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Healthcare Newsletter

March 2019

Issue 5

PROVIDING ESSENTIAL LEGAL UPDATES TO THE HEALTHCARE SECTORS

"... As a team i find them to be excellent and dedicated to achieving the best for their clients ..."

by Mark Heald

Trustpilot

Based on count 357

IN THIS ISSUE

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Landmark legal ruling changes the way professional bodies deal with their members

The manner in which professional bodies and associations deal with their members could now be subject to change thanks to a landmark legal judgment in the High Court.

Judgment was handed down on 25 January 2019 in the case of Dymoke v Association for Dance Movement Therapy UK Limited (ADMP). The case concerned Catherine Dymoke, a Dance Movement Psychotherapist whose membership of the ADMP, a limited company, was terminated following alleged conflict of interests.

Having been stripped of her membership, the ADMP's termination letter did not identify the reasons justifying Ms Dymoke's termination and did not refer to or address the criteria for termination of membership identified in the ADMP's Complaints Procedure. Despite numerous requests for details of the allegations against her, and the opportunity for Ms Dymoke to respond to the allegations during the ADMP's investigation, her requests went unanswered. Ms Dymoke's subsequent appeal to the ADMP against this decision was also not allowed, but no substantive response outlining the reasons for this decision on sanction was provided.

Acting on behalf of Ms Dymoke, the national law firm, Stephensons was instructed to issue proceedings in the High Court of Justice (Queens Bench Division) against the ADMP for breach of contract, citing the ADMP's failure to follow its own internal rules and procedures, as well as its commission of multiple breaches of the rules of natural justice.

The ADMP denied that the rules of natural justice applied to it as a private limited company, by reference to a contractual implied term and denied that there had been any failure to comply with its procedural codes. The ADMP further argued that the outcome of the investigation would have been the same in any event and that reinstatement of Ms Dymoke's membership was not an appropriate remedy.

In his judgment, Mr Justice Popplewell concluded that there were express terms in the contract between the parties that, in the event of any complaint made against her, Ms Dymoke would be informed of it and invited to respond; be kept appropriately informed; and any decision to impose a sanction or uphold the termination of her membership would take into account the recommended criteria set out in the ADMP's Complaints Procedure. It was also determined that it was an implied term in the contract that Ms Dymoke would be treated fairly in relation to her termination, with sufficient detail of the complaints relayed to her and a reasonable opportunity to respond provided.

In his summary, Mr Justice Popplewell said: "...generally an implied term must not be inconsistent with any express term. The duty to act fairly in relation to decisions to terminate membership of a company must be consistent with the articles of association and the fiduciary duties of the directors."

Commenting on the judgment, Counsel for Ms Dymoke, Nicholas Leviseur of 3 Paper Buildings added:

"This case is fundamentally about fairness and how the courts strive to ensure that members who face allegations which are serious and reputational can expect to know what the case against them is about.

"It sets standards to ensure that those affected are given a chance to respond at all stages of a disciplinary process whether at investigation, sanction or appeal. It ensures that the rules of natural justice are applied even in the absence of specific fairness provisions. It brings together strands of company and contract law and judicial review to prevent companies sheltering behind outdated defences. This is an important decision that changes the way membership organisations must deal with their members. "

Laura Hannah, Senior Associate Solicitor, instructed on behalf of Ms Dymoke said:

"This is an important decision, not only for Ms Dymoke, but for other members of professional bodies, who are not given the opportunity to positively engage in the investigatory, decision making and appeal stages of a disciplinary process. It makes clear that members should be treated fairly and the rules of natural justice will be upheld wherever a membership organisation fails to do so."

Laura Hannah, Senior Associate.

Ofsted successful in appealing High Court decision which ruled their complaints procedure was unfair

by Francesca Snape, Solicitor, Regulatory team

The Court of Appeal ruled in favour of Ofsted, allowing their appeal against a decision of the High Court in 2017, which ruled their complaints procedure was unfair for those schools judged to require special measures or have serious weaknesses. The Court of Appeal decided that the High Court was wrong to reach a conclusion that Ofsted's complaints procedures were unfair and that it was wrong to quash the inspection report relating to Durand Academy Trust.

Background – the High Court decision

Durand Academy brought a judicial review claim against Ofsted in respect of an inspection that was carried out in November and December 2016 and the associated report, which was published in February 2017. This report set out that Ofsted had judged the academy as requiring special measures. This was disputed by Durand Academy, who brought the claim on the basis that the judgements set out in the inspection report were unreasonable and secondly, that Ofsted's complaints procedure was unfair. Their second argument was raised on the basis that schools deemed to be inadequate or requiring special measures were unable to challenge the grade given by Ofsted under step two of its complaints procedure; a challenge which is open to schools who are graded as 'outstanding', 'good' or 'requires improvement'.

The High Court ruled in favour of Durand Academy and found that Ofsted's complaints procedure did not allow for a substantive challenge to be made to the report's judgement of the academy requiring special measures and that this was neither fair nor rational. As a result, the High Court ruled that the inspection report was quashed. No ruling was made in respect of the first argument raised by the academy, relating to the unreasonableness of the judgement as a result.

The Court of Appeal decision

Ofsted subsequently appealed the High Court's decision and a hearing took place on 5th December 2018. The full judgement can be found here.

The Court of Appeal determined that in order to assess whether Ofsted's procedures are unfair, it is necessary to consider the entirety of the inspection, evaluation and reporting process, which includes but is not limited to the complaints procedures. Having carried out this assessment, the Court of Appeal ruled that overall the process is fair, regardless of the criticism made of step two of the complaints procedure. In particular, the Court of Appeal considered that Durand Academy had a number of opportunities provided at the inspection stage for issues of concern to be identified and addressed. Throughout the judgement these are referred to as "additional statutory and non-statutory procedural safeguards".

Firstly, schools are encouraged to raise any concerns they may have at the inspection within step one of the complaints procedure itself. A further opportunity is provided during feedback with the senior HMI following the inspection. Following the inspection, there are further opportunities to raise concerns, including the factual accuracy stage where schools are able to comment on the draft report. There is no limitation in this process to the type of comment or complaint that can be made and so schools can include substantive challenges to the conclusions reached. A judgement whereby a school is deemed to require special measures must also be authorised by the chief inspector or a regional director on their behalf.

Although a complaint under step two of Ofsted's complaints procedure will not reconsider the judgements, if a challenge of the judgements is in fact made via Ofsted's complaints procedure before finalisation of the report, then the complaint will be referred to those undertaking the quality assurance and moderation process. Following completion of a step two complaint, the school then has the ability to request a review of the process confirming the inspection judgements under step three of the complaints procedure.

In summary, the Court of Appeal determined that the High Court had erred in focusing exclusively on the complaints procedure and had not considered the overall fairness of the process of inspection, including evaluation and reporting processes. Lord Justice Hamblen's notable statement from the judgement was that "fairness do not require equivalence", when considering that the complaints procedure for schools judged as 'outstanding', 'good' and 'requires improvement' does allow for challenge under step two.

Implications

The Court of Appeal's decision may not be one that sits well with schools. The key points to take away from the decision are that schools should be fully aware of all of their routes to challenge an inspection and/or inspection findings and should take full advantage of these processes where appropriate.

It is vital that schools raise any concerns as early as possible at the inspection itself if Ofsted indicate they are in the realms of a judgement of serious weaknesses and requiring special measures. Ideally these concerns should be followed up in writing the same day, so there is a contemporaneous written record. Additionally, schools should ensure that full and robust comments are provided upon receipt of the draft inspection report. This should contain challenges to findings and should not be limited to factual accuracy comments, wherever appropriate. Finally, schools should consider raising a formal complaint and following Ofsted's complaints procedure if there are concerns about the processes followed or conduct of an inspector. A review of the process confirming the inspection judgements can be raised at step three, if appropriate.

It is also worth noting that the Court of Appeal did comment on the procedures set out within the complaints procedure document. The Court of Appeal indicated that it would welcome expansion in some areas of this document, setting out further detail on the processes followed in circumstances where a school is deemed as requiring special measures to ensure there is clarity as to the options open to them in these circumstances. It remains to be seen whether Ofsted will take on board the Court of Appeal's comments in this respect. At Stephensons, we have represented numerous providers in relation to challenging inspection findings and the complaints process. If you require any advice and assistance, call us now on **0333 999 7151**.

RECENT EVENTS

Great British Care Awards

Our Sean Joyce, Laura Hannah and Francesca Snape joined the judging panel for the Great British Care Awards, National Finals in February 2019 after being involved the North West and London Regional judging days in October 2018 with Paul Loughlin. There were some fantastic candidates on the short list for each category. Congratulations to everyone who was short listed and those who won an award. We look forward to taking part in the judging days again later this year!

INSPECTION STATISTICS

32.5%

of registered services inspected by the CQC in the past month were rated 'inadequate' or 'requires improvement' (figures taken from the CQC website on 12th March 2019 as below)

The past month's ratings

50	☆ Outstanding
970	● Good
391	● Requires improvement
101	● Inadequate

LATEST CARE HOME STATISTICS

18,491

Care homes in the UK

Statistics obtained from Carehome.co.uk in March 2019 show that there are 18,491 care homes in the UK of which 28.65% are nursing homes. The statistics show that, of the total number of care homes, 76.86% are privately owned.

CQC issues guidance to care home providers after a resident dies falling from a window

by Laura Hannah, Senior Associate Solicitor, Regulatory team

The Care Quality Commission (CQC) has recently published guidance on managing the risk of falls from windows in a care home, as the seventh issue of its 'learning from safety incidents' resources.

In this issue, the CQC describe an incident in which the CQC prosecuted a provider and registered manager of a nursing home this year in relation to an incident from 2016, in which a resident died after falling from his second-floor bedroom window that did not have window restrictors. The provider and manager admitted that they had failed to provide safe care and treatment in accordance with regulation 12 of the Health and Social Care Act 2008 (Regulated Activities) regulations 2014 by failing to take measures to prevent falls from windows. In this case, the CQC stated that the home should have fitted restrictors to the windows to prevent them from opening more than 100mm.

Both the registered provider and manager were prosecuted in this case as the CQC found that they had both played a role in ensuring that safe care and treatment was provided. The CQC argued that they had failed in their duty to ensure that the home's health and safety policy was followed because they had not completed an up-to-date environmental risk assessment or an individual risk assessment for the resident's risk of falling from the windows. As a result, the court ordered that the provider pay a £16,500 fine and the manager pay a £1,000 fine.

For care homes looking after vulnerable people, sometimes with limited mental capacity, it is vital that they fully consider and manage any risks to residents appropriately. The CQC are increasingly pursuing prosecutions against care providers and managers who have failed in their duties to mitigate these risks, especially where it leads to a serious injury or death of an elderly resident. In particular, with regards to the risk of falls, this guidance makes it clear that care providers should ensure that they carry out an up-to-date environmental risk assessment to assess the risks posed by the premises, as well as individual risk assessments for the individual residents to ensure that any appropriate measures are put into place to mitigate the associated risks to each resident.

If you require any specialist advice or assistance in relation to a criminal investigation or prosecution by the CQC, we have a dedicated team of specialist CQC lawyers who are on hand to assist you. Call us now on **0333 999 7151**.

Author: Laura Hannah, Senior Associate Solicitor

CQC Prosecution: Failing to monitor resident with history of sexual assaults

by Laura Hannah, Senior Associate Solicitor, Regulatory team

It was recently reported that the CQC prosecuted a care home provider in the Magistrates Court for failing in its duty to protect people in its care, exposing them to the risk of sexual abuse.

The case concerned an allegation that the care home had allowed a male resident, with a history of sexual assaults, the freedom to prey on other vulnerable residents and that they had not provided the constant, one-to-one supervision that was necessary. In particular, it was alleged that this male resident had followed one resident, with a limited mental capacity, to their room and raped them at the end of 2015. This was reported to the police, who decided not to prosecute. It is reported that this decision was taken partly due to the alleged victim's mental capacity and a lack of evidence. The district judge in the Magistrates Court fined the care home provider £300,000 and ordered them to pay the CQC's legal costs of £141,000.

The CQC's former chief inspector of adult social care, Andrea Sutcliffe, commented: "It has taken a long time to bring this prosecution to a conclusion but the outcome proves that it has been worth the effort and dedication of CQC's inspection and legal teams. Providers should be clear that if people are exposed to harm through their failure of care we will take every step we can to hold them to account."

The CQC has a wide range of criminal enforcement powers which include the power to prosecute and issue fixed penalty notices or simple cautions. These powers are, however, limited to registered providers and certain individuals who work for providers such as directors; managers; the secretary of a corporate body, or an officer of an unincorporated association or member of its governing body.

As can be seen from this case, the fines issued in CQC prosecution cases can be significant and in some cases, they can severely affect a care provider's ability to continue to invest in and maintain the business for the benefit of the remaining residents. This is because, for some offences, the Magistrates Courts have the power to order unlimited fines.

Is there a time limit on a CQC prosecution?

A common query of such prosecutions is the length of time that has passed before a prosecution is instigated and whether the CQC can, in fact, prosecute a care home provider after such a long period of time. Unfortunately, Section 90(2) of the Health and Social Care Act 2008 confirms that the CQC may bring a prosecution within a period of 12 months from the date on which sufficient evidence to warrant the prosecution came to their knowledge. However, this is limited to no more than three years after the commission of the relevant offence.

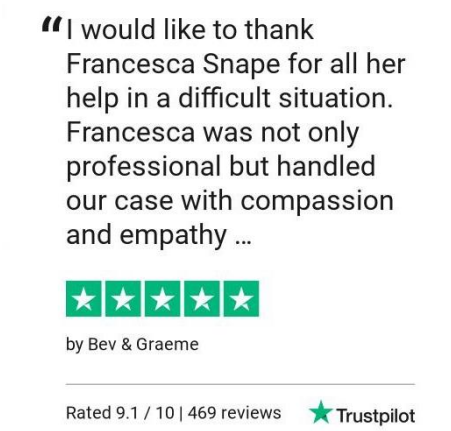
It is therefore worrying for those care homes who have had an incident which triggers an investigation by the CQC, with the potential for that investigation to take up to three years before any criminal proceedings are even issued. In cases where a resident has passed away, a coroner's inquest may also take place and in some cases, this could lead to a police investigation; safeguarding investigation; or civil claims for compensation by the family and relatives of the particular resident.

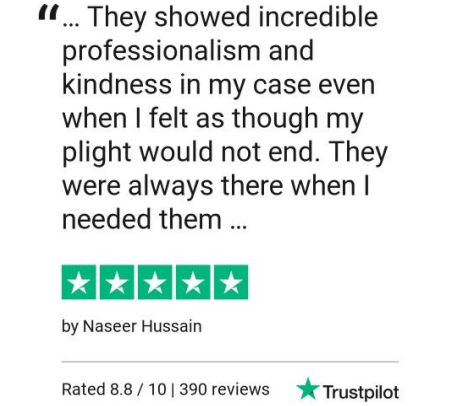
What should I do if I am facing a criminal prosecution by the CQC?

It is vital that anyone facing criminal enforcement action, particularly a CQC prosecution, seeks specialist legal advice as soon as they become aware of a potential criminal investigation. Early action and a measured and careful approach to the investigation, and any response made, can limit the impact of a prosecution; or even prevent it from proceeding to court at all.

In any event, a response should only be made to the CQC, particularly where it is made under caution, after a full consideration of the evidence against you and the consequences of the offence. Where the evidence is stacked against you, an early admission may be the best way forward, with strong mitigation to assist in trying to minimise any fine imposed. In addition, it is vital that anyone subject to a prosecution engages in the proceedings and is appropriately represented at Court in order to protect their interests and long standing reputation in the care sector.

RECENT TRUSTPILOT REVIEWS





Ten things to do when preparing your property and business for sale

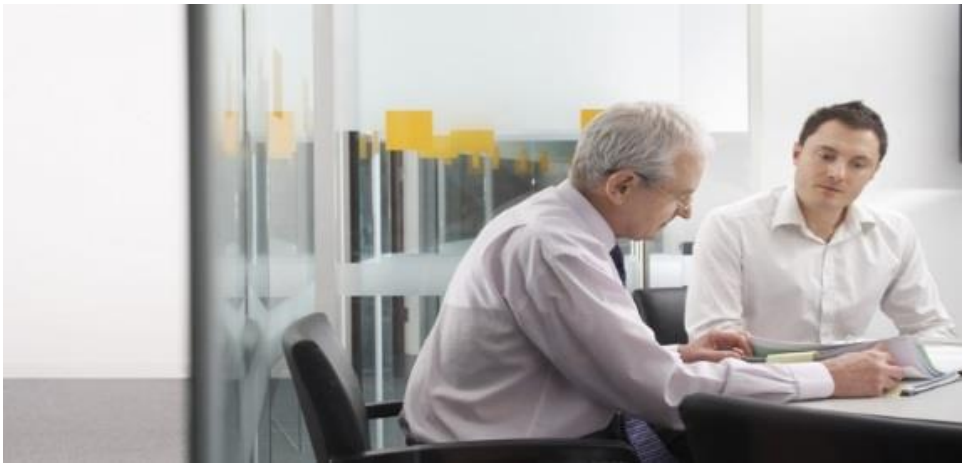
by Kate Bullen, Partner, Commercial Property team

Once a seller has agreed a sale for a property they are keen to see progress as quickly as possible. Lack of preparation can significantly affect the early progress in a transaction. Follow these ten tips to prepare for a quick sale:

1. Collate your title deeds:
Most properties are registered with the Land Registry and so quite often documents can be downloaded from the Land Registry portal. In some cases documents are either not available or have not been registered with them. Collect together your title deeds and whatever documents you have relating your property. If you have granted a lease or leases over your property then ensure you have them to hand.

2. Collate any other documents that you have for your property:
For example, if works have been done to your property, such as a damp proof course, then ensure you have to hand any guarantees that have been issued. Similarly, collect together any certificates that have been issued for your property (such as FENSA certificates or gas safety certificates) and ensure you have these documents to hand. Most buyers will also wish to see a fire risk assessment and asbestos report. If structural works have been completed do ensure you have copies of all relevant planning decisions a building regulations completion certificate.

3. Energy Performance Certificate (EPC):
All properties that are rented or sold now require an EPC. Subject to the availability of an energy assessor, it usually takes one to two weeks for a survey to be carried out and the report prepared. Do check that you have a valid EPC. Certificates are valid for a period of ten years unless works have been carried out in that time that will affect the energy efficiency of a property. You also need to check the EPC rating within the certificate. Properties should no longer be sold or let with a rating of F or G. If the certificate shows a rating of F or G then consult an energy assessor to identify what works need to be done to increase the energy performance rating. In many cases simple changes that have a low costs can be sufficient to increase the energy rating of a property to E or above.



Any such improvement works will need to be carried out and a fresh certificate obtained so that a certificate can be provided to a buyer with a rating of E or above.

4. Capital allowances:
If you have not already claimed capital allowances for the property you should consider whether you would like to retain the right to do so after completion. Capital allowances is a form of tax relief and so you should seek advice from your accountant on this relief as early as possible. Should you wish to retain the ability to claim capital allowances then in many cases a specialist surveyor needs to be appointed and a report prepared. This can take time and so it is important to consider it as early as possible.

5. Locate your mortgage details:
You will need the name of your mortgage lender, your mortgage account number and contact details for your relationship manager. It is always prudent to check at an early stage the amount outstanding on your mortgage to ensure any figure agreed for the purchase price is sufficient to repay the mortgage.

6. Consider the proposed transaction structure:
You should consider at an early stage how the transaction is to be structured and take both solicitors and accountants' advice on your proposals. It may be that the structure you envisage is not possible or has significant tax implications.

7. Consider whether a licence to assign is required:
If the property that you own is a leasehold property then consider whether or not you will need consent from the landlord (a licence to assign) before the property may be sold. The application for consent can be a lengthy process and so it is prudent to start it as soon as possible. Once a suitable buyer has been found, firstly check the lease for the property to identify whether the landlord's consent is required before you sell the property. If that consent is necessary, approach your landlord with details of the proposed buyer and see what requirements they have. The landlord will wish to approve the buyer and be satisfied that they will be a suitable tenant in the future. You can approach your landlord direct or you may wish to ask your solicitor to do so.

8. Make a start in completing the Commercial Property Standard Enquiries (aka CPSE):
These are lengthy forms that ask a number of questions about the property. Sellers do find them arduous to complete and so it can sometimes delay transactions by weeks as a result. In addition, sellers may require assistance from their accountants, property managers or other professionals to complete some of the questions which can again cause a delay.

9. Determine whether your property is "VAT elected":
This is an issue that delays many transactions. A seller will be required to confirm to a buyer whether or not the property is VAT elected. If

a seller is not VAT registered then VAT election is not a consideration. That said, if a seller is VAT registered then they should make enquiries to be certain whether or not the property is VAT elected. Failure to deal with this issue properly could cause a seller a significant loss. Sellers should approach their accountants and ask them to confirm the VAT position. Sometimes it is not possible for accountants to be certain and so a written request needs to submitted to HM Revenue and Customs. They will be asked to confirm whether or not their records show that an "option to tax" has been submitted for the property. We have experienced delays of six to ten weeks in waiting for a response from HM Revenue and Customs and so for this reason it is prudent to consider VAT as early as possible.

10. Instruct a suitably qualified solicitor:
It is important that you instruct a solicitor with sufficient experience to deal with your transaction. In many cases when a solicitor who lacks experience is appointed it will lead to delays and increased costs.

Stephensons' commercial property team are highly experienced in the sale of both properties and business. We would be happy to discuss your property and/or business sale needs with you in preparation for sale. Call us for a no obligation discussion on **0333 200 9848**.

Author: Kate Bullen, Partner, Commercial Property team

NMC approves changes to English language requirements for international nurses and midwives

by Elizabeth Groom, Graduate Paralegal, Regulatory team

The Nursing and Midwifery Council (NMC) recently proposed changes to the requirements for nurses and midwives from outside the UK taking the International Language Test System (IELTS), as part of the NMC's international registration process.

As a regulator, the NMC must have appropriate and proportionate checks in place to in order to ensure that applicants are able to practise safely and effectively. This includes having the appropriate qualifications and good health and character, as well as a necessary knowledge of English.

The proposal means that an overall level 7 in the IELTS will still be required, however, it would be possible for candidates to achieve a level 6.5 in writing. This score would be accepted as long as a level 7 was achieved in reading, listening and speaking.

The NMC recognised that nurses and midwives from outside of the UK were a vital part of the workforce, and that the healthcare system would not operate as it does without them. The NMC further recognised that good communication was also essential to safer and better care.

The proposal was approved by the NMC on 28th November 2018, following support from key stakeholders, who told the NMC that many nurses and midwives were just missing out on achieving a level 7 when taking the IELTS test, despite being able to communicate to a high level of English.

The change was accepted, on the grounds that it is a 'moderate and proportionate' change which is in line with the NMC's commitment to better and safer care. This change, introducing the new level of 6.5 for writing, came into effect on 5th December 2018.

The NMC has also advised that IELTS results that are under two years old, which meet this new criteria will also be considered.

At Stephensons, we have a team of specialist NMC lawyers who have extensive experience in representing and advising nurses and midwives involved in NMC investigations, fitness to practice proceedings or those seeking registration advice. If you find yourself in a situation where you require registration advice, we have a dedicated team who will be able to assist you. For more information, call our specialist NMC lawyers now on **0333 999 7151**.

NMC Nursing & Midwifery Council

Health and Safety Executive - how and when do they investigate?

by Brea Carney-Jones, Trainee Solicitor

The Health and Safety Executive (HSE) is a regulator which aims to prevent workplace death, injury or ill health.

The HSE investigate reportable injuries, diseases, dangerous occurrences and concerns raised by workers, the public or others to help improve health and safety standards.

Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR), duty holders must report certain serious workplace accidents, occupational diseases and specified dangerous occurrences (near misses) to the HSE.

The HSE does not investigate everything that is reported to them, only the most serious work-related incidents, injuries or cases of ill health. It does, however, consider all health and safety concerns and makes risk-based decisions when deciding what actions to take. When investigating, the HSE will gather and establish the facts; identify immediate and underlying causes and lessons to be learned; take actions to prevent reoccurrence; identify any breaches of legislation; and consider appropriate enforcement.

The level of investigation carried out by the HSE depends on the seriousness of the incident or complaint. An investigation may

range from an enquiry by a single inspector about a minor incident or a complaint to a large enquiry involving a team of inspectors. It is also important to be aware that other agencies may be involved, for example, the police and a coroner where there has been a work-related death.

Following an investigation, the HSE has a range of enforcement powers including:

- Providing information and advice face-to-face or in writing;
- Serving notices on duty holders;
- Withdrawing approvals;
- Varying licences, conditions or exemptions;
- Issuing simple cautions; and
- Prosecution.

Duty holders have a right to challenge or appeal any enforcement action taken by the HSE and the appropriate route to take in this respect is dependent on the type of enforcement action taken.

Duty holders therefore have significant

responsibilities to ensure that their business is compliant with health and safety regulations and to put measures in place to reduce health and safety risks as far as possible. A failure to do so can have serious consequences for the duty holder and their business.

If you have any concerns regarding the compliance of your business; a complaint that has been made; reporting an incident to the HSE; or an ongoing investigation by the HSE, our HSE specialist lawyers are on hand to assist. Please call **0333 999 7151** and we will be pleased to assist with any queries.

HSE
Health & Safety Executive

CQC makes changes to inspection report processes

by Laura Hannah, Senior Associate Solicitor, Regulatory team

On 28th January 2019, the CQC implemented changes to their inspection report writing template and processes. The CQC state that these changes have been produced with and tested by care providers and inspectors and will apply to all inspection reports in respect of inspections carried out from 1st March 2019.

The changes will mean that providers will now see clearer formatting within the report, including the use of heading and bullet points instead of numerous paragraphs of text. The CQC state that this will make inspection reports easier to read. However, it remains to be seen whether this will lead to less detail than usually expected in draft reports, which could potentially make ratings and judgments much harder to challenge in the factual accuracy and ratings review processes.

The CQC also make clear that the inspectors will be aiming to contact registered providers and managers to discuss the inspection reports around two days after the draft report is sent out, in order to explain how the inspectors have reached their inspection judgments.

Whilst this may be a welcome change for some providers, who often feel frustrated by the findings outlined within draft reports, it is important that providers think carefully about their discussions with the inspectors at this stage. It would be advisable for providers to ensure that they have read the draft inspection report in detail before discussing it with the inspector, as anything they discuss with the inspector, including any admissions they make, may be taken into consideration during the factual accuracy process. It would be much harder to challenge the factual accuracy of an inspection finding if a provider has already admitted or accepted its accuracy during this initial discussion.

Some providers may have already been having some form of informal discussion with their inspectors on receipt of draft reports but this change now builds this discussion into the formal process for inspection reports. It should be noted that providers are under no obligation to engage in this discussion with their inspector but in most cases, it is likely to be advisable for you to engage with the inspector and sustain a good working relationship with the CQC wherever possible. The key to this stage will be to ensure that providers are well prepared for any discussion with their inspector.

Commenting on these changes, Debbie Westhead, the CQC's Interim Chief Inspector of Adult Social Care, has said:

"In our piloting of this, we've found it has helped providers to better understand how we arrived at our judgments and helped clarify issues or concerns or celebrate Outstanding care. As a result, some challenges that might previously have been made have been avoided which has allowed us to publish some reports more quickly – a good thing for providers, CQC and the public."

At Stephensons, we have a specialist team of CQC lawyers who regularly assist providers and managers nationwide in relation to factual accuracy challenges and ratings review requests. If you require any advice or assistance, please contact us now on **0333 999 7151** or complete our online enquiry form.

RECENT NEWS

CQC concerned as more than half of London's care homes fail fire safety inspection

by Brea Carney-Jones, Trainee Solicitor

The London Fire Brigade has warned of a risk to the elderly as 101 out of 177 premises are told to address safety concerns. The concerns follow a one-off series of in-depth fire safety inspections by the brigade in light of a number of recent fires in care homes and the devastation caused by the Grenfell Tower fire.

The brigade's findings included the following serious fire safety breaches in London care homes:

- One in three premises had inadequate or poorly maintained fire doors
- Fire risk assessments were being carried out by people without the proper skills and experience
- There was widespread confusion about fire evacuation strategies; and
- Roofs were being omitted from fire risk assessments (roof voids often increase the spread and severity of a fire).

45% of the homes inspected were found to have an unsuitable or insufficiently comprehensive fire risk assessment. The brigade has stressed the need for care home fire risk assessments to be carried out by an assessor that is competent and experienced in fire safety.

One in seven homes were also found to have poor emergency planning or a potential lack of staff to implement the plan. A similar proportion of homes had problems with their protected escape corridors, with failures also relating to fire doors at 29% of the homes inspected.

1 in 10 of the homes inspected provided inadequate training for staff and the brigade said it feared fire safety training for care home staff was becoming generic. Of the 177 homes, 101 (57%) were issued with a formal notification to address safety concerns. The brigade state that they believe the findings would be repeated if similar inspections were carried out across the country.

These findings serve as a stark warning for care homes and demonstrate the importance of having robust and fit for purpose fire safety procedures to protect service users, including specialist fire safety training, comprehensive fire risk assessments, and adequate fire exits and safety equipment. CQC inspectors are likely to scrutinise fire safety compliance more rigorously and take enforcement action where providers are failing to meet the required standards moving forwards.

MEET OUR REGULATORY TEAM

Carl Johnson, Partner & Head of Regulatory Law

Carl specialises in professional discipline and regulation and is recommended in the current edition of the Legal 500. **View his profile here.**

Sean Joyce, Head of Regulatory & Criminal Justice

Sean is a Partner and heads our regulatory, serious fraud and business crime teams. Sean is listed in Chambers and Partners 2018 as a leader in his field. **View his profile here.**

Alison Marriott, Senior Associate

Alison represents professionals in fitness to practice proceedings. Alison also provides advice to companies facing prosecution by the HSE, Food Standards Agency (FSA) and trading standards. **View her profile here.**

Laura Hannah, Senior Associate

Laura represents health and social care providers in relation to proceedings before the Care Quality Commission (CQC) providing advice on compliance; enforcement action; and, appeals to the First-tier Tribunal (Care Standards Chamber). Laura is also is recommended in the current edition of the Legal 500. **View her profile here.**

Paul Loughlin, Solicitor

Paul's specialism covers a wide area of regulatory work, alongside a niche specialism in criminal motoring offences. In particular, Paul advises and represents professional clients facing regulatory action in a healthcare setting as well as providing advice and representation to health and social care providers looking to challenge any decisions made by the CQC. **View his profile here.**

Francesca Snape, Solicitor

Francesca represents and advises a range of professionals across a number of sectors before their professional regulators. Francesca acts for professionals in the healthcare, education and counselling and psychotherapy sectors. She also represents registered providers and managers facing enforcement action by Ofsted and the CQC. **View her profile here.**

Chloe Parish, Trainee Solicitor

Chloe started her training contract in September 2017 and is due to quality as a Solicitor in September 2019. Chloe specialises in regulatory defence and professional discipline. Chloe often assists with challenging enforcement action and inspections of the CQC and Ofsted. **View her profile here.**

Elizabeth Groom, Gaduate Paralegal

Elizabeth assists the partners and solicitors in the regulatory team, providing advice and assistance in a number of areas including professional discipline, road traffic offences and trading standards investigations and prosecutions. Elizabeth also assists with cases before the CQC and Ofsted. **View her profile here.**

Cameron Stubbs, Gaduate Paralegal

Cameron assists the partners and assists in the team in all of the key practice areas, including road traffic offences, professional discipline and regulatory defence. Cameron also has a special interest in sports law. Cameron graduated with a first class honours degree in law in 2018. **View his profile here.**

Martin Haisley, Gaduate Paralegal

Martin specialises in professional disciplinary work and is recommended in the 2017 edition of the Legal 500. In particular, Martin has assisted a wide range of professionals in the healthcare, legal and teaching sectors before their respective regulators. Having previously qualified as a football agent in 2012, Martin also has a keen interest in sports law and has assisted clients in relation to disciplinary matters before their respective governing bodies. Martin is due to commence his training contract in 2019. **View his profile here.**

Emily Hill, Gaduate Paralegal

Emily assists clients facing fitness to practise proceedings before the GMC; NMC; and HCPC, as well as other professional bodies. She also assists the specialist solicitors in providing advice and representation to care providers and managers in relation to proceedings before the CQC and Ofsted. In particular, Emily assists in challenging enforcement action; inspections; and appeals before the First-tier Tribunal (Care Standards). Emily is currently studying her legal practice course and masters. **View her profile here.**

Jessica Macaulay, Gaduate Paralegal

Jessica assists the partners and solicitors in the team with a variety of areas, including professional discipline; health and social care regulation; road traffic offences; and criminal prosecutions. In particular, Jessica assists in cases concerning the CQC and Ofsted, providing representation to registered providers or managers in a range of matters including making a complaint, compliance, enforcement action and appeals. Jessica completed her bar professional training course (BPTC) in 2017. **View her profile here.**

CONGRATULIONS

Stephensons' employment department wins prestigious Manchester Legal Award

The employment department at Stephensons Solicitors has been named 'Team of the Year' in the employment category at the prestigious Manchester Legal Awards 2019.

Held at The Midland Hotel, the awards recognise and reward the best legal talent in the Manchester region and are organised and hosted by The Manchester Law Society. The awards are judged by prominent business leaders and organisations from the across the North West business community.

Philip Richardson, head of employment law at Stephensons commented:

"Naturally we're incredibly proud to have won this award. This is a very competitive category and reflects the depth of talent the region has in employment law. To have won is a wonderful recognition of the achievements of the team here at Stephensons over the past year and our absolute commitment to providing the very best legal advice to our clients."

Healthcare Newsletter

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