



Department  
of Health

From David Mowat MP  
Parliamentary Under Secretary of State for Community Health and Care

Richmond House  
79 Whitehall  
London  
SW1A 2NS

Miss Stephanie Haskey  
Assistant Coroner  
Office and Main Court  
The Council House  
Old Market Square  
Nottingham  
NG1 2DT

*Dear Miss Haskey,*

Thank you for your letter dated 25 October 2016, following the inquest into the death of Ivy Atkin.

I was very sorry to hear of Mrs Atkin's death. Please extend my sincere condolences to her family.

You have raised the following matters of concern:

- the Care Quality Commission (CQC) expects a provider to consider Disclosure and Barring Service (DBS) certificates and make decisions as to the suitability of a proposed Nominated Individual, where the provider is a limited company
- In the case of a small family owned limited company, where the controlling director and Nominated Individual are one and the same person, there is no reliable, independent or objective means of assessing the good character, safety and suitability of a Nominated Individual.
- You feel that the wording of the present Regulation 6 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 allows for what you believe is 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 this.

In responding to the serious issues that you raise, Departmental officials have worked closely with the CQC; this response will also refer to the separate response that the CQC is sending to your letter.

The issues of concern that you raise relate partly to the way in which the legislation governing CQC's regulation of providers is established (which is the responsibility of the Department of Health) and partly to the way in which the CQC undertakes its regulatory duties. This response will therefore refer to both the legislation that underpins the regulatory system and the operational practice of the CQC, which is covered in more detail in the CQC's own response.



The underpinning principle of the regulatory regime in health and social care is that providers remain responsible for the management and delivery of the care that they offer. The role of the CQC is to assess providers to give assurance that they are taking the necessary steps to fulfil their legal duties and, where appropriate, to take regulatory enforcement action if providers are failing in their duty. In the view of the Department of Health, it would be neither desirable nor practical for the CQC to take on a role in which it was overseeing the management decisions of providers. For this reason, the legislation is established in a way that requires providers to demonstrate to the CQC that they have appropriate systems and processes in place to manage and oversee the care that they provide. This includes systems that provide assurance as to the suitability of management and staff within care providers.

You raise concerns around the role of the nominated individual, particularly the fact that CQC does not check DBS records for individuals fulfilling this role. The role of the nominated individual is essentially that of a point of contact between the care provider and the CQC for the purposes of correspondence and other regulatory business. For this reason, the nominated individual is not registered directly with the CQC. This is different in the case of Registered Managers, who are legally responsible for the care being delivered within care organisations; these individuals are registered directly with the CQC, and therefore vetted more closely by CQC upon registration.

If the CQC has concerns about the recruitment of a nominated individual within an organisation, they would have recourse to their general powers which they can use in relation to any concern regarding the management of a registered service, for example to refuse a registration request or impose conditions upon the registration of a provider. Given the primarily administrative role of the nominated individual, Departmental officials are content that this position offers proportionate assurance, and that this system should be maintained.

CQC's response to your letter also details changes to the legislation that have come into place since 2012 relating to the Fit and Proper Persons Requirements (Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014). These regulations require that a provider must check that an individual is of good character, with the necessary skills and qualifications and has not been involved in previous misconduct or mismanagement before they can be appointed as a director of a provider. This regulation places wide duties of diligence on providers, and the CQC's role will be to ensure that providers have proper systems and processes in place to undertake these assessments. If the CQC has concerns about the process of decisions that a provider is taking when appointing directors, it can use its regulatory powers.

The CQC has identified that a greater risk exists in providers where a small number of individuals may be operating as directors and managers, as there is less independent assurance that proper checks are being carried out. The CQC's response to you has detailed work that it is undertaking to consider how the CQC can best use the legislative and regulatory powers it has under the Fit and Proper Person's Requirements to target this



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risk. The Fit and Proper Persons Requirements are relatively newly introduced into legislation; the CQC is working to learn from its use of these regulations to date, and introduce new processes which will offer a higher level of oversight for those providers that pose greatest risk in this area. For this reason, we are content that the existing regulations are sufficient in providing the CQC with the powers they need to oversee providers' appointment of directors.

I hope that this response, along with the one you receive from the CQC, is helpful and I am grateful to you for bringing the circumstances of Mrs Atkin's death to my attention.

*Yours sincerely,*

**DAVID MOWAT**