

RIDOUTS

FACTUAL ACCURACY COMMENTS

GEMMA NICHOLAS, ASSOCIATE SOLICITOR

OLIVER BROWN, TRAINEE SOLICITOR



29 MARCH 2023



OVERVIEW

FACTUAL ACCURACY COMMENTS

- Preparing for Inspection
- During Inspection
- Post Inspection
- FAC Process
- FAC Response
- Post FAC
- Interactive Element – Think like a Lawyer

RID OUTS

Preparing for Inspection



Preparing for Inspection

- Familiarise yourself with CQC Guidance on Inspections;
 - How CQC monitors, inspects and regulates – (includes the ratings methodology – KLOEs, characteristics, ratings principles)
 - Guidance for providers on meeting the Regulations – Regulated Activities Regulations (the Fundamental Standards) and Registration Regulations



Preparing for Inspection

- **Brief Guides for Inspection Teams** – published on the CQC website e.g. restraint, inspecting safeguarding, covert medication
- **Report Writing Guidance** - internal guidance – request through FOI (ASC v12 most recent)
- **PIR** – To be filled submitted within four weeks from the date it is sent by CQC. Ratings limiter for ‘Well-led’ if not submitted in time.



Preparing for Inspection

- Challenge your own systems as part of Quality Assurance and check for weaknesses against the CQC Key Lines of Enquiry and Prompts
- Audit documentation across your service: care plans, risk assessments and daily records should be “joined up” and demonstrate the delivery of safe, effective and responsive care and treatment
- Consider getting an independent pair of eyes to come in and assess compliance with the Fundamental Standards – Consultants can support you through the preparation phase



Preparing for Inspection

- Brief your staff on what to expect from a CQC inspection.
- Ensure you have a **Registered Manager** – not always easy – or that you are taking active steps to get one in place (rating limiter for ‘Well-led’).
- Be aware of current CQC Hot Topics.



Preparing for Inspection – Hot Topics

- CQC Inspector Conduct.
- Agency workers & Regulation 18.
- Whistleblowing
- Fire Safety
- Record Keeping



RID OUTS

During Inspection



Top tips During Inspections

- Ask questions, offer assistance and request feedback throughout to avoid surprises.
- Feel free to sit CQC inspectors down and present your service to them. Show them a presentation to start the Inspection process highlighting the positives.
- **Staff interviews** – staff should have the confidence to deal with questioning by the inspectors and to challenge where necessary.



Top tips During Inspections

- Ensure you address any immediate compliance issues that arise during the inspection and confirm that you have taken any necessary action.
- Ensure there is clarity about what additional information CQC requires during the inspection, write it down and provide it promptly.
- **Evidence is everything.** Make sure your staff are aware of where they can get information requested from the CQC. Make sure information is easily accessible.
- Ask if CQC require further information/evidence.



RIDOUTS

Post Inspection



Post Inspection

- Feedback session – make notes and ask questions
- You should be given an Initial Feedback Inspection Summary linked to the five key questions/KLOEs.
- Ask for clarification about issues that you are unclear about
- Supply additional evidence promptly and comprehensively



Post Inspection

- If there are issues about the professionalism and conduct of particular inspectors consider lodging a complaint
- **Be Cautious.** CQC Inspectors are not a providers friend.
- **Always remember** time is short. Act quickly. Respond quickly and effectively.



RID OUTS

FAC Process



FAC Process

- After an Inspection you will receive a draft inspection report by email, this is the start of the process.
- The 10 working day count begins the following day after you receive this email.
- FAC Process allows the provider to identify and inform the CQC of factual inaccuracies.
- Supply additional information that was not seen on the day of Inspection, but existed at the time of inspection.



FAC Process

- Inspection reports must be challenged within 10 working days.
- Extensions are rare. Seek legal advice early as possible.
- The Factual Accuracy Challenge is the only real opportunity to dispute allegations.
- If you do not challenge, the CQCs allegations will become the truth, critical to utilise the FAC process.



FAC Process

➤ Ratings Limiters:

- The Provider does not currently have a registered manager.
- The Provider has a condition on its registration that is not being met.
- The Provider has failed to submit statutory notifications without good reason.
- The Provider has failed to comply and return information made in a PIR request by the CQC.
- The Provider has a regulation breach.



RIDOUTS

FAC Response



FAC Response


- How to draft the Factual Accuracy Comments Challenge?
- The FAC form can be accessed here -> <https://www.cqc.org.uk/factualaccuracyform-appendix>
- Three main sections to the form

Section A	Typographical or numerical errors or, for example, incorrect job titles.
Section B (Main Section)	Information that has contributed to a judgement , but which you believe is factually inaccurate . You will need to provide supporting evidence.
Section C	Additional information, or information that was omitted , which you think we should consider. For example, you may have further examples of exemplary practice that demonstrate real benefits for people using your service, which may support a rating of outstanding rather than good.

FAC Response

- The Factual Accuracy Comments Challenge form will look like this:

Factual accuracy check form for the draft inspection report



Complete this form and return your submission to:

- email: HSCA_Compliance@cqc.org.uk or
- post: CQC HSCA Compliance, Citygate, Gallowgate, Newcastle upon Tyne, NE1 4PA

*Inspection number	
*Location/organisation ID	
Location name	

**This is on your letter with the draft inspection report. You must record these details correctly so we can identify you and consider your comments*

What does your factual accuracy challenge relate to?	Use	Select section
Typographical/numerical errors	Section A	Yes/No
Accuracy of the evidence	Section B	Yes/No
Additional or omitted information we should consider – 'completeness'	Section C	Yes/No

Completed by name (see our privacy notice)	
Position	
Date	

CQC use only

Response prepared by name	
Position	
Date	

Response reviewed by name	
Position	
Date	

20191024_9001652_factual_accuracy_form_draft_inspection_report_v3.00 (11)

1

FAC Response

- What can be challenged and included in the FAC response?
- There is no limit on what you can challenge. If you disagree with a negative comment in a draft inspection report. Challenge it.
- CQC inspectors will argue it was a 'Snapshot' of what they saw on the day.
- FAC Challenges are limited to what evidence was in place at the time of inspection.



FAC Response

➤ The Factual Accuracy Comments Challenge form will look like this:

Section A: Typographical/numerical errors in the draft inspection report

What to list here

- typographical or numerical errors

How to complete this section

- list each error on a separate line
- if the same error is repeated, identify the first time it appears and add 'throughout the report'
- provide a brief explanation of the point you wish to make and specific reference to any supporting information

Point	Hospitals only: Location or core service	Page no	Correction	For CQC use	
				Decision Yes/No/Partial	Response
A1					
A2					
A3					
A4					
A5					
A6					
A7					
A8					
A9					
A10					
A11					
A12					
A13					
A14					
A15					
A16					
A17					
A18					
A19					
A20					
A21					
A22					
A23					
A24					
A25					

If you wish to add more points and need extra rows, place the cursor outside of the righthand side of the last row and press enter.

Section B: Accuracy of the evidence in the draft inspection report

What to list here

- corrections to factually inaccurate evidence used in your inspection report
- this must relate to the position **at the time of your inspection**

How to complete this section

- list each correction point on a separate line
- provide a brief explanation of the point you wish to make and specific reference to any supporting information
- for each point, **you must specify exactly** where we can find the information that supports your correction

Point	Hospitals only: Location or core service	Page no	Correction	For CQC use	
				Decision Yes/No/Partial	Response
B1					
B2					
B3					
B4					
B5					
B6					
B7					
B8					
B9					
B10					
B11					
B12					
B13					
B14					
B15					
B16					
B17					
B18					
B19					
B20					
B21					
B22					
B23					
B24					
B25					

If you wish to add more points and need extra rows, place the cursor outside of the righthand side of the last row and press enter.

Section C: Additional or omitted information we should consider – 'completeness' in the draft report

What to list here

- additional information or information omitted from the draft report you think we should consider to inform our judgement of your service
- this must relate to the position **at the time of your inspection**

How to complete this section

- list each piece of information on a separate line
- provide a brief explanation of the point you wish to make and specific reference to any supporting information
- for each point, **you must specify exactly** where we can find the information that supports it

Point	Hospitals only: Location or core service	Page no	Additional/omitted information	For CQC use	
				Decision Yes/No/Partial	Response
C1					
C2					
C3					
C4					
C5					
C6					
C7					
C8					
C9					
C10					
C11					
C12					
C13					
C14					
C15					
C16					
C17					
C18					
C19					
C20					
C21					
C22					
C23					
C24					
C25					

If you wish to add more points and need extra rows, place the cursor outside of the righthand side of the last row and press enter.

FAC Response

Evidence tips:

- Be aware, the CQC will scrutinise and use your own evidence against you
- Check any evidence to be submitted for 'Red Flags' which include:
 - Any out of date training certificates.
 - Care plans which reveal adverse information, details of a fall, missing care signatures etc.
- The evidence is everything. It is crucial.



FAC Response

- Consider requesting copies of the inspection notes. Increasingly difficult to obtain but worth a try.
- Request a Service User and Staff key.



Why FACs are important?

Ratings	
Overall rating for this service	Requires Improvement ●
Is the service safe?	Requires Improvement ●
Is the service effective?	Good ●
Is the service caring?	Good ●
Is the service responsive?	Good ●
Is the service well-led?	Requires Improvement ●

← Before a FAC

Ratings	
Overall rating for this service	Good ●
Is the service safe?	Good ●
Is the service effective?	Good ●
Is the service caring?	Good ●
Is the service responsive?	Good ●
Is the service well-led?	Good ●

← After a successful FAC

RID OUTS

Post FAC



Post FAC

➤ Further Enforcement action

Seriousness of the breach	Recommended initial civil enforcement action
Extreme	Urgent cancellation Urgent suspension Urgent imposition, variation or removal of conditions
High	Cancellation Suspension More significant conditions (impose, vary or remove)
Medium	Conditions (impose, vary or remove) S29 Warning Notice
Low	Requirement Notice

Post FAC

- Await CQC response (which can take a considerable length of time)
- Consider a Rating Review
- Consider the merits of a complaint if necessary



Exercise 1



Brown & Nicholas Limited

ABC Care

Inspection report

7-10 Chandos Street
London
W1G 9DQ

Tel:

Website:

Date of inspection visit:

22 March 2023

Date of publication:

29 March 2023

Ratings

Overall rating for this service

Requires Improvement 

Is the service safe?

Requires Improvement 

Is the service effective?

Requires Improvement 

Is the service caring?

Good 

Is the service responsive?

Good 

Is the service well-led?

Requires Improvement 

Exercise 1

Requires Improvement ●

Is the service safe?

Our findings

Safe – this means we looked for evidence that people were protected from abuse and avoidable harm.

This is the first inspection of this newly registered service. We have rated this key question requires improvement. This meant some aspects of the service were not always safe and there was limited assurance about safety. There was an increased risk that people could be harmed.

Assessing risk, safety monitoring and management; Using medicines safely

- The provider did not always effectively manage risks to people's health and safety. We reviewed a sample of 4 care records for people using the service and found the provider sometimes did not conduct a standard care planning and risk assessment document.
- The provider was not consistently safe in the management of people's medicines. At the time of our inspection only 10 people were being supported with their medicines. We saw they had a medicines care plan in place which stipulated the medicines they were required to take, the time they were required to take them as well as the dosage. However, there was no recorded information stating what the medicines were for 1 person as well as any other relevant information such as side-effects in accordance with NICE guidance.

The above issues constituted a breach of regulation 12 (Safe care and treatment) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Exercise 1

Requires Improvement ●

Is the service safe?

Our findings

Safe – this means we looked for evidence that people were protected from abuse and avoidable harm.

This is the first inspection of this newly registered service. We have rated this key question requires improvement. This meant some aspects of the service were not always safe and there was limited assurance about safety. There was an increased risk that people could be harmed.

Assessing risk, safety monitoring and management; Using medicines safely

- The provider did not always effectively manage risks to people's health and safety. We reviewed a sample of 4 care records for people using the service and found the provider sometimes did not conduct a standard care planning and risk assessment document.
- The provider was not consistently safe in the management of people's medicines. At the time of our inspection only 10 people were being supported with their medicines. We saw they had a medicines care plan in place which stipulated the medicines they were required to take, the time they were required to take them as well as the dosage. However, there was no recorded information stating what the medicines were for 1 person as well as any other relevant information such as side-effects in accordance with NICE guidance.

The above issues constituted a breach of regulation 12 (Safe care and treatment) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Exercise 2

Question: What evidence could we collect to submit to the CQC to show that the below snippet is not a fair representation of the service?

Requires Improvement ●

Is the service effective?

Staff support, training, skills and experience

- Although the provider ensured staff had the training and skills in place to conduct their roles, care workers told us they did not feel supported. Prior to our inspection, we received concerns about care workers hours and rotas. Care workers expressed concerns that they worked long hours and were not given enough breaks.

Exercise 2

Question: What evidence could we collect to submit to the CQC to show that the below snippet is not a fair representation of the Service?

Requires Improvement 

Is the service effective?

Staff support, training, skills and experience

- Although the provider ensured staff had the training and skills in place to conduct their roles, care workers told us they did not feel supported. Prior to our inspection, we received concerns about care workers hours and rotas. Care workers expressed concerns that they worked long hours and were not given enough breaks.

Evidence to submit

- 1. Staff rotas
- 2. Evidence of staff appraisals & development chats
- 3. Meeting minutes from internal staff meetings
- 4. Staff Surveys

Exercise 3

Requires Improvement 

Is the service well-led?

Our findings

Well-led – this means we looked for evidence that service leadership, management and governance assured high-quality, person-centred care; supported learning and innovation; and promoted an open, fair culture.

Managers and staff being clear about their roles, and understanding quality performance, risks and regulatory requirements

- The provider's quality assurance systems had not identified and acted on issues of concern. The system had failed to address areas of concern in relation to a recently admitted person whose support needs the service was unable to meet. The provider was candid about these failures and advised us systems were being put in place to ensure there was no recurrence.
- There were systems in place to monitor the quality of support provided to people. People's support records were regularly reviewed. A range of regular monitoring activities took place. These included audits of records, safety, infection prevention and control, medicines administration, staff records and people's support plans.
- We found gaps in some of the service's quality assurance monitoring. Some audits had not taken place as scheduled, and a recent service audit was limited in detail. For example, actions had not been recorded where failures were identified.
- There was no system in place for monitoring behavioural charts to identify patterns over time. The service's training matrix had not been updated to reflect all the training staff had received. Although there was some evidence of training audits in the form of emails, there had been no systematic recording of these. The provider had failed to identify failures to update a person's risk assessment following incidents.

How the provider understands and acts on the duty of candour, which is their legal responsibility to be open and honest with people when something goes wrong

- The provider understood the need to report incidents to the local authority and CQC where appropriate. They described the importance of being open and honest when things went wrong.
- The provider had notified CQC about significant incidents and events at the service. The nominated individual was open and candid about recent safeguarding events, and what they had learnt from this.

Exercise 3

- Adult social care KLOEs prompts and characteristics can be found here <https://www.cqc.org.uk/sites/default/files/20171020-adult-social-care-kloes-prompts-and-characteristics-showing-changes-final.pdf>
- What are the merits of a 'ratings characteristic table' and where does it go in a FAC challenge?
- An example of the ratings characteristic table is below:

Well-Led Domain	Positive Comments	'Good' KLOE reference
	<p>"The provider was candid about these failures and advised us systems were being put in place to ensure there was no recurrence."</p>	<p>W4 - There is a strong focus on continuous learning at all levels of the organisation.</p>
	<p>"There were systems in place to monitor the quality of support provided to people. People's support records were regularly reviewed. A range of regular monitoring activities took place. These included audits of records, safety, infection prevention and control, medicines administration, staff records and people's support plans."</p>	<p>W2 - Management systems identify and manage risks to the quality of the service. They use the information to drive improvement within the service.</p> <p>W2 - The service has clear and effective governance, management and accountability arrangements.</p>
	<p>"The provider understood the need to report incidents to the local authority and CQC where appropriate. They described the importance of being open and honest when things went wrong."</p>	<p>W5 - The service is transparent, collaborative and open with all relevant external stakeholders and agencies. It works in partnership with key organisations to support care provision, service development and joined-up care.</p>
	<p>"The provider had notified CQC about significant incidents and events at the service. The nominated individual was open and candid about recent safeguarding events, and what they had learnt from this."</p>	<p>W1 - Managers and leaders genuinely welcome feedback, even if it is critical, and can demonstrate what action has been taken in response.</p> <p>W4 - There is a strong focus on continuous learning at all levels of the organisation.</p>

Exercise 3

Ratings characteristics: **WELL-LED**

Step 1

Well-led
 By well-led, we mean that the leadership, management and governance of the organisation assures the delivery of high-quality and person-centred care, supports learning and innovation, and promotes an open and fair culture.

Outstanding	Good	Requires improvement	Inadequate
There are key characteristics that make leadership of the service exceptional and distinctive. The leadership, governance and culture are used to drive and improve high-quality, person-centre care.	The service is consistently well-managed and led. The leadership, governance and culture promote the delivery of high-quality, person-centred care.	There is a lack of consistency in how well the service is managed and led. The leadership, governance and culture do not always support the delivery of high-quality, person-centred care. Regulations may or may not be met.	There are widespread and significant shortfalls in the way the service is led. Normally some regulations are not met. The delivery of high-quality care is not assured by the leadership, governance or culture in place.

W1: Is there a clear vision and credible strategy to deliver high-quality care and support, and promote a positive culture that is person-centred, open, inclusive and empowering, which achieves good outcomes for people?

Outstanding	Good	Requires improvement	Inadequate
People say that the way the service is led is exceptional and distinctive. Its vision and values are imaginative and people are at the heart of the service. They were developed	People say the service is consistently well-led. Leaders and managers shape its culture by engaging with staff, people who use services, carers and other stakeholders. It has clear, person-centred vision and values that include honesty,	People say that the service is not always well-led. The service does not have well-developed statements of its vision and values. Where they exist, they do not	People say that the service is not well-led. There is no credible statement of vision and values, and staff are not aware of or do not understand them. Leaders

Step 2

Step 3

Step 4

Polls Question 1

- **Question:** If you received the draft inspection report by email on 29 March 2023 when will the deadline be for the FAC?

- **Answers:**
 - A. 8 April 2023.
 - B. 9 April 2023.
 - C. 12 April 2023.
 - D. 11 April 2023.



Polls Question 1

- Correct Answer = C
 - Working day count starts the following day after you receive by email, not the letter date. In this instance it would be on 30 March 2023 (Day 1)
 - Working days do not include Saturday or Sunday
 - Count 10 working days from 30 March 2023 = 12 April 2023 (Day 10)



Polls Question 2

- Question: Which one of the following is NOT a Rating Limiter?
- Answers:
 - A. The provider not currently having a registered manager.
 - B. The provider having a regulation breach.
 - C. The provider failing to comply and return information made in a PIR request.
 - D. The Provider does not have up to date Statement of Purpose.



Polls Question 3

- **Question:** You receive a draft inspection report, and you notice the Inspector has failed to consider a key piece of information you know you showed them, what section in the FAC form should you mention this?
- **Answers:**
 - A. Section A.
 - B. Section B.
 - C. Section C.
 - D. Multiple sections.



Polls Question 4

➤ **Question:** Which one of the following is the approach that the CQC adopts during an Inspection?

➤ **Answers:**

- A. CQC only consider what was in place at the time of the Inspection.
- B. CQC will consider everything shown to them prior to publishing the final inspection report.
- C. CQC will consider all evidence and information sent to them, because they judge the service in its most recent position.
- D. CQC will only consider information sent in a PIR request.
- E. None of the above.



Polls Question 5

- **Question:** Which of the following options would be valid grounds for a complaint regarding a CQC inspector?

- **Answers:**
 - A. You did not get along with the inspector.
 - B. You did not like the inspection rating and suspect foul play.
 - C. The inspector behaved in an unprofessional manner, did not follow policies or procedures and made administrative mistakes.
 - D. After the FAC process ended, you noticed evidence relied upon by the CQC inspector is still incorrect.



Questions?



RIDOUTS

Contact us:

www.ridout-law.com



@Ridoutslaw



/company/Ridouts



Ridouts Professional Services Ltd