AI and Care – Its use in regular: in conversation with the Care Quality Commission

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Speakers

- **Katie Thorn**, Digital Care Hub
- **Caroline Green**, Institute for Ethics and AI, University of Oxford
- **Moritz Flockenhaus**, Regulatory Policy Manager, Care Quality Commission (CQC)
- **Daniel Casson**, Casson Consulting

Katie Thorn - Digital Care Hub: Hi, good afternoon, everybody. Welcome to our webinar, looking at AI and care in conversation with CQC. We'll be starting in just a couple of minutes. There has been a huge number of people registering for this event, so I just want to make sure people have some time to join. But just to let you know, you are in the right place.

Excellent. Numbers are still going up at the moment, so we'll start in probably about two minutes, just giving people time to find the joining link. In the meantime, hello, welcome, and good afternoon to our session on AI and care. We'll do proper introductions in a moment, but we're just giving people time to get settled.

Great. It looks like numbers have stabilised, so I think we will make a start. Thank you once again for joining us today. My name is Katie Thorn, and I'm delighted to be here with an amazing panel of people who will introduce themselves in a minute. I'm just going to run through some quick housekeeping, so everyone knows how the session will run.

This webinar is being recorded, and we will share the recording and slides with you. If you require closed captions or a transcript, you can go to settings and set up automated closed captions, which will be available live throughout. If you would like a copy of the transcript, we can email this to you afterwards with the slides and recording.

Unfortunately, we can't see any of you, and you are all on mute, so please use the chat to introduce yourself and have discussions. If you have specific questions, we have a lot of time for Q&A today. Please use the Q&A function where possible, otherwise I'll do the best I can, but I may miss questions if they are in the chat.

Our agenda for this session is a brief introduction and welcome from Caroline Green. Then we'll pass over to Moritz from CQC, and my colleague Daniel will lead a moderated Q&A for the remainder of the session. As you can see, there will be lots of time for questions, so please keep those coming through. With that, I will pass over to you, Caroline.

Caroline Green: Hi, good afternoon, everyone. I'm Caroline from the Institute for Ethics and AI at Oxford University, and I'm really pleased to open this conversation today. This is the first conversation under the new AI Alliance in Care, so it is a really big moment for us.

The new alliance resulted from the Oxford project on the responsible use of generative AI in adult social care. We are a community of good practice for AI in care. We come together to discuss the latest developments in responsible AI for care and to address gaps in knowledge and practice.

We firmly believe that AI can create a better environment for care to happen, but that we need to work together to achieve this. I want to give a special thank you to Katie Thorn and the Digital Care Hub for getting our website live and for coordinating today's meeting too. Thank you, Katie and Daniel.

In England, we do not have a law on AI as such. Instead, we operate a sector-led, principle-based approach in which regulators are required to set out their own direction on AI, applying five core AI principles to their respective industries. This also applies to the Care Quality Commission, and its guidance is crucial in setting the trajectory for how AI in care is perceived and rolled out in the future.

In spring this year, CQC published its first statement, *Artificial intelligence in health and social care: CQC's role, expectations and plans*. We have Moritz with us today to go into the statement, and we're so pleased to have you with us, Moritz, showing such an open approach to consultation.

I won't go into the details of the statement, because that's what Moritz is here for, but I would like to quote one line from it that I think is really important: "Our vision is for everyone to receive safe, effective and compassionate care."

This quote is important because it forefronts people who receive care and support, and points to the role of values in this approach. It departs from some other policy narratives in this space, where the relational side and the experience of people using care services are often secondary or completely forgotten.

The statement also aligns with the definition of responsible use of generative AI in adult social care, which we co-produced in the project that preceded the alliance. The definition is on the screen, but I'll read it out.

"The responsible use of generative AI in social care" — and we now put this into brackets because it applies to all types of AI — "means that the use of AI systems in the care, or related to the care, of people supports and does not undermine, harm or unfairly breach

fundamental values of care, including human rights, independence, choice, control, dignity, equality and wellbeing."

Again, this forefronts the values of care that we all care about. Without further ado, I will now hand over to Moritz. I also invite you all to join the alliance. Thanks so much.

Moritz Flockenhaus: Lovely, thank you. Thank you so much. It's really nice to be here with you all today, and thank you for inviting me. I'm Moritz Flockenhaus, one of the regulatory policy managers in the policy function at CQC.

My colleague Chris unfortunately can't attend today because he is having some IT issues, but hopefully this will be a really helpful session. I'll talk a little bit about CQC's role and vision as a regulator.

I won't go into too much detail. These slides will be shared, so any further information on CQC will be in the slides. I'll use the biggest chunk of time today to focus on our role around AI in health and social care, and on our views.

When I talk about our views on AI, I'm referring to AI being used to deliver or support health and social care services. I'm not talking about how we might use Copilot or any other AI internally within CQC.

Caroline has already touched on CQC's vision. For us, as a regulator, it is about making sure that everyone receives safe, effective and compassionate care. Based on the regulations we enforce, our focus is on outcomes for people using services.

As a regulator, we are not focused on specific technologies. Where technologies are used, that is great, but the question for us is what that means for people who are receiving or using services.

I always find this slide helpful because it sets out what our regulatory activities involve. We register care providers, monitor services, inspect services and rate them.

I am often asked what inspection teams do when it comes to AI, and how they assess whether AI is safe during an inspection. I'm always keen to be clear that inspection is just one of many different activities we carry out as a regulator.

The slide also shows the wide variety of services and settings that CQC regulates, and explains why we needed to develop a position on AI. The reasons listed are probably not surprising. For CQC, it is really important to understand the implications for people using services.

When we developed our position on AI, the emphasis on individuals — and what AI means for individuals — was really important.

Our role around AI is not to assess or approve individual technologies. There is a product regulator that is much better placed to do that. What puts CQC in a unique position is the regulations we enforce, most of which are based on the Health and Social Care Act.

Those regulations give us a role in ensuring that, where technology is used, it results in better and safer outcomes for people using services. Equity is also hugely important for us.

In our AI position statement, we looked through the regulations we enforce and considered what they mean for health and social care providers. For us, it is crucial that AI supports, but does not replace, human decision-making.

We also talk about transparency, choice, fairness, impartiality and governance. When we open the floor for discussion, it will be interesting to hear whether people think anything is missing from that list.

Before we open up for discussion, I should say a few words about the wider context. CQC is currently developing its sector-specific assessment frameworks. We have engaged extensively on these frameworks with health and social care providers, people using services and other stakeholders.

We are working through the feedback from those engagement sessions and deciding what further engagement or consultation is needed. That is likely to happen later in the autumn, so if you receive CQC provider bulletins, please look out for further information there.

Because the assessment frameworks are still being developed, I am keen not to go into too much detail today about what CQC will inspect or what questions inspectors will ask about AI. If possible, I'd like us to focus on our role around regulation and responsible use.

The slide also includes a few links to resources that may be helpful and of interest.

Daniel Casson: Moritz, that was a great start. Thank you very much. I'm sure there are many questions out there. I've put the link to the position statement in the chat so people can have a look at it. We'll also launch a poll in a minute asking what people think about the position statement, what is missing and what should be included.

When we were preparing, you said you wanted to focus on regulation rather than the detail of inspection, because that will come later. We really appreciate CQC's openness in engaging with providers as policies and inspection approaches are developed.

I have some questions that came in before the session, and we'll focus on the regulation side. Looking at training for people in social care and care organisations, do you think CQC would expect different groups — such as frontline care workers, supervisors, registered managers and senior managers — to engage with AI in different ways?

Moritz Flockenhaus: As a regulator, we are supportive of the use of innovative technologies. But, as I touched on earlier, the important issue is outcomes. If innovative

technologies are used, how do we ensure that this results in the best possible outcomes for people?

Those involved in using those technologies need to feel confident that they improve care quality. I would assume — although I do not have evidence to back this up — that what someone needs in order to feel confident will look very different depending on their role, job, experience and AI literacy.

Daniel Casson: That's interesting, because questions are starting to come in. How does this look for people who draw on care and support? In the Alliance, and in your work, there is a focus on people's lived experience. How does CQC draw in the experiences of people who draw on care and support?

Moritz Flockenhaus: In our regulatory approach, we use different evidence categories. During inspections, our inspection colleagues would look to engage with people who use services. We also have the Tell Us About Your Care programme at CQC.

People's experiences are one of several evidence categories, but they are a really important part of how we form judgements and make assessments.

Daniel Casson: How would that work in practice? We know AI should be integrated into existing pathways. What would good integration of people's views into assessments look like? I know that is an open question, but your views will help guide how people integrate AI into current systems.

Moritz Flockenhaus: It is a challenging question, and unfortunately I don't think there is a single answer that works across the board. But one of the regulations CQC enforces is about informed consent.

Anyone who receives care needs to be given the information they need to make an informed decision and provide consent. The level of information people need will depend on the kind of care or treatment they receive and how that care is delivered.

It is down to providers to work out, case by case, what information is needed to help people make a decision.

One of my questions is what happens if somebody chooses to decline or does not consent to AI-delivered or AI-assisted care. Are we sure it is feasible to respond to those requests? What needs to be in place to ensure there are alternatives if somebody refuses AI-enabled care?

Daniel Casson: You may be pre-empting a question from Helen Gilbert, who asks: what are the biggest regulatory challenges CQC anticipates as AI becomes more common in health and social care? You've highlighted the consent issue there.

Moritz Flockenhaus: Consent is one issue. Another really big concern for us is making sure that, as a regulator, we understand enough about new and emerging AI risks.

Daniel Casson: So you need input from providers on the risks they are seeing as well?

Moritz Flockenhaus: Absolutely. We need to understand the risks and concerns. A lot of the information we have comes through our inspection teams, but inspectors are not technical experts.

Our remit is also England-only. For example, AI technologies used in diagnostic imaging may be used internationally. If an AI tool causes harm overseas, at the moment we do not have a mechanism to pick that up.

There is also an issue around recognising instances where AI causes harm. If a medical device malfunctions and causes harm, the MHRA has the yellow card reporting system. Clinicians notify the manufacturer, and the manufacturer notifies the MHRA. But those processes can take time, and harm may occur in the meantime. The question is how we can respond more quickly.

Daniel Casson: How does that work for care homes? How does what you are saying about the MHRA and medical devices reflect social care settings?

Moritz Flockenhaus: It is a really big concern for us. From our perspective, someone somewhere has to ensure that all devices used in health and social care are regulated and safe.

In health and social care, not all AI is classified as a medical device. Even where something is classified as a medical device, that does not mean it cannot cause harm. A device may be classified for a specific intended purpose, but if it is used outside that purpose, it can still result in harm. We need to work with the MHRA and other regulators to ensure those cases can be picked up and prevented.

Daniel Casson: The national commission you mentioned was specifically for healthcare. What we may push for through the AI and Care Alliance is a national commission on social care, because so much of what you are talking about falls into a grey area. Is it the responsibility of carers? Is it about using medically approved devices? How can CQC help with guidance in that area? It feels like a regulation issue rather than an inspection issue.

Moritz Flockenhaus: I agree. In the first instance, one of our jobs at CQC is to highlight some of the issues. We know there is a lot of interest from government in encouraging the use of innovative technologies. There is also concern that regulators might be too quick to develop new regulation, which could hinder or slow down AI adoption.

But the examples we have just touched on show why, in some cases, more or different regulation is important. All AI has to be safe if it is used in health and social care.

Daniel Casson: This is really interesting. We won't go into specific regulation or inspection detail, but there is a question from Khaled Gamiet about whether CQC has

processes or training in place for inspectors to promote a culture that sees technology and innovation as a good thing.

One frustration for care providers has been a lack of uniformity among inspectors in how they deal with technology. Is there training in place for inspectors?

Moritz Flockenhaus: There are AI upskilling programmes being rolled out within CQC. The challenge you described was one of the reasons our work on the AI position statement started. It was really important that all our colleagues understand that, as a regulator, we support the use of innovative technologies where there is evidence that they are safe.

The position statement, training and upskilling programmes for inspection colleagues are some of the steps we are taking. We are not inspecting or assessing individual technologies, but we do need to understand the risks and benefits.

Daniel Casson: There are questions coming in asking whether CQC will verify or validate certain AI tools. I don't think that is CQC's role, but people need to be involved in informing your thinking. What is your response?

Moritz Flockenhaus: In short, no. At the moment, there is nothing in our regulations that would give us the power to catalogue which AI technologies are being used, or to approve individual technologies.

I don't think we need those levers, because we are not the product regulator. Our role is to ensure that, where providers use a specific technology, they have evidence to show that it results in better outcomes for people.

Daniel Casson: A question from Alex Plenty links this to existing regulation. GDPR makes clear the roles of controller and processor of data. Does the use of AI follow the same framework, or should it be viewed differently?

Moritz Flockenhaus: I'm not an expert on Information Commissioner's Office regulations, but I would assume GDPR applies irrespective of what technologies are in place. Using AI cannot mean that GDPR requirements no longer apply.

Daniel Casson: Katie has shared ICO guidance in the chat. I also want to ask about ambient voice technology in social care situations. What are your views on its use, particularly around recording meetings or care interactions?

Moritz Flockenhaus: My question would be: how do we know that using those technologies improves care? If there is evidence that ambient voice technology improves outcomes, that is great. I have seen evidence that it can result in time savings, but I have not seen evidence showing that those time savings translate into better outcomes for people.

Daniel Casson: So people need to evidence that and share their use cases. Is there a portal or best route for people to share experiences and examples with CQC?

Moritz Flockenhaus: The usual route would be through inspection colleagues and engagement colleagues. From a CQC policy perspective, we want to understand where AI is making a positive difference.

We are seeing and reading about many examples of AI being used, but I have not seen much credible evidence showing how those examples improve people's experiences. If providers have that evidence, and it can be shared with us, I will follow up with our engagement colleagues. That is precisely the kind of information we need to test whether the views in our position statement are the right ones.

Daniel Casson: Keith Easley has asked about the ethical use of AI, including World Health Organization guidance on ethics and governance of AI in health. At the moment, there is no single way people should be documenting this. Is there an ethical approach you expect providers to take?

Moritz Flockenhaus: We have to assess providers' ability to evidence that, where AI is used, it is done ethically. My personal view is that I would rather see a provider explain how they have scrutinised different standards and decided to focus on specific areas, rather than simply saying they know their AI use is ethical because they are using one particular standard.

For us, it is about understanding why providers feel confident, or perhaps less confident, that their use of AI will result in positive benefits.

Daniel Casson: Richard Ayres from Care England has made a point in the chat that AI can sometimes pick up things humans cannot. For example, it may identify a change in someone's wellbeing that could indicate deterioration earlier than a person would notice it. If the result is the right one, even if the provider is not certain how the AI reached it, how would CQC view that?

Moritz Flockenhaus: How would you know the result is the right one? At the end of the day, I think we all want the same thing: the best services and the best outcomes for people using services.

If you are using an AI that may be a medical device but has not been accredited by the MHRA, I would question where your confidence in that technology is coming from. If you are using a device that has not been properly licensed, you do not really understand what it is doing, and you are not certain whether the outputs can be verified, how much confidence can you have in those outputs?

Daniel Casson: It is an interesting issue, and again it depends on knowing the use cases.

Moritz Flockenhaus: I know it may sound as though I am deflecting the question, but at the end of the day, the issue is how a health and social care provider can decide whether the AI is trustworthy. How do you know whether it is doing the right thing?

Daniel Casson: What people are looking for is more guidance. For example, ZZ asked whether there is guidance on how to translate regulations and best practice to the frontline, where understanding of AI can be so variable. My reading of what you are saying is that this can be developed over time through experience and by opening up those channels.

Moritz Flockenhaus: Yes, although I have not discussed this with our engagement colleagues. They may have a different view. But from my perspective, if there is specific feedback on individual pieces of CQC guidance, or if some of our guidance is difficult to understand, I would hope we would be able to improve and clarify it.

Daniel Casson: There are various examples being shared in the chat, including an interesting case study from Lucy Ogilvie. How would you want people to use their learning from AI across their own organisations and share it more widely?

Moritz Flockenhaus: That is a really interesting question. I would say that whether AI is involved or not should not make a difference. We want to see mechanisms and processes where providers can learn, demonstrate best practice and share learning from experience, including when things go wrong.

Daniel Casson: Jacqui Darlington has continued to ask how CQC will engage people receiving care and support, and how you will engage everyone involved. I hope the AI and Care Alliance can be one of the routes for that, and that this conversation will continue between us.

Moritz Flockenhaus: It will have to continue. It is also a challenge for CQC. As I mentioned earlier, a lot of work is going into developing the new assessment frameworks. Entire teams have been working on planning and carrying out engagement activities for those frameworks.

It remains challenging to get resource to focus on our role in AI and to support engagement on AI-related topics, because so much emphasis within CQC is currently on the new assessment frameworks.

Daniel Casson: People are still not convinced about your answer on whether an AI is giving the right answer. They are saying that if it is actually preventing deterioration, then it is the right answer.

Moritz Flockenhaus: If you know it is preventing deterioration, then that is great.

Daniel Casson: Yes, so it is about getting that balance. We are not talking about CQC validating tools, and that can only really come from experience. A lot of people are using large language models in care, but they need to be in a closed loop, and there are clear issues around sharing data.

What would you expect from tech partners and technology companies working in care? How would you like them to work with CQC and with care providers?

Moritz Flockenhaus: From a CQC perspective, it would be helpful for technology providers to consider how their products influence outcomes for people using services.

There can be a lot of emphasis on trying to work out what data and information are needed to determine whether products are safe. That is important, of course, but knowing a specific technology is safe does not necessarily mean that using that technology will result in better outcomes for people.

Anything that helps us understand the implications for people would be a bonus when working with manufacturers or tech partners.

Daniel Casson: I prefer to call them tech partners, because they can imagine what is possible. There are also a few questions coming in about individuals who draw on care and support using AI themselves. Chris Bell asks whether that is, or could be, a concern for CQC.

Moritz Flockenhaus: I would say that depends on whether the activity or function the AI carries out is what we would deem a regulated activity.

Daniel Casson: Right. So if a provider carrying out regulated activity becomes aware of that, what happens?

Moritz Flockenhaus: Our focus is on assessing whether a whole range of activities are safe. One regulated activity is caring for someone. Another is making a diagnosis. If a technology delivers what is essentially a regulated activity, then, depending on how the service is provided, it could be in scope of our regulations.

Daniel Casson: I am trying to interpret another question, which asks how much responsibility sits with the care provider and how much sits with the individual professional carer when determining the use of AI. That feels like an issue for regulation.

Moritz Flockenhaus: It is, and the answer probably depends on who you ask. CQC regulates service providers, not individuals. From a CQC perspective, responsibility would sit with the provider, presumably with the registered manager. But professional regulators may also talk about the responsibility of individual professionals when using technology.

Daniel Casson: There has been a lot of reorganisation in government, and we are trying to understand where responsibility for AI will sit. People are concerned about the lack of joined-up policy between health, social care and tech partners. There needs to be more of a coalition of the willing. How can CQC promote that?

Moritz Flockenhaus: I think by making those points again and again. I have lost count of the number of submissions we have written for different government departments, where

we keep talking about the need for different regulators and departments to come together to ensure AI regulation and the use of AI are regulated holistically.

There is often an assumption that there is too much regulation and too much duplication between regulators, and that this slows down innovation. But the evidence I have seen suggests that clear regulation is crucial to ensuring innovative technologies can improve outcomes.

We need to continue making the case to government and to changing government departments. If departments are reorganised, we need to work out who we need to engage with in the new structures so that we can keep making those points.

Daniel Casson: Damian Green, former Deputy Prime Minister, asks whether CQC is confident it has the technical capacity and knowledge to assess such fast-moving technology. We have touched on this, but are you confident that CQC has the technical capacity, and the links with government departments, to react quickly enough?

Moritz Flockenhaus: In terms of capacity, I don't think we ever have enough. It is not our role to assess or approve individual technologies, but there are questions about how we understand and identify new AI risks when they emerge. At the moment, there is no mechanism for that, so it definitely needs more work.

Daniel Casson: Felicity Simpkins asks whether you have had any learning from AI that can be shared going forward. For example, if an AI tool contributes to a decision that leads to harm, how should bias, particularly in relation to protected characteristics, be managed? How can that be fed back and made known?

Moritz Flockenhaus: It is difficult for me to answer because I am not involved in providing care. There is a lot of emphasis on manufacturer liability and the yellow card reporting system, which are both important.

If AI results in harm, there are also questions that need to be asked about governance processes. What needs to change, not just from a technical perspective, but also in governance, to ensure a similar event cannot happen again?

Daniel Casson: So this comes back to the feedback loop we need between CQC and the care sector. We are all learning, and there needs to be more focus on that.

Moritz Flockenhaus: There are lots of different elements to that. Yes, there needs to be a feedback loop. We also need to continue looking at the technology itself and understand the wider systems in which the technology was used.

If harm occurred, how was it noticed? Who found out? What could be done next time to avoid getting into that position in the first place? There are lots of variables to consider, and the technology is just one.

Daniel Casson: We are coming close to the end, and there are still plenty of questions in the chat. We will try to deal with those over the next few months, and I hope you will come back. What are your hopes and aspirations for how care will implement AI, and how CQC can help it improve?

Moritz Flockenhaus: One hope is that we can continue to collaborate and formalise collaboration arrangements with other regulators, including regulators from other sectors. We touched on GDPR, so we need to work more closely with the Information Commissioner and the Equality and Human Rights Commission, as well as organisations that do not currently sit within health and social care but still need to be part of this work.

We need to continue engaging providers and, of course, people using services. It is relatively easy to assume that regulation and different regulators create too much burden, and that lifting regulations would speed up AI adoption. I would hope we can move the conversation on, so it becomes clearer that good regulation has a role in ensuring AI and all technology improve outcomes.

Daniel Casson: That is a good call. Looking at the poll results, very few people said they did not have a view, which is positive. Most people found the guidance helpful.

From what I can see, around 65% thought the guidance was either very helpful or somewhat helpful. Only one person said the position statement was unhelpful, so I think most people felt it was helpful to some degree.

Lucio has asked us to wrap up and think about the clear takeaways or actions from this call. Moritz, what clear actions do you want people to take away?

Moritz Flockenhaus: From a CQC perspective, one action I am taking away is to speak to our engagement colleagues about how we can gather examples of AI working well. There was a question about how providers can share good practice with us.

We also need continued engagement. At the end of the day, we need to work with providers to help them work out what they need in order to feel confident in using, and to some extent trusting, AI.

Daniel Casson: From a care provider point of view, I think this is a very good start, and CQC needs to continue that engagement. The AI and Care Alliance will hopefully be there to support that.

What we have tried to do here is give CQC that voice, and give care providers a voice too. There are some useful links in the chat, but we also want social care to be one of the sectors that recognises both the need for regulation and the need to take responsibility for working with regulators to support best practice and the best outcomes for people.

Thank you very much, Moritz. Any final words for people to take away, or anything you feel we have missed?

Moritz Flockenhaus: I think we covered everything, but thank you.

Daniel Casson: The AI and Care Alliance is now formally launched, so people can come to us with questions. You can contact Katie, Caroline, and the steering committee. We will send out more information as we go along.

Thank you very much, everyone. I'm sorry we have not been able to get through all the questions, but we have tried to start the conversation. We are getting some good feedback, and Moritz, thank you very much for the openness you have shown. We want more of that. Thank you very much.

Moritz Flockenhaus: Thank you for having me. Bye.

Daniel Casson: Thank you, Moritz. Bye-bye.

Useful links

- CQC: Artificial intelligence in health and social care: CQC's role, expectations and plans
- CQC: Give feedback on care
- AI in Care Alliance NEW WEBSITE
- Oxford Statement on the responsible use of generative AI in adult social care
- ICO: Controllers and processors
- MHRA Yellow Card: software, apps and artificial intelligence reporting
- MHRA Yellow Card reporting site
  WHO: Ethics and governance of artificial intelligence for health
- Digital Care Hub: AI and Robotics

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