



# Challenging CQC Reports – Important

Providers can often feel as though they have hit a wall when challenging CQC inspection reports through the limited factual accuracy and ratings review processes. Very few reviews succeed, leaving providers with little option but to challenge decisions through judicial review. The recent High Court declaration made in *R (on the application of SSP Health Ltd) v CQC* suggests that a further right of redress is needed beyond the two-stage challenge procedure, and is therefore welcomed.

The provider received an overall rating of 'Inadequate' for its GP practice and submitted its factual accuracy comments, identifying a number of factual inaccuracies within the draft inspection report. The provider did not submit evidence to challenge fact-findings alongside its comments, because there was nothing in the procedure that allowed for this, and evidence was not requested by CQC.

Consequently, the provider's comments were rejected out of hand on the basis that the evidence did not exist at the time of inspection, because the inspectors did not see it. Following publication of the report, the provider requested a review of the rating, which CQC refused on the basis that the provider had not identified any failure by CQC to follow process. In the absence of a further right of redress, the provider applied for judicial review.

At the hearing, the provider focused on the factual accuracy process, alleging that findings in the draft report were demonstrably wrong or misleading and procedural fairness required that those inaccuracies be corrected.

The judge concluded that CQC must not make adverse findings that something does not exist simply because the inspectors did not see evidence of it at the inspection, particularly when it had not tested whether that evidence existed. If a provider can supply evidence to challenge fact-findings or show that CQC has made an ill-founded and misleading implication, CQC should respond in the following ways:

1. accept the word of the provider and make appropriate adjustments to the draft report;
2. ask the provider to see some evidence; or
3. adjust the draft report to state that it saw no evidence of that matter at the time of inspection, but have

been subsequently been informed that such evidence existed.

The court went on to grant a declaration that, where requested to do so by a provider, CQC has an obligation to carry out an independent review of a decision in response to factual accuracy comments, if the ground of complaint was that a fact-finding maintained in the draft report is demonstrably wrong or misleading. However, a declaration is not the same as an order. Whilst it would be unwise of CQC to ignore the declaration, this simply clarifies the rights and obligations of the parties; the court has not ordered CQC to review all similar decisions. It is unclear whether reviews should take place in other scenarios.

The judge also considered that there should be a swift, fair and effective process to allow a provider to challenge any refusal by CQC to change demonstrably inaccurate or misleading findings. She criticised the role of the Lead Inspector in solely determining whether a draft report should be amended and did not think it fair that providers should be disproportionately burdened with having to seek judicial review of a refusal to review ratings, in the absence of an alternative right of redress.

On that basis, the judge stated that an independent person within CQC would be better placed to determine whether a provider has a legitimate grievance and recommended use of a pre-publication internal review process to deal with challenges by providers.

Whilst it is not yet clear how CQC will respond to this case, it is hoped that more ratings can now be altered before publication. A CQC spokesperson has commented that 'CQC had started reviewing this as part of ongoing improvements that had been underway for some months' and 'when providers ask for amends in draft reports, a member of staff who was not present during the inspection will review the response.' They have also stated that 'CQC welcomes the judgment as a further endorsement of its inspection, rating and quality assurance methodologies.'

In any event, the provider's claim for judicial review of CQC's refusal to review the rating failed, because the provider had not alleged any failure by CQC to follow process. It was stated that judicial review would have succeeded if the provider had requested a review of CQC's failure to amend the draft inspection report. Specialist legal advice should therefore be obtained by providers who wish to challenge an inspection report and the actions of CQC.