



SOLICITORS

# Planning for CQC inspections and preventing adverse outcomes

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# Pre – Inspection



# Top Tips for preparing for Inspections

## Pre-Inspection

### Legal Framework:

- **Health and Social Care Act 2008** - overarching powers, duties and functions. Key points: public protection, risk-based system, public assurance through publication of inspection reports; focus on improvement; focus on service users
- **Regulations** – key ones are the Fundamental Standards
- **Guidance** - on how to comply with the Fundamental Standards – not binding



# Top Tips for preparing for Inspections

## Pre-Inspection

### **Familiarise yourself with CQC Guidance on Inspections:**

- **How CQC monitors, inspects and regulates adult social care services** – last updated May 2018 (includes the ratings methodology – KLOEs, characteristics, ratings principles)
- **Guidance for providers on meeting the Regulations** – Regulated Activities Regulations (the Fundamental Standards) and Registration Regulations
- **Report Writing Guidance** - (internal guidance v10) most recent
- **Brief Guides for Inspection Teams** – published on the CQC website e.g. restraint, inspecting safeguarding, ligature points



# Top Tips for preparing for Inspections

## Pre-Inspection

- **PIC** (previously PIR) – 3 months to complete – allows you to submit up to date information online and get your case across to CQC – Must update at least annually
- **Challenge your own systems** as part of **Quality Assurance** and check for weaknesses against the **CQC Key Lines of Enquiry** and Prompts
- **Audit documentation across your service:** care plans, risk assessments and daily records should be “joined up” and demonstrate the delivery of safe, effective and responsive care and treatment
- Consider getting an **independent pair of eyes** to come in and assess compliance with the Fundamental Standards – **Consultants** can support you through the preparation phase



# Top Tips for preparing for Inspections

## Pre-Inspection

- Pay particular attention to compliance with the **Mental Capacity Act 2005 & DoLS**
- Current **CQC Hot Topics** appear to include risk management (in particular diabetes, choking); window restrictors; personalised décor. Medicine management is another hot topic and reference is often made to NICE Guidance.
- **Brief your staff** on what to expect from a CQC inspection. Typical areas of questioning are safeguarding and their understanding of the principles of the Mental Capacity Act. Forearmed is forewarned
- Ensure you have a **Registered Manager** – not always easy – or that you are taking active steps to get one in place (rating limiter for ‘Well-led’)



# During Inspection



# Top Tips for handling Inspections During Inspection

- Ask questions, **offer assistance** and request feedback throughout to avoid surprises
- **Staff interviews** – staff should have the confidence to deal with questioning by the inspectors and to **challenge where necessary**
- Ensure you **address any immediate compliance issues** that arise during the inspection and confirm that you have taken any necessary action
- Ensure there is clarity about what **additional information** CQC requires during the inspection, write it down and provide it promptly in an accessible format



# Top Tips for handling Inspections During Inspection

- **Feedback session** – make notes and ask questions
- **Request evidence** to support allegations where it has not been provided already and counter findings you disagree with
- Ask if CQC require **further information/ evidence**
- Use it as an opportunity to **reply to issues and challenge** any misunderstandings/errors
- You should be given an **Initial Feedback Inspection Summary** linked to the 5 key questions/KLOEs



# Post Inspection



# Top Tips for preventing adverse outcomes Post-Inspection

- **Immediately after the inspection supply additional evidence** that CQC requests promptly and comprehensively
- Ask for **clarification** about issues that you are unclear about
- If there are issues about the **professionalism and conduct** of particular inspectors consider lodging a complaint
- **Factual Accuracy Comments (FACs)** – important opportunity to challenge the draft inspection report.
- **10 working days to submit FACs** - check CQC has calculated the right date.



# Top Tips for preventing adverse outcomes Post-Inspection

- **Respond to in detail in FACs** – supply evidence.
- **Challenge negative wording and connotations**, as well as imprecise wording e.g. “some people complained about late visits” – how many exactly?
- **Alleged breaches of regulation(s)** – does the evidence support this?
- Has CQC taken a **measured and proportionate approach** to rating your service?
- **Challenge findings** (opinions) and **judgements** as part of the factual accuracy process.



# Top Tips for preventing adverse outcomes Post-Inspection

- Consider requesting copies of the **inspection notes**.
- It is the **underlying evidence** so worth getting hold of.
- **Request for voluntary disclosure** under the HSCA – not a Freedom of Information Request which CQC sometimes suggests.
- Make a targeted request
- If you do not submit factual accuracy comments the content of the report becomes the truth.
- **FAC consultation period – 31 October 2018!!**



# Top Tips for preventing adverse outcomes Post-Inspection

- **SSP case** - unhappy with the response to your FAC Comments? Ask for an independent review
- **Key High Court Decision** – GP Practice rated Inadequate and in Special Measures. Challenged via Judicial Review
- Conducting an analysis of the report, Mrs Justice Andrews concluded that there were **several factual matters that were clearly wrong** but the **Lead Inspector had refused to amend the report**. Mrs Justice Andrews commented:
  - Requiring the provider to start judicial review proceedings would amount to a “**disproportionate burden**”
  - Judicial review is generally an inappropriate means of resolving disputed issues of fact;
  - There should be an **independent person** introduced as part of the process to review “*whether there is or is not a legitimate grievance about the Lead Inspector’s failure to correct the report.*”



# Top Tips for preventing adverse outcomes Post-Inspection

- **A Rating Review** – the only other official route to challenge inspection reports post FAC process.
- It can only be requested **after publication** of the finalised inspection report and providers have **5 working days** from publication **to notify CQC** of their intention to submit a rating review.
- **15 working days** - of the date of publication of the report to lodge a rating review.
- **Narrow grounds for requesting a rating review** - The rating review process does not re-consider any factual disagreements or disputes over judgements. CQC have failed to follow its process or making ratings decision.
- **500 word limit** for the review
- Ratings can go up as well as down as a result of a challenge.



# Important Information for Providers!!

## CQC's proposals for a new FAC process:

- To develop specific provider guidance with clearer instructions and examples.
- **To make its form simpler and mandatory (the only way they will accept provider information).**
- **To word limit each point that is being made on the form, but not the number of points.**
- To ask submissions to identify where and how the information supports the point (**rather than sending lots of material**).
- To stick strictly to the 10 days' time limit for submissions.
- To allow discretion to the time limit but only in exceptional circumstances.
- To develop a digital solution (this is a longer term aim).



# Important Information for Providers!!

- **What does this mean for providers?**
- CQC's proposals are quite alarming and very restrictive!
- They limit what providers can say about a draft report and discourage them from sending additional evidence.
- We would urge providers to participate in the consultation which can be found at <https://communities.cqc.org.uk/provider/document-for-review/tell-us-what-you-think-about-our-proposals-improve-factual-accuracy-process> and let CQC know your thoughts on its proposals.
- Ridouts will be submitting its own thoughts to CQC to try to protect providers' rights to fully respond to inaccurate and misleading reports.
- **Deadline to respond is 31 October 2018!!**



# Questions





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