

Impact of the new Memorandum of Understanding between the CQC, the HSE and Local Authorities in England

Published 30 March 2015

Background

A new Memorandum of Understanding (MoU) between the Care Quality Commission (CQC), Health & Safety Executive (HSE) and Local Authorities in England will come into effect on 1 April 2015. This briefing summarises the impact of the new MoU on how health and safety incidents in health and social care will be dealt with and how we can help you through the investigation and enforcement process.

The new MoU replaces the much lengthier CQC/HSE 'Liaison Agreement' (July 2012) and focuses on which organisation will be the lead inspection and enforcement body in relation to particular types of health and safety incident. Whereas the previous Liaison Agreement related only to healthcare, the new MoU also relates to adult social care, hence Local Authorities also being party to the MoU given their role as prosecuting authority in relation to incidents in care homes.

This development reflects the CQC's new, wider enforcement powers which come into effect from 1 April 2015 and will enable the CQC to prosecute health and social care providers directly where certain CQC Fundamental Standards are breached (including the 'Safe care and treatment' standard).

We expect an increase in the numbers of CQC-led prosecutions for incidents arising from failures in safety and quality of treatment and care.

What does the new MoU say?

The previous CQC/HSE 'Liaison Agreement' was based on the HSE policy that the HSE would deal with 'non-clinical' incidents (e.g. trips, falls, scalding) and would not, in general, investigate matters relating to quality of care, which would fall to the CQC. The new MoU moves away from this clinical versus non-clinical distinction.

The MoU sets out which organisation will typically take the lead in relation to particular types of incident, as follows:

CQC-led investigations/prosecutions

The CQC will be the lead inspection and enforcement body for incidents arising from failures in the safety and quality of treatment and care of service users receiving health or social care services from a CQC registered provider. This will include some types of incident which the HSE would generally have led on previously, for example:

- Falls - a patient/service user falling from a window
- Scalding - severe scalding of a patient/service user in the bath/shower
- Choking - a patient/service user who needs assistance with eating choking due to being given inappropriate food and subsequently dying/being seriously injured
- Physical restraint - a patient/service user being seriously injured or dying after being physically restrained by staff

HSE/LA led investigations/prosecutions

The HSE/LAs will remain the lead inspection and enforcement body for all health and safety incidents involving workers, visitors and contractors, irrespective of CQC registration, and for all patients/service users receiving health or social services from providers not registered with the CQC. This will include the following types of incident:

- Incidents involving maintenance contractors - e.g. scaffolding or asbestos
- Incidents involving installed plant - e.g. lifts or escalators
- Staff developing dermatitis related to glove use
- Manual handling injuries due to ill-maintained equipment
- Cases where the commissioner of services rather than the provider seems to have been primarily at fault

There is clearly an overlap between the two functions. The MoU recognises there may be situations where it is unclear which organisation takes the lead or where the particular circumstances of the case make it preferable for one body to take the lead rather than another (e.g. where an individual is to be prosecuted for breach of the Health & Safety at Work Act, the HSE would need to take the lead). Therefore, organisations will need to agree between them who should have primacy for any regulatory action or whether joint/parallel action may be indicated (e.g. if both commissioners and registered providers appear to be significantly at fault).

Impact of the new MoU?

The new MoU is likely to have a significant impact on the way health and safety incidents in health and social care are investigated and prosecuted. In particular: the CQC's remit will widen to include leading on cases which have previously fallen to the HSE (e.g. patient falls)

- there is likely to be an increase in CQC-led prosecutions for breaches of the new Fundamental Standards
- the MoU also means the HSE could become involved in investigating incidents involving quality of care or clinical judgement (e.g. in cases relating to the commissioner of the service)
- close liaison between the CQC and HSE in relation to health and safety incidents is likely to continue and strengthen going forward

What do you need to do?

- Be aware of the new landscape in terms of potential areas of scrutiny and risks of non-compliance following this re-shaping of regulatory responsibility on enforcement.
- Place compliance at the heart of patient (and staff/visitor) quality and safety initiatives.

How can we help?

We are able to offer a unique combination of experience within CQC, HSE and health and social care provision, due to the specialist expertise of our teams and the breadth of our health and social care clients.

Our national Healthcare Regulatory and SHE (Safety Health and Environment) team have a strong reputation for responsiveness and delivering pragmatic advice and solutions in the highly charged atmosphere that follows an adverse incident. Our clients include independent and public sector health and social care organisations. We understand the profound impact of these investigations by the CQC and/or HSE on providers and we can guide you through this increasingly complex and ever expanding regulatory environment.

The support we provide will be tailored to you and can supplement your own internal structures, for example:

- conducting a legal risk check to review compliance with HSE legislation and CQC standards to reduce the possibility of future enforcement action
- advising on the extent of the investigating authority's powers (whether CQC, HSE or both)
- guiding you through the practicalities of the investigation process
- assisting with the initial provision of evidence
- providing representation during interviews under caution
- defending a prosecution if necessary.

For more information about how we can help, please contact: [Corinne Slingo](#), [Tracey Longfield](#) or Juliet Everson

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