

# 7 ways to get fined by The Care Quality Commission

A guide for GPs, dentists and providers of adult social care in England to the financial penalties of inadequate CQC compliance management



## Introduction

High quality, technology led health services are expensive; against a background of reduced budgets and major restructuring, modifying the healthcare system to meet evolving needs is a complex matter. The need to adapt the healthcare system to the changes in society is something that we all agree on, even if concurring on the best way forward often appears elusive.

Whether as health professionals or those providing support, essentially the shared motivation for individuals is the desire to provide the best standards of service and care to users of the healthcare system. Supporting this is the mission of The Care Quality Commission, ('The Commission' or the CQC) created by the legislature as the regulator to ensure that health services meet essential standards of quality and safety.

The Commission's comprehensive set of enforcement powers are enshrined in the Health and Social Care Act 2008. The CQC regulates GPs, dental practices and adult social care providers in England. For those that are registered, prosecution under criminal law is only one of the powers that The Commission may exercise to enforce the regulations.

In this guide we identify seven offences for which adult social care providers, GPs and dentists may be fined and discuss other issues around prosecution and compliance. We also consider how the use of a compliance management system enables those regulated by CQC to discharge their CQC compliance obligations in an efficient and cost effective manner.

Here are 7 sure fire ways to get fined by the CQC:

**1. Provide services when you are unregistered**

To fulfil its mission of making sure that health services meet essential standards of quality and safety, The Care Quality Commission has introduced a new registration system. For GP and dental practices and providers of adult social care in England, continuing to operate without being registered may result in criminal prosecution and a fine of up to £50,000.

**2. Fail to comply with regulations about quality and safety**

The care and welfare of service users is a central consideration of the CQC and providers must comply with regulations that safeguards service users. In cases where warning notices for failing to meet quality and safety standards have been given and the registered person fails to comply with the terms, a criminal conviction may result in a fine of up to £50,000 being handed down.

**3. Provide a regulated activity for which you are not registered**

Your organisation may be registered and may be providing activities; however if it is providing regulated activities for which it is not registered to do so, it is an offence. Failing to register a regulated healthcare activity which is provided by your organisation may result in criminal prosecution and a fine of up to £50,000.

**4. Fail to comply with conditions of registration, suspension or cancellation**

Registration is conditional, and failing to comply with conditions without reasonable excuse may lead to criminal prosecution. The CQC has the power to suspend or cancel registration; once notified of such action, it is an offence to provide regulated services. Registered managers or registered service providers successfully prosecuted for any of these breaches may incur a fine of up to £50,000.

**5. Make false descriptions of concerns or statements in applications**

Making false descriptions of concerns relating to regulated activities, or the premises used for providing regulated activities are offences; knowingly making false statements in applications is also an offence. Both carry the potential of criminal prosecution and fines of up to £5,000 and £2,500 respectively.

**6. Obstruct entry and inspection, fail to provide documents or information or explanations**

Anyone preventing entry to premises for inspection may be criminally prosecuted; failing to provide documents or information, or an explanation of any related matter may result in a criminal prosecution and fines of up to £2,500.

**7. Carry on a regulated activity once registration is cancelled**

Successful prosecution and conviction of a registered manager or provider, or admitting an offence, may result in cancellation of CQC registration. Continuing to provide services once registration is cancelled may result in further prosecution and a fine of up to £50,000.

## Preventing enforcement action against you from entering the public domain

The Regulations require the CQC to publish information relating to its enforcement actions and there is little chance of preventing the naming and shaming of those concerned from entering the public domain. The Commission includes such information in its reviews of compliance reports and publishes summaries of information about enforcement actions on its website.

It is also a requirement for the CQC to send copies of enforcement notices to prescribed bodies or any other persons that The Commission considers appropriate. Enforcement activity is also included in its annual report.

The reputational damage that may result from CQC publishing enforcement action taken against regulated practices and providers in England may have a detrimental effect that impacts beyond their balance sheets.

### In the real world

Except in cases identified as requiring immediate and severe action, those regulated by CQC would be given a number of opportunities to comply before criminal prosecution and maximum fines become realistic prospects. However, this should not be interpreted that the regulator adopts a 'softly, softly' approach.

The Commission has a range of enforcement powers at its disposal. A *compliance action* is a precursor to an *enforcement action*. It is a significant step and failure to act will result in an enforcement action. Simple *cautions*, *warning notices* and *civil enforcement* are all available to The Commission. Generally speaking, *penalty notices* and *criminal prosecution* come into play when failure to comply continues after less serious enforcement has been applied.

*Direct offences* may be prosecuted without issuing a prior warning. The CQC uses a *regulatory response calculator* to determine the appropriate level of response to any compliance failure. Instances where there is a risk of harm are treated with appropriate severity, and *urgent procedures* may be initiated if deemed necessary.

### Health Warning! The regulator may have something to prove...

The CQC has not had a smooth ride. Several news stories have cast the regulator in a negative light; some tranches of registrations did not run to plan. This makes registration and on-going inspections a point of scrutiny upon which the performance of The Commission will be assessed.

Examples of poor standards in the health sector grab headlines and get picked up by the broadcast media. This fuels public concern and poses the question: Why is the regulator not effective?

Taken together, this background may be indicative that the regulator is under some pressure, as it calls into question its ability to perform effectively. The pressure on the regulator to perform effectively can only serve to increase the strength of its response to breaches of compliance and it is likely to demonstrate a reduced tolerance to those failing to comply.

### Obstacles to compliance using internal resources or outsourcing

For all, in attempting to complete the process using internal resources, many will find that achieving compliance across many areas is time consuming. Complexity means that detailed knowledge on a range of compliance points is required. Without multidisciplinary expertise the registration and compliance process may be flawed, leading to a failure to comply.

Some may elect to outsource CQC compliance by hiring external resource; however external consultants may not necessarily be any more knowledgeable across the compliance areas than internal staff, and significant cost is often attached to consultant services.

## Benefits of a compliance management system

A compliance management system is a framework that provides the cure to CQC compliance issues. A well designed and thought out system provides outstanding benefits that help to ensure that GP and dental practices and providers of adult social care do not fail compliance.

There are a number of management systems on the market from which to choose. Compliance management systems, with their content drawn from a broad range of contributors and experts, enable registered managers to undertake compliance processes with ease, and delegate where appropriate. A management system buttons down service provider compliance and provides efficiency at a fraction of the cost of external consultant fees or employing someone in house. The best management systems should offer benefits and features such as:

- Best use of time for busy registered managers
  - Many hours of your time per year are saved
- Expertly produced policies and procedures
  - Written by industry leading experts, compiled by contributors who are verifiable experts in their fields
- Processes and procedures are up to date at all times
  - Remain in step with changes in legislation or best practice
- A searchable, online reference
  - An easy to use, online management system, allowing policies to be searched or browsed
  - Provide hard copy manuals with monthly updates via post
- Totally comprehensive set of policies
  - Whatever the situation, a registered manager should be able to source the relevant policy
- Designed to ensure successful registration and inspection
  - Quarterly contact with a proactive Customer Service team
  - Demonstrate active engagement with policies which helps prevent failure of CQC inspection

## About QCS

Quality Compliance Systems (QCS) offers a unique approach to CQC compliance with an online and print based service specifically tailored to the individual needs of your organisation. Whether for established providers of care, or start-up organisations, our service objective is to ensure clients are able to attend to every aspect of care planning and compliance.

Our care experts continually update existing policies and procedures, whilst introducing new ones in response to the latest changes issued by the UK Care Authorities. As well as online access to policies and procedures, the QCS Care Management System provides an easy-to-use set of printed manuals and simple access to up-to-date information.

The value of QCS is built on enabling health and social care service providers to completely discharge compliance obligations for a fraction of the cost, in both time and money, than alternative approaches.

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