

# CQC's Prosecution – A Reminder to Providers to be Open and Transparent

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The Care Quality Commission (CQC) has recently publicised its successful prosecution of a care provider, as a result of which the care home operator was ordered to pay £11,371.

The care provider, Premiere Care (Southern) Limited, was fined £3300 (£1650 for each charge) and ordered to pay a £181 victim surcharge and £7890.61 in prosecution costs after the care provider admitted that it failed to inform and apologise to the appropriate family members after the death of service user, Jean Herring.

Mrs Herring had been a resident of Avenues Care Centre, a care home operated by the company. She had died after falling from the upper extension roof of Avenues Care Centre. The care home had failed to share details of this with the family in a timely manner. Premiere Care (Southern) Limited admitted that it had failed to inform and apologise to the appropriate person after Mrs Herring's death, as required by the duty of candour requirements in Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The CQC has used this announcement to remind providers that they have a duty under the Health and Social Care Act and associated regulations to be open and transparent and to provide timely apologies to both service users and their families, in the event of a serious incident.

The recent decision comes quickly on the heels of CQC publishing [updated guidance](#) on examples of notifiable safety incidents as relates to the duty of candour.

The examples confirm how CQC expects providers to apply the notifiable safety incident criteria over a variety of settings, including Care Homes, Mental Health Services and General Practice.

A notifiable safety incident must meet all three of the following criteria:

1. The incident (as opposed to the outcome) must have been unintended or unexpected;
2. It must have occurred during the provision of an activity regulated by CQC; and
3. In the reasonable opinion of a healthcare professional, the incident has, or might, result in death, or

severe or moderate harm to the person receiving care.

If any of the three criteria are not met, it is not a notifiable safety incident (though this does not remove the obligation on the healthcare provider to comply with the overarching duty of candour, and their duties to be open and transparent).

If all three criteria are met, the registered person (individual or healthcare provider) must, as soon as reasonably practicable after becoming aware:-

1. Notify the relevant person of the incident in person,
2. Provide an account which to the best of the registered person's knowledge is true and includes all facts known at that time;
3. Advise the relevant person of any further enquiries that should be made;
4. Apologise;
5. Provide reasonable support to the relevant person in relation to the incident; and
6. Record the notification in writing.

As emphasised in the successful prosecution of Premiere Care (Southern) Limited, the apology is a crucial part of the duty of candour. It is not a legal admission of liability. Indeed, it is the lack of a timely apology that can motivate families to seek to pursue legal action.

In the absence of openness and transparency, service users and their families may suspect that facts are being hidden from them. Not only does this increase concerns relating to the incident in question but also increases concern that a similar incident could occur again. Meaningful involvement in the process enables service users and their families to understand how healthcare professionals are investigating and learning from such incidents.

This prosecution is therefore a timely reminder that, by ignoring their duty to engage appropriately with the duty of candour, healthcare providers will damage their relationships with service users and their families. There may also be an increased risk of adverse publicity if families feel there is a "cover-up", legal claims from families or prosecution from their regulator.

If you would like advice in relation to a notifiable safety incident, potential CQC prosecution or alternative regulatory enforcement action, please contact our [CQC solicitors](#) to discuss how we can help:

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