Registration under the Health and Social Care Act 2008

Warning Notices

Guidance for registered providers and managers

October 2015
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Introduction

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.

You should read this guidance alongside our decision tree and Enforcement policy on our website.

Warning Notices

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. Legal requirements can include the Health and Social Care Act 2008 (‘the Act’) and the regulations made under it, but also 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. A section 29 Warning Notice will be used for all sectors apart from NHS trusts (including foundation trusts). There is additional provision in section 29A of the Act for a Warning Notice that is addressed to NHS trusts or foundation trusts. We may issue such a Notice where it appears to us that significant improvement is required. Significant improvement is not necessarily restricted to breaches of legislation but could be broader.

Where the failure to meet the requirement(s) is continuing, a Warning Notice will specify the timescale by which the registered person must comply, and a warning that we may take further action if the Notice is not complied with within that timescale.

When using these Notices, we will:

- Look at where the outcomes for the people using the service are failing.
- Be proportionate.
- Be consistent.

Making representations and how we publish Warning Notices

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) in relevant inspection reports and on the relevant location page for your organisation on our website, which will include a summary of the Notice(s). We will notify the media and may also issue a press release to summarise the Notice. We will not do so if we uphold your representations.

We will not publish the full content of a Warning Notice.
Guidance on Warning Notices

1. What are Warning Notices and when does CQC use them?

We can serve Warning Notices when:

- Regulations have been breached.
- A section of the Health and Social Care Act 2008 has been breached.
- A ‘relevant enactment’ (another Act with requirements relevant to the fundamental standards) has been breached.
- A condition placed on a registration has been breached.

We can serve Warning Notices for breaches that have occurred in the past but which have now been rectified, if it was serious enough to necessitate issuing a Warning Notice.

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 the registered person did not comply or is 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 the registered person must comply.

Under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, we do not need to serve a Warning Notice before we are able to prosecute for some regulations as they relate specifically to harm or the risk of harm, or are requirements imposed by CQC.
2. What are the timescales to comply with 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. We will make sure that it is realistic and achievable, and take into account the registered person’s track record of enforcement, inspection history and notifications.

We will impose a tighter timescale on a service that has a poor track record of enforcement, inspection history and notifications, 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?

If you receive a Warning Notice that includes requirements to take action and a timescale to comply with legal requirements, you must let CQC know when you have complied.

Please do not use a representation form to tell us this; instead, send us written confirmation that you have complied with the notice.

We will always check that you have made required improvements. If we decide that we need to make further checks about meeting the requirements, we 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.

Publishing Warning Notices

6. Are Warning Notices made public?

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

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.

Making written representations to CQC

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.

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.

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 that 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 20 working days of receiving any representations.

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 at CQC, 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 possibly 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, 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.
We may withdraw a Warning Notice and issue another Warning Notice. We will do this if the first Warning Notice contained an error that 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 the Act. The decisions we make about representations will also have implications for those bodies.

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.

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 with the requirements of section 39 of the Act.

If representations are made only against publication, we will 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.