



CQC Crackdown on Registered Manager Vacancies

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Rarely a day goes by without us hearing concerns from care providers in respect of difficulties over recruitment in the sector. Particularly in respect of care homes, many of whom have recently seen staff leaving or dismissed due to the mandatory vaccination requirement.

Nurse and Manager vacancies seem particularly difficult to fill, especially in some areas. So it is perhaps not surprising that CQC's latest project, to crack down on services with no Registered Manager in post, has been met with some frustration from providers.

Over the last two weeks we have been instructed to challenge a number of letters which providers have received from CQC stating that CQC is investigating a criminal offence under Section 33 of the Health and Social Care Act 2008 for a breach of condition of registration (namely the condition requiring the provider to have a Registered Manager).

The letters typically start with the words: "IMPORTANT - THIS CORRESPONDENCE CONCERNS A SUSPECTED CRIMINAL OFFENCE" and advises providers to seek legal advice.

We understand that CQC has commenced a 'project' targeting services which have been without a Registered Manager for around 12 months or more (although in some cases the letters received relate to gaps of less than 12 months).

Section 33 makes it an offence to breach a condition of registration (such has the condition to have a manager registered with CQC as the Registered Manager). However, there is a defence if providers can show they have a "reasonable excuse" for the breach.

Whilst there is no definition of "reasonable excuse", there are a number of circumstances which could be argued amount to a reasonable excuse for not having a Registered Manager. On its website, CQC suggests that the following may be examples of a reasonable excuse for the lack of a Registered Manager:

- A new manager application has been submitted to CQC and is being processed;
- An application has been submitted to cancel or remove the location;

- A location is currently dormant; or
- A location is currently subject to other enforcement action regarding a breach of manager condition or is subject to an enforced cancellation.

In addition, if a provider has evidence of its efforts to recruit a new Registered Manager, the provider could argue that it has done all that it is able in the circumstances. After all, Registered Managers do not grow on trees (unfortunately!) and providers will understandably want to ensure they are recruiting someone with the necessary skills and experience to perform this important role.

Section 33 letter

Upon receipt of a Section 33 letter, providers have three options:

- do nothing (i.e. ignore it);
- Respond, admit the offence but put forward mitigation (reasons why you say the offence is less serious); or
- Respond, deny the offence and put forward a defence.

CQC will then consider any response you provide and could do one of three things:

- Take no further action;
- Issue a Fixed Penalty Notice (FPN); or
- Prosecute

It is quite rare for CQC to prosecute for this offence, but it has happened in the past. Most commonly, providers will be issued with a Fixed Penalty Notice for £4,000. If the fine is not paid within 28 days, CQC may prosecute. Whilst it may still be possible to persuade CQC not to prosecute by offering a defence at this stage and requesting that the FPN be withdrawn, it is far preferable to respond to CQC's initial letter with any mitigation or defence, to reduce the risk of CQC taking any further action.

Even if it is correct that you have not had a Registered Manager, there may be information which could be put

forward in your defence, or at least in mitigation, which may avoid CQC taking further action. Our CQC defence lawyers regularly support care providers with responding to allegations of criminal offences by CQC and we are often able to persuade CQC to take no further action.

If you have received a Section 33 letter or Fixed Penalty Notice, or any other form of Notice from CQC, we would suggest you seek specialist legal advice to best protect your position.

Contact

Contact our team of [CQC defence](#) solicitors to discuss how we can help on 01202 786135 or laura.guntrip@la-law.com.