

# 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 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 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

Cancelling a registration is a powerful sanction. Although this is available to us, we will not normally use it until we have made considerable effort to get registered persons to meet the legal requirements. Cancellation applies to all locations where the registered person carries on regulated activity. If providers 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 trusts, we have powers to require NHS England to appoint an administrator and thereby place the 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 other 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.

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