

Miss Stephanie Haskey
HM Coroner's Service
The Council House
Old Market Square
Nottingham
NG1 2DT

21 March 2017

Care Quality Commission
Regulation 28 Report: Response of Care Quality Commission

Dear HM Coroner Haskey

I write in response to the Report to Prevent Future Deaths that was issued to CQC on 25 October 2016, following the inquest into the death of Mrs Ivy Atkin, with assurance of the action the Care Quality Commission (CQC) is taking in relation to your concerns.

You identified the following concerns and advised that there is a risk of future deaths unless action is taken:

1. [REDACTED] had criminal convictions including for an offence involving violence against another person. He had not provided a Disclosure and Barring Service ("DBS") certificate to the CQC nor been asked to do so, before becoming Nominated Individual.
2. The CQC were therefore unable to assess whether or not [REDACTED] was of good character and was suitable for the position of Nominated Individual, that person being responsible for supervising the management of a Residential Care Home, a role which [REDACTED] undertook.
3. This is because the CQC expected and still expects a Provider to consider DBS certificates and make decisions as to the suitability of a proposed Nominated Individual, where the Provider is (as was here) a limited company.
4. In the case of a small family owned limited company, where the controlling director and Nominated Individual are one and the same person, as in this case, there is therefore no reliable nor independent nor objective means of

assessing the good character, safety and suitability of a Nominated Individual.

5. This is because the wording of the present Regulation 6 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ('the Regulated Activities Regulations 2014') allows for such a "loophole", and/or in the alternative the manner in which the CQC interprets its powers and duties in the light of this Regulation allows for such a loophole.

Given the seriousness of your concerns and the implications it could present a working group was set up comprising of CQC staff from various teams including representatives from operational inspection and registration teams, Government engagement team, legal team, policy team and our strategy team. We also liaised with colleagues in the Department of Health.

Having given very careful consideration to the concerns you have raised we have concluded that CQC should not directly check the DBS for Nominated Individuals. This decision was authorised by [REDACTED], Chief Inspector, Adult Social Care.

CQC check systems and processes to ensure that providers are confident that the individuals they are recruiting are suitable, whether as Nominated Individual or otherwise. In the case of registered managers, individual providers and partners within a partnership we do follow a fuller process and countersign DBS applications but this approach is based on risk both in terms of oversight and that they are registered persons.

Legally the Nominated Individual is not registered with CQC. We see their position simply as the corresponding link between the provider and CQC. They may have other responsibilities within the service such as registered manager and suitability for checks will be carried out as necessary for any other roles they perform. If CQC were to check the fitness of the nominated individual on an application by the provider, including their criminal record, we would have no formal recourse except to refuse the entire registration which would not always be a proportionate response or one we would typically use. The Regulated Activities Regulations 2014 do not give us the power to agree or refuse the Nominated Individual as we can with others who are registered persons, nor would we want to given our understanding and interpretation of their role.

In practice we may refuse registration applications if we are not satisfied with individual fitness or have concerns about the systems used by the provider to appoint any of the individuals identified to us, including the Nominated Individual. However, we would only do this, regarding the Nominated Individual, if we had significant enough concerns to warrant refusal of the entire registration. It is also important to note that in terms of DBS checks specifically, reference numbers for nominated individuals are sought only at registration stage and not post registration if the nominated individual changes.

In the Autumn Grange case it is probable that if we had have had sight of the DBS of [REDACTED] we may not have refused the registration or raised concerns with the provider. This is because a) the convictions on his record pre-dated 2000 and taking account of the Rehabilitation of Offenders Act 1974 it is likely that they would have been deemed “spent” b) they were for relatively minor or unrelated matters albeit it is correct that a common assault conviction may be more relevant when considering work in the care sector and c) any response we take must be proportionate to identified risks.

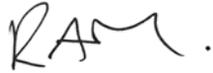
Since Autumn Grange closed in 2012, the regulations have changed and now include Regulation 5 of the Regulated Activities Regulations 2014, the Fit and Proper Persons Requirements (‘FPPR’). This regulation was not in force in 2012 and it does now provide a partial solution to the matters raised.

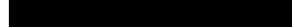
Regulation 5 allows CQC to have greater oversight of the appointment of directors and gives us the power to take regulatory action where the regulation is breached. However, the role for CQC is still only to check that the provider has fulfilled their responsibility regarding the fitness of directors not to check the individual director’s fitness. Nor do CQC check DBS certificates as a default. Through Regulation 5 we expect diligent enquiries to be made by providers at the appointment stage and effective performance management for the duration of the appointment. These checks will go beyond just DBS enquiries. If CQC has concerns, we have the power to check the specifics of the DBS and if we decide that the concerns warrant enforcement action then changes to directors may take place as a consequence of that action. Furthermore, we would require greater assurance where the director and nominated individual is the same person, a situation which is more common amongst small providers. As part of continuing review of the position one option in the future may be to formalise independent checks but work is ongoing to consider how this would operate in practice and where the responsibility would lie in performing such checks.

An issue does however remain that FPPR may potentially be less effective in small providers due to the risk of overlap between directors and nominated individuals or other senior managers and the potential lack of assurance this would provide that proper checks were being carried out. Work is currently underway to evaluate how CQC use the fit and proper person test and it has been identified as part of this work that there continues to be risks within smaller providers. In practice our registration teams may address this risk. Work is underway to develop a triage system for registration applications to ensure that higher risk applications go through an appropriate process, and to streamline our processes for those that are lower risk. The size of provider organisations is being explored as a potential risk factor within this work, to ensure that such applications continue to be given appropriate consideration. It is anticipated that changes will be made with regard to these areas during 2018.

I hope this response is helpful to you, should you wish to discuss the matter further please do not hesitate to contact me.

Yours sincerely

Handwritten signature in black ink, appearing to read 'RAM.' with a period at the end.


Head of Inspection
Adult Social Care – Central East Midlands