


Care Quality Commission (CQC) prosecution outcomes highlight ongoing trends

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In the last three months, the Care Quality Commission (CQC) has concluded three prosecution cases relating to unsafe care and treatment. The first, against Richmond Psychosocial Foundation International, followed the death of a young person in their care in January 2016. Oakdene Care Home Ltd were prosecuted in relation to a resident's fall that led to a broken jaw in February 2018. The resident was admitted to hospital and passes away four days later, although it's unclear whether this was linked to the incident. The most recent, against Ideal Care Homes (Number One) Ltd, related to failures to manage aggression by one resident against others dating back to December 2017.

These results reveal three themes: 1. The CQC's increased appetite for prosecutions continues; 2. There remain substantial delays in bringing prosecutions; and 3. Apparent inconsistency in sentencing.

The most striking feature of these cases is their age. The CQC has three years to bring prosecutions in relation to unsafe care and treatment. It appears that in each of these cases that deadline was fast approaching before prosecution decisions were made. We have observed and commented over recent years that this is too often the case; indeed it appears almost exclusively. It cannot be said to be a pandemic effect. Although delays of this kind can occur in regulatory cases, for a variety of reasons, they are not routine. They prolong worries for those affected and their families as well as staff involved from the care provider's perspective. They create uncertainty for care business and for investors looking to acquire those businesses, who are required to look back at incidents a full three years in the past for potential liabilities.

It is to be hoped that part of the CQC's new strategy, to be launched in 2021, will be to address this aspect of their enforcement activities. It has been clear for some time that CQC wishes to be more robust in its criminal enforcement actions, as shown by an increased number of prosecution and penalty notices for both unsafe care and treatment and duty of candour failings. They have recently parted company with Alan Fox, former Head of Casework at the Health and Safety Executive, after his brief six-month stint as Interim Head of Governance and Legal Services. Nonetheless, there remains an opportunity, if CQC inspectors are to be freed from some responsibilities for routine, on-site inspections, to dedicate some of that resource to accelerating enforcement processes.

Another feature of these cases is the disparity in fines, ranging from £10,000 in the case of Oakdene Care Home through £40,000 for RPI to £140,000 for Ideal Care Homes. An RPI senior manager, prosecuted alongside the organisation, was fined only £3,000. In part, this disparity can be explained by the difference in the financial resources available to those defendants. Nonetheless, the fines issued to the two smaller organisations would be considered low in comparison to similar offences covered by health and safety sentencing guidelines, which do not apply to CQC prosecutions.

Recent prosecutions have led to much larger fines for public bodies, such as a local authority fined £500,000 for unsafe care and treatment leading to a resident's death. On the other hand, prosecutions for duty of candour failings have resulted in sentences at level that the CQC could have imposed by way of penalty notices, with prosecution legal costs far outstripping fines.

As we emerge from the pandemic and the Court system clears its own backlogs, it will become apparent whether the CQC has addressed some of these issues as new cases emerge. As ever, we will provide updates wherever we can. To hear more from us on CQC regulation

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