Patient Transport Services: Increasing Enforcement Action by CQC

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There has been a noticeable increase in the number of adverse ratings and enforcement action taken by CQC against CQC registered patient transport and private ambulance services over the past few months as CQC shifts towards risk-based inspections.

We have seen that CQC has taken against this specialist type of service several times in recent months, across the country. Most notably, there has been an upward trend in the suspension of registration and adverse overall ratings, in the aftermath of the COVID-19 pandemic and during a period where we have seen an increased number of CQC prosecutions and enforcement action being taken more widely across other types of service regulated by the Commission.

This increase in enforcement action comes after recent reports that CQC has been lobbying the government to expand powers over unregulated healthcare providers providing patient transport style services where there are concerns about risks to vulnerable patients. The Independent recently reported that CQC has had concerns around the high-risk nature of patient transport services following an internal report last year, which identified specific risks. These risks were reported to include sexual harm and inconsistencies in providers' reporting of incidents.

Common shortfalls in recent inadequate ratings and suspensions of registration for CQC regulated services have included:

- Leaders not having the appropriate skills and knowledge to run the service;
- Ineffective monitoring of the service including lack of continuous training for staff, with some staff not understanding relevant legislation applicable to patient transport services (such as de-escalation, consent or procedure if a patient deteriorated during a patient transfer);
- Patient safety not being well managed including lack of detail in patient records, particularly risk assessments relating to transfers of patients;
- Equipment on the ambulances not being stored correctly and maintenance standards of equipment not

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being met to a high enough standard;

- Concerns relating to infection control measures, particularly when transferring patients who have been found to test positive for COVID-19; and

- Concerns around compliance with Regulations in respect of complaints.

The adverse ratings and suspensions of services can understandably and have significant commercial and financial implications for providers and create barriers to their usual CCG stakeholders being able to commission their services.

We are also aware that some providers have not taken the opportunity to challenge, at the factual accuracy stage, the inaccuracies contained within an adverse draft CQC inspection report. Some providers have expressed concern that by challenging the inaccuracies robustly themselves during the factual accuracy stage, they may antagonise CQC further. However, providers must carry out a careful and detailed review of the draft CQC inspection report before it is published and use the factual accuracy process to challenge each finding contained within the factually inaccurate draft report.

We specialise in the regulation of health and social care and in representing providers in their dealings with CQC. We have unfortunately seen several examples where CQC has misapplied the Regulations to the evidence reported and has also included and published some factually incorrect statements within inspection reports.

It is therefore essential that providers act quickly to remedy any factual inaccuracies through the use of the CQC factual accuracy form within 10 working days of receipt of the draft report. Challenges to the draft inspection report through this process can result in CQC making substantive changes to the wording of the report before it is finalised and published on CQC's website, changes to the ratings of individual domains or even the overall aggregated rating.

Once an "Inadequate" inspection report is published, the reality is that it is then very difficult to get the content of the report changed or amended. The only process available once the report has been published is a ratings review, however, the only ground for requesting a ratings review is that CQC has not followed its published guidance. A ratings review is limited to 500 words and does not allow the provider to sufficiently address any inaccuracies that remain in the report.

The importance of using the factual accuracy process is also coupled with importance to ensure that the quality of the factual accuracy form and comments is as effective as it can be. There are therefore significant benefits in investing in legal advice and lawyers with a range of experience in CQC compliance including the drafting of factual accuracy reports.

In addition to the importance of the factual accuracy process, providers who are facing enforcement action

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such as a suspension of registration should immediately seek specialist legal advice. CQC has the power to suspend registration for a specific period. It also has the power to extend any period of suspension after the initial period. CQC's enforcement policy states that it will use this power where there is a very serious concern that it believes can be addressed within a fixed period.

It is crucial to note providers should seek legal advice and respond to a Notice of Proposal to suspend a registration with Representations to CQC within 28 calendar days from the date that the provider has been served with the notice. As is the case with factual accuracy forms, providers must instruct specialist lawyers to ensure that CQC is being provided with good quality and well-drafted Representations on behalf of a provider for the most effective outcome – i.e. the withdrawal of the notice to suspend registration.

If you are a patient transport service, a private ambulance service or indeed any other type of service regulated by CQC and require any advice on an adverse draft inspection report, or if you have any questions regarding CQC's inspection process or enforcement action, please contact our experienced healthcare and social care solicitors as soon as possible to discuss your situation the options available to you at online.enquiries@la-law.com or call 01202 786135.

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