

RIDOUTS

The law firm for health and social care providers

MASTERCLASS:

**How the CQC can restrict your business:
Cancellation, Conditions of Registration
and Coming out the other side**

In association with the National Care Association



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MASTERCLASS:

How the CQC can restrict your business:

Cancellation, Conditions of Registration and Coming out the other side



Nadra Ahmed

Chairman of the National Care Association



Caroline Barker

Director & Non-Practicing Solicitor



Why does this matter to you?

- During COVID the CQC seemingly went AWOL
- Physical inspections decreased, enforcement action was down
- Since Autumn 2021, Ridouts has seen an increase in enforcement action
- Current environment, move from timetabled inspections to 'risk' as a trigger for inspection and enforcement action



Why does this matter to you?

- 962 inspections were conducted in November, representing the highest number of inspections undertaken since June
- Of those inspections that have a recorded risk trigger (not regulatory history), 48% are triggered by information of concern
- Over the past 12 months 27% of inspections have led to civil enforcement
- The CQC has the power to cancel, suspend and place restrictions on your registration, severely impacting how you run your business including causing it cease trading all together
- No-one is exempt from coming under the scrutiny of the CQC
- CQC implementing new regulatory model, reflect new Strategy – more contemporary ratings



Notice of Proposal & Notices of Decisions

Notice of Proposal (NOP)

is a document that the CQC has to issue on a provider if it proposes to take certain action.

Notice of Decision (NOD)

is a document that, either:

- 1) the CQC has to issue after it has issued a Notice of Proposal, or
- 2) can be the first document the CQC serves when it takes urgent action against a provider.



POLL 1

What action can the CQC not take against you by issuing a Notice of Proposal or Decision?

- Prevent a home from carrying on e.g. cancel its registration
- Prevent you from admitting service users
- Cancel your provider registration with immediate effect
- Require you to send them weekly audit reports
- Stop you from providing nursing care



POLL 1: ANSWER

What action can the CQC not take against you by issuing a Notice of Proposal or Decision?

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- **Cancel your provider registration with immediate effect**
- Require you to send them weekly audit reports
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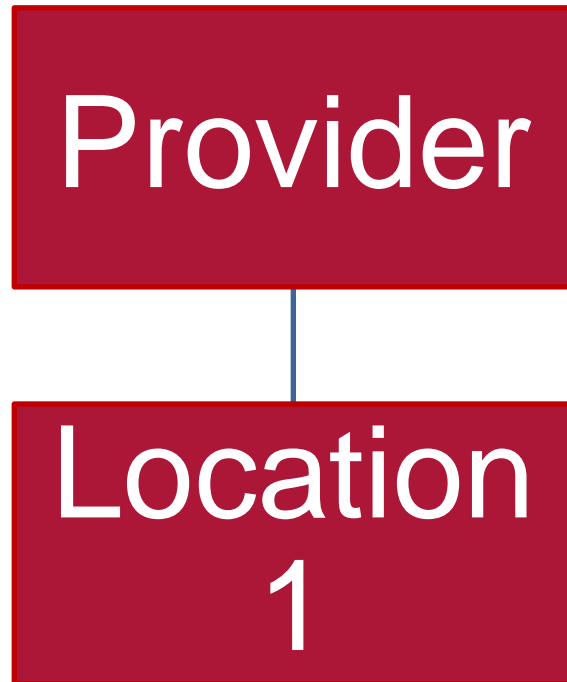
How the CQC can restrict your business

- Cancel Registration
- Suspend Registration
- Vary Registration:
 - Remove Condition; Your locations (i.e.) homes are conditions
 - Impose Condition;
 - Positive: Send audits to the CQC weekly
 - Negative: Don't admit service users without the CQC's consent
 - Vary Condition: Stop providing nursing care; Reduce service user numbers
- Refuse Registration

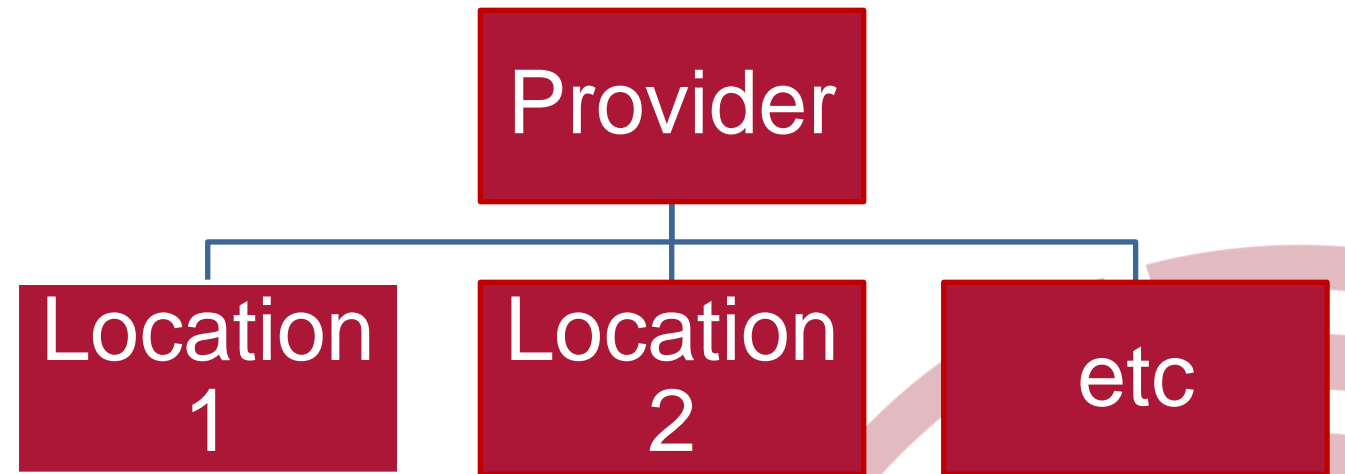


Provider Set Up

Single Location Provider



Multiple Location Provider



Different Types of Action

**Notice of Proposal
(Slow) (s.26)**



**Notice of Decision
(Slow)**



Appeal to First-Tier Tribunal

**Notice of Decision
(Urgent) (s.31)**



Appeal to First-Tier Tribunal

**Magistrates' Order
(Urgent) (s.30)**



Appeal to First-Tier Tribunal



Notice of Proposal (Slow)

- Served under section 26 of the Health and Social Care Act 2008
- Cancel, Suspend, Vary, Remove, Impose, (Refuse)

Notice of Proposal
(Slow) (s.26)



Notice of Decision
(Slow)



Appeal to First-Tier Tribunal



CQC NoP Representations
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

Telephone: 03000 616161
Fax: 03000 616171

For the attention of [REDACTED]

Served by e-mail to [REDACTED]

9 November 2021

Our reference: [REDACTED]

Dear [REDACTED]

Notice of Proposal to cancel your registration

Pursuant to Section 17(1)(c) of the Health and Social Care Act 2008 we propose to cancel your registration as a provider in respect of the regulated activity of Accommodation for persons who require nursing or personal care at [REDACTED]

A. Registration history

A1. On [REDACTED] the Care Quality Commission ("the Commission") registered you as a provider in respect of the regulated activities of Accommodation for persons who require nursing or personal care at [REDACTED]

APPENDIX 1 Certificate of Registration

B. Reasons for the Commission's proposal to cancel

B1. We are making this proposal because the above cited regulated activity(s) is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements.

C. Evidence relied upon

C1. [REDACTED]

Notice of Proposal to impose a condition on your registration for the regulated activity Accommodation for persons who require nursing or personal care and Treatment of disease, disorder or injury

The Commission's Proposal

Pursuant to Section 12(5)(b) of the Health and Social Care Act 2008 we propose to impose the following conditions on your registration:

Notice of Proposal to impose a condition on your registration for the regulated activity: Treatment of Disease, Disorder or Injury

This notice is served under Section 26 of the Health and Social Care Act 2008.

The Act and its associated regulations are available on the Commission's website: www.cqc.org.uk

The Commission's Proposal

Pursuant to Section 12(5)(b) of the Health and Social Care Act 2008 we propose to impose the following condition on your registration:



Notice of Proposal Outline

- Registration History
- Reasons

Most common reason, because the regulated activity/activities:

'is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements'

Relevant Requirements:

- Care Quality Commission (Registration) Regulations 2009
- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

- Evidence Relied Upon
- Conclusion
- Right to make representations
- Appendices (Anonymised Service Users)



Notice of Proposal (Slow)

Note:

- It is a proposal only
- You have the right to make representations
- If you don't make reps, the CQC will issue a NOD



POLL 2

How long do you have to make representations to a Notice of Proposal issued by the CQC?

- 10 working days
- 10 calendar days
- 28 working days
- 28 calendar days



POLL 2 Answer

How long do you have to make representations to a Notice of Proposal issued by the CQC?

- 10 working days
- 10 calendar days
- 28 working days
- 28 calendar days



BEWARE

- Service rules
- Has it being sent to a monitored email address?
- Statutory deadline
- Do not sit on it/ignore it/hope it will go away
- 28 calendar days is not a long time



Knock-On effect

- CQC cannot publish but will share with commissioners
- Lead to multiple fire-fighting
- LA assessing to move/telling closing
- Unsettling staff/service users
- NOP often follows poor inspection
 - factual accuracy comments/warning notice
 - media interest
 - family members



Address Each Allegation & Improvements

- Understand and address each allegation
- The CQC are supposed to consider current position
- Therefore set it out, with evidence
- Demonstrate compliance with the Regulations



POLL 3

During the Representation and Appeal process, how many times does the CQC have to re-inspect your home?

- None
- Once
- Twice
- Once a month, whilst the proceedings are ongoing



POLL 3 Answer

During the Representation and Appeal process, how many times does the CQC have to re-inspect your home?

- **None**
- Once
- Twice
- Once a month, whilst the proceedings are ongoing



Notice of Decision (slow)

- CQC consider Representations
- Say currently 60 working days but can be shorter/longer
- Issue a Notice of Decision (NOD) either:
 - Adopt or
 - Not adoptthe Proposal
- If proposal is not adopted, that is the end of proceedings



First-Tier (Care Standards) Tribunal

- If the CQC adopt the Proposal
- You have 28 calendar days to appeal to the FTT
- Beware!
 - Service
 - Statutory deadline
- If you do not appeal, the proposed action takes effect



First-Tier (Care Standards) Tribunal

- Lodge Appeal – forms
- Provide reasons, evidence and desired outcome
- CQC have 20 working days to respond – usually oppose the appeal
- Telephone Case Management Hearing (TCMH)
- Judge lay down directions
- Exchange evidence/supplementary evidence
- Witnesses
- Scott Schedule
- Date of hearing



First-Tier (Care Standards) Tribunal

- Judge and two specialist panel members
- Ask questions of the witnesses
- Will be questioned by the CQC (Legal Representation)
- You (Legal Representation) can ask questions
- Consider Evidence
- Make decision to allow or dismiss the appeal
- Or impose its own conditions



Important

- The CQC and the FTT are supposed to consider the current position
- At the time it makes its decision.
- Are you currently complying?
- BUT History is not irrelevant – have you scraped by?
- Different to FAC process – improvements since inspection can be considered



Timescales

- c. 6-9 months from start to finish
- Time – not to sit back but to embed
- CQC can withdraws its opposition to appeal
- May propose to dispose by way of conditions
- Consent Order



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(Slow) (s.26)**



**Notice of Decision
(Slow)**



Appeal to First-Tier Tribunal

**Notice of Decision
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**Magistrates' Order
(Urgent) (s.30)**



Appeal to First-Tier Tribunal



Section 31: Urgent Notice of Decision

- Notice of Proposal stage is bypassed.
- If the Commission has reasonable cause to believe that unless it acts...any person will or may be exposed to the risk of harm.
- Vary, remove or impose a condition.
- Suspend registration/Extend period of suspension
- Cancellation?
 - locations are conditions on your registration
 - remove a condition = cancel home registration



Timescales

- 28 days, from the time the NOD is given
- No Representation Stage
- Lodge Appeal to FTT
- Memorandum of Understanding – hearing within 10 working days of appeal lodged
- Speeded up version of process on NOP
- Still have evidence, witnesses, TCMH



POLL 4

If the CQC serves a section 31 Notice of Decision on you, you must start to do what it says:

- After the 28 days you have to lodge an appeal
- After you lose an appeal
- Only if your Managing Director confirms you should
- Immediately



POLL 4 Answer

If the CQC serves a section 31 Notice of Decision on you, you must to do what it says:

- After the 28 days you have to lodge an appeal
- After you lose an appeal
- Only if your Managing Director confirms you should
- **Immediately**



Why?

- It is a criminal offence to:
 - Carry on a regulated activity without being registered
 - Fail to comply with a condition of registration (without reasonable excuse)
- Can be prosecuted by the CQC
- Insurance issues
- Risk issues

- Positive or Negative Conditions
- Conditions need to be clear



Positive Condition: example

Send a monthly report to the CQC:

analysing all incidents that have resulted in harm to service users at each registered location in the preceding calendar month, and setting out the action taken (or intended to be taken) as a result of each incident. Provide a report on how incidents and notifiable events have been reported appropriately to the local authority and CQC.

- There is no definition of “harm”.
- There is no definition of “notifiable events”.
- There is no definition of “local authority” – is it the host safeguarding local authority or all commissioning local authorities?
- Is the provider required to notify every incident and event to the both local authority and CQC?
- Are incidents that have resulted in “harm” (undefined?) to be reported even if they do not reach the criteria set out in the Care Quality Commission (Registration Regulations) 2009 (which are not referred to in the Proposed Conditions)?



Negative Condition: example

You must not admit a service user without the written permission of the CQC

- What are the mechanisms? Who consents, how long, what information is required
- Back door closure? Proportionality.
- Not to be unreasonably withheld?



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Notice of Decision
(Slow)



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Notice of Decision
(Urgent) (s.31)



Appeal to First-Tier Tribunal

Magistrates' Order
(Urgent) (s.30)



Appeal to First-Tier Tribunal



Section 30: Urgent Magistrates' Order

- Cancellation of provider or manager in respect of a regulated activity

“it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being”

- Cancellation has effect from the time when the order is made
- Usually done for one home provider
- Takes effect immediately – comply or face possible prosecution



POLL 5

How much notice must you be given of the Magistrates' hearing?

- No notice
- 24 hours
- 10 working days
- 28 calendar days



POLL 5 Answer

How much notice must you be given of the Magistrates' hearing?

- **No notice**
- 24 hours
- 10 working days
- 28 calendar days



Timescales

- 28 days, from the time the Order is made
- No Representation Stage
- Lodge Appeal to FTT
- Memorandum of Understanding – hearing within 10 working days of appeal lodged
- Speeding up version of process on NOP
- Still have evidence, witnesses, TCMH



Important

- The FTT are supposed to consider the current position at the time it makes it's decision
- At a hearing within c. 6 weeks of Order



Remember

- Timescales are short
- Lots to do within time available
- Often multiple stakeholder interest
- Do not ignore
- Which email address is in use?!
- Make resources available
- Notices of Proposal, Notices of Decision & Magistrates' orders are not the end of the road!



ANY QUESTIONS ??

RIDOUTS

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Ridouts Professional Services Ltd