Criminal Offences – Responding to CQC

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Over the past few years, there has been a notable rise in CQC prosecutions. CQC's Chief Executive, Ian Trenholm (a former police officer), 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.

Our specialist CQC defence solicitors then saw CQC recruit former police officers and criminal barristers to help them achieve this aim. We have seen that CQC criminal investigations and prosecutions are on the increase.

If you receive a letter from CQC notifying you that it considers a criminal offence may have been committed, do not ignore it. This is your opportunity to provide a response and hopefully persuade CQC not to take any further action.

Typically, CQC will send a letter to a care home or care provider, stating that CQC considers a criminal offence may have been committed and offering the opportunity to provide a response to the alleged offences set out in the letter. Recent examples of alleged offences in such letters have included failure to have a Registered Manager in post or failing to submit notifications to CQC.

It is important to note that the letter does not mean that an offence has been committed, only that it may have been committed. There may be a number of points which could be put forward to avoid CQC taking further action. At this stage, a provider has the option of putting forward a response or doing nothing. CQC will then decide whether to (a) do nothing; (b) issue a fixed penalty fine; or (c) prosecute.

Although there is no obligation to provide a response, it is usually better to do so. That response may include a defence (i.e. explaining why you haven't committed an offence) and/or mitigation (explaining why the offence isn't serious or CQC should not take further action, even if an offence is admitted).

For example, in the case of alleged offences for failing to submit notifications to CQC under Regulation 18 Care Quality Commission (Registration) Regulations 2009, you may have a defence that the matter in question did not meet the criteria to notify CQC. Alternatively, you may accept that it was notifiable and a notification was not submitted but you may have a good reason, it may have been a single isolated incident, you may have taken other steps to respond to the incident or you may have put in place new processes to avoid notifications being missed in the future. Legal arguments can also be made in respect of the threshold for further action or CQC's

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own processes. Our expert healthcare lawyers regularly draft responses on behalf of clients, often resulting in CQC taking no further action, even if the offence is admitted (for example it is admitted that notifications were not made when they should have been).

Fixed Penalty Notices

If CQC decides to issue a fixed penalty notice, there are still options available but we would recommend that legal advice is sought. A fixed penalty notice is essentially a fine. There will be a fine per offence, so if CQC decides that notifications were not submitted in relation to four separate allegations of abuse, it will give a fine of £1,250 for each allegation.

There is no obligation to pay the fine. However, it is not a conviction and, if paid, no further action will be taken by CQC in relation to the allegations. If it is not paid, CQC will need to decide whether to prosecute. As a fixed penalty notice should not be issued unless CQC has sufficient evidence to prosecute, that is a real risk. It is therefore advisable to seek legal advice early when the initial correspondence is received from CQC, to avoid any potential consequences, if at all possible.

Prosecution

If CQC is considering a more serious offence which it is considering prosecuting, CQC will invite the care homeowner, and usually Manager, to attend an interview under caution. It is very important to seek legal advice from expert healthcare solicitors at this stage and is prudent to have representation at the interview.

Interviews may take place in person or through written correspondence but will be subject to the rules of criminal caution. Careful consideration needs to be given to what is said in an interview, as anything said can be used in evidence against you.

Our CQC defence lawyers have seen a notable increase in our clients being asked for interviews under caution over the last two to three years. Most commonly prosecutions relate to a breach of Regulation 12 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, namely Safe Care and Treatment.

Prosecution is obviously a serious step and legal advice should be obtained as soon as possible.

If CQC has raised any concerns over criminal offences or if you have received any notice from CQC or have any other concerns, contact our CQC defence solicitors to discuss your options. Contact Laura.Guntrip@LA-Law.com or 01202 786187

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