



The CQC and your estate

Making sure you're compliant

The Care Quality Commission uses five questions to assess and rate an organisation's services:

- Are they safe?
- Are they effective?
- Are they caring?
- Are they responsive to people's needs?
- Are they well-led?

How does this impact on estates?

There are two main areas where this will impact your organisation's estate:

Regulation 15

The main focus on CQC estates compliance is through Regulation 15 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. This focuses primarily on the role played by your estate in satisfying the CQC key question of whether your services are safe.

Regulation 15 sets out the requirements for premises and equipment. Premises must be clean, secure, suitable, properly used, maintained and appropriately located. As part of this, the premises need to meet the requirements of all relevant legislation, much of which relates to health and safety. Responsibility for any shortfall in meeting the regulation lies with the provider of the relevant care and treatment.

It's important to note that providers keep legal responsibility under these regulations, even when they delegate responsibility through arrangements or contracts with a third party. So it's vital that you document any contractual relationship, including occupational leases or licences. This is to assess, crystallise and minimise risk to your organisation and to flow down (or up!) any relevant obligations within your occupational arrangements.

Applications to add a location to an approved regulated activity

In April 2015 the CQC updated the application form for existing CQC-registered service providers who need to add a location to an approved regulated activity. For example, where (due to acquisition) you have won a new services contract and have taken over a service or location run by an existing registered provider. This now has a much greater estates focus than before.

The form now requires details of planning consent and building regulations consent for each new location. If you don't own the new location, the form requires confirmation that you have your landlord's written permission and (if relevant) the mortgagee's written permission to use the premises for the regulated activity. Where you don't have this written permission, applicants must explain why it's not needed, or has not been received yet.

If you are occupying premises as a tenant, you will therefore need to get your landlord's written consent to carry on providing your service, as a CQC requirement. However, what form should this consent take?

- Landlords should think carefully before providing this if a lease (in cases of exclusive possession) or a licence (where the premises are shared or used on a sessional basis) is not already in place. This is because of the implied occupancy rights which this confirmation may confer on your tenant. In order to protect your position, you should try to regularise the occupational arrangements as a priority. This will also help to avoid uncertainty about risk and responsibility for the premises, which assists in complying with Regulation 15.
- For tenants: you may come under scrutiny on CQC inspection or otherwise if you are unable to provide evidence of landlord consent, or else the consent is not documented sufficiently to minimise on going risk to the tenant. Again, tenants in these situations should try to regularise the occupational arrangements with your landlords as a priority. As is the case for landlords, this will help to avoid uncertainty as to risk and responsibility for the premises, which assists in meeting your Regulation 15 requirements.

In either case, the best evidence of consent is via fully documented estates arrangements such as a lease or licence. This should also help to satisfy the CQC's key question about whether your services are well-led.

CQC non-compliance - other risks for your estate

Even where your organisation is occupying premises and you're relatively comfortable with not having landlord's consent in place, third party funders are taking a greater interest in CQC compliance. Funders are picking up these issues and the potential adverse CQC non-compliance impact on their estates investments. So it's important to check you have all the necessary landlord consents before you negotiate any funding or finance arrangements for your estate.

The CQC has fixed penalties and fines for breaches of its requirements. This includes a failure to provide documents and information, and carrying on an activity without being registered.

How can we help?

Our team of healthcare estates lawyers can support you in:

- Advising on CQC Regulation 15 requirements and their impact on your estate, including health and safety queries
- Carrying out an estates audit to identify any undocumented or expired occupational arrangements
- Uploading your estates leases, licences and other records onto our innovative remote access Estates Management Service. This will assist with record and document reviews for CQC inspection visits
- Advising on the impact of the CQC's application to add a location to an approved regulatory activity, from a landlord and tenant perspective
- Negotiating leases and licences to regularise your occupation whether you are the landlord or the tenant, including support in preparing heads of terms where necessary

- Applying for retrospective consent from landlords and mortgagees
- Undertaking CQC-compliant estates due diligence where you are acquiring a new services contract or in advance of business acquisitions, including preliminary enquiries

If you would like to get in touch and find out more, please contact:



MARK PAGET SKELIN
Partner
020 8780 4861
mark.pagetskelin@capsticks.com



LISA GEARY
Partner
0113 322 5561
lisa.geary@capsticks.com



LISA ROBOTHAM
Partner
0121 230 1511
lisa.robotham@capsticks.com



SAM HOPKINS
Partner
020 8780 4776
sam.hopkins@capsticks.com

Capsticks
www.capsticks.com
 @capstickslp

London
1 St George's Road,
London SW19 4DR
T +44 (0)20 8780 2211
F +44 (0)20 8780 1141
DX 300118 - Wimbledon Central

Birmingham
35 Newhall Street,
Birmingham B3 3PU
T +44 (0)121 230 1500
F +44 (0)121 230 1515
DX 13003 - Birmingham

Leeds
Toronto Square, Toronto Street,
Leeds LS1 2HJ
T +44 (0)113 322 5560
F +44 (0)113 242 2722
DX 713112 - Leeds Park Square

Winchester
Staple House, Staple Gardens,
Winchester, SO23 8SR
T +44 (0)1962 678 300
F +44 (0)1962 678 311
DX 2532 - Winchester