



AUTHOR / KEY CONTACT

CQC – Regulator or Prosecutor?



Laura Guntrip
Partner

✉ Laura.Guntrip@LA-Law.com
☎ 01202 786187

In its recently published [annual report](#), CQC has confirmed that the trend of increasing enforcement action has continued over the last twelve months. Not only is CQC taking action to impose conditions or propose the cancellation of the registration of services, but the annual report confirms our own experience of an increase in criminal enforcement action by CQC.

In 2018/19, CQC issued 2,206 enforcement actions. Most of the enforcement action comprised of Warning Notices or civil enforcement action, such as Notices of Proposal or Notices of Decision for the imposition of conditions or cancellation of registration of a service. The number of Warning Notices fell by 19% to 1,089, compared to the previous year, almost mirroring a 16% increase in other civil enforcement action, which rose to 906. In our experience, CQC has been much quicker to commence action to cancel the registration of a service following an Inadequate inspection rating, often without the service first having any opportunity to improve under these special measures process.

Perhaps most notable is the continued trend increase in criminal actions, which rose almost a third (33%), to 211 during 2018/19, compared to 159 the previous year. This is part of a continuing trend of increasing criminal enforcement action by CQC over the last two years (including cautions, fixed penalty notices and prosecutions).

CQC took over responsibility from the HSE as lead regulator for health and safety incidents involving service users, in 2015. Initially, CQC got off to slow start but is now gaining momentum. Although CQC was already working on achieving more prosecutions, that target has seemingly been further prioritised since the appointment of Ian Trenholm (as former police inspector) as the new Chief Executive of CQC in the summer of 2018.

Mr Trenholm has been open with his plans to pursue more criminal enforcement action. In an interview with Health Service Journal in November 2018, Mr Trenholm warned that we would see an increase in the number of prosecutions. He revealed CQC's intentions to take a tougher stance and that CQC had hired 11 new employees, including ex-military and police officers, to review evidence and build cases for prosecution. At that time, he revealed that criminal investigations were being undertaken in respect of 163 care homes and 31 NHS organisations.

It seems that Mr Trenholm has been true to word and CQC also now employed criminal barristers to work in its

legal department and has credited its case management tracking system for helping to strengthen its criminal action work.

We have seen that the majority of prosecutions are in respect of a breach of Regulation 12 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the requirement to provide safe care and treatment. In most cases, prosecutions follow incidents where a service user has been harmed, such as scalding, a fall from a hoist or stand aid, self-harm by a service user and other similar circumstances. However, there is no requirement for harm to have occurred in order for CQC to prosecute, only that there was significant risk of avoidable harm occurring.

We are also noticing that CQC is more commonly pursuing criminal action against Registered Managers as well as Registered Providers. It is also worrying that CQC has not always been prompt in pursuing such action and we are currently dealing with cases in which CQC has apparently launched a criminal investigation almost a year after the event, in some circumstances after the business has ceased trading.

It is important that providers ensure robust record keeping is in place and are able to properly evidence staff training, should the need arise. You should also try to learn from the mistakes of others, to avoid falling into the same trap. If CQC is carrying out a criminal investigation, if you have been invited to attend an interview under caution or if CQC is threatening or proceeding with prosecution, it is vital you obtain expert legal advice at the earliest opportunity to ensure you are best protected. It is also important to ensure that any incidents are properly managed including in respect of evidence provided to [safeguarding investigations](#) and [coroner's inquests](#).