

# Enforcement policy

This policy sets out how we will use our enforcement powers under the Health and Social Care Act 2008, as amended by the Care Act 2014.

## Updates to this policy in 2023

Since we published this policy in 2015, we have:

- Improved the language to be more accessible, using clear, plain English.
- Used dual terminology where required, to ensure this policy works alongside both assessments using key lines of enquiry (KLOEs) and the new single assessment framework. We will remove any references to KLOEs once we are using our new regulatory approach and single assessment framework in all regions.
- Removed the diagram 'CQC's Operating Model' as it is now out of date.
- Removed the table 'Relationship between the ratings and regulations' as it is out of date.
- Removed the principle 'integrating enforcement into our regulatory model', as it will soon be out of date. We have published information about [our new approach to assessments](#) on our website.

- Removed the summary of the decision tree as we will provide a [link to our decision tree](#).
- Replaced the reference to 'sector' enforcement priorities with 'enforcement priorities' more generally.
- Updated the section on use of conditions to be more concise.
- Removed references to special measures where they concern NHS trusts as CQC and NHS England no longer use these.

# Introduction

Enforcement is one of the core components of the operating model that the Care Quality Commission (CQC) uses to achieve its purpose and perform its role.

This policy sets out the principles and approach we will follow when using our enforcement powers under the Health and Social Care Act 2008, as amended by the Care Act 2014, to improve health and adult social care services and protect the health, safety and welfare of people who use them.

This policy takes effect from 21 November 2023 and replaces the previous enforcement policy. It particularly concerns enforcement of:

- [The Health and Social Care Act 2008](#)

- [The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) (as amended by:
  - Health and Social Care Act 2008 (Registration and Regulated Activities (Amendment) Regulations 2015
  - The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012)
- [The Care Quality Commission \(Registration\) Regulations 2009](#) (as amended by:
  - The Care Quality Commission (Registration) and (Additional Functions) and Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012
  - The Care Quality Commission (Registration and Membership) (Amendment) Regulations 2012.)

In this policy, we refer to these sets of regulations as 'the regulations'.

**Note:** there will be occasions when, depending on the facts of an individual case, it will not be appropriate to follow the precise steps described in this policy. Therefore, it should be used as a general guide to good practice when carrying out or considering carrying out enforcement action. It cannot substitute for judgement in individual cases.

There are many places in this policy where we describe the steps we will take if **it appears to CQC that** there has been:

- a breach of the statutory duties of the registrant
- a breach of the regulations
- risks to people using services.

Decisions about these matters, and whether to proceed to the next state of enforcement action, should be based on the information available to CQC at that time.

We accept that there will be occasions when more facts emerge later in the process, or disputes of fact are resolved, and therefore enforcement action is no longer required. If we believe such a stage has been reached, we will cease enforcement.

When we refer in this policy to ‘failures’ by registered providers or others, this means we are referring to a breach of the statutory duties, a breach of the regulations or where the actions or omissions of the provider or others have led to unacceptable risks to people using services.

## Related guidance documents and legislation

Ensure you read our other key guidance documents with this policy:

- [Enforcement decision tree guidance](#) for selecting appropriate enforcement powers.
- [Guidance for providers on meeting the regulations](#)

This policy does not cover:

- the [Ionising Radiation \(Medical Exposure\) Regulations 2017](#) these are covered under separate primary legislation and we publish [guidance for complying with these regulations](#)
- use of section 48 of the Health and Social Care Act 2008 to carry out investigations.

CQC has powers under the [Regulation of Investigatory Powers Act 2000](#) to use directed surveillance and covert human intelligence sources and we will use them when we assess it is appropriate to do so. These powers are governed by separate legislation, policy and processes.

## Key points

- We are the primary enforcement body at a national level in England for ensuring that people using health and adult social care services receive safe services of the right quality.
- We have a wide range of enforcement powers, and this policy sets out our approach to using them.
- We will use a structured decision process to help us decide:
  - which cases should result in enforcement action
  - which enforcement powers we should use
  - which approach we should take when using our powers.

# Purpose and principles of enforcement

## Purpose of enforcement

We have 2 primary purposes when using our enforcement powers:

1. **To protect people who use regulated services from harm and the risk of harm, and to ensure they receive health and social care services of an appropriate standard.**

We may work with a provider **without using enforcement powers** to improve standards where the quality or safety of a service is below those required, but we assess the risk of harm is not immediate and we consider the provider should be able to improve standards on its own.

We may **take enforcement action** to compel improvement where the quality or safety of a service has fallen to unacceptable levels.

**2. To hold providers and individuals to account for failures in how the service is provided.**

We have powers to pursue criminal sanctions when there has been a breach of the fundamental standards of quality and safety, or some other criminal offence.

The aim of using the full range of our enforcement powers, including criminal sanctions, is to focus providers on the need for their services to meet the regulatory requirements.

When a service falls below the required standards, we will consider both purposes.

## Principles guiding the use of our enforcement powers

We will use our enforcement powers to promote our statutory objective of protecting and promoting the health, safety and welfare of people who use health and social care services. The following principles will guide our decision making:

### Being on the side of people who use regulated services

- Where appropriate, we are prepared to use the full range of our powers to ensure that people receive safe, effective, compassionate, high-quality care that meets regulatory requirements.
- The starting point for considering the use of all enforcement powers is to assess the harm, or the risk of harm, to people using a service.

### Proportionality

- We will only take action that we judge to be proportionate to the circumstances of the individual case. If we judge that the provider can improve the service on its own – and where the risks to people who use services are not immediate – we aim to work with them to improve standards rather than taking enforcement action.

## Consistency

- We aim to be consistent in applying our enforcement powers by dealing with similar cases in a similar way where possible. However, consistency does not mean we will use the same enforcement action every time a regulation is breached. Our enforcement decision tree is designed to enable us to select the appropriate power for each individual case.

## Transparency

- We will strive to be open and transparent in our approach to enforcement by:
  - publishing related information, including the criteria we use to make decisions and the processes to make appeals and representations against these decisions
  - publishing information about our enforcement activity and including it in management information reported to our public Board meetings
  - consulting on any material changes to this enforcement policy.

# How we use our enforcement powers

## What we can enforce

Firstly, providers of any regulated activity in England must be registered with CQC. We can take enforcement action against anyone who provides regulated activities without registration (section 5 of this policy).

Secondly, we can take enforcement action against registered persons (meaning registered providers, and/or registered managers) who breach either:

- conditions of their registration
- relevant sections of:
  - the Health and Social Care Act 2008
  - the [Care Quality Commission \(Registration\) Regulations 2009](#)
  - the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
  - other legislation that is relevant to achieving registration requirements.

Where breaches of regulation do not constitute a criminal offence, we can enforce the standards by using our civil powers to:

- impose, vary or remove conditions
- suspend a registration
- cancel a registration.

Failure to comply with the steps required when we use certain civil powers is a criminal offence and may result in a prosecution.

We list the regulations and the action we will take for [breaches of the regulations, including those that constitute criminal offences](#).

As well as our statutory powers, we also work with other oversight organisations to ensure they can act on concerns that we have identified. We do this where it is more proportionate, or likely to be more effective than if we act on our own.



# How we select the appropriate enforcement power

We use a 4-stage decision-making process to reach enforcement decisions. This is described in our [enforcement decision tree guidance](#).

## Enforcement priorities

As part of developing our annual business plan, we review enforcement activity that we have taken and consider whether the plan should reflect particular priorities. Our Board sets these priorities when it agrees the business plan. Enforcement priorities do not override the terms of this policy but are considered.

# Protecting people using services by requiring improvement

We use the following enforcement actions to **require** a provider to protect people who use regulated services from harm and the risk of harm, and to ensure they receive health and social care services of an appropriate standard:

- Action Plan requests (called Requirement Notices if using KLOEs)
- Warning Notices
- Section 29A Warning Notices

We use Action Plan requests if we are using the new single assessment framework and Requirement Notices if we are using KLOEs.

# Action Plan requests or Requirement Notices

Where a registered person is in breach of a regulation but people using the service are not at immediate risk of harm, we may use our power to request a report from the provider.

This is called an 'Action Plan Request' when using our single assessment framework. It is called a Requirement Notice when using KLOEs. Making such a request notifies a provider that we consider them to be in breach of their legal obligations.

The report must show how the provider will comply with these legal obligations, and what action it is taking or proposes to take to do so. Crucially this must be within a timeframe we judge to be reasonable. Failure to send us the requested report in a set timescale is an offence and could lead us to use our enforcement powers.

We will consider issuing an Action Plan request or Requirement Notice where:

- the provider is acting in breach of the regulations
- the impact on people using the service is not immediately significant
- we assess that the provider should be able to improve its standards within a reasonable timeframe
- the provider has no history of poor performance that gives rise to wider concerns.

## Warning Notices

Warning Notices notify a registered person that we consider they are not meeting:

- a condition of registration
- a requirement in the Health and Social Care Act 2008

- a regulation, or any other legal requirement that we think is relevant.

We cannot use Warning Notices against unregistered persons.

We can serve Warning Notices about past failures to meet legal requirements or about a continuing breach of a legal requirement.

Where a Warning Notice concerns a continuing breach of a legal requirement, it will include a timescale by when improvements must be achieved. If a registered person has not made the necessary improvements within the timescale, we will consider further enforcement action. This could lead to further action under civil or criminal law.

The enforcement decision tree published with this policy specifically prompts our operational colleagues to consider persistent concerns and the ability to improve where concerns are identified.

We aim to follow up every Warning Notice through an appropriate form of check (including unannounced site visits where necessary) within 3 months of the date set in the Notice.

The regulations allow us to publish Warning Notices if we give registered persons the opportunity in advance to make representations about the proposed publication.

## Section 29A Warning Notices for NHS trusts

Section 29A of the Health and Social Care Act makes additional provision for a [Section 29A Warning Notice](#) that is addressed to NHS trusts or NHS foundation trusts. We may issue such a notice where we judge an NHS trust requires significant improvement. Significant improvement is not necessarily restricted to breaches of legislation but could be broader.

When issuing a section 29A Warning Notice:

- We will use the same criteria for deciding whether to issue other Warning Notices.
- We will set a timescale for the significant improvements required to meet the legal obligations of the NHS body or to address the matters set out in the Notice.
- We will allow the NHS body to make representations in the same way as other Warning Notices and will have the same expectations for publication and follow-up.

We may use notices under Section 29A as part of the NHS Single Failure Regime. This is considered in section 4 of the policy as part of special measures.

# Protecting people using services by forcing improvement

We use the following **civil enforcement powers** to **force** a provider to protect people who use regulated services from harm and the risk of harm, and to ensure they receive health and social care services of an appropriate standard:

- Impose, vary or remove conditions of registration
- Suspend registration
- Cancel registration
- Urgent procedures
- Special measures – a time limited approach ensures inadequate care doesn't continue
- Co-ordination with other oversight bodies

# Impose, vary, or remove conditions of registration

Registered persons may have routine conditions attached to their registration. These conditions may include the locations where the regulated activity can be carried on or managed.

These are usually agreed when we receive an application for registration.

We may also choose to impose, vary, or remove conditions of registration under certain circumstances.

For example, we may use a condition to stop a regulated activity at one location but allow the provider to continue providing services at its other locations. This allows us to remove the condition when the concern has been addressed. We can apply conditions at whole-provider level and/or at certain targeted geographic locations.

We can also use conditions to require a registered person to take some action where further improvement is necessary.

We design and communicate these conditions in so that they explain what we require to be achieved but leave the provider to decide exactly how that will be delivered. We will not define precisely how a provider should operate or manage its service. It should be the provider's choice to decide precisely how to operate its business, as long as it complies with all the relevant legal requirements.

## Suspend registration

We can suspend the registration of a registered person for a specified period. This period can also be extended if we feel it is necessary. This power may allow us to compel the provider to address a specific concern within a fixed period, for example, by hiring new staff.

If a provider carries on providing a regulated activity after their registration is suspended, that is an offence for which CQC may prosecute.

## Cancel registration

One of our most powerful sanctions is to cancel a registration. As with suspension, this will affect all the locations where the registered person carries on or manages the relevant regulated activity. Cancellation normally follows considerable efforts to get registered persons to meet the legal requirements, including taking [special measures](#). However, where appropriate we will use the cancellation process without following other processes first. Cancellation applies to all locations where the registered person carries on regulated activity. If providers still carry on providing a regulated activity after their registration has been cancelled, that is an offence for which CQC may prosecute.

## Urgent procedures

We will use urgent procedures where the evidence demonstrates that:

- unless there is an urgent use or amendment of conditions, or urgent suspension of registration, a person will or may be exposed to harm
- unless we apply to a Justice of the Peace for the urgent cancellation of registration, a person will be exposed to serious risk to their life, health, or wellbeing.

We have the right to impose, vary or remove conditions or suspend a registration on an urgent basis and with immediate effect. Providers are entitled to appeal against the use of these urgent powers, but this does not prevent the condition or suspension taking effect.

## Cancelling a provider's registration on an urgent basis

If we wish to cancel a provider's registration using urgent procedures, we must apply to a Justice of the Peace for a court order. In these circumstances we will, where reasonably practicable:

- tell the registered person in advance about our application to cancel their registration using urgent procedures
- only make an application without telling and involving the registered person in exceptional circumstances, such as when their whereabouts are not known and after we have made considerable efforts to locate them.

## General provisions about the use of urgent powers

When serving an Order or Notice of Decision on a registered person using an urgent procedure it will always include information to explain:

- our memorandum of understanding with the First-tier Tribunal (Care Standards) about a 'fast track' option for appeals
- how the registered person can appeal against the urgent cancellation order or notice
- that unless there is an urgent use or amendment of conditions, or urgent suspension of registration, a person will or may be exposed to harm
- that unless we apply to a Justice of the Peace for the urgent cancellation of registration, a person will be exposed to serious risk to their life, health, or wellbeing.

## When providers do not comply when we use these powers

It is a criminal offence not to comply with conditions of registration, or to continue to provide a regulated activity after registration has been suspended or cancelled for any reason. This includes where the breach that caused the conditions, suspension or cancellation is not in itself a criminal offence.

Breaches of such provisions can amount to a serious offence, which is set out in CQC's criteria for prosecution.

## Special administration for NHS trusts and foundation trusts

For NHS foundation trusts, we have powers to require NHS England to appoint an administrator and thereby place the foundation trust in 'special administration'. Special administration is a form of time-limited, rules-based administration that will result in an administrator making recommendations that are designed to ensure that the NHS body improves its standards so that it provides secure, sustainable, and high-quality services. These powers are set out in the Care Act 2014.

To use these powers, we must first have issued a section 29A Warning Notice and be satisfied that the provider has not complied with it. Before requiring appointment of an administrator, we will consult the Secretary of State for Health and Social Care and NHS England and Improvement (as appropriate). We will then consult:

- the provider
- the board, anybody that the trust provides services to
- any other people or organisations that we judge appropriate.

As with cancellation of registration, using this power would normally follow considerable efforts to get the provider to improve.

## Special measures



Special measures are an administrative framework that helps CQC to manage providers that are failing to comply with their legal requirements and require a higher than usual level of regulatory supervision. For these providers, special measures help us to deliver our statutory functions.

Part of any special measures regime is the effective use of enforcement powers to ensure that improvements are made to the standard of care provided by the registered provider. A provider that is operating under special measures may also be working under the close supervision of another oversight body. Where appropriate, we will work closely with relevant oversight bodies to ensure that the registered provider makes improvements to the standards of service provision.

The purpose of special measures is to:

- ensure that providers found to be providing inadequate care do not continue to do so
- provide a framework within which we can use our powers, including enforcement powers, in response to inadequate care standards or other regulatory failures
- provide a framework for us to work with other relevant oversight bodies, including signposting the provider to another relevant oversight body or other organisation, to help ensure that improvements in standards and regulatory compliance are achieved
- provide a clear and consistent timeframe within which providers are required to improve their quality of care so that they meet the regulatory requirements. If providers do not make improvements, we are likely to seek to exercise our powers to cancel their registration.

Special measures only apply to services we regulate. They are usually triggered by ratings of inadequate care, rather than by individual breaches of regulations. Ratings of inadequate care will generally include a breach of regulations, but they are a rounded assessment of the overall effect on people of how a service is provided, including how the provider meets individual regulations within that.

For services that we do not rate, or where an issue arises in a rated service, but it does not change the rating, we will usually continue to use the full range of our enforcement powers as appropriate, without the special measures framework. We will still be able to use our enforcement powers as appropriate during the period when a provider is in special measures.

Special measures work differently in different types of services such as:

- in primary care, where we work closely with NHS England, professional regulators, and others
- in other services, including adult social care and independent healthcare, that do not all have a public sector commissioner, or where services are operated by corporate providers or single entities.

For each sector in which we use special measures, we will issue relevant information alongside this policy, in line with its principles and approach. This guidance will take account of the characteristics of the sector, the needs of people who use these services, and the roles of other oversight bodies, improvement agencies and corporate providers. It will always include:

- Clear entry criteria that will trigger special measures, linked to inadequate ratings.
- Time-limited periods for providers to make the necessary improvements so that they are not providing inadequate care.
- Consideration of whether an extension of the time limit will be possible, and if so in what circumstances, through a follow-up inspection.
- Clear criteria for providers exiting special measures, linked to improvement in ratings.
- A clear approach to providers that do not improve and continue to have a rating of inadequate at the end of special measures.

We will work closely with other organisations or oversight bodies in the system to ensure that providers do not continue to provide inadequate care and that they improve during the special measures period. It is the provider's legal responsibility to improve, and we will work with the provider to make that happen.

When one or more of a provider's services is placed in special measures, we will assess the wider impact of this on the quality of care provided in its other services.

Special measures are also reflected in the enforcement decision tree that accompanies this policy. In particular, the criteria for the use of our power to cancel registration will be triggered where serious concerns are identified and have not been improved within the timeframe that we set.

# Holding providers and individuals to account

We can use a variety of methods to hold providers and individuals to account for failures in how the service is provided.

## **Our criminal powers include using:**

- Simple cautions
- Penalty notices
- Prosecution

## **To hold individuals to account we can use:**

- Fit and proper person requirement
- Prosecution of individuals

We have set out the following prosecution criteria to ensure there is coherence and consistency in how we select cases for prosecution, and how the Health and Safety Executive or local authorities do so. These criteria are embedded within the enforcement decision tree.

We will consider prosecution where there is evidence that any of the following apply:

- Services that result in either:
  - avoidable harm (whether of a physical or psychological nature) to a person using a service
  - a person using a service being exposed to a significant risk of such harm occurring
  - in a case of theft, misuse or misappropriation of money or property, any loss by a person using a service of the money or property concerned.
- Services that have been provided to individuals without informed consent.
- There has been a failure to provide reports on complaints or good governance.
- There has been a failure to legibly display ratings that relate to performance at a provider's premises and overall place of business.
- There has been a failure to notify and offer support to the relevant person following a notifiable safety incident.
- There has been disregard for, and/or attempted avoidance of, the requirement for anyone who carries on regulated activities in England to be registered with CQC.
- There has been a failure to comply with a requirement, Warning Notice, or condition, suspension, or cancellation of registration.
- False information has been supplied willfully, information or explanations have been withheld, or there has been an intent to deceive in relation to a matter that gives rise to significant risk.

- Persons authorised by CQC to enter and inspect have been intentionally obstructed in the lawful course of their duties.

We will also consider the following factors when deciding whether to prosecute:

- The gravity of the incident, taken together with the seriousness of any actual or potential harm or the general record and approach of the provider, mean that not holding the provider to account could undermine public confidence in regulation or in that sector of providers.
- There has been disregard for the requirements on a registered person.
- There have been repeated or multiple breaches that give rise to significant risk, or persistent and significant poor compliance.
- The service is breaching fundamental standards of care, namely that it has been provided significantly below the standards that are required for compliance with regulations and is giving rise to significant risk.
- The potential for wider learning points for providers may mean we will prioritise a single case, so that enforcement sends a broader message to a sector and encourages improvement across it.

The Health and Safety Executive (HSE) (and for certain services, local authority health and safety inspectors) also have a key role in prosecuting serious safety incidents.

We have a memorandum of understanding with the HSE to set out how our roles fit together, and the principles for managing cases that cut across more than one of these roles.

- CQC is the lead assessment and enforcement body for safety and quality of treatment and care matters involving patients and people receiving health or adult social care service from a provider registered with CQC.

- HSE/local authorities are the lead inspection and enforcement bodies for health and safety matters involving people receiving a health or care service from providers not registered with CQC.
- HSE/local authorities are the lead inspection and enforcement bodies for health and safety matters involving workers, visitors, and contractors.

## Criminal enforcement powers

### Simple cautions

A simple caution ensures that there is a formal record of an offence when a person has admitted to it but is not prosecuted. There is no obligation on a provider to accept a caution and, where the offer of a caution is refused, we will consider prosecution. We will consider using a simple caution when:

- We have evidence of an offence, and that evidence is sufficient to enable us to bring a criminal prosecution.
- Although we could prosecute, we consider that achieving improvements without initiating lengthy and costly proceedings is a realistic alternative and is more proportionate than proceeding with prosecution.
- The provider has demonstrated to us that they will be able to put these improvements in place within a reasonable timescale.
- The [Code for Crown Prosecutors](#) indicates that this option would be appropriate.
- The offence has an insubstantial impact on people using the service.

## Penalty notices

Paying a fixed penalty enables a registered person to avoid a potential prosecution for an offence. It is only appropriate to issue a penalty notice where CQC would have been entitled to prosecute.

CQC has discretion over whether to serve a fixed penalty notice as an alternative to a prosecution. There is no obligation on a registered person to pay the sum under a penalty notice and, if a registered person decides not to pay the penalty, we will consider using other enforcement powers. Failure to pay sums under a penalty notice will normally lead to a prosecution.

The power to issue a penalty notice enables proportionality in specific circumstances. It also enables CQC to 'send a message' where there are recurrent breaches across a sector. Use of fixed penalties to multiple providers within a sector can make it clear that the issue of concern will not be tolerated, but also avoids the need to prosecute every person in breach. It can also signal the importance of the regulatory requirement and that we may proceed to prosecution if there is no improvement.

Any fixed penalty paid to CQC is not retained but must be passed on by CQC to the Secretary of State for Health and Social Care.

[See the relevant legal requirements and current levels of penalties.](#) We will consider using the power to issue penalty notices when:

- We have evidence of an offence, and that evidence is sufficient to bring a criminal prosecution.
- Although we could prosecute, we consider that achieving improvements without initiating lengthy and costly proceedings is a realistic alternative and is more proportionate than proceeding with prosecution.
- The offence has an insubstantial impact on people using the service.

## Prosecution

Prosecution can be used to:

- hold a registered person to account for breaches of prosecutable fundamental standards, or for failing to comply with conditions of registration
- enforce the offence of carrying on a service without registration, in which case we may prosecute the person who appears to be carrying it on
- ensure accountability for any person who obstructs us during an inspection, or any person who makes a false or misleading statement in an application to be registered with us.

Where appropriate, we may prosecute at the same time as taking other enforcement action, for example alongside urgent procedures. We may also prosecute more than one offence at the same time.

There may be occasions where, even if the above criteria are satisfied, we will decide to serve a Warning Notice as an alternative to immediate prosecution. However, we will generally prosecute providers where there are serious, multiple, or persistent breaches of the fundamental standards (those regulations with prosecutable clauses that specifically relate to harm or the risk of harm) without issuing a Warning Notice first.

Failure to make the improvements set out in a Warning Notice is likely to lead to a prosecution.

Although we are not required by law to publish details of all criminal law procedures that we undertake, we have a general power to publish this type of information and will normally do so. We must publish information about any offence for which a registered person has been convicted.

All investigations of criminal offences will be carried out with regard to the [Police and Criminal Evidence Act 1984](#) (PACE) principles and [codes of practice](#).



Where another regulator has the power to prosecute, we will co-ordinate our activity with them at an early stage. This is to:

- ensure the right action is taken
- avoid inconsistency
- ensure that any proceedings taken are for the most appropriate offence.

Where we successfully prosecute, the court will decide on the penalty to be imposed. Where someone is charged with more than one offence, the court may order separate penalties in relation to each conviction. The court may impose a prison sentence as well as, or instead of, a fine following conviction for carrying on a regulated activity without being registered.

Read the table of offences and current maximum court fines.

We will consider using our powers to prosecute where:

- The breach of legislation is assessed by us to be serious and there are multiple or persistent breaches.

Or

- We have sufficient evidence so there is a realistic prospect of conviction.
- We assess that it is in the public interest for us to use our powers of prosecution.

In making decisions about whether to prosecute, we will be guided by the Code for Crown Prosecutors.

# Holding individuals to account through criminal prosecutions or using other powers

CQC's enforcement activity mostly concerns providers and their liability as the body carrying on regulated activities. However, we can use our enforcement powers to hold certain individuals who work for providers to account. Those individuals can be directors, registered managers, or the secretary of a corporate body (or a person purporting to act in that capacity), or an officer of an unincorporated association or member of its governing body. We will consider holding individuals to account by prosecuting them where:

- an offence has been committed with their consent or connivance or is attributable to neglect on their part
- there is clarity about the individual's accountability as opposed to the service provider
- there is a realistic prospect of conviction, and we assess that it is in the public interest for us to use our powers of prosecution.

We may also hold individuals to account by ensuring they are not employed in a role they are not fit for. We can do this by cancelling the registration of a registered manager, or by refusing a new registration where we consider an individual is not a fit and proper person. For an existing provider, we can request that they provide assurance that directors are fit for their role.

The regulations also establish a fit and proper person requirement for directors or individuals working in an equivalent role. We may request the chair or equivalent of an organisation to carry out that test and confirm the fitness of the individual director in writing.

# Unregistered providers

It is an offence to provide regulated activities in England without registering with CQC. It is a provider's responsibility to register.

Unless people are at immediate risk of harm, we will usually write to an unregistered provider if we suspect that regulated activities are being provided without registration in the first place. However, in the following instances we will rapidly take enforcement action against all appropriate persons.

- If a provider continues to provide regulated activities without registration.
- If we have grounds to believe that a provider is knowingly choosing not to register.
- If an unregistered provider places people at risk of harm.

This enforcement can include prosecution (which can lead to a fine or imprisonment) and/or other actions such as obtaining an injunction.

# Representations and appeals

## Representations

Registered persons have the right to make representations to us about certain types of enforcement action. We provide the following guidance to help them:

- [Make a representation](#)
- [Representations and appeals.](#)

Registered persons can make representations about the following types of enforcement action:

- Warning Notices
- Notice of Proposal to refuse an application for registration
- Notice of Proposal to refuse an application by a registered person
- Notice of Proposal to impose, vary or remove conditions of registration
- Notice of Proposal to suspend a registration, or to extend the period of a suspension of registration
- Notice of Proposal to cancel a registration.

## Appeals

Registered persons have the right to appeal to the First-tier Tribunal (Care Standards) against enforcement action using the civil enforcement procedures. This includes action under urgent procedures but, in those cases, the Tribunal will ensure any appeal is fast tracked.

Appeals must be lodged within 28 days of the service of:

- A Notice of Decision.
- A notice of imposed, varied, or removed conditions and/or notice of suspension using the urgent procedures.
- A court order to cancel a registration using urgent procedures.

There is no right of appeal to the Tribunal in relation to Warning Notices, penalty notices or conviction for offences.

For providers that receive a rating, we offer the opportunity to request a review of their ratings. That review is not a statutory right of appeal, but a matter of CQC's policy. It is separate to the procedures for representations and appeals on enforcement and registration decisions.

# Publication and notification of enforcement action

The regulations require and authorise us to publish certain information relating to enforcement action.

We are required by law to publish certain details of civil and criminal enforcement. We are also required by law to publish details of any action taken under CQC's urgent powers. We will also publish on our website, a summary of information about the enforcement action taken against each provider and information about our enforcement activity overall.

We publish information about enforcement action in our inspection or assessment reports.

We send copies of notices relating to enforcement action to several third parties, such as commissioners and other regulators. Generally, these notifications are required in the Care Quality Commission (Registration) Regulations 2009, but we will also inform any other people that we consider appropriate.

We notify commissioners whenever our activity has an impact on the capacity or configuration of a health and social care economy. Where changes to capacity or configuration are made because of our findings but without formal enforcement – for example, if a provider makes rapid changes and we decide that enforcement would no longer be proportionate – we will still endeavour to notify commissioners.

## Penalties and fines for offences

# Fixed penalties

**Offence:**

Failure to comply with regulations about quality and safety (see Regulation 22 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014)

**Penalty:**

Provider £4,000

Registered manager £2,000

**Offence:**

Carrying on a regulated activity without being registered

**Penalty:**

£4,000

**Offence:**

Failure to comply with conditions of registration

**Penalty:**

Provider £4,000

Registered manager £2,000

**Offence:**

Carrying on a regulated activity while registration is suspended

**Penalty:**

£4,000

**Offence:**

Managing a regulated activity while registration is cancelled or suspended

**Penalty:**

£2,000

**Offence:**

Failure to provide an updated statement of purpose (see Regulation 12 of the Care Quality Commission (Registration) Regulations 2009)

**Penalty:**

Provider £1,250

Registered manager £625

**Offence:**

Failure to make required notifications (see Regulations 14-18 of the Care Quality Commission (Registration) Regulations 2009)

**Penalty:**

Provider £1,250

Registered manager £625

**Offence:**

Failure to provide a statement about fees chargeable (see Regulation 19 of the Care Quality Commission (Registration) Regulations 2009)

**Penalty:**

Provider £1,250

Registered manager £625

**Offence:**

Failure to observe certain requirements relating to termination of pregnancy (see Regulation 20 of the Care Quality Commission (Registration) Regulations 2009)

**Penalty:**

Provider £1,250

Registered manager £625

**Offence:**

Obstructing entry and inspection

**Penalty:**

£300

**Offence:**

Failure to provide documents or information

**Penalty:**

£300

**Offence:**

Failure to provide an explanation of any relevant matter

**Penalty:**

£300

## Prosecution

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 and regulations made under that Act have made changes to the maximum penalties outlined in the table below. The maximum limit on fines previously imposed on summary conviction for amounts of £5,000 or more has been removed.

**Offence:**

Failure to comply with regulations about quality and safety (see Regulation 22 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014)

**Maximum fine:**

Unlimited

**Offence:**

Carrying on an activity without being registered

**Maximum fine:**

Unlimited or 12 months



**Offence:**

Failure to comply with conditions of registration

**Maximum fine:**

Unlimited

**Offence:**

Offences relating to suspension or cancellation

**Maximum fine:**

Unlimited

**Offence:**

False descriptions of concerns

**Maximum fine:**

Unlimited

**Offence:**

False statements in applications

**Maximum fine:**

£2,500

**Offence:**

Obstructing entry and inspection

**Maximum fine:**

£2,500

**Offence:**

Failure to provide documents or information

**Maximum fine:**

£2,500

**Offence:**

Failure to provide an explanation of any related matter

**Maximum fine:**

£2,500

**Offence:**

Failure to display performance assessment (see Regulation 20A of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014)

**Maximum fine:**

£100

Note: some lesser requirements have a maximum court fine of £2,500.