Consultation on Guidance for providers on meeting the fundamental standards and on CQC’s enforcement powers

1. The RCGP welcomes the opportunity to respond to the CQC consultation on ‘Guidance for providers on meeting the fundamental standards and on CQC’s enforcement powers’.

2. The Royal College of General Practitioners (RCGP) is the largest membership organisation in the United Kingdom solely for GPs. Founded in 1952, it has over 49,000 members who are committed to improving patient care, developing their own skills and promoting general practice as a discipline. We are an independent professional body with expertise in patient-centred generalist clinical care.

Summary

3. The RCGP has significant concerns that many of the regulations appear to assume a level of staffing and funding that is only present within large organisations and do not take into account the nature of a GP practice in comparison to that of large NHS organisations such as hospitals. General practice does not have the hierarchy or the administrative support afforded to other organisations within the NHS.

4. In addition, there are differences between GPs practices that are not taken into account within the regulations. While some organisations such as GP federations may have capacity within the workforce to meet the requirements within the regulations, single handed practices which currently make up 11.4% of GP practices in England, would neither have the administrative capacity or the relevant chain of command to follow many of the regulations. For example, if a complaint was made against a single handed GP it is difficult to see how that practice could be expected to carry out an report into the GPs behaviour. Provision has not been made within the regulations for this situation.
5. Even in the case of regulations that could apply easily to the structure of general practice the regulations fail to take into account reasonable capacity for extra work within general practice. General practice is currently facing a workforce crisis with not enough capacity within all aspects of the workforce to meet patient demand. As such general practice may be unable to meet many of the regulations without compromising on the ability to provide patient care.

6. While the RCGP strongly supports the use of care planning within general practice, we have concerns around the impact of the funding and workforce crisis on the ability of GPs to provide it, and as such do not feel it is appropriate to judge GP practices against their ability to do so. Proactive care planning is a complex procedure which requires significant buy-in from the patient, alongside the provision of lengthy consultations and continuity of care within general practice. However, the capacity issues facing general practice have impacted significantly on their ability to provide continuity of care, with patients finding themselves unable to see their preferred GP, or receive the required number of consultations.

7. The RCGP welcomes the proposed approach of the CQC of responding to failure: that it is time-limited but we also work with any partner agencies who may be better placed to secure improvement before we escalate use of our enforcement powers. Many of the powers and responsibilities of the CQC overlap with existing regulatory bodies. The RCGP holds that it would be preferable if existing regulatory bodies carried out the required enforcements to avoid duplication of powers and responsibilities.

Question one: Is it clear what providers should do to meet the requirements of the fundamental standards (regulations 9 to 19)? If not, how could it be made clearer?

8. The regulations are broadly quite clear (with important caveats given below). However, the RCGP has a number of significant concerns around the ability of general practice to meet the requirements of the fundamental standards in their current form.

9. The RCGP has concerns about the inclusion within the regulations of requirements to undertake proactive care planning (regulations 9(3)(a)/(b)) The RCGP is dedicated to promoting the use of care planning within general practice and views it as an essential way to enable the management of multimorbidities and long term conditions. However, we have long standing concerns around the impact of the workforce crisis on the ability of general practice to provide care planning. Proactive care planning requires both continuity of care between an individual GP and patient and long and frequent consultations, however in recent years it has become impossible for many GPs to deliver these aims due to a lack of capacity within the workforce. In addition, care planning requires a certain amount of ‘buy in’ and trust from the patient, something which can take a long period of time to create. As such we have concerns that GPs would fail to meet this requirement through no fault of their own.

10. Regulation 12(2)(i) states that there is a requirement that All relevant information relating to care and treatment is shared appropriately, in accordance with current legislation and guidance, in a timely manner when service users move between services and providers. While the RCGP supports this aim there are long standing barriers to information sharing within the NHS, with different aspects of the health service using different record keeping systems, with no unified way to share records and information, and some services functioning without the use of notes at all. As such it would be difficult for GPs to deliver on this aim without an associated increase in basic infrastructure.

11. Regulation 12(2)(a) and regulation 13(2) state that Risk assessments relating to the health, safety and welfare of service users are completed and reviewed regularly by people with the qualifications, skills, competence and experience to do so and Staff receive safeguarding, including child protection training to the appropriate level for their role, as part of their induction and keep up to date at appropriate intervals and are able to recognise different types of abuse. These requirement appear to be tailored towards large organisations such as hospitals, which will have a variety of administrative and clinical staff fulfilling many different roles. Depending on the nature of the practice, a GP surgery may comprise a very small (down to one) number of GPs and a limited number of administrative staff. As such it is difficult to see how general practice could provide the specialised skills to complete this task in house. If outsourcing were
required it would eat into financial and human resources that are currently being used to provide patient care.

12. In addition, the requirements for providers to seek the views of services users and stakeholders regarding the care and service that is provided (regulation 9(3)(f)) while admirable would clearly require a certain amount of administrative support to deliver. While this may be possible for the small number of GPs which operate within a federation or network, where they have combined ‘back office’ functions, for small or single handed practices it is difficult to see how they could find the capacity to undertake proactive work such as this without risking compromising patient care.

13. The RCGP strongly supports the principles behind the requirement for premises to be suitable for the purpose for which they are being used. However we have concerns that GPs would struggle to meet this requirement. As GPs are required to buy and upgrade the premises themselves, this regulation presents unique challenges which many GPs who have seen decreases in their income and staffing levels over recent years may be unable to meet through no fault of their own.

14. Regulation 18(1) states that sufficient numbers of suitably qualified, competent, skilled and experienced persons must be deployed. The RCGP strongly support this aim. There are long standing well documented issues in the general practice workforce, with not enough capacity within all aspects of the general practice workforce to meet patient demand. The RCGP estimates that at least 10,000 extra GPs are needed to meet current demand alone. As such it is difficult to see how this regulation could be met, and its existence risks penalising GPs for a situation that is outside of their control.

Question two. Is it clear what providers should do to meet the fit and proper person requirements for directors (regulation 5)? If not, how could it be made clearer?

15. The regulations are broadly clear, with the following caveat. Regulation 5(3)(d) states that The provider has processes in place to assure itself that the individual has not been at any time responsible for, privy to, contributed to, or facilitated, any serious misconduct or mismanagement in the carrying on of a regulated activity; this includes investigating any allegation of such potential behaviour. Where the individual is professionally qualified it may include fitness to practise proceedings and professional disciplinary cases. As mentioned above in paragraph twelve regulations of this type appear to relate to large organisations with a large variety of staffing roles. This is not a requirement we would expect to be carried out with ease within general practice, particularly by smaller or single handed surgeries.

Question three. Is it clear what providers should do to fulfil their duty of candour (regulation 20)? If not, how could it be made clearer?

16. The regulations make it broadly clear what should be done to fulfil the duty of candour. However the RCGP has concerns around the impact of the regulations on workforce capacity within general practice. For example regulation 20(3) states that A step-by-step account of all relevant facts known about the incident at the time should be given, in person, by one or more appropriate representatives of the provider. As mentioned above, regulations such as these require a significant amount of man hours to complete and as such would be very hard to comply with given the workforce pressures facing general practice.

Question four. Is the format and layout of the guidance easy to follow and understand?

17. The RCGP agrees that the format and layout is easy to follow and understand. However the document that has been produced is extremely long and detailed. It would be useful for GPs within practice if the CQC produced a summary of the salient points within the document.

Question five. Are the links to key legislation and guidance helpful? How could we promote these links better?

18. The links are helpful in their current form. However, we have concerns that they are not comprehensive, for example there is very little of relevance for GPs. We would suggest that
they could be updated regularly and placed somewhere where they can be easily accessed, such as on the CQC website.

**Question six. Is there anything missing from the guidance?**

19. The RCGP thinks that more consideration should be given to the differing capabilities of different providers within the NHS. Many of the regulations within this guidance appear to have been written with a large organisation in mind as they require a certain level of funding and staffing capability to be delivered and as such would be unworkable within general practice. We would like to see separate guidelines produced that take into account the differing natures and capabilities of providers within the NHS.

**Question seven. Is there anything that should be taken out of the guidance?**

20. The regulations on the subjects of care planning, data sharing and adequate workforce and premises should be taken out of the guidance. As discussed above general practice is facing a workforce and funding crisis leaving it struggling to provide patient care, as such GPs may be unable to meet the regulations regarding care planning, workforce and premises through no fault of their own. In addition, the regulations surrounding data sharing would be impossible to meet given the available infrastructure and resources. These are not aims that can be met through the imposition of regulations and sanctions and therefore have no part in this guidance.

**Question eight. Do you agree with our approach to using our enforcement powers?**

21. The RCGP has concerns about a number of the proposals regarding the CQC’s approach to using its enforcement powers, for example, the aspect of the approach that states that the CQC is no longer required to issue a warning notice before moving to prosecution. We do not think it would be appropriate to move to prosecution without warning in the context of general practice, as single handed or understaffed GP practices will not be able to make provisions to ensure the continuation of patient care if they are prosecuted without warning.

22. In addition we have concerns that a failure to provide reports on complaints or good governance would be considered a cause for action in all circumstances. As mentioned above there are long standing issues with a lack of capacity in the general practice workforce. As such we have concerns that single handed or understaffed GP practices simply would not have the capacity to deliver this aim without compromising patient care.

23. The RCGP strongly agrees with the approach laid out that Where appropriate, if the provider is able to improve the service on their own and the risks to people who use services are not immediate, we will expect them to do so rather than intervening ourselves (for example, to restrict a service). The majority of problems within general practice can be solved by the practice team without the need for outside intervention.

**Question ten. Do you agree with our proposed approach when responding to failure, that it is time-limited but we also work with any partner agencies who may be better placed to secure improvement before we escalate use of our enforcement powers?**

24. The RCGP strongly agrees with this approach and thinks that this should be the main approach of the CQC to the regulation of the services it oversees. We note that many of the proposed sanctions and enforcement powers overlap with existing powers exercised by regulatory bodies. Where possible enforcement should be carried out by the existing regulatory bodies rather than risk duplicating powers and responsibilities.