

Shared Insights

CQC enforcement and prosecution in the health and care sector

Panel of speakers

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Kathryn Fearn

This session focused on insights from our extensive

CQC enforcement powers and the role of criminal prosecutions

Carl May-Smith Partner,
Browne Jacobson

Trends in what the CQC prosecute for, and who the CQC decide to prosecute, have varied over the years. There was a period, four or five years ago, where we saw an increase in prosecutions of Registered Managers by the CQC and it does seem to be a focus of the CQC again – at least to interview under caution stage. Examples of cases we have seen prosecuted for the failure to provide safe care and treatment include:

Patients accessing areas where they can fall or jump.

Defective equipment which has not been maintained or subject to regular audit.

Lack of training or ineffective training.

Fire safety deficiencies.

Failure to protect patients from other patients.

Hot pipes.

Legionella.

The investigation and prosecution process

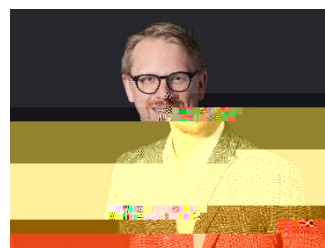
The usual process is:

1. Initial enquiries such as request for medical records and copies of any post incident investigation. This can be followed up for further requests for information.
2. Invitation to interview under caution – usually this is by means of a written response from the Trust or Registered Manager to specific questions posed by the CQC. It is worth noting that the period of time between an initial request for information and an invitation to interview under caution can be lengthy.

3. The CQC makes a determination of whether to proceed with a prosecution. The CQC has three years from the date of the incident to bring a prosecution. The CQC notifies the organisation of its decision.
4. If the decision is to proceed to prosecution, the CQC lays an Information with the Court and a hearing date is set. The CQC will then share Initial Details of its Prosecution Case with the organisation (setting out the alleged failings by the organisation).
5. The organisation determines if they will plead guilty or not guilty. If the organisation pleads not guilty the case will proceed to trial. If the organisation pleads guilty the case proceeds to a sentencing hearing.

Consequences of a conviction

We have seen in recent years significant fines imposed on organisations. The level of fine will be dictated by the size of the organisation (i.e. its turnover), the level of harm risked and, the culpability of the organisation (e.g. the extent of its failings - which will consider what processes and procedures were in place, how these were embedded and whether the failing was one off or systemic). There is also considerable publicity in these cases. The proceedings are public and the CQC will publish details of prosecutions and the outcome of the sentencing hearing. These can, and often are, reported by both regional and national news outlets.



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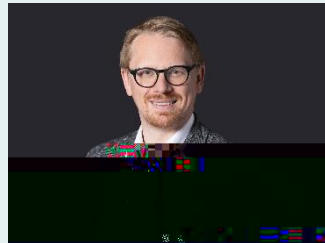
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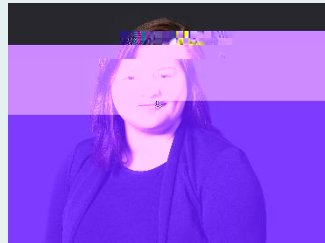
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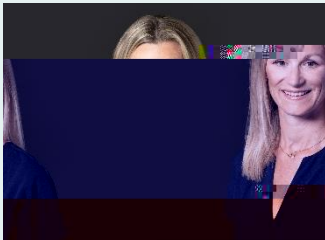
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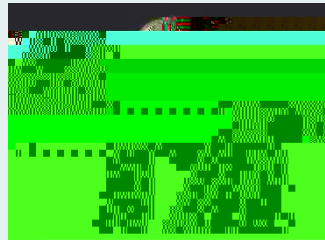
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