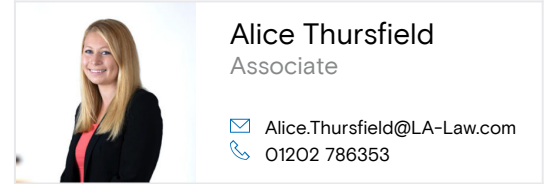




# New CQC Guidance on Registration and Regulation of Learning Disability/Autism Services

AUTHOR / KEY CONTACT



[CQC](#) has now published new guidance to revise its Registering the Right Support (RTRS) guidance in an attempt to clarify the rules for services supporting people living with autism and people with a learning disability.

Earlier this year, CQC carried out an engagement exercise to discover how the RTRS guidance could be improved to be clearer and to better reflect personalised care and outcomes for people. During the engagement phase, it was unclear whether the updated guidance, entitled [Right Support, Right Care, Right Culture](#), would be replacing the RTRS or simply supplementing it. In response to feedback provided to CQC as part of that engagement process, CQC decided to make some further changes to the draft guidance and a final version was published in October.

CQC's new guidance states that *"Registering the right support was published following consultation in 2017. From time to time we revise the guidance we issue. This guidance has been revised and retitled and continues to be statutory guidance in accordance with s.23 of the Health and Social Care Act 2008. Our policy on regulating providers that support autistic people and people with a learning disability remains unchanged from Registering the right support, but, having sought feedback, we have aimed to clarify to providers how we implement this policy in this update."*

The new guidance is brief in its explanation of the interplay between it and RTRS. In our view, it remains unclear, although it is understood that it is intended to replace the RTRS guidance.

There are three key factors which CQC expects providers to consider if they are or want to provide care for people with autism and/or people with a learning disability, namely; **right support** - the model of care and setting should maximise people's choice, control and independence; **right care** - care should be person-centred and promote people's dignity, privacy and human rights; and **right culture** - the ethos, values, attitudes and behaviours of leaders and care staff should ensure people using services lead confident, inclusive and empowered lives.

## Size of residential services

One of the key problem areas for providers has been in relation to applications for registering a service for these client groups with more than six beds. The new guidance attempts to clarify how CQC will implement the original RTRS guidance, although we are not sure this has been achieved.

The new guidance states that CQC's policy has always been set alongside other standards in the system and references NICE guidance (CG142) on the definition of "small" services for autistic people with mental health conditions and/or behaviour that challenges. The NICE guidance identifies services of no more than six people as being appropriate for autistic people.

CQC specifically states that *"while we continue to refer to NICE guidance in describing what "small" means for how we apply our approach, we want to be clear that this is not the same as having an absolute upper limit for the size of services. CQC has never applied a six-bed limit in its registration or inspection assessments.*

*We have previously refused to register services that are smaller than six beds because they could not assure us that they could deliver person-centred care in line with current best practice. We also have registered services with more than six beds because they have been able to demonstrate how care will be high quality and person-centred".*

Despite this statement, our experience of CQC's application of the RTRS guidance and the six-bed rule has been that CQC does tend to be fairly rigid on this point. CQC guidance has always stated that there is no strict rule that services must not be more than six beds, however, in our experience, CQC usually appears to start from the basis that services should not be larger than six beds, with the onus then moving to the provider to evidence that there are exceptional circumstances for departing from that best practice recommendation. That said, we have achieved success in several challenges against CQC's refusal to register services by demonstrating that the other underpinning values of RTRS were met.

## Case studies

Appendix A of the new guidance sets out a variety of case studies which CQC states illustrates the new guidance in action. There are case studies on registration, monitoring and inspection of learning disability services.

Interestingly, despite CQC claiming it does not have a strict six-bed rule, all but two of the case studies where an application to register a new service has been granted relate to services with less than six beds. Conversely, each of the case studies where an application has been refused relates to services seeking to register more than six beds. Unfortunately, we do not expect to see a significant change in CQC's approach to the size of services as a result of the revised guidance.

If you are making an application to register or vary your registration in respect of a learning disability service, or if you have any questions arising from CQC's new Right Support, Right Care, Right Culture guidance, please contact our experienced [healthcare lawyers](#) to see how we can assist.

If you require any assistance in relation to CQC's new guidance, please do not hesitate to contact a member of our [healthcare law team](#) on [online.enquiries@la-law.com](mailto:online.enquiries@la-law.com) or call 01202 786135 to discuss how we can assist you.