



AUTHOR / KEY CONTACT

Registering the Right Support



Laura Guntrip
Partner

✉ Laura.Guntrip@LA-Law.com
☎ 01202 786187

CQC'S new policy statement for learning disability services: "Registering the right support"

Reporting restrictions on legal proceedings which lasted five years, involving the provision of care to people with learning disabilities at Veilstone and Gatooma care homes have recently been lifted. The case has been described as "ground-breaking" in that directors and senior managers have been held to account for creating a culture of systematic neglect through the routine use of excessive restrictive practices. Weak inspection systems and poor commissioning of services were also blamed for allowing a culture of abuse to develop.

The case, and the convictions which followed, are a stark reminder of what can happen if a service gets things wrong. The revelations come at the same time as the publication of the final version of "Registering the Right Support", CQC's policy statement for providers supporting people with a learning disability and/or autism. Against this background of shocking reports into inappropriate care settings and the resulting increased scrutiny of services which provide care for people with a learning disability and/or autism, we look at the changes introduced by CQC and what they mean for service providers.

The guidance was first published in February 2016, however, following a period of implementation and legal review, CQC found that this was not effective in securing compliance with the national plan, "*Building the Right Support*" and service model, developed by NHS England (NHSE), the Local Government Association (LGA) and the Association of Director of Adult Social Services (ADASS). The intention of the national plan was to develop community services and close inappropriate inpatient services. CQC published revised guidance in December 2016 which formed part of the wider consultation on its next phase of regulation.

The revised guidance proposed to take a firmer approach to the registration of new premises such that those who do not comply with the national plan in terms of suitability and location may find their registration refused. The national plan and service model set out plans to close hospital services and strengthen support in the community with an estimated reduction of 35% to 50% of inpatient provision for people who have a learning disability, including those who may also display challenging behaviour and /or suffer from a mental health condition. The revised guidance proposed the following:

- That providers who apply to register new inpatient services are only registered when a clear need is identified (agreed with local commissioning partnerships) and the services comply with the national plan in terms of suitability and location. The factors which would indicate the applicant is less likely to be able to satisfy CQC about its compliance include if the hospital is a large institution, if there is no written expressed intent by commissioners for placing people there, if the hospital is secluded and geographically isolated and if the provider has not demonstrated how they will promote independence and discharge.
- That providers who apply to open a new care home or location for supported living (including variations to existing registration to add further premises) will need to demonstrate the service is suitable and appropriately located. New premises should not be developed as part of a campus style development and services should meet an identified local need. In addition, providers should involve people in the design of their services and take into account the proximity of family members when selecting the location. Further, the premises should be situated so as to promote access to the local community and new premises should be developed as small-scale housing units accommodating six people or less and not be close to other premises for people with learning disabilities.
- That existing registered providers who change the regulated activity they provide at a location (for example, a change from hospital services to care home services or a change to supported living services) should demonstrate that the changes make a difference to the people receiving the services so that there is a real culture change and that the premises do not feel institutional. In addition, providers who seek to add beds or places will be subject to additional scrutiny.

The revised guidance also concluded that it would apply to CQC's inspection process to make sure providers continue to meet the requirements after registration and that existing services are being delivered in line with the national plan and other good practice guidance.

Whilst CQC reports that the majority of the consultation responses conveyed a positive overall sentiment, a number of criticisms were made by service providers, including that the guidance lacks flexibility and clarity and is not robustly backed up by evidence. The main criticisms levelled at CQC were that:

- services for people with a learning disability and/or autism would be regulated more severely than other services;
- the "small scale housing" requirement and six bed cap would have a market-shaping effect, stifle

innovation and affect the viability of residential services;

- CQC is making an assumption that smaller sized accommodation provides more guarantee of high quality care, when existing larger services currently have “Good” or “Outstanding” ratings;
- the proposals do not take account of the diversity of the sector and do not acknowledge the preferences of individuals with a learning disability and/or autism who may prefer a quiet rural setting to an urban community environment;
- housing and staffing costs vary considerable across the country and there is real concern that the guidance would have the effect of concentrating the provision of services in cheaper areas; and
- the impacts of the guidance for existing services which do not meet the new guidelines is that good care homes may be forced to close or move to qualify for re-registration.

CQC's June 2017 policy

Following on from the consultation, CQC has taken into account some of the concerns above, however the expectation remains that providers which demonstrate their model of care follows best practice are more likely to evidence compliance with fundamental standards. The final policy is still directed at those applying to provide care in a specialist hospital provision such as an assessment and treatment unit, those applying to provide care in other services for people with a learning disability and/or autism and those applying to add or remove a location or increase the number of places provided.

CQC recognises that larger services which do not comply with best practice guidance, may still be able to demonstrate that they can provide person-centred care. CQC now clarifies it is seeking to work with providers to develop services that follow best practice and will discuss proposals with providers in advance to enable them to gain an understanding as to whether an application may be likely to be refused. Despite these statements, the policy still questions the long term sustainability of those services and the expectation is that providers will need to demonstrate that their proposals comply with the principles of the guidance and if not, provide an explanation as to why the application should be granted.

CQC confirms the guidance will apply across registration and inspection but provides reassurance that it does not want to disrupt the lives of people who are currently residing in a service that is not small scale. In relation to existing services, CQC now acknowledges that providers have to work within the physical constraints of existing locations. However, providers will be expected to have plans in place to adapt premises and meet best practice guidelines. For new services, the requirement to develop services taking into account the proximity of family members and the prohibition on “campus style” development remains.

Finally, the new policy statement attempts to clarify the position in relation to the “six bed” rule. CQC confirms

that it will adopt the presumption of small services (usually accommodating six or less) for providers of services that provide care (or might intend to in the future) for people with a learning disability and / or autism who display behaviour that challenges, including those with a mental health condition. This is a change from the earlier guidance which applied the six-bed rule in a wider context, namely to any proposed premises for people with learning disabilities. In addition, CQC has also clarified that it will not adopt “six” as a rigid rule for providers of any service for people with a learning disability and / or autism. CQC states that it may register services that are small scale but accommodate more than six people, where providers are able to demonstrate that they follow all of the principles and values in the *Building the Right Support* guidance, meet the fundamental standards and other relevant regulations.

Although it appears CQC has taken on board some of the criticisms as a result of the consultation, the final policy statement will still present challenges for the sector and providers should ensure that if their services do not comply with the guidance, they can demonstrate the care they provide is person-centred and promotes choice, inclusion, control and independence. CQC is already actively applying its policy and has recently been supported by the Tribunal in its decision to refuse an application by a provider to change one of its rehabilitation services into a nursing home because the proposal did not support the national plan.

If considering changes in registration or planning to acquire or register new services caring for those with learning disabilities and/or autism, providers should consider seeking legal advice to check whether their plans conform with the new policy.