

A new system of registration

Written representations against Notices of Proposal

and

Appeals to the Tribunal against Notices of Decision and urgent cancellation orders

Guidance for registered providers and managers

July 2011

Introduction

If you are a registered person (a provider or manager), this guidance will tell you how you can make written representations to us about our Notices of Proposal and how we receive, process and respond to these representations.

It also tells you how you can appeal to the First-tier Tribunal (Health, Education and Social Care Chamber) against our Notices of Decision, and against Notices and magistrate's orders served under the urgent procedures to cancel a registration.

Main points

Notices of Proposal

1. We send a Notice of Proposal to a registered person when we want to:
 - Limit the way an activity is carried on or managed
 - Suspend a registered person's registration, or
 - Cancel a registered person's registration.
2. After a registered person has been served a Notice of Proposal, they have the right to make written representations to us.
3. Written representations enable you to explain why they think we should withdraw our Notice. We consider your representations and then we either:
 - Uphold the representations, or
 - Decide to adopt our Notice of Proposal.
4. If we uphold representations, we will reconsider how to deal with the problem that the Notice was about. We may serve a different Notice, follow another course of action, or take no further action, depending on the circumstances.

Notices of Decision

5. These tell registered persons that we have decided to adopt a Notice of Proposal served under the normal procedures of the Health and Social Care Act 2008.

Notices served under the urgent procedures

6. Notices served under the urgent procedures tell registered persons that we have decided to:
 - Suspend a registration, or
 - Extend the suspension of a registration, or
 - Vary or impose a condition of registration under the Act's urgent procedures with immediate effect.

We do not serve Notices of Proposal under urgent procedures.

Urgent cancellation orders

7. CQC can apply to a magistrate to make an **Order to immediately cancel a registration**. We can apply for these orders when there is serious, immediate risk to a person's life, health or wellbeing if a registration is not cancelled.

Representations

8. You can make representations to CQC about Notices of Proposal.

Appeals

9. You have the right to make a formal appeal to the First-tier Tribunal (Health, Education and Social Care Chamber) against:
 - Notices of Decision.
 - Notices served under the urgent procedures.
 - Urgent cancellation Orders.

This appeal process is completely independent of CQC.

Please read our separate guidance about Warning Notices.

Guidance on written representations

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Which Notices can I make written representations about?

You can make representations to us about:

Notices of proposal:

- to impose, vary or remove a condition of registration
- to suspend a registration
- to cancel a registration.

2

Is there a time limit for making representations?

Yes. Section 27(1) of the Health and Social Care Act 2008 says that representations must be made within 28 days 'of service of the Notice'.

For Notices sent electronically (by email), the day of service of the Notice is the day after the Notice was sent. For Notices sent by post, the day of service is two days (48 hours) after we posted the Notice.

You must submit your full representations within 28 calendar days of the 'date of service'. You cannot tell us that you are going to submit representations within the timescale and then submit the actual representations afterwards.

We will always write to confirm that we have received representations.

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Can I make representations verbally?

No. Section 27(1) of the Health and Social Care Act says that representations must be made **in writing**. This means a written submission delivered electronically (by email), by post, by fax or in person to one of our offices.

You should submit your representations by email to:
HSCA_Representations@cqc.org.uk.

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Is there a standard representations form?

Yes. We send a copy of the representations form with all relevant Notices served by letter. If we serve a relevant Notice electronically, we will tell you how to download standard representations forms in the Notice.

You do not have to use our standard forms, but we encourage you to do so to avoid any doubt that you are making representations.

If we receive a letter from a registered person about a Notice of Proposal that they have received, we will consider whether they are making representations in the letter. If they are, the normal response timescales will apply.

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Is there a timescale for responding to representations?

Although there is no legal timescale for us to respond to representations about Notices of Proposal, we aim to do so within 28 days.

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How does CQC consider representations?

We will make our decision about representations and consult with you, members of our staff, user/carer representative organisations or other expert opinion, where appropriate.

When seeking clarification or expert opinion, we will let you know and give you an opportunity to comment.

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What happens when CQC upholds representations?

We send you a letter to explain that we have upheld your representations.

When we uphold representations, we withdraw the Notice.

If we then send a new Notice as a result of you making representations, we will aim to make sure it arrives with you within 28 days of when we received your representations.

You have the right to make representations against any new Notice. If you do so, the representations procedure starts again.

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What happens when CQC does not uphold representations?

We send you a letter explaining that your representations were not upheld, the reasons why, and that our original proposal will be adopted. This letter encloses a Notice of Decision.

The letter includes information about when the Notice of Decision takes effect, and how you can appeal to the First-tier Tribunal against our decision.

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Are the Notices and representations procedures confidential?

Although we will always take into account and respect your rights to privacy and confidentiality, our wider responsibilities for the safety and welfare of people using services means that we will share relevant information about enforcement Notices as appropriate with:

- People who use services and their representatives.
- Local authorities.
- Primary care trusts.
- Monitor (the NHS foundation trust regulator).
- Strategic health authorities.

We will publish information about any enforcement action we take on our website.

We will handle any request for information under our Freedom of Information request procedure.

Guidance on appeals to the First-tier Tribunal

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How can I find out about appealing against a Notice of Decision?

You can find out more about appealing against our Notices of Decision on the First-tier Tribunal Service's website:

<http://www.tribunals.gov.uk/> follow the links to the first Tier tribunal (Care Standards).

If you don't have access to the internet you should write to:

First-tier Tribunal
Care Standards Appeals
Mowden Hall
Staindrop Road
Darlington
DL3 9BG

Or you can contact them by telephone on 020 7960 0660.

The Tribunal Service deals with appeals against decisions made by a variety of statutory regulators, Government departments and other public providers.

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How do I submit an appeal?

You have to complete and submit the right appeal forms, which you can download from the Tribunal Service's website.

If you don't have access to the internet, you can contact the Tribunal Service at the above address or telephone number, and ask them to send the correct forms.

You can ask your solicitor for advice and help with the appeals process.

You must submit appeals to the tribunal service within 28 days of receiving:

- A Notice of decision, or
- An urgent order to cancel a registration.

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What happens after I submit an appeal?

When the Tribunal Service receives a properly submitted appeal within the correct timescale, it arranges a hearing to consider all the relevant evidence and make a decision.

We submit and exchange 'bundles' of evidence with you before the hearing. This makes sure that the process is open, takes all relevant evidence into account, and that both sides have full access to all relevant information when preparing for the hearing.

The Tribunal Service can hold hearings in its London offices, or in local venues across the country as needed.

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Can I carry on providing or managing a service during an appeal to the Tribunal?

If you are appealing against a Notice of decision that was not issued under the urgent procedures of the Health and Social Care Act 2008, you can continue to carry on the regulated activity.

However, if we take enforcement action under the urgent procedures of the Health and Social Care Act, our decision remains in place unless and until the Tribunal decides otherwise. You can find information about these urgent procedures and how we use them in our general policy and guidance on enforcement.

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What decisions can the tribunal make?

The Tribunal can:

- Dismiss the appeal, in which case our Notice of decision is upheld and takes effect, or
- Uphold the appeal.

If the Tribunal upholds an appeal it will make a decision about your registration. The Tribunal's options for their decision are the same as those available to CQC under normal regulatory activity.

This includes changing conditions placed on your registration.

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Can I appeal against a Tribunal's decision?

Yes. There are appeal processes within the Tribunal service and through the Court of Appeal.

There is more information about this on the Tribunal Service website, or you can contact them using the details in question 10 above.