

# Holding providers and individuals to account

We can use a variety of methods to hold providers and individuals to account for failures in how the service is provided.

## **Our criminal powers include using:**

- Simple cautions
- Penalty notices
- Prosecution

## **To hold individuals to account we can use:**

- Fit and proper person requirement
- Prosecution of individuals

We have set out the following prosecution criteria to ensure there is coherence and consistency in how we select cases for prosecution, and how the Health and Safety Executive or local authorities do so. These criteria are embedded within the enforcement decision tree.

We will consider prosecution where there is evidence that any of the following apply:

- Services that result in either:
  - avoidable harm (whether of a physical or psychological nature) to a person using a service
  - a person using a service being exposed to a significant risk of such harm occurring
  - in a case of theft, misuse or misappropriation of money or property, any loss by a person using a service of the money or property concerned.
- Services that have been provided to individuals without informed consent.
- There has been a failure to provide reports on complaints or good governance.
- There has been a failure to legibly display ratings that relate to performance at a provider's premises and overall place of business.
- There has been a failure to notify and offer support to the relevant person following a notifiable safety incident.
- There has been disregard for, and/or attempted avoidance of, the requirement for anyone who carries on regulated activities in England to be registered with CQC.
- There has been a failure to comply with a requirement, Warning Notice, or condition, suspension, or cancellation of registration.
- False information has been supplied willfully, information or explanations have been withheld, or there has been an intent to deceive in relation to a matter that gives rise to significant risk.
- Persons authorised by CQC to enter and inspect have been intentionally obstructed in the lawful course of their duties.

We will also consider the following factors when deciding whether to prosecute:

- The gravity of the incident, taken together with the seriousness of any actual or potential harm or the general record and approach of the provider, mean that not holding the provider to account could undermine public confidence in regulation or in that sector of providers.
- There has been disregard for the requirements on a registered person.
- There have been repeated or multiple breaches that give rise to significant risk, or persistent and significant poor compliance.
- The service is breaching fundamental standards of care, namely that it has been provided significantly below the standards that are required for compliance with regulations and is giving rise to significant risk.
- The potential for wider learning points for providers may mean we will prioritise a single case, so that enforcement sends a broader message to a sector and encourages improvement across it.

The Health and Safety Executive (HSE) (and for certain services, local authority health and safety inspectors) also have a key role in prosecuting serious safety incidents.

We have a memorandum of understanding with the HSE to set out how our roles fit together, and the principles for managing cases that cut across more than one of these roles.

- CQC is the lead assessment and enforcement body for safety and quality of treatment and care matters involving patients and people receiving health or adult social care service from a provider registered with CQC.
- HSE/local authorities are the lead inspection and enforcement bodies for health and safety matters involving people receiving a health or care service from providers not registered with CQC.
- HSE/local authorities are the lead inspection and enforcement bodies for health and safety matters involving workers, visitors, and contractors.

# Criminal enforcement powers

## Simple cautions

A simple caution ensures that there is a formal record of an offence when a person has admitted to it but is not prosecuted. There is no obligation on a provider to accept a caution and, where the offer of a caution is refused, we will consider prosecution. We will consider using a simple caution when:

- We have evidence of an offence, and that evidence is sufficient to enable us to bring a criminal prosecution.
- Although we could prosecute, we consider that achieving improvements without initiating lengthy and costly proceedings is a realistic alternative and is more proportionate than proceeding with prosecution.
- The provider has demonstrated to us that they will be able to put these improvements in place within a reasonable timescale.
- The [Code for Crown Prosecutors](#) indicates that this option would be appropriate.
- The offence has an insubstantial impact on people using the service.

## Penalty notices

Paying a fixed penalty enables a registered person to avoid a potential prosecution for an offence. It is only appropriate to issue a penalty notice where CQC would have been entitled to prosecute.

CQC has discretion over whether to serve a fixed penalty notice as an alternative to a prosecution. There is no obligation on a registered person to pay the sum under a penalty notice and, if a registered person decides not to pay the penalty, we will consider using other enforcement powers. Failure to pay sums under a penalty notice will normally lead to a prosecution.

The power to issue a penalty notice enables proportionality in specific circumstances. It also enables CQC to 'send a message' where there are recurrent breaches across a sector. Use of fixed penalties to multiple providers within a sector can make it clear that the issue of concern will not be tolerated, but also avoids the need to prosecute every person in breach. It can also signal the importance of the regulatory requirement and that we may proceed to prosecution if there is no improvement.

Any fixed penalty paid to CQC is not retained but must be passed on by CQC to the Secretary of State for Health and Social Care.

[See the relevant legal requirements and current levels of penalties.](#) We will consider using the power to issue penalty notices when:

- We have evidence of an offence, and that evidence is sufficient to bring a criminal prosecution.
- Although we could prosecute, we consider that achieving improvements without initiating lengthy and costly proceedings is a realistic alternative and is more proportionate than proceeding with prosecution.
- The offence has an insubstantial impact on people using the service.

## Prosecution

Prosecution can be used to:

- hold a registered person to account for breaches of prosecutable fundamental standards, or for failing to comply with conditions of registration
- enforce the offence of carrying on a service without registration, in which case we may prosecute the person who appears to be carrying it on
- ensure accountability for any person who obstructs us during an inspection, or any person who makes a false or misleading statement in an application to be registered with us.

Where appropriate, we may prosecute at the same time as taking other enforcement action, for example alongside urgent procedures. We may also prosecute more than one offence at the same time.

There may be occasions where, even if the above criteria are satisfied, we will decide to serve a Warning Notice as an alternative to immediate prosecution. However, we will generally prosecute providers where there are serious, multiple, or persistent breaches of the fundamental standards (those regulations with prosecutable clauses that specifically relate to harm or the risk of harm) without issuing a Warning Notice first.

Failure to make the improvements set out in a Warning Notice is likely to lead to a prosecution.

Although we are not required by law to publish details of all criminal law procedures that we undertake, we have a general power to publish this type of information and will normally do so. We must publish information about any offence for which a registered person has been convicted.

All investigations of criminal offences will be carried out with regard to the [Police and Criminal Evidence Act 1984](#) (PACE) principles and [codes of practice](#).

Where another regulator has the power to prosecute, we will co-ordinate our activity with them at an early stage. This is to:

- ensure the right action is taken
- avoid inconsistency
- ensure that any proceedings taken are for the most appropriate offence.

Where we successfully prosecute, the court will decide on the penalty to be imposed. Where someone is charged with more than one offence, the court may order separate penalties in relation to each conviction. The court may impose a prison sentence as well as, or instead of, a fine following conviction for carrying on a regulated activity without being registered.

Read the [list of offences and current maximum court fines](#).

We will consider using our powers to prosecute where:

- The breach of legislation is assessed by us to be serious and there are multiple or persistent breaches.

Or

- We have sufficient evidence so there is a realistic prospect of conviction.
- We assess that it is in the public interest for us to use our powers of prosecution.

In making decisions about whether to prosecute, we will be guided by the Code for Crown Prosecutors.

## Holding individuals to account through criminal prosecutions or using other powers

CQC's enforcement activity mostly concerns providers and their liability as the body carrying on regulated activities. However, we can use our enforcement powers to hold certain individuals who work for providers to account. Those individuals can be directors, registered managers, or the secretary of a corporate body (or a person purporting to act in that capacity), or an officer of an unincorporated association or member of its governing body. We will consider holding individuals to account by prosecuting them where:

- an offence has been committed with their consent or connivance or is attributable to neglect on their part
- there is clarity about the individual's accountability as opposed to the service provider
- there is a realistic prospect of conviction, and we assess that it is in the public interest for us to use our powers of prosecution.

We may also hold individuals to account by ensuring they are not employed in a role they are not fit for. We can do this by cancelling the registration of a registered manager, or by refusing a new registration where we consider an individual is not a fit and proper person. For an existing provider, we can request that they provide assurance that directors are fit for their role.

The regulations also establish a fit and proper person requirement for directors or individuals working in an equivalent role. We may request the chair or equivalent of an organisation to carry out that test and confirm the fitness of the individual director in writing.

## Unregistered providers

It is an offence to provide regulated activities in England without registering with CQC. It is a provider's responsibility to register.



Unless people are at immediate risk of harm, we will usually write to an unregistered provider if we suspect that regulated activities are being provided without registration in the first place. However, in the following instances we will rapidly take enforcement action against all appropriate persons.

- If a provider continues to provide regulated activities without registration.
- If we have grounds to believe that a provider is knowingly choosing not to register.
- If an unregistered provider places people at risk of harm.

This enforcement can include prosecution (which can lead to a fine or imprisonment) and/or other actions such as obtaining an injunction.