

# **HSC Professional (Consultancy)**

## **Brochure of Services**

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## Brochure of Services

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Compliance assessment package - flexible package tailored to individual need
  - much more than a 'mock inspection'
  - fully up to date with the new Key Lines of Enquiry
  - may be extended to include detailed advice / support for drafting provider returns
- **Representations in response to draft inspection reports and proposed enforcement, imposition of conditions, or Notices of Proposal**  
Thoroughly researched, carefully drafted, well balanced, legally sound
  - nothing less will do!
- **Challenging your ratings**  
To challenge the published ratings is to enter a legal minefield - to have any chance of success it must answer all legal questions about the process that has been followed
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Three decades of experience of adult social care, over a decade and a half of consultancy experience, legal training to Masters level, and an increasing knowledge of what works and what doesn't - underpinned by extensive research of inspection report outcomes (including those of the new KLOEs) - enabling informed advice to support effective change in governance and regulatory risk management

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## What is compliance?

A clear inspection report and a “Good” rating across the five domains?

### The “fundamental standards” of the 2014 Regulated Activities Regulations -

- replaced the old “essential standards” in April 2015 with a system that allows for graded judgements of breaches of regulations, from the more minor to the more significant findings (and potential criminal offences) of “unsafe care”, and
- brought in much tougher, more probing tests of ‘safe’ care; and
- ushered in a new era of “special measures”, resulting in many closures of care services deemed to be providing “inadequate” standards of care.

The fundamental standards operate in a quite different way from the old essential standards, with major implications for inspection judgements and for ratings.

### The expanding scope of CQC inspections -

Inspections are however no longer merely a test of compliance with the regulations ...

- CQC issues its own “statutory guidance” to compliance, and registered persons must have regard for this prescriptive set of ‘tests’ of compliance - e.g. the staffing regulation is interpreted as including an “expectation” of training to Care Certificate standards.
- There is an increasing body of other ‘authoritative’ guidance especially NICE social care guidelines, guidance on management of medicines, restraint, fire safety, and much more, and this is increasingly being applied in inspections;
- Additionally, CQC policy on the interpretation of the “fundamental standards” and the things that matter in running a good service are of increasing importance in the outcome of inspections, in both the judgement of breaches of regulations and the determination of the all-important ratings. The sort of findings that are considered to be ‘safety issues’. The criteria for ‘effective’ governance arrangements to control the quality of the service. And so on.
- Back in 2014 CQC warned that once all services had been rated they would review the ratings criteria so that *today’s ‘outstanding’ becomes tomorrow’s ‘good’, and today’s ‘requires improvement’ becomes tomorrow’s ‘inadequate’*. Right on cue, CQC replaced the “Key lines of enquiry” that underpin the criteria for performance ratings. The new ratings framework has been applied since November 2017, and providers need to be up to the new mark in time for inspections under a far more probing set of criteria for staffing systems and governance.

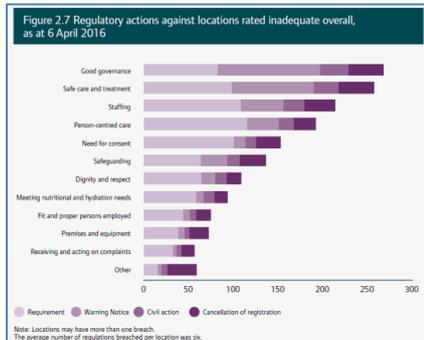
### The targeting of inspections, new annual returns

- CQC are now operating a system of targeting of services rated “Requires improvement” or “Inadequate”, the driving force for this being a major reduction in their grant-in-aid from central government;
- Providers given ratings of “Good” or (rarely) “Outstanding” will in future be inspected at intervals of “up to 30 months” subject to satisfactory annual provider returns, while the rest will feel the pinch of more frequent inspections with harsher enforcement to force compliance in short order;
- Inspectors commonly refuse to upgrade ratings at a follow up inspection, on the grounds that to do so requires a ‘longer term track record of consistent and sustained good practice’. This is of dubious legality and can be challenged. However it does mean that it can be a long road back from a downgraded rating to a “Good” rating.

## How Safe are your Ratings?

To maintain compliance with the “fundamental standards”, and be in the best position for the next inspection, providers and managers need answers to a range of questions. What is meant by ‘safe’ and ‘unsafe’ care? What are inspectors looking for under the heading of ‘good governance’? What are the optimum systems for quality monitoring? How are the staffing regulations applied in practice?

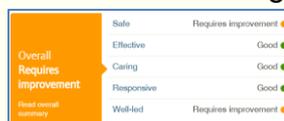
The patterns of inspection findings under the 2014 Regulations give clear insight into the way in which the regulations are applied.



These patterns of non-compliance, or “unsafe” care, can readily be seen in the statistics published by the Care Quality Commission, where certain regulations stand out as being most commonly found to be breached.

It is noteworthy that, for the regulations at the top of the list, *more often than not* a finding of a breach will result in a warning notice or on occasions a ‘section 31 notice’ blocking admissions to the service.

A key feature of the application of the fundamental standards is that findings may have implications for judgements against more than one regulation. The error in a MAR chart that is a safety issue under regulation 12 (“Safe care and treatment”) *and* a governance issue under regulation 17 (“Good governance”), on the basis that ‘quality audits had not picked up issues identified at the inspection’. The slow answering of a call bell that is a caring issue under regulation 10 (“Dignity and respect”), a staffing issue under regulation 18 (“Staffing”), and perhaps also a governance issue under regulation 17. Such wide effect on judgements of compliance may also be reflected in the ratings given - the “Safe” and “Well-led” domains often being downgraded together.



The systems, both regulations and ratings, are indeed very sensitive to relatively minor issues. CQC has mapped the regulations against the KLOEs, making for sharper comparison against the standards. More recently NICE has published a map of their guidelines and standards against the KLOEs, again enabling a more probing assessment.

Our ongoing research shows clearly that the new KLOEs are increasing the downward pressure on ratings in the Well-led domain. More than ever, inspecting officers are matching a wide variety of findings to deficiencies in the governance arrangements (with the increasing application of NICE guidance this is set to continue apace). This is true even where no breach of regulations is identified. About one fifth of social care services rated “Requires improvement” are compliant with the fundamental standards. It should be added that such ‘low risk’ services will be a low priority for re-inspection, and the “substandard care” label may have to be carried for years not months. In some areas of the country local authorities exclude services rated “Requires improvement” from their contracting systems.

Compliance with the fundamental standards is not ‘black and white’. Evaluation of “regulatory risk”, and of any effective measures that will safeguard your ratings at the next inspection, is necessarily based on expert knowledge of how the fundamental standards are interpreted and applied by the inspecting officer, as well as on detailed and up to date knowledge of the law itself. That is the basis for our **Compliance Assessment package**.

## **Compliance Assessment - the HSC Professional package**

### **“Finding solutions, not just looking for problems”**

We provide comprehensive Compliance assessments for care homes and domiciliary care services. The package provides a set of tools for the manager in making any changes needed to ensure a good inspection outcome, in addition to highlighting any areas of ‘regulatory risk’. This is more than just a “mock inspection”!

Based on our experience and also on in depth research of the outcomes of inspections under the fundamental standards introduced in April 2015 as well as the Key Lines of Enquiry for adult social care introduced in November 2017, this will assess your compliance with the regulations and give you a ‘best estimate’ of the ratings to be expected from your next inspection, based on the current systems in place in your organisation.

As well as providing a ‘regulatory risk profile’, the visit and report will give an expert analysis of changes and updates to policies and procedures, of documentation systems, and of quality controls, that should be considered to ensure a satisfactory outcome of that inspection. The inspecting officer’s perception of the ‘safety’ of the care provided is informed by a wide range of observations and it is the corroboration of evidence of non-compliance that will trigger a downgrading of ratings or allegations of breaches of regulations. The checks included in this Compliance assessment range from broad general matters, such as the effectiveness of quality controls, to detailed matters (informed by our research) that, cumulatively, may count against the registered person if not addressed. The assessment package will be suitable: in planning for the next inspection; in making changes in the light of a previous inspection; in the induction of a new manager.

### **The process of the Compliance assessment**

#### Preliminary information

We will request information and documentation prior to the site visit. Together with any published inspection reports this will enable the assessment to home in on anticipated inspection issues.

#### The site visit

The site visit is flexible. It can concentrate on policies, care plans, audits and other documentation. It can run partly as a training day for staff with responsibilities for compliance with the legal requirements. The agenda includes a screen presentation of the application of the fundamental standards and inspection outcomes (the latter being based on the survey of hundreds of reports of inspections under the fundamental standards).

The visit will also include assessment of policies and other general documents such as audits, accidents and incidents, and complaints. Issues from previous inspections will be reviewed. We will look at care plans and records, and other documentation as directed by the general checks.

#### Feedback and report

At a convenient time we will offer general feedback on the assessment of ‘regulatory risk’ from the checks made during the day. Recommendations and matters for urgent attention will be highlighted. We will compile a report on the Compliance assessment and send it by email, normally within one week of the visit. The report will analyse regulatory risk areas, as well as making detailed recommendations. We also provide a usb clip with a range of legal material, statutory and other guidance, and policy and audit templates. We will be happy to offer support in the preparation of action plans.

### **Support and advice on provider information returns (PIR or PIC)**

Provider returns (the current PIR or the new “provider information collection”) are designed to probe the current arrangements and any areas for improvement that the registered person ‘reasonably believes’ are needed. This is an important legal document. Where areas for improvement have been identified and are in process, the risk of downgrading of ratings is much lower than where these are identified by the inspecting officer during an inspection. We will advise where there is a need for a balanced improvement plan. We can also advise on a “Statement of Service” to supplement the PIR or PIC, to support a rating of ‘Outstanding’.

### **Follow up support**

Where changes are being made in the light of the Compliance assessment, the manager may wish to discuss them over the coming weeks, and telephone support is available.

To keep your costs down a follow-up site visit is not included in the standard contract. Follow up visits, if required, are available at reduced rates for a first visit (within eight weeks of the report) and then for up to three further visits within eighteen months of the report (see Fees section for details).

## **Regulatory support - the HSC Professional package**

**If your inspection report is not as you would wish, or as you believe it ought to be, what are your options? What are your rights of challenge to the judgements as well as the findings of the report? What are the rights of challenge to the ratings proposed in the report? What is your right of reply to any proposed enforcement action? Just as crucially, in a relationship of somewhat unequal power, how can you ensure that the CQC assesses any representations fairly, and makes changes where those should properly be made?**

HSC Professional offers a consultancy service, under contract, to advise on and prepare representations to the Care Quality Commission on draft inspection reports, proposed enforcement action, and performance ratings (proposed or published).

The first task is to assess the 'true' regulatory position of the organisation. Following a free preliminary consultation to explore the areas for advice, we will put a contract in place and request the relevant documentation to enable work to start. From the outset our work will be as directed by you.

Normally a meeting will be arranged following preliminary assessment of documentation and additional information where needed. A report of any preliminary work will be made at that meeting. Responses and representations on any matter will be developed with you the client, and approved before submission. No communication will be made with the regulator or other third party without prior approval.

It is most important not to delay the preparation of responses to inspection reports, of action plans, and of response to other documents or notices such as proposals on enforcement action. For example, where an action plan is required following an inspection, failure to submit it within the timescale given may result in an internal CQC Management Review meeting to determine further action such as a warning notice. If, however, you are already beyond a deadline for a reply to correspondence from CQC we would recommend that a response is still submitted. The next inspection is not the time to challenge the previous inspection report!

### **Response to proposed enforcement or imposition of conditions**

A separate or additional submission is indicated where there is proposed enforcement such as a warning notice. The response starts with the reply to the draft inspection report, but will of course address the detail of the notice. A proposal for enforcement may come at the same time as the draft report, or at some later date. There will be a deadline for reply to it.

### **The Notice of Proposal**

CQC's Special measures policy declares that, if there is not enough improvement at a follow-up inspection of a service placed in special measures they may "move to close the service *by adopting our proposal* to vary the provider's registration to remove this location or cancel the provider's registration". In some (probably not all) cases CQC issues a pre-emptive notice of proposal to cancel registration. This must be responded to within the statutory 28 days, regardless of whether and when cancellation might be considered.

### **What are the chances of success?**

It is crucial that any and all representations are sound **legally** as well as **clinically** if they are to persuade the inspecting officer and her manager that they have 'got it wrong'. Successfully argued representations will result in change including, where appropriate, withdrawal of allegations of breaches and proposed enforcement, and upgrading of ratings.

The High Court case of *SSP Health Limited v Care Quality Commission [2015]*, a judicial review of the response of CQC to representations by a general practice, was a watershed for the Commission. Mrs Justice Andrews observed: “There is little point in giving someone an opportunity to make factual corrections, if there is no procedural mechanism for safeguarding against an unfair refusal to make them”. However the judge did not favour ‘two bites of the same cherry’ unless there was evidence of an unreasonable response, and representations must be **legally sound** from the outset. One result of the High Court case was a new “factual accuracy” form which, be in no doubt, is a trap for the unwary.

## **Challenging your ratings**

A challenge to the ratings is first and foremost within the response to the draft report, but is also permitted following publication of the inspection report. The grounds for challenge at the latter stage are strictly limited, and tightly controlled. The only permitted grounds for requesting a review of the published ratings are that the inspector did not follow the process for making ratings decisions and aggregating them. Providers cannot request reviews on the basis that they disagree with the judgements made by CQC, as such disagreements would have been dealt with through the factual accuracy checks and any representations about a Warning Notice if one was served.

The reality is that a challenge to the published ratings is little short of a test of whether the Commission would be at risk were they to come before a judge! The wording in the policy as to “all relevant grounds” gives away the thinking behind the Commission’s approach when you do raise such a challenge after publication. From Freedom of Information requests we know that challenges can be successful and, in any case, no challenge means acceptance of the ratings (and potentially a long road back to a “Good” rating). However, submissions will need legal expertise if they are to have a realistic chance of success. Successful challenge to published ratings is not a copy of the response to the draft report!

## **Non-urgent advice and support**

We can offer considerable flexibility of advice and support. Other than the Compliance assessment package and contracts solely for representations, the arrangements for consultancy can be as a half-day seminar for the manager and other senior staff, with slide presentation and discussion of key issues. For specific advice on current regulatory issues in association with a seminar, time will be needed for preliminary work before the meeting.

We can also advise on preparation and the content of a Provider Information Return; on the preparation of action plans; on updating of Statements of Purpose; or on preparation for the fit person interview for a new registered manager.

## **Preliminary consultation**

If you are interested in engaging any of our services, please call on **07866 605545** to discuss your needs for consultancy support, or you could just send an email. This preliminary consultation is free and without obligation. While we will not be able to offer specific advice at this stage, we will be happy to explore the ways in which our input could be of assistance, whether in carrying out a Compliance assessment, or responding to draft inspection reports and ratings, or proposed enforcement, or in developing action plans, or in meetings to review your arrangements under the fundamental standards.

## Fees for consultancy work

The general hourly rate for work under contract is, at the time of this brochure, **£120.00 per hour**. Where the scope of work and therefore the time likely to be taken is reasonably predictable, fees have been set down in the fixed fee scheme, on the basis of a (partly discounted) calculation of the fees that would otherwise end up in your invoice.

The baseline rates of the scheme are necessarily subject to adjustment due to any significant predictable additional work, e.g. where there is a long or complex history of findings of non-compliance; or where extensive enforcement is proposed, e.g. several warning notices.

Under “**Standard terms**”, fees are invoiced in arrears with exceptions as stated below. Where there is a threat against registration (e.g. a block on new clients to the service, or a notice of proposal to cancel), or in other circumstances at our reasonable discretion e.g. where there have been significant difficulties with previous invoices, “**Project terms**” apply, and payment in advance will be required for each ‘chunk’ of work undertaken (on an estimated or the fixed fee basis as appropriate).

### The fixed fee scheme

Consultancy is offered on a fixed fee basis for ‘standard’ work of response to a draft inspection report or to proposed enforcement action, or for request for review of performance ratings. The fee includes the first meeting.

The ‘baseline’ fees (as at January 2018) are as follows:

- |  |                          |
|--|--------------------------|
| ✓ Response to draft inspection report and proposed ratings | <b>£1,800.00</b>         |
| ✓ Response to warning notices                              | <b>£400.00</b>           |
|  | in addition to above fee |
| ✓ Request for review of ratings (after publication)        | <b>£1,500.00</b>         |
| ✓ Response to notice of proposal                           | <b>£1,500.00</b>         |

Fees proposed will be confirmed following assessment of documentation, and before a contract is signed to enable work to commence. VAT does not apply to any of our fees.

There will normally be an initial payment, with a baseline figure of **£700.00**, to enable work to start. This payment is part of the total fee, and enables preparation for a meeting to report on the regulatory ‘position’ of the client, and discuss options for representations. If no further input is then needed or requested, no further payment will apply.

Consultancy work outside the scheme is provided on an hourly rate, currently **£120.00 per hour**. Full Terms of Business are provided when offering a contract for consultancy work.

Consultancy may still be provided just on the hourly rate where preferred (and we will also recommend this where the fees would be substantially lower), but the contract may not be transferred to a fixed fee basis at any later date.

There is no charge for travel or accommodation in a first meeting with a new client. Travel for subsequent meetings is charged at a nominal rate of 25p per mile from Ipswich.

Where work is invoiced in arrears, payment is due within ten days of the date on the invoice. We do ask clients to respect this timescale. Our escalation procedure is automated, swift and certain, and without fear or favour.

A discount of £300.00 on the fixed fee package is offered where we have carried out a Compliance Assessment at the same location within the 12 months prior to an inspection.

Follow up visits to the Compliance assessment package are available at a reduced rate. A first visit, if carried out within eight weeks of the report, will be at a flat rate of £200.00 (half-day) or £400.00 (full day). Up to a further three follow up visits may be carried out within eighteen months of the report at a rate of £250.00 (half-day) or £500.00 (full day).

For further details or discussion of the fixed fees system please call on **07866 605545**.

The baseline fees are subject to periodic review (and this brochure may not be taken as having fixed the fee at an old level). Please check with us if there has been any change since receipt of this brochure.

## Fees for the Compliance assessment

The total fee for the Compliance assessment (inclusive of the site visit) is currently as follows:

No previous inspection report for the registered service	<b>£600-00</b>
Most recent published inspection rated “ <b>Good</b> ” overall	<b>£600-00</b>
Most recent published inspection rated “ <b>Requires improvement</b> ” overall	<b>£650-00</b>
Most recent published inspection rated “ <b>Inadequate</b> ” overall	<b>£700-00</b>
Advice on PIR or PIC, or support for a “Statement of Service”	<b>add: £300.00</b>

The above scale allows for any additional work in assessing regulatory risk, and applies regardless of individual domain ratings. A booking payment of £200-00 (out of the total fee) applies (any total fee level).

There is no charge for travel or accommodation if needed to conduct the Compliance assessment.

*Last review of fees levels: January 2019*

## On site seminars

On site seminars are available for groups of managers. These will be along the same lines as the seminars ‘on the road’, and they can be tailored to your needs. They can also be combined with advice on specific issues, subject to charges at the hourly rate for any additional work involved. The rate for a half-day seminar is £520-00 and for a whole-day seminar is £920-00. For further information and discussion of your needs, please call.

## Dr Richard Fairburn LLB LLM BSc MB,BS DMS

Following careers in the NHS and the Pharmaceutical Industry Richard Fairburn owned and ran a nursing home in Suffolk from February 1986 (the first re-registration in the old East Suffolk HA under the Registered Homes Act 1984) to 2003, and was the only home owner in the country to go all the way to the Care Standards Tribunal with regard to the transfer of registration under the Care Standards Act (resulting in a pivotal decision on the scope of registration of nursing homes). He set up and ran a domiciliary care service from 1994, registering for the first time with CSCI in 2003, and selling it in 2006, then running an umbrella service for Criminal Records Disclosures.



Richard represented nursing homes and domiciliary care agencies locally from the late 1980s on regulatory and contractual matters. He was a member of the Council of the Registered Nursing Home Association for many years; member of the Executive Committee; set up a Patient Affairs Committee; and was the Association's first Liaison Officer for Community Care, representing the independent sector in negotiations of the Guidance for Community Care. He wrote monthly articles in "This Caring Business" on regulatory and other aspects of the Care industry for six years up to 2006. He qualified LLB at London University in 2000, and completed the Masters degree in Human Rights and Public Law at Essex University in 2002. He obtained the Diploma in Legal Practice at the University of Westminster in 2004, and the NEBOSH Diploma in Occupational Safety and Health (Pt 1) in 2005.

Richard Fairburn has provided Consultancy advice on regulatory matters to Care Providers since 2000 and the implementation of the Care Standards Act, also running seminars across the country on regulatory issues from that time. He took a particular interest in Statements of Purpose at the time of transfer to the Care Standards Act, preparing many such Statements for care homes and domiciliary care and nurses agencies, and has advised Care Providers on an ongoing basis in regard to regulatory issues for over a decade.

The Consultancy works with providers and managers to draft and submit: responses to draft inspection reports including draft performance ratings; responses to proposed enforcement action (including under the special measures scheme); and requests for review of published performance ratings where the ‘final’ ratings are still contested ... as well as seminars ‘on the road’ or tailored for the organisation on site. This is a research-based consultancy, constantly keeping abreast of changes in inspection methodology. There is (and always will be) an ongoing survey of inspection reports, looking for evolving attitudes to compliance, and even the most minor findings that are deemed non-compliant or requiring improvement.

\* Please note that our fax-to-email service charges the sender 13p per minute (this is in addition to your own service call charges)

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