



CQC Continues to Enforce Duty of Candour – Landmark Prosecution

AUTHOR / KEY CONTACT



Alice Thursfield
Associate

✉ Alice.Thursfield@LA-Law.com
☎ 01202 786353

You may recall that October 2020 saw CQC's first prosecution for a breach of duty of candour. In that case, CQC ordered University Hospitals Plymouth NHS Trust to pay over £12,000 after it admitted that it failed to disclose details relating to a surgical procedure. This was the first prosecution of its kind.

Fast forward just 6 months to April 2021 where CQC has undertaken a further prosecution, described as a "landmark" case, against Spire Healthcare for a breach of a duty of candour responsibility. This is the first case where CQC has prosecuted an independent hospital provider for breach of duty of candour regulations. Spire Healthcare has been ordered to pay over £20,000 in total for the breach. Spire Healthcare is a private hospital group with 39 hospitals and 8 clinics across the UK providing a range of treatments and services.

In this case, Spire Healthcare was fined £5,000, ordered to pay a £120 victim surcharge and court costs of nearly £15,000, after it admitted that it did not apologise and disclose details regarding failures and inadequate treatment to four patients that were treated at one of its private hospitals in Leeds, Spire Leeds Hospital.

The four patients were under the care of Mr Mike Walsh (a consultant orthopaedic surgeon) and suffered pain that required further remedial surgery. It was the NHS Leeds Clinical Commission Group, several physiotherapists and another upper limb consultant orthopaedic surgeon at the Spire Leeds Hospital who raised concerns about Mr Walsh. As a consequence, Spire Leeds Hospital undertook a review of cases (including the four involved in this matter specifically). An independent upper limb consultant orthopaedic surgeon also undertook a review in May and June 2018.

Despite undertaking this review in May/June 2018, Spire Leeds Hospital did not write to the four patients letting them know about the concerns raised until November 2018.

This delay led CQC to undertake a prosecution for a failure to follow duty of candour regulations which states that individuals should be informed when a notifiable safety incident occurs and should be provided with reasonable support as soon as is "reasonably practical" after the incident.

Sarah Dronsfield, CQC's head of hospital inspection commented: *"The patients under the charge of Mr Walsh neither received a prompt apology nor full explanation for the poor care they received. Spire Hospital Leeds was*

not transparent or open with regards to what happened....

“People using any type of health or social care service have a right to be informed about all elements of their care and treatment – and, all providers have a responsibility to be open and honest with those in their care. Spire Healthcare Limited failed to meet that responsibility, which is why the CQC took this action.”

The Group Clinical Director for Spire Healthcare acknowledged that the investigation into the cases, along with an apology and opportunity to raise and discuss concerns, was not given to the four patients promptly enough. She further acknowledged that Spire Healthcare fell short of the requirements required under duty of candour regulations.

The duty of candour requirement is set out in Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and applies to all health and social care providers. The duty of candour requires registered providers and registered managers to act in an open and transparent way with people receiving care or treatment from them. The regulation also defines ‘notifiable safety incidents’ and specifies how registered persons must apply the duty of candour if these incidents occur. CQC published updated guidance in relation to duty of candour in March this year, which can be found [here](#).

Although the duty of candour includes apologising to those affected by shortfalls in care and treatment, that does not necessarily mean admitting fault. Careful wording should be considered when complying with the duty of candour, but it is clear that CQC is looking more closely at compliance with duty of candour now than it has in the past.

Prosecution for a breach of the duty of candour regulations is part of a range of enforcement action available to CQC and is something that we have been seeing more of in recent months. There is a growing trend of more numbers of criminal investigations and prosecutions being undertaken by CQC. As Laura has set out in her most recent [blog](#), CQC’s Chief Executive, Ian Trenholm, has previously told of his intention for CQC to carry out more prosecutions to give the public confidence that CQC is stamping out poor care.

Prosecution by CQC is a serious step and our healthcare lawyers urge providers to take legal advice if they find themselves in this situation. We are specialist [health and social care solicitors](#) with extensive experience in advising care providers on CQC requirements and compliance, and defending all forms of enforcement action, [criminal investigation or prosecutions](#) by CQC or other authorities (such as the Police). If you require any assistance in relation to CQC requirements or your dealings with CQC, please do not hesitate to contact our [CQC solicitors](#) at online.enquiries@la-law.com or call 01202 786135 to discuss your situation.