



AUTHOR / KEY CONTACT

What if CQC Tries to Cancel my Registration?



Laura Guntrip
Partner

✉ Laura.Guntrip@LA-Law.com
☎ 01202 786187

Regrettably, as we move out of the pandemic and CQC is increasing the number of inspections it is undertaking, we are seeing an increase in the number of Inadequate and Requires Improvement ratings and an increase in enforcement action.

Almost 60% of CQC inspections over the past year have resulted in a rating of Inadequate or Requires Improvement, with many care providers feeling that the inspection reports do not provide a fair reflection of their service. Against the backdrop of an ongoing pandemic and well documented staffing crisis in the sector, it is hardly surprising that CQC may find some areas for improvement if they look for them.

Although CQC's guidance states that inspectors should begin by looking for evidence a service meeting the rating characteristics of a 'Good' rating, this is seemingly undermined by CQC's current risk based approach to inspecting, which means that most inspections are taking place because CQC thinks there is a risk.

As a result, we have seen an increase in enforcement notices over recent months. Some providers are receiving multiple Warning Notices with their draft inspection report. Several others have received a Notice of Proposal to impose conditions or a Notice of Proposal to cancel registration or remove a location.

Whilst CQC has a number of enforcement powers available to use, the most serious civil enforcement action is cancellation of registration. In the most serious cases, CQC will take action under Section 31 Health and Social Care Act 2008. Typically this means CQC will send a letter under Section 31, in the first instance, requesting an urgent action plan. Section 31 letters should not be ignored and we would recommend that you seek legal advice if you receive such a letter because the situation can quickly escalate if CQC is not satisfied with the action plan provided.

However, in the majority of cases, where CQC takes steps to cancel a registration, or remove a location from a registration, it will serve a Notice of Proposal to cancel or vary registration. This will often happen after a service has been rated Inadequate and placed into special measures, so it is important to take the time to challenge any factual inaccuracies in an Inadequate report, to reduce the risk of CQC taking further enforcement action.

It is important to seek specialist legal advice if you receive a Notice of Proposal.

You should read the notice carefully and understand the grounds on which CQC is alleging you are in breach of regulation. To preserve the registration, written Representations will need to be submitted to CQC within 28 days of service of the Notice of Proposal. Those Representations should clearly explain any inaccuracies in the Notice of Proposal, along with details of actions taken or being taken to achieve compliance. The Representations provide an opportunity to show CQC why it is not necessary to cancel your registration.

After considering your Representations, CQC will serve a Notice of Decision, which will either confirm no further action will be taken, or, more commonly, uphold its proposal to cancel. If no action is taken after CQC has sent the Notice of Decision, the registration will end after 28 days. However, if an appeal is submitted to the First Tier Tribunal (Care Standards) within the 28 days, the registration will continue unless or until a Tribunal orders otherwise. This is therefore an important step.

Once an appeal is submitted, CQC must provide a formal Response to the Tribunal and then the Tribunal will set a timetable for preparing the case for a hearing. This process can take some time but provided any necessary improvements are being made at the service, there is always the opportunity to negotiate with CQC.

We are currently representing several care homes and domiciliary care agencies through this process. Our specialist CQC defence solicitors have extensive experience of defending CQC enforcement action and helping care providers to prevent the cancellation of their registration. We understand that every business is different and we work with you to understand your circumstances and explore your options, to agree the most appropriate strategy to achieve your aims. In most cases, it is possible to stop cancellation action without the need for a costly Tribunal hearing, but taking action early is key. We can provide you with advice and representation throughout the process, alongside support with ancillary issues such as safeguarding matters, inquests, employment advice and assistance dealing with banks, commissioners, families and the media.

If you have received an enforcement notice, Notice of Proposal or Notice of Decision, contact our health and social care lawyers to discuss how we can help: 01202 786187 or Laura.Guntrip@LA-Law.com.