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Care Quality Commission

Legal advice to help care homes navigate
inspections, ratings and enforcement

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“We have a **very good impression** of **Clarke Willmott**. We appreciate the **personal approach** and **timely responses** to our needs.”

Client quoted in Chambers UK 2020

Care Quality Commission inspections

As a care home owner, you are legally obliged to ensure that your business meets the requirements of the Care Quality Commission (CQC). The objective of the CQC is to protect and promote the health, safety and welfare of your residents.

All registered care homes are subject to a comprehensive inspection by the CQC at least every 30 months. How often your home is inspected usually depends on its most recent rating.

Our specialist solicitors can advise you on strategies to manage and respond to a rating that you feel is unfair, whilst being mindful of your future relationship with the CQC. This booklet outlines the ratings process, your options and steps the CQC may take.

Inspections
**at least
every 30
months**



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About CQC ratings

Following an inspection, the CQC will rate the quality of care. The CQC does this by providing an overall location rating and a separate rating for five key questions:

- Is it safe?
- Is it effective?
- Is it caring?
- Is it responsive?
- Is it well-led?

For the overall location rating and each key question the CQC awards a rating of outstanding, good, requires improvement or inadequate.

Why are ratings important?

Your home's ratings are public. Certain ratings must be displayed at homes and on websites. Failure to display is an offence, unless you have taken all reasonable steps and exercised all due diligence.

If your home has a bad rating residents may leave, you may struggle to attract new residents and your staff may lose motivation. This may result in a decrease in revenue, leading to lower profits or a loss and an increased risk of insolvency. Ultimately, a bad rating may lead to closure of your home.

Ratings are
**key for
revenue**

Challenging your draft report

Before your final rating is published you will receive a draft report. If you are unhappy with the ratings, you can challenge the accuracy of the facts and the completeness of the information used by the CQC. You can do this by submitting a response to the CQC.

This must be done within 10 working days. If you need more time due to exceptional circumstances, this must be explained to the CQC immediately.

A home facing bad ratings may wish to invest in legal advice following receipt of the draft report. We are most likely to achieve a cost effective solution at this stage.

We can work with you and other healthcare professionals to carefully explain why the information the CQC has relied on is incorrect or incomplete. Our objective will be to show the CQC that, with the benefit of correct and complete information, they can award better ratings.

We will consider whether the best approach is for us to prepare the submission for you to make to the CQC or whether it will be better for us to make the submission on your behalf.

Getting help
early can be
**the most
cost effective
solution**

Challenging your final report

All is not lost if you do not successfully challenge your draft report. You can ask the CQC to review their ratings after publication of the final report.

You can only request the CQC to conduct a ratings review on the grounds that it failed to follow its process for deciding on ratings. A request must be submitted within 15 working days. While a review is taking place the CQC will display a message on their website, but the report will remain published and available.

Requesting a ratings review after your report has been published can be a stressful process. We can guide you through the process and make a request on your behalf.

There is a separate procedure for challenging the accuracy of the facts and the completeness of the information used for ratings. This challenge must be made within 10 working days of receiving the draft report.

Judicial review

If the CQC does not change the inspection report we may be able to challenge it through the courts. Action must be taken quickly, because there is a time limit. We can guide you through the process and take action on your behalf.



Challenging
the process

Being placed in special measures

Your home may be subject to special measures if it is rated as being inadequate overall. It may also be subject to special measures if it is rated as being inadequate for any key question, the CQC reinspects within six months and the home has not improved sufficiently.

Special measures is a framework used to improve the quality of care within a timeframe. Special measures does not replace the CQC's enforcement powers. The CQC may take enforcement action at the same time.

When a home is in special measures the CQC will re-inspect within six months to see if sufficient progress has been made. If sufficient progress has not been made the CQC will take enforcement action to prevent the home from operating. They may do this by proposing to cancel a registration or vary its terms. The CQC will then closely monitor the home until it closes or improves sufficiently.

We can help you to navigate out of special measures by working with you and other healthcare professionals. We can work as a team to prepare an action plan and establish better practices.

**Re-inspection
and enforcement
action**

Enforcement

and how to stop it

If a home breaches a legal obligation the CQC may take action. When deciding whether to take action the CQC will generally take a broad view, taking account of a wide range of factors.

The CQC's enforcement options include:

- Requirement notices
- Warning notices
- Notices of proposal leading to notices of decision
- Urgent changes to conditions of registration
- Applications to magistrates for closure orders

We can help you try to persuade the CQC that enforcement action is inappropriate. We can also advise you on appealing to the First-tier Tribunal, the Upper Tribunal and the Court of Appeal.

We can help
**you stop
enforcement
action**

Requirement notices

The CQC may serve a requirement notice on a home where it is in breach of a regulation or it has poor ability to comply, but residents are not at immediate risk of harm.

The notice will require you to submit a report to the CQC. The report must show how the home will comply with its legal obligations and explain the action the home is taking or proposes to take.

Warning notices

If a home has failed to comply with certain requirements, the CQC may issue a warning notice. The CQC can issue warning notices about past failures and continuing breaches. Where a failure is ongoing the warning notice will specify a time by which the home must comply.

You are entitled to make representations before information relating to a warning notice is published. For example, you may say the notice contains an error, it is based on inaccurate information and it would be unfair to publish it. Representations must be made within 10 working days.

You can make
representations

Notices of proposal leading to notices of decision

The CQC can propose to change the conditions of, suspend or cancel a registration. You are entitled to make representations within 28 days.

If the CQC adopts a proposal it will issue a notice of decision. You can appeal against a decision to the First-tier Tribunal. This must be done within 28 days.

Urgent suspension and changes to conditions

In certain circumstances, the CQC can suspend a registration or change its conditions without issuing a notice of proposal. The CQC must have reasonable cause to believe a person will or may be exposed to the risk of harm. You can appeal to the First-tier Tribunal. This must be done within 28 days.

Applications to magistrates for closure orders

If there will be a serious risk to life, health or well-being the CQC can ask a magistrate to cancel a home's registration. The magistrate has discretion whether to close the home.

A home can appeal against an order from a magistrate to the First-tier Tribunal. An appeal must be made within 28 days.



Restricting
operations and
closure

How we can help if you are facing enforcement

Our analytical and drafting skills allow us to carefully craft representations in response to warning notices and notices of proposal.

We can explain to the CQC that it is mistaken or has proposed disproportionate action and help with any subsequent consultation by the CQC.

Our legal skills can help with court action. We can argue there are no grounds for a magistrate to close your home. If there are grounds, we can explain why the magistrate should use its discretion to keep a home open. We can articulate why an action plan is achievable and will quickly remedy the situation.

We can work with you and the CQC to try to agree solutions which remove the need for enforcement action.

About Clarke Willmott

Clarke Willmott is a national law firm with seven offices across England and Wales.

We have a focus on the healthcare sector, including care homes. Our solicitors can help you to navigate the regulations affecting your home and to manage the requirements of the CQC.

Our skills
can help you
**achieve a
positive
outcome**

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Great service... Great people...

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