



## **Association of Directors of Adult Social Services response to the Care Quality Commission proposed changes to the Judgement Framework and Enforcement Policy**

The Association of Directors of Adult Social Services (ADASS) represents Directors of Adult Social Services in Local Authorities in England. As well as having statutory responsibilities for the commissioning and provision of social care, including the safeguarding of vulnerable adults, ADASS members often also share a number of responsibilities for housing, leisure, library, culture, arts, community services, and increasingly, Children's Social Care within their Local Authority.

### **Proposal 1**

*Following an inspection or review, we will judge providers to be either compliant or non-compliant.*

This approach will promote the development of a consistent minimum standard of care based on the Essential Standards, removing or addressing poor provision. However the loss of the "compliant with concerns" category for which "improvement actions" were set is a further shift away from providing any differentiated information about providers which meet essential standards, and thus any encouragement to improve above those essential standards.

This lack of differentiated information will make it very difficult for commissioners to provide incentives for maintaining high standards or improving standards through tiered payment systems based on quality, as without an independent assessment of quality this approach is fraught with problems.

Just as significantly a compliance only system will not provide any independent guidance to individuals who are looking for quality services.

Indeed, for these reasons, there is a very real danger that this compliance only approach may engender a slippage of care standards.

## **Proposal 2**

*Our inspections will be focused on identifying areas of non-compliance, rather than focusing on compliance. Where we see non-compliance we will continue to triangulate our evidence to reach a judgement. If we see compliance, our judgement will be that the provider is compliant.*

The shift from looking for evidence of compliance to finding evidence of non-compliance is welcomed as the current system of looking for evidence of compliance and not being able to look at other areas without reason has caused some concerns. For example Council commissioners have shared instances with us where CQC has found a service to be complaint but a visit from a Council monitoring officer, who was able to look at all aspects of the service, raised a number of serious concerns.

However there is a potential concern about the level of evidence for consistent compliance. Whilst a focus on outcomes is to be supported, ensuring systems and processes are in place to assure that outcomes for service users are consistent and improving can also be important. Without these systems and processes outcomes may be good for one person but are unlikely to be guaranteed for all.

## **Proposal 3**

*Where we judge that a provider is non-compliant with one or more of the regulations, the level of impact on people who use the service (minor, moderate or major) will inform the regulatory response we make. We will judge the level of impact on people who use the service after we have reached a judgement of non-compliance with a regulation.*

Linking the regulatory response to the seriousness of the impact on individuals is welcomed and will help to ensure that the regulatory response is proportionate and appropriate given the impact of the non-compliance.

However it is not entirely clear how the actual impact on individuals of non-compliance will be assessed with a significant risk of subjectivity in such assessments.

The proposal that the impact on clients will always be judged as major, where there is a failure to comply with the safeguarding regulations is interesting. Whilst ADASS agrees that compliance with safeguarding regulation is of great importance, this seems to depart from a focus on the outcome of the non-compliance and might be in tension with personalisation and the need sometimes to balance safeguarding with the choice to take risks.

#### **Proposal 4**

*Our level of confidence in the provider's capability will not directly affect our regulatory response. Our regulatory response will be primarily based on the significance of the non-compliance and its impact on people who use services.*

Our understanding of what is intended here is that capability will no longer affect judgements about compliance, only what enforcement action is taken as a result of non-compliance. If this is the case this proposal is supported.

#### **Proposal 5**

*The escalating scale of enforcement action will help inspectors decide which regulatory response to take. We will follow a clearer, more transparent escalation process to ensure providers achieve compliance, referred to as the enforcement escalator. We will not normally issue a second compliance action to follow up a compliance action. We will not normally extend the timescales we give providers to achieve compliance. Failure to respond to compliance or enforcement actions will usually result in an escalation of enforcement activity. However, we will always be proportionate in the action that we take and we will retain our discretion to take individual circumstances into account.*

A transparent escalation process for enforcement is welcomed and ADASS agrees that timescales to achieve compliance should not normally be extended.

#### **Proposal 6**

*We will judge the level of impact on people who use the service, including the degree of risk to which they have been exposed, for each one of the regulations where we have identified non-compliance. We will assess whether the impact of this risk is minor, moderate or major, and this will influence our regulatory response.*

Whilst a clear focus on the level of impact on people who use the services is welcomed, there is a potential issue that looking only at the impact on individuals and not including the likelihood may lead to a risk averse approach in the case of some individuals and or providers. One of the key factors in personalisation is positive risk taking, with identified benefits for specific individuals with some risks, it is hoped that the implementation of this approach will take into account positive risk taking in individual care plans.

## **Proposal 7**

*Where we issue a warning notice for non-compliance with a regulation, we will publish a summary of the notice and refer to the warning notice in the compliance report, unless representations about that notice are received and upheld. Where the provider does not comply with this notice, evidence on which the notice was based can be considered again and used as a basis for further action if compliance is not achieved.*

The proposal to refer to warning notices in the compliance report is welcomed as this will provide more transparent information to individuals and commissioners about provider failure. It is also important that adequate information around the non-compliance is available in clear and easy to understand text with an explicit statement of why the notice was put in place.

Equally important is that compliance reports are issued more promptly. At present this can take many weeks before a compliance report is in the public domain.

### **Other Comments:**

#### **Following up Non-Compliance**

The proposals state that checking that a compliance action has been addressed and completed by a provider will be done by desktop review with the provider sending evidence of compliance, and that normally it will not be followed up by a visit but there may be occasions when this happens.

It is appreciated that following up every compliance action by a visit is not possible but it would help if this were strengthened with examples of particular Regulations or Outcomes that would need addressing by a visit rather than a desk top

In addition there may be areas where other parties, for example the local authority, may have up to date direct evidence. In which case this should be sought as well as undertaking a desktop.

Whilst the proposals talk about acting swiftly there is no information about timescales. It is also not clear whether follow up visits to check compliance with a warning notice will be announced or unannounced?

**Sarah Norman, Co-Chair ADASS Standards and Performance Committee**  
**9<sup>th</sup> December 2011**