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Engagement & Policy Division

Head of Local Authority & Safety Unit
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Date: 19 December 2023

Dear Madam

REGULATION 28 PREVENTION OF FUTURE DEATH – RECLINER CHAIR

Thank you for your report sent to [REDACTED], HSE Chief Executive, in relation to the death of Mrs Burcham of Frethey House Nursing Home. Mrs Burcham suffered a head injury when she fell from a standard riser-recliner chair after it was operated by another resident, while unattended by nursing home staff. I am responding as the Head of Local Authority and Safety Unit at the Health and Safety Executive (HSE) which leads on workplace product safety.

Your report highlights, as matters of concern, that these chairs are commonplace in care home settings where residents suffer from cognitive impairment that manifests itself in a compulsion to fiddle and/or press buttons, and that the risk of other residents with dementia accessing the controls was unforeseen. This did not feature in any risk assessment undertaken by the home and therefore measures were not put in place to address this risk.

There are a number of regulatory regimes that may be applicable to the circumstances, and I provide some detail on these below.

In England, the Care Quality Commission (CQC) is the lead inspection and enforcement body for safety and quality of treatment and care matters involving patients and service users in receipt of a health or adult social care service from a provider registered with CQC. The [Memorandum of Understanding](#) between CQC and HSE explains the respective roles and responsibilities of each organisation with regard to health and safety incidents in the health and adult social care sectors.

This means that, in general, where care homes are registered with CQC, then CQC will be responsible for regulating the safety, quality of treatment and care matters involving service users and patients. HSE or the Local Authority will be responsible for the health and safety matters involving workers, visitors and contractors. HSE is the enforcing authority for care homes with nursing where the main activity is the provision of nursing/medical care. Local Authorities are the enforcing authority for care homes where the main activity is the provision of residential accommodation. The Health and Safety

(Enforcing Authority) Regulations 1998 set out the enforcement allocation of workplaces between Local Authorities and HSE. As this case involves a service user/patient it would not be a matter for HSE enforcement and would instead fall within the remit of CQC.

With regard to product safety matters, the chair involved in this tragic incident would appear to meet the definition of a 'machine', and therefore the relevant supply legislation would be the Supply of Machinery (Safety) Regulations 2008, which implemented the EU Machinery Directive 2006/42/EC in GB.

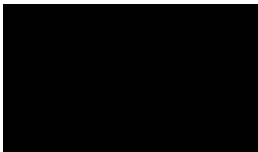
HSE is responsible for the enforcement in respect of unsafe workplace machinery placed on the market in GB. However, for consumer products, it is Trading Standards. Standard riser-recliner chairs are widely used domestically. If anyone can purchase the chair for use at home then it would normally be considered as a consumer product and be regulated by local authority Trading Standards.

After receiving your report, HSE contacted the other regulatory bodies who may have an interest or potential regulatory role in respect of this incident. We have written to CQC (who are already in receipt of your report) on the patient safety aspects. HSE has also notified the Office for Product Safety and Standards (OPSS) who are the national regulator for consumer products and who work with the local authority Trading Standards services that undertake most enforcement activity.

I would seek your permission to share your report with OPSS who will be able to consider the consumer safety aspects and liaise with Trading Standards as appropriate. Alternatively, you may contact OPSS directly at the following address: Graham Russell, Chief Executive Officer, The Office for Product Safety and Standards, Dept. for Business and Trade, 4th Floor Cannon House, 18 The Priory, Queensway, Birmingham, B4 6BS.

I hope that the above information is of assistance and addresses the matters raised.

Yours faithfully



Head of Local Authority and Safety Unit