliberate or unintentional harm.

**High risk concern:** In this report we use the term high risk to refer to all concerns from workers currently categorised as priority 1 and priority 2 whistleblowing, which is where the concerns involve a significant risk of harm. Our National Customer Service Centre triage all incoming concerns from workers into priority levels. This is based on the level of risk present within the information shared. Priority 1 information is the highest risk level through to priority 4, which is a low risk level. Priority 1 and 2 information contain safeguarding information. Priority 3 (medium risk) information indicates a concern that could include a breach of fundamental standards, or a significant concern.

**Protected disclosure:** The Public Interest Disclosure Act 1998 (PIDA) amended the Employment Rights Act 1996 to include protection for individuals who make protected disclosures. A 'protected disclosure' means a qualifying disclosure.

A 'qualified disclosure' applies when the worker reasonably believes that disclosing the information **is in the public interest** and the information tends to show that one or more of the following has occurred, is occurring or is likely to occur:

- a criminal offence
- a breach of a legal obligation
- a miscarriage of justice
- danger to the health or safety of any individual
- damage to the environment; or
- deliberately covering up a wrongdoing in the above categories.

**Speaking up:** A person 'speaking up' is the term we use when a worker passes on information about a concern. The issue reported will typically (although not necessarily) be something they have witnessed at work. This includes Whistleblowers

**Whistleblower:** The term 'whistleblower' is used to describe people who make a 'qualifying disclosure' about a concern at work. Where a worker suffers a detriment or is dismissed as a result, then they may have certain employment protections under the Employment Rights Act 1996 (as amended by the [Public Interest Disclosure Act 1998](#), often referred to as 'PIDA'). CQC is a 'prescribed body' organisation where a 'qualifying disclosure' can be reported to. Only workers are defined as whistleblowers in accordance with the legislation. If members of the public raise health and safety issues they are classified as raising concerns.

**Worker:** The term 'worker' is used to define a person who is directly employed by, or provides services for, a provider who is registered with CQC. The [Employment Rights Act 1996](#) defines a worker as "an individual who has entered into or works under (or, where the employment has ceased, worked under):

- a contract of employment; or
- any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

There is also an extended definition of worker that can be viewed at [section 43K of the Public Interest Disclosure Act 1998](#).