

Sussex Partnership NHS Trust fined £200,000 – A warning for providers and investors

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Sussex Partnership NHS Trust was sentenced on 14 June 2019 for failing to provide safe care and treatment to a 19 year old inmate being cared for on the hospital wing of Lewes Prison, Jamie Osborne. The prosecution is only the second brought against an NHS Trust by the CQC since the Fundamental Standards came into effect in 2015, following Southern Health's £125,000 fine in October 2017.

The CQC, describing the circumstances of Mr Osborne's death, explained how he was considered a high risk of suicide but despite there were failings in assessing ligature risks including in his cell. Prescribed medication was not given and a planned transfer from prison to hospital had been delayed. CQC has previously indicated that prosecutions of NHS Trusts are likely to be limited to cases where clear warnings of potential harm are not heeded, with the result that service users come to harm. Here a CQC statement said that it hoped it would send "a clear message that people in prison have the same right to high quality mental healthcare as any other member of our society".

In imposing a fine of £200,000 and awarding £25,000 in prosecution costs, the Judge at Brighton Magistrates' Court said that the care provided to Mr Osborne fell "far short of an appropriate standard", procedures "were not adequately adhered to" and there were "systematic failings" in how staff were trained. These words reflect the description of a highly culpable offender in health and safety sentencing guidelines that CQC argue are applicable to the prosecutions they bring. Under those sentencing guidelines, a highly culpable, corporate offender with a turnover in the same category as Sussex Partnership whose failings bring about a death against the background of risks described could expect a sentence in the region of £1.5m to £6m with a starting point of £2.4m.

Public bodies, including NHS Trusts, are entitled to a substantial reduction in sentence under the guidelines although the extent of the reduction here may suggest that the Court did not fully accept the relevance of the sentencing guidelines to CQC prosecutions. Either way, private providers should be aware that similar prosecutions brought against them would be likely to result in substantially higher sentences than imposed in this case. Even somewhat smaller providers, in respect of similar offences, might face fines of approaching or even exceeding £1m.

For any investor looking to acquire CQC regulated services, this case is an important reminder of the importance of due diligence in respect of regulatory issues and, in particular, historical accidents and incidents going back some years. CQC can bring prosecutions in respect of incidents up to three years after they occur and routinely take until close to that deadline to decide whether to do so. Mr Osborne's death occurred in February 2016. In our experience, CQC and HSE investigations often appear dormant or even concluded from the provider's perspective for long periods of time before being reignited.

If you are subject to HSE investigation or prosecution or if you are considering investing in a CQC regulated business, don't hesitate to contact us about our health and care regulatory services. Our defence litigation team can assist with responses to critical incidents, privileged internal investigations and challenging CQC reports or enforcement Notices as well as providing representation at inquests, tribunals and in criminal proceedings. Our specialist health and care regulatory due diligence team, incorporating CQC, HSE and fire safety specialists, carries out reviews for all kinds of health and care providers as well as advising on compliance with recent CMA guidance for care homes either as a standalone service or as part of our full package of specialist healthcare corporate transactional services.

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