

# A Guide to The Care Quality Commission (CQC)

A summary of everything you need to know

# Introduction

The Care Quality Commission (CQC) is the independent regulator of health and social care in England. They are responsible for ensuring that care services comply with current legislation and regulations and ensure the quality and safety of services meet the fundamental standards of care.

Their role consists of registering providers; monitoring, inspecting and rating services; taking action to protect people who use services and using their independent voice by publishing their findings.

## Services Regulated by the CQC

The CQC regulates a broad range of services across various service providers. It is the responsibility of each service provider to identify the regulated activities used within their service and register them. Provision of a regulated activity without being registered with the CQC is a prosecutable offence and offenders can be charged with a fine.

The services the CQC provides guidance documentation for include adult social care providers, hospitals, mental health and community health services, GP practices, health and social care in prisons and young offender institutions, primary care dental services and many others.

### Regulations relating to the provision of care

In April 2015, the 'Health and Social Care Act 2008 (Regulated Activities) Regulations 2014' came into power. Part 3 of these regulations, 'Requirements in relation to Regulated activities', is the section relevant to the provision of services. This section is split into two sub-sections: the first details the requirements relating to persons carrying out or managing a regulated activity and the second details the fundamental standards of care to which a provider should adhere.



There are 11 fundamental standards which replace the previous 16 regulations. These are:

- Regulation 9: Person-centred care
- Regulation 10: Dignity and respect
- Regulation 11: Need for consent\*
- Regulation 12: Safe care and treatment\*
- Regulation 13: Safeguarding service users from abuse and improper treatment\*
- Regulation 14: Meeting nutritional and hydration needs\*
- Regulation 15: Premises and equipment\*
- Regulation 16: Receiving and acting on complaints
- Regulation 17: Good governance
- Regulation 18: Staffing
- Regulation 19: Fit and proper persons employed

\*These regulations relate specifically to harm or the risk of harm, or are requirements imposed by CQC. Breach of these regulations is a criminal offence and CQC is able to move directly to prosecution without first serving a warning.

New guidelines have been implemented through the new regulations which include:

- Regulation 5: Fit and proper persons: directors (Section 1)
- Regulation 20: Duty of candour\*\*
- Regulation 20A: Requirement as to display of performance assessments\*\*

\*\*These regulations relate specifically to harm or the risk of harm, or are requirements imposed by CQC. Breach of these regulations is a criminal offence and CQC is able to move directly to prosecution without first serving a warning.

Under section 23 of the Health and Social Care Act 2008, the CQC is required to issue guidance documentation to help service providers to meet regulations. This document, named 'Guidance for providers on meeting the regulations', provides detailed direction and should be the first point of reference to ensure compliance. The CQC has said "the regulations set out in [the] guidance apply to all registered persons ... registered with the Care Quality Commission that carry on regulated activities."

## Monitoring and Inspecting

Monitoring and inspecting the standards of services forms a large part of the CQC's role.

The CQC has a focused approach around five key questions and key lines of enquiry (KLOEs). These act as key focuses for inspection and differ slightly for each service type, forming the framework behind all CQC inspections and ratings whilst ensuring consistency across all inspections.

The five key questions and key lines of enquiry are:

- Are they safe?
- Are they effective?
- Are they caring?
- Are they responsive to people's needs?
- Are they well-led?

The KLOEs are provided with prompts to direct the inspector's questions and can be found for each specific service provider in the provider handbooks issued by the CQC.

## Intelligent Monitoring

The CQC uses an intelligent monitoring tool to inform their decision making, which is based on 150 indicators to provide a warning of the risk to service users.

The monitored indicators relate to the five key questions and help to identify any particular area of concern within the service provision. The range of indicators includes patient experience, staff experience and analysis of any statutory returns to CQC. Final judgements for the rating of a service will never solely be based on the intelligent monitoring data and will always take into account what is found during an inspection along with information provided by the service provider.

The intelligent monitoring tool is used to allow the CQC to prioritise their inspections rather than allow them to make judgements regarding rating.

## Inspection

Inspections are usually unannounced unless it is necessary to give prior warning to ensure there is someone there to receive the inspector.

There are two types of inspection:

### Comprehensive inspection

A comprehensive inspection involves a review of the service against all five of the key questions and leads to a rating of each on a four-point scale. The results of this review are founded on a risk-based decision established on the information gathered using the intelligent monitoring tool along with the provider's previous rating.

Due to the differences in service provision across the different sectors, the inspection approach is tailored to each specific sector. However some providers sit with more than one of the CQC's inspection processes. In these cases, the CQC undertakes a combined inspection which uses an arrangement of the inspection approaches.

### Focused inspection

A focused inspection can be a follow-up of a previous inspection or a response to a particular issue or concern identified through intelligent monitoring.

Focused inspections do not look at all five key questions; instead they focus on the areas indicated that have triggered the need for inspection, such as a specific breach of the regulations or a response to a specific concern.





# Rating

CQC produces a rating for the service provided at two levels.

## Level 1 rating

In order to award ratings for the five key questions, the inspection teams base their judgements on all the available evidence under each of the KLOEs. These judgements include the CQC's ongoing relationship with the provider, the ongoing local feedback and concerns, pre-inspection information and information gathered at the inspection itself.

## Level 2 rating

When producing an overall rating for the service, the CQC inspection teams follow a set of broad principles to ensure that the decisions are consistent across service providers. The principles followed ensure the key questions are all given equal weighting.

The broad principles are as follows:

- To gain an 'outstanding' rating at least two of the five key questions need to be rated 'outstanding' and the remaining three need to be rated as 'good'
- To gain a 'good' rating there must be no more than one key question rated 'requires improvement' and there must not be a key question rated as 'inadequate'
- To gain a 'requires improvement' rating two or more of the key questions will be rated 'requires improvement'
- To gain an 'inadequate' rating two or more of the key questions will be rated 'inadequate'.

In some instances, such as a service being new or not fully operational, there will not be enough evidence to adequately rate the service. In these cases, the CQC uses the term 'inspected but not rated'.

# Reporting

Once an inspection has taken place a report is produced with the findings focused in each key question. The report states any breach of regulation that has occurred and the steps required to resolve issues, along with any recommendations of how the provider could improve their service. The provider is required to develop an action plan to help address any identified concerns and improve the quality of their service. Actions taken are followed up by the CQC through a focused inspection.

Since April 2015, care providers are required by law to display the ratings they are given by the CQC. This applies both on site and on their website, should they have one. The CQC also publishes all of their inspection ratings and reports online.

# CQC Statutory Powers

The CQC is able to take enforcement action against anyone who provides regulated activities without registration. They are able to take enforcement action against any persons who breach conditions of registration or the relevant regulations which permits prosecution. Where a breach of regulations does not constitute a criminal offence, they can enforce the standards by using their civil powers, as failure to comply with these becomes a criminal offence.

# Enforcement Policy

In February 2015, the CQC published their latest enforcement policy which detailed how they implement enforcement powers. There are 5 principles that guide the use of their enforcement powers which are:

- Being on the side of the people who use regulated services
- Integrating enforcement into their regulatory model
- Proportionality
- Consistency
- Transparency

In order to reach enforcement decisions they use a four-stage decision-making process which they refer to as the 'Enforcement Decision Tree'.

- Stage one: Initial assessment - consider and justify their response to concerns identified
- Stage two: Legal and evidential review - is there a breach of regulations or relevant requirements? (legal check) and is the evidence sufficient, credible and appropriately recorded? (evidential check)
- Stage three: Selection of the appropriate enforcement action - seriousness of concern and multiple or persistent breaches
- Stage four: Final review - sector enforcement priorities and management review meeting to decide enforcement action

## Requiring Improvement

There are three types of enforcement action that the CQC can take to require service providers make an improvement or improvements.

### Requirement Notices

Requirement notices are used when a registered provider is in breach of a regulation or has poor ability to maintain compliance with regulations, but people using the service are not at immediate risk of harm. This is only the case when assessments state the provider is able to improve its standards and in cases when the service provider has no prior history of poor performance. Once issued with a requirement notice, the provider is required to deliver a report showing how they will comply with their legal obligations along with an explanation of the action they propose to implement.

### Warning Notices

Warning notices are used when a service provider is considered to be not meeting a legal obligation. The CQC is able to serve warning notices regarding past and continuing failures to meet legal requirements. They include a timescale, which if not met generates further enforcement action. Providers are entitled to appeal but this does not stop the condition or suspension taking effect in the meantime.

### Section 29A Warning Notices

Section 29A warning notices are addressed to NHS trusts or foundation trusts. These notices can be issued for breaches of legislation and in situations when the CQC believes significant improvement is required. Again, these notices require a timescale that should be adhered to.



## Forcing Improvement

The special measures framework is used by the CQC when working with service providers who are not providing an adequate standard of care.

### **Special Administration**

For NHS trusts and foundation trusts, the CQC has the power to require Monitor (an external body) to appoint an administrator, therefore putting the provider into special administration. This is a form of time-limited, rules-based administration which results in the assigned administrator making recommendations to the NHS body. In order for the CQC to use this power, they must have first issued a Section 29A warning notice where the provider has not complied.

### **Special Measures**

Special measures are an administrative framework which aids the CQC to manage providers failing to comply with their legal requirements therefore requiring a higher than usual level of regulatory supervision. Its purpose is to raise the standard of care and provide a framework with a timeframe for providers to improve. It is the provider's legal responsibility to improve and the CQC will work closely with the provider to try and ensure that happens. Should the provider not have made the necessary improvements after an allocated time, the CQC is able to administer their civil enforcement powers, of which they have four. These are used to protect the service users.

### **Imposing, Varying or Removing Conditions of Registration**

When a provider registers with the CQC, they have routine conditions attached to their registration. However, the CQC has the right to impose additional, vary existing or remove conditions of registration.

### **Suspending Registration**

Should the CQC believe that there is a very serious concern, they may suspend registration for a length of time they feel is appropriate for the concern to be amended. However, due to the significant impact of suspension, the CQC rarely implements this.

### **Cancelling Registration**

Cancelling registration is one of the CQC's most powerful sanctions as it affects all locations where the person is providing the relevant regulated activity. Should services still be provided after a cancellation has been implemented, the registered person is liable for prosecution.

### **Urgent Procedures**

The CQC has the right to impose any of the above conditions on an urgent basis, therefore their decisions have immediate effect. Providers are entitled to appeal but this does not stop the condition or suspension taking effect in the meantime.



## Holding Providers and Individuals to Account

The CQC is now able to prosecute cases which involve registered services or regulated activities under new regulations. In order to do so, the CQC has criminal powers that can be used to hold providers to account and enforcement powers which allow them to directly prosecute individuals.

### **Criminal Powers**

The CQC has three criminal powers.

- Simple cautions – these are used to ensure that there is a formal record of any offence in which a person has admitted fault but without prosecution.
- Penalty notices – these are used in situations where the CQC would be entitled to prosecute but under their discretion they have decided a fixed penalty is a more appropriate response.
- Prosecution – is used in situations when the breach of legislation is considered to be serious, there are multiple/persistent breaches, and there is sufficient evidence to provide a realistic prospect of conviction or it is considered to be in the public's interest.

### **Holding Individuals to Account**

With the introduction of 'Regulation 5: fit and proper persons', there is opportunity to hold specific individuals to account. The CQC will consider holding a registered individual to account where: an offence has been committed with their consent or participation, or attributable to neglect on their part; there is clarity about the individual's accountability rather than the service provider; or there is a realistic prospect of conviction and it is in the public's interest. Providing a regulated activity without registration is also a prosecutable offence.

### **References:**

- Health and Social Care Act 2008 <http://www.legislation.gov.uk/ukpga/2008/14/section/23>
- Guidance for providers on meeting the regulations (March 2015) – CQC [http://www.cqc.org.uk/sites/default/files/20150324\\_guidance\\_providers\\_meeting\\_regulations\\_01.pdf](http://www.cqc.org.uk/sites/default/files/20150324_guidance_providers_meeting_regulations_01.pdf)
- Enforcement policy – CQC [http://www.cqc.org.uk/sites/default/files/20150209\\_enforcement\\_policy\\_v1-1.pdf](http://www.cqc.org.uk/sites/default/files/20150209_enforcement_policy_v1-1.pdf)



[www.healthcareea.co.uk](http://www.healthcareea.co.uk)

info@healthcareea.co.uk • 01943 885086

**Health & Social Care Division, Virtual College Ltd**

Marsel House, Stephenson's Way, Ilkley, West Yorkshire, LS29 8DD, England

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