



GUIDANCE FOR INSPECTORS

DEALING WITH ABSENT AND VACANT MANAGERS

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1. Introduction

1.1 Legislation, practice and recent serious case reviews have recognised the critical importance of services being managed by suitably qualified and competent registered managers. Not having a registered manager due to either a period of absence or a vacancy is a known risk factor.

2. Definitions

Registered Manager

2.1 CSSIW registers managers of defined services. The exception to this are services where the registered provider is an individual who intends to also manage the service themselves and is 'fit' to do so. Regulations specify the requirements to be able to demonstrate 'fitness'.

2.2 The registered manager is legally responsible and accountable (together with the registered provider) for compliance with the Care Standards Act 2000, the Registration of Social Care and Independent Health Care (Wales) Regulations 2002 and associated sector regulations.

Absent Manager

2.3. The law recognises and allows for the absence of a registered manager as long as the registered provider formally notifies CSSIW when the manager will be absent and informs us of the arrangements they are making for the management of the service.

2.4. Where the registered provider/manager or registered manager expects to be absent for a continuous period of 28 days or more they should give CSSIW at least one month's written notice. Shorter notice may be agreed in emergency situations. The notice must specify:

- length or expected length of absence
- reason for absence
- alternative arrangements for the running of the service
- name, address and qualifications of the person responsible for the home in the person's absence and, critically in this context
- arrangements for appointing an alternative manager during the person's absence and date the appointment is to be made.

2.5 CSSIW does not approve such arrangements but can judge whether additional regulatory oversight or action is required. Where CSSIW considers the absence of a registered manager to be having a negative impact for people using the service we will

use our inspection and enforcement powers to ensure that regulations are complied with.

Vacant Manager

2.6 CSSIW recognises that when the registered manager has left and the post is vacant, recruiting a competent, capable manager who can meet the requirements of the regulations can take time, including advertising, interviewing, completing reference checks and allowing for employment notice periods. The process for applying for registration with CSSIW takes additional time following an appointment. It is therefore to be expected that there will often be a gap of some months between a registered manager leaving and a new manager being appointed and then registered.

2.7 Registered providers are required by regulations to notify CSSIW within 28 days of a registered manager leaving and to set out the interim arrangements they have put in place for the management of the service.

2.8 CSSIW does not approve such interim arrangements but can judge whether additional regulatory oversight or action is required. Where CSSIW considers the interim arrangements to be having a negative impact for people using the service we will use our inspection and enforcement powers to ensure that regulations are complied with.

3. Principles for dealing with absent and vacant managers

3.1 It is expected but not assumed that registered providers will put in place reliable and robust arrangements. Good services will have contingency arrangements in place however it is quite common for there to be drift with interim arrangements becoming protracted and subject to change. There is often false optimism about new applicants taking up post, being competent and sustaining their appointments. It is not untypical for intended applications not to materialise or to be withdrawn part way through the registration process.

3.2 Establishing a proportionate approach which recognises the challenges facing registered providers and balancing this with the risks of service failure and the requirements of the law requires vigilance and judgement by CSSIW inspectors.

3.3 It is anticipated that 3 months is a reasonable time for a registered provider to appoint a suitable manager. The law requires the registration of any person managing a service and therefore it is expected that a manager appointed to cover a temporary absence, or vacant post is registered. CSSIW may consider taking enforcement action should a manager be in post for 3 months or more if they have not taken, or do not within a reasonable time take, the necessary steps to apply to CSSIW for registration. A person managing, or proposing to manage, a care home without being registered to do so is at risk of prosecution under the Care Standards Act S11(1).

3.4 In order for any manager to be registered by CSSIW they must satisfy the prescribed requirements as to their personal fitness, as well as demonstrate their ability to comply with all relevant regulatory requirements in respect of the service. Where a

registered provider repeatedly appoints managers who are unable to satisfy the relevant requirements for registration, CSSIW may consider taking enforcement action against the provider, for their failure to carry on the service with sufficient care, competence and skill.

3.5 Services without a registered manager for more than 3 months must be regarded as being high risk and will receive more frequent focussed inspections.

3.6 Robust enforcement action should be taken against services where outcomes are poor for people and there is no registered manager, or where the provider has not taken reasonable action to appoint a manager with a view to registration.

3.7 CSSIW will liaise with the Care Council for Wales, the social care workforce regulator, to exchange information and share any specific concerns in accordance with our information sharing protocol.

4. Action required in accordance with CSSIW's established enforcement procedures

4.1 CSSIW may consider taking enforcement action should a manager not be appointed, or has been appointed and been in post for 3 months or more, but does not take the necessary steps to apply to CSSIW for registration.

4.2 If an application for registration has not been submitted within 3 months after the date CSSIW was notified, or became aware the registered manager has left or is absent, a focussed inspection will take place to assess the impact for people using the service.

4.3 If no application is in process or anticipated and received within 10 working days of the inspection a non compliance notice will be issued. It is expected that this will be issued to all services routinely as a result of a technical breach of regulation, irrespective of the impact for people using services. However, the notice will evidence the level of impact the breach is having and this will be taken into account in determining whether any further enforcement action is required.

4.4 CSSIW would expect a completed application to be submitted within 2 months of the date the non compliance notices was issued.

4.5 If the timescale for compliance is exceeded then, in line with CSSIW's Guidance for Responding to Non Compliance, a Provider Meeting will be held and the normal decision making and action will be taken, including where necessary escalation to a Service of Concern meeting. CSSIW will consider and formally review the evidence of impact as part the Provider Meeting and if there is low impact may decide not to progress enforcement action at that stage.

4.6 CSSIW will consider referral as a Service of Concern if the timescale becomes extended, there is a lack of effort by the registered provider to achieve compliance, or the outcomes for people at the service are compromised.

4.7. Area teams are responsible for the inspection and oversight of individual services without registered managers.

4.8 All outstanding non compliance notices in respect of the absence of a registered manager are reported upon and monitored each month by an area manager and enforcement inspector.

4.9 Once a non compliance notice has been served it remains in force until a new manager is registered. CSSIW will not extend the timescale nor apply conditions to give the registered provider any "grace".

5. Process for dealing with vacant managers

5.1 CSSIW wants to be better able to identify services which are likely to present management problems, and thereby improve its regulatory response.

This guidance draws a distinction between:

Managers who have left a setting and submitted an application to voluntarily cancel their registration.

And

Managers who have left a setting but have not notified CSSIW or submitted an application to voluntarily cancel their registration.

6. Managers who have left a setting and submitted an application to voluntarily cancel their registration

6.1 Under Section 15(1)(b) of the Care Standards Act a person registered under Part II of the Act may apply to CSSIW for cancellation of their registration.

6.2 If CSSIW has not issued a Notice of Proposal to cancel the person's registration then the application must be accepted as long it is on the prescribed form and provides the relevant information.

6.3 Under Section 15(2) of the Care Standards Act it states that a person may not make an application under 15(1) (b) if CSSIW has already issued a Notice of Proposal to cancel that person's registration, or a Notice of Decision to cancel has been issued but the time in which an appeal may be brought has not expired.

6.4 If CSSIW has issued a Notice of Proposal to cancel the person's registration and an application to voluntarily cancel registration is subsequently submitted there is no obligation to accept this as detailed above. The application should not be accepted unless there are particular circumstances (reasons as listed in the NoP) and these would be sufficiently important for a Tribunal to have findings made against a manager's fitness despite the fact that they are no longer working at the setting. For example, if the reasons listed are that the manager has left and therefore can no longer fulfil their regulatory responsibilities then on balance it would not be reasonable or proportionate to proceed on the basis of the person no longer working there. However,

if there are clear grounds to question the fitness of an individual then CSSIW should not accept the application. Advice can be sought from legal services.

6.5 Whenever a manager successfully cancels their registration the certificate of registration for the setting must be updated to record the date of the decision. If there isn't a registered manager the updated certificate will be issued to the provider stating 'No registered manager since.....'.

7. Managers who have left a setting but have not notified CSSIW, or submitted an application to voluntarily cancel their registration

7.1 Registered providers are required to notify CSSIW within 28 days of a registered manager leaving and to set out the interim arrangements they have put in place for the management of the service.

7.2 If a manager has left a setting but not submitted an application to voluntarily cancel their registration CSSIW will need to take enforcement action to remedy this. CSSIW is relying on the statutory grounds to cancel a person's registration as detailed under the CSA Section 14 (1) (c). This is where, as a matter of fact, a manager no longer works at the service, has no access to the premises, and therefore is not managing the service in accordance with the relevant requirements (for example, due to their resignation).

7.3 In these circumstances, cancellation of a manager's registration under s14(1) (c) on a limited, no fault basis, provides clarity in terms of the registration status of managers who are known to have left their employment and who have failed to submit an application to CSSIW to cancel their own registration. If the individual applies for registration in respect of the same or similar services in the future, the application process requires previous registrations to be taken into account, but it is unlikely they would be penalised for having their registration cancelled on these neutral grounds.

7.4 The above process would not apply where a manager is dismissed or is the subject of disciplinary proceedings which calls their fitness into question. In these circumstances, CSSIW would need to include specific evidence to cancel the manager's registration, or await the outcome of the employer's disciplinary process.