

# Warning Notices

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

Also see our [enforcement decision tree](#) and [enforcement policy](#).

## Why we issue Warning Notices

We can issue a Warning Notice to a registered person where they have "failed to comply with the relevant requirements", that is to say where the quality of the care they are responsible for falls below what is legally required.

Legal requirements can include:

- the Health and Social Care Act 2008 ('the Act') and the Regulations made under it
- other legislation that registered persons are legally obliged to comply with in delivering the service

The discretionary power to issue a Warning Notice is conferred by section 29 of the Act. We use a section 29 Warning Notice for all types of regulated provider except NHS trusts (including foundation trusts).

For NHS trusts, section 29A of the Act has additional provision for Warning Notices. We may issue a section 29A Notice to an NHS trust where it appears to us that significant improvement is required. See more information in our [Section 29A Warning Notice guidance](#).

## When we issue Warning Notices

We can issue a Warning Notice when there is a breach of:

- a Regulation
- a section of the Health and Social Care Act 2008
- a 'relevant enactment' (another Act with requirements relevant to the fundamental standards)
- a condition placed on a registration

We can issue a Warning Notice for a breach that occurred in the past, and which has been rectified, if it was serious enough to necessitate issuing the Notice.

## How we issue Warning Notices

We will send a Warning Notice to the registered person. We must issue all Warning Notices in writing, and they must state:

- the relevant Regulation, section of the relevant Act, or condition that the registered person is not complying with and
- how the registered person did not comply or is continuing not to comply with a legal requirement

If a Warning Notice relates 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 Warning Notice and the breach is continuing and
- the timescale within which the registered person must comply

For some Regulations of the Health and Social Care Act 2008, we do not firstly need to issue a Warning Notice before we are able to prosecute as they relate specifically to harm or the risk of harm, or are requirements imposed by CQC.

A Warning Notice is deemed to have been served:

- the next working day after it was sent, if issued electronically (by email)
- on the third day after the day it was sent, if issued by registered post
- on the day it was given to the person, if delivered by hand

## Timescales for complying with a Warning Notice

There is no legally set timescale for complying with a Warning Notice. CQC can set any reasonable period. Timescales will reflect the degree of risk to the safety and welfare of people who use the service.

When issuing a Warning Notice, we will:

- focus on where outcomes for the people using the service are failing
- be proportionate
- make sure the timescale is realistic and achievable
- be consistent
- take into account the registered person's track record of enforcement, inspection history and notifications

If your service has a poor track record of enforcement, inspection history and submitting statutory notifications, we may impose a tighter timescale to encourage prompt action and improvements.

Where there is continuing failure to meet the requirement(s), a Warning Notice will specify the timescale in which the registered person must comply. It will include a warning that we may take further action if they do not comply with the Warning Notice within that timescale.

## How we follow up requirements in a Warning Notice

We always check that you have taken action to comply with the legal requirements in a Warning Notice.

If you have complied within the specified timescale, you can let us know by sending confirmation. Email this to [EnforcementComms@cqc.org.uk](mailto:EnforcementComms@cqc.org.uk). Do **not** use a representations form to do this.

If we decide that we need to make further checks about meeting the requirements, we can either:

- telephone the registered person
- ask an appropriate third party for information or
- carry out an assessment activity (which could be an unannounced inspection)

If you are making representations against a Warning Notice and the deadline to comply stated in the Warning Notice has expired, we will assess your compliance after the representations process has concluded.

# How we follow up non-compliance with requirements

We will consider the options and take the most appropriate action in line with our [enforcement decision tree](#). This can, in certain circumstances, include prosecution or taking action to vary or impose conditions of registration.

In serious circumstances, we can take action to cancel a registered person's registration. See our [enforcement policy](#).

## Publishing Warning Notices

We do not have to publish information about any Warning Notice that we have issued. If the registered person has had the opportunity to make representations about it, we can publish it under Schedule 2, Part 2 of the Care Quality Commission (Registration) Regulations 2009.

In most circumstances, representations made concerning an adverse effect on the provider's business would not be a sufficient reason to withhold publication.

When we publish an inspection report for a service, we will refer to enforcement action in the report, and we may publish a summary on the provider's relevant location page on our website. We may also publish a press release on our website, and link to it from the relevant location page.

In all cases where we publish, we only publish a summary of the main points of the Warning Notice, not the full content.

If we decide not to publish the Warning Notice (and it has not been withdrawn), we will still send a copy to other bodies under our statutory duties (section 39 of the Health and Social Care Act).

# Warning Notices - Cloned

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# Representations against a Warning Notice

If we issue a Warning Notice against you there is no right of appeal against it, but you may decide to make representations to CQC about it.

Examples of representations about the content of a Warning Notice include:

- it contains an error
- it is based on inaccurate facts
- it should not have been issued for some other reason

Representations can also include reasons for why it would be unfair to publish the Warning Notice.

## How to make representations

Representations against a Warning Notice **must be in writing**. We will not accept a verbal representation.

This avoids any misunderstanding about the content of the representations and ensures that we record all details.

Each Warning Notice contains details of how to make representations, including how to download the [representations form for Warning Notices](#).

We encourage you to use our form so that it is clear that you are making

representations. If you do not use the form and send us a letter, please be clear that you are making representations. We will determine whether the letter constitutes formal representations about the Warning Notice. If we determine that it is representations, we will consider and respond to the letter using our representations process.

## Where to send your written representations

Email to: [HSCA\\_Representations@cqc.org.uk](mailto:HSCA_Representations@cqc.org.uk)

Post to: Care Quality Commission

Citygate

Gallowgate

Newcastle upon Tyne

NE1 4PA

You can also deliver your written submission in person to one of our offices.

**Note:** You cannot make representations as part of the [factual accuracy check](#) process for a draft inspection report, as this is a separate and distinct process.

## Deadline for representations

You must make representations against a Warning Notice within **10 working days** of service of the Notice.

## How we respond to representations

There is no legally set timescale for us to respond to representations about Warning Notices, but we aim to respond within **20 working days** of receiving any representations.

This timescale is calculated from the working day after we receive the representations.

We will send an outcome letter to the registered person who has made written representations to let them know our decision.

## How we make decisions about representations

Representations are considered by the National Representations Team (NRT) (for representations received from 1 April 2023 onwards).

To help us decide whether to uphold your representations, we will consider the information in your submission alongside the information detailed in the Warning Notice.

We firstly consider any representations made against the content of the Warning Notice.

We can decide to:

- **Not uphold the representations:** the decision maker has not agreed with the grounds made in the representations or
- **Uphold the representations:** the decision maker has agreed with the grounds made in the representations or determined for some other reason that it was not appropriate or proportionate to serve the Warning Notice. When we uphold representations, this will mean the outcome letter will formally record that we have withdrawn the Warning Notice

Please note there is no decision to partially uphold representations.

Where representations are made regarding publication, these will be considered, and the decision maker will decide whether the Warning Notice should be published.

We may confirm the accuracy and appropriateness of the Warning Notice in deciding that representations are not upheld, but also decide not to publish the Warning Notice (in such circumstances, a summary of the Warning Notice would not be included in the published inspection report, but the report would still state that enforcement action has been taken against the provider).

Please note CQC will 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 the Health and Social Care Act 2008. The decisions we make about representations will also have implications for those bodies.

If we do not uphold representations and decide not to publish the Warning Notice, the local operations team who issues the Warning Notice will still send copies of it to relevant external bodies. The operations team will make these external bodies aware of any errors or issues that we have noted in the outcome letter to the provider.

If we have decided not to uphold the representations against the Warning Notice, there is no statutory appeal process for a registered person. However, registered persons have a right to apply for a Judicial Review of our decision.

## Withdrawing a Warning Notice

CQC will withdraw a Warning Notice if we take the view that it should not have been issued.

There is no specific statutory provision for withdrawal of Warning Notices, but we are obliged to consider representations about Warning Notices before we publish them. If the decision makers consideration of the representations shows that the Warning Notice should not have been issued, we will withdraw it.

We may decide to withdraw the Warning Notice because:

- it contains a serious error (which impacts upon the seriousness of the matters described or the proportionality of issuing the Warning Notice)
- it is based on inaccurate 'facts' (which impacts upon the seriousness of the matters described or the proportionality of issuing the Warning Notice)
- it has not been issued in accordance with the legal test, that is, it 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

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

## Additional information

If we decide to uphold representations and withdraw the Warning Notice, the local operations team may decide to issue another Warning Notice (following the usual internal enforcement processes).

We will follow our [code of practice on confidential personal information](#) when making decisions in relation to confidential information.