Registration under the Health and Social Care Act 2008

Warning notices

Guidance for registered persons

May 2013
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Summary

This guidance gives you an overview of how CQC uses Warning Notices in our enforcement procedures, how you can make representations about a Warning Notice, and how we may publish them.

You should read this guidance alongside our Judgement Framework and Enforcement policy.

We can issue Warning Notices to a registered person where the quality of the care they are responsible for falls below what is legally required. We can use them to tell a registered person that they are not compliant with the law – this includes the Health and Social Care Act 2008 (“the Act”), and the regulations made under it, but also it includes other legislation that they are legally obliged to comply with in delivering the service. Where the failure to meet the requirement(s) is continuing, the Warning Notice gives the registered person a timescale for them to become compliant.

We must serve a Warning Notice before we can prosecute for certain offences under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (see the appendix).

When using these notices, we will:

- Focus on the outcomes for the people using the service.
- Be proportionate.
- Be consistent.

If we serve a Warning Notice against you, you may decide to make representations about it. If we do not uphold those representations, we will refer to the Warning Notice(s) that we have served in relevant inspection reports and on your relevant location page on our website and include a summary of the notice(s). We will notify the press and may also issue a press release, summarising the notice. But we will not do so if we uphold your representations.

We will not publish the full content of a Warning Notice.
1. What are Warning Notices and when does CQC use them?

We can serve Warning Notices when:

- Regulations have not been complied with.
- A section of the Health and Social Care Act 2008 has not been complied with.
- A ‘relevant enactment’ (another Act with requirements relevant to the essential standards) has not been complied with.
- A condition placed on a registration has not been complied with.

We can serve Warning Notices for breaches that have occurred in the past but which have now ceased or have been rectified, or for a continuing breach or failure to comply.

If the Warning Notice is about continuing failure to comply, we will include an appropriate timescale for the registered person to achieve compliance.

We must issue Warning Notices in writing. All Warning Notices must state:

- The relevant regulation, section of the relevant Act or condition that the registered person is not complying with, and
- How they did not comply or are continuing not to comply with the requirement.

If a Warning Notice is being served in relation to continuing failure to comply with a legal requirement, it must also include:

- A warning that we may take further action if the registered person does not comply with the notice and the breach is continuing, and
- The timescale within which compliance must be achieved.

We can prosecute a registered person in relation to the breach of some regulations in the Health and Social Care Act 2008 if we have served a Warning Notice with a timescale for compliance, and the registered person is still failing to comply when our timescale has expired (see appendix).
2. What are the timescales for compliance in a Warning Notice?

There is no legally-set timescale for complying with a Warning Notice – CQC can set any reasonable timescale. However, we will always be proportionate when setting a timescale, and we will make sure that it is realistic and achievable, and take into account the registered person’s track record of compliance.

We will impose a tighter timescale on a service that has a poor track record of compliance, to encourage rapid improvement.

The timescales will reflect the degree of risk to the safety and welfare of people who use the service.

3. How does CQC check that requirements in a Warning Notice have been met?

You must let CQC know when you have complied with a Warning Notice that includes requirements to take action and a timescale to achieve compliance.

Please do not use a representation form to tell us this – use extra pages attached to your inspection report.

We will always check that you have made improvements.

We judge whether we need to make any further checks about compliance with the requirements, and how to do so in the most appropriate way. This might be by telephoning the registered person, asking an appropriate third party for information, or by visiting the location.

4. What does CQC do if requirements in a Warning Notice are not complied with?

We will consider the options and take the most appropriate action. This can include prosecution or taking action to vary or impose conditions of registration.

In very serious circumstances, we can take action to cancel a registration.

You can read more about our options and approach to enforcement in our enforcement policy on our website.

5. How does CQC calculate the date of service of a notice?

A Warning Notice is deemed to have been served:

- The day after it was sent, if served electronically (by email).
- On the third day after the day it was sent if served by registered post.
- On the day it was given to the person if delivered by hand.
| 6. Are Warning Notices made public? | We do not have to publish information about any warning notice that we have served. We can publish it under Schedule 2, Part 2 of the 2009 Regulations, if the registered person has had the opportunity to make representations about it. We will always make reference to enforcement action in the inspection report that we publish about a service and on the provider's relevant location page on our website. If we do not uphold any representations, we will notify the press and we may also issue a press release. Please see question 14 for more detail on our decisions about representations.

In all cases where we publish, we do not publish the full content – just a summary of the main points.

We publish the press release in the ‘news’ section of our website, and link to it from the provider's relevant location page. |
| 7. Can I make representations about, or appeal against, a Warning Notice? | There is no right of appeal against a Warning Notice, but you may make representations to CQC about it. |
| 8. What can I make representations about? | Representations against a Warning Notice may include that the Warning Notice contains an error, that it is based on inaccurate ‘facts’, that it would be unfair to publish it for some other reason or that it should not have been issued for some other reason.

These representations are separate to any factual accuracy comments that you might choose to make in relation to an inspection report. This is because the Warning Notice may contain more detail than the inspection report. But one may impact upon the other. Our guidance about making factual accuracy comments tells you how to challenge the content of an inspection report. |
| 9. Is there a time limit within which representations must be made? | You must make representations against a Warning Notice within 10 working days of receiving it. We will consider any representations at the same time as any factual accuracy comments you have made. |
| 10. Can I make representations verbally? | No, you must submit representations against the Warning Notice in writing. We have adopted this position to avoid any misunderstanding about the content of the representation, when it was received and from whom, and to make sure that any representations are not missed or not recorded. You should provide your written submission and send it either electronically (by email), by post, by fax or in person to one of our offices. If you make representations by email, please send to: HSCA_Representations@cqc.org.uk. You can also send representations by post or fax to: Care Quality Commission Citygate Gallowgate Newcastle upon Tyne NE1 4PA Fax: 03000 616172 |
| 11. Is there a standard form to make representations? | Yes. When we serve a Notice by letter we enclose a copy of the form with it. If we serve a Warning Notice electronically, we explain in the Warning Notice how to download the standard representations form. If a registered person doesn’t use the standard template, and we receive a letter from them about the Warning Notice that they have received, we will determine whether the letter constitutes a formal representation about the Warning Notice. If we determine that it is a representation, we will consider and respond to the letter using our representations process. However, we do encourage you to use the standard representation form to avoid any doubt that you are making representations. If you do not use the standard template, please ensure you make it clear that you are making representations. |
| 12. Is there a timescale for responding to representations from registered persons? | Although there is no legally-set timescale for us to respond to representations about Warning Notices, we aim to respond within five working days of receiving both any representations and any comments about factual accuracy. Any representations and factual accuracy check comments are considered together. |
In exceptional circumstances, we may be delayed in our response. We will advise the registered person about this in writing, and let them know the anticipated date that we will complete the process.

13. How does CQC consider representations?

To help us decide whether to uphold your representations, we will use information in your submission and consult with you and with other staff in the Care Quality Commission, where appropriate.

14. What decisions can CQC make when it has considered representations?

CQC may decide to do one of three things:

- Withdraw the Warning Notice, or
- Withdraw the Warning Notice and re-issue another one, or
- Publish a summary of the Warning Notice and we may issue a press release.

Although there is no legal obligation that requires CQC to withdraw a Warning Notice, we may do this in very exceptional circumstances. We may decide that we should not have issued the Warning Notice. This may be because:

- It contains a serious error.
- It is based on inaccurate ‘facts’.
- It has not been served in accordance with the legal test i.e. you must satisfy the test "it appears to the Commission that...has failed to comply with the relevant requirements....",
- It would be unfair to publish it.
- It makes requirements that we decide are not reasonable or proportionate.

We may withdraw a Warning Notice and issue another Warning Notice. We will do this if the first Warning Notice contained an error, which can be rectified, but where we still consider that a Warning Notice is appropriate.

We may confirm the accuracy and appropriateness of the Warning Notice, but decide not to publish it more widely than in the inspection report.

We may confirm the accuracy and appropriateness of the Warning Notice, and also decide that it is appropriate to publish a summary of it in a press release as well as in the inspection report.
15. What will happen when CQC makes a decision about the representations?

We will always send a letter to the registered person who has made written representations to inform them of our decision and about the next steps. We will refer to the enforcement action in the final inspection report.

It is important to remember that CQC must send a copy of any Warning Notice that we issue to relevant external bodies, such as a local authority, in line with Section 39 of Act. The decisions we make about representations will also have implications for those bodies.

If we withdraw a Warning Notice, we will not publish details of it. We will inform any relevant external bodies who have received a copy of the notice that it has been withdrawn.

If we issue a replacement Warning Notice, we will then consider whether it is appropriate to publish that new notice, and will inform you of our decision. We will send a copy of any replacement Warning Notice to relevant external bodies in line the requirements of Section 39 of the Act.

If representations are made only against publication, we consider whether to withdraw the Warning Notice or replace it at the same time as considering whether to publish it. There is no need for you to make any separate representations about withdrawal. We will inform you if we decide that the notice should be withdrawn.

If we confirm the accuracy and appropriateness of the Warning Notice, but decide that we will not publish it, we will still send copies to the relevant external bodies.

If we confirm the accuracy and appropriateness of the Warning Notice and also decide that we will publish it more widely, we will send copies to the relevant external bodies.

We will follow our Code of Practice on Confidential Personal Information when making decisions in relation to confidential information.