

# Hot topics in adult social care

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8 November 2023

# Introduction

- RWK Goodman is a top 100 law firm with in-depth knowledge and experience advising in the health and social care sector. We are known as a “go to firm” for our technical expertise, underpinned with a friendly and personable style.
- We are highly regarded by stakeholders in the sector, including being recommended lawyers for the Care Association Alliance and a commercial partner of Care England.
- Our clients comprise private companies as well as not-for-profit and charitable organisations.



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# Changes at CQC

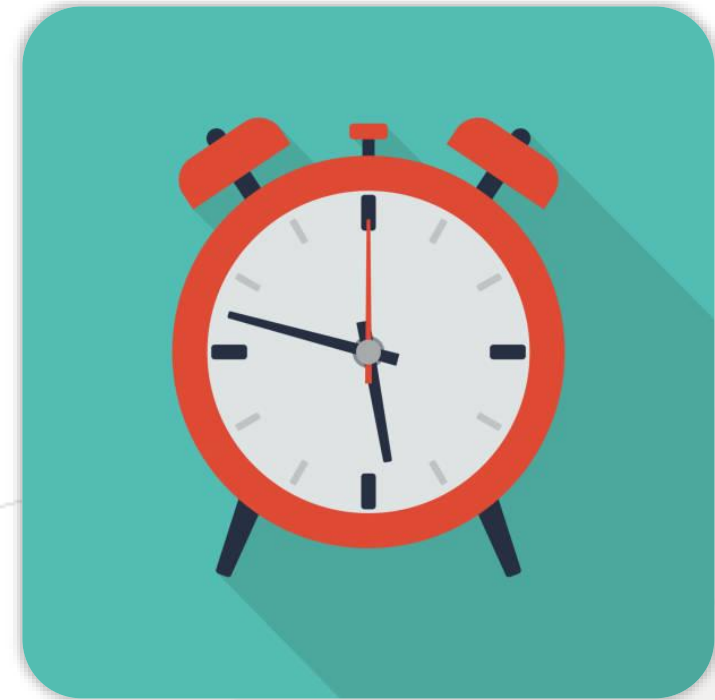
- CQC plans to create a “single assessment framework” for all types of services (social care, healthcare and local authorities).
- Aim is to avoid
  - Long gaps between inspection and rating updates
  - Writing substantial reports
  - Engaging in a long FAC process.
- Not clear how the challenge process will work.

# What's coming? An overview of changes

Current model	Future model
Multiple assessment frameworks	One assessment framework
Risk-based approach. Ongoing (monthly) monitoring.	Ongoing assessments of risk, which may trigger an inspection.
Snapshot approach using the KLOEs - questions asked are the “prompts”.	Gather evidence at multiple points in time. KLOEs whittled down to 34 “topic areas”.
Ratings characteristics.	Numerical score: 1 to 4.
Factual Accuracy Check (FAC) - 10 working days (2 weeks).	FAC process? Timeframe may be shortened. To be called: “Review and submit further evidence”
Longer inspection report	Ratings updated on CQC’s website and short statement published.

# Timeframe for these changes

- Launch of provider platform has begun, ongoing until 2024.
- CQC plan to adopt its new regulatory approach in the South region from **21 November 2023**.
- South includes Berkshire, Buckinghamshire, Cornwall, Devon, Dorset, Gloucestershire, Hampshire, Kent, Oxfordshire, Somerset, Surrey, Sussex and Wiltshire.
- Providers will be contacted and invited to be early adopters.
- Up to 4 December 2023, CQC will undertake planned assessments and then expand the new regime to all providers on a risk-informed schedule.
- CQC says providers will be informed when the new approach is being used in their region.



# CQC's aims

- ✓ Better portal allowing for more real-time information.
- ✓ More transparency.
- ✓ More frequent updates of ratings.
- ✓ Ability to look for evidence of good care.

## **Remember!**

It is critical that providers retain their right of reply regarding the facts found about their services.

# Subject access requests (SARs)

- Any individual has a right to access their personal information that is stored by an organisation.
- SARs can be made verbally or in writing - ensure you can detect both.
- Usually from employees, service users **or** relatives (either about themselves or on behalf of the service user).
- Capacity and authority will need to be considered if a request is made by a third party on behalf of an individual.

# Subject access requests (SARs) - things to consider

- Involve your IT team where data is stored - data mapping will be crucial to this.
- Manage the DSAR appropriately by:
  - Identifying a team to deal with the DSAR and nominate one person to lead
  - Identify who is making the request
  - Identify what locations will need to be searched
  - Identify the search terms.
- Do you need to clarify the request?
- Do you need identification?
- Do you need more time? One month or up to three months.
- How will the data be provided?
- Redact data of others and keep records of redactions applied or data not disclosed and why.



# Requests for information after a service user's death

- The UK GDPR only applies to living individuals. Therefore, a SAR made post-death is not enforceable.
- Under the Access to Health Records Act 1990, some categories of people have a right to apply for access to information contained within a deceased person's health records (subject to exceptions):
  - Personal representatives/ executors of Estate
  - Those with a claim arising from the death.
- There is no equivalent legislation for care records - use common sense.
- Deadline: either 21 days if the latest record about the deceased was made within 40 days of the request **or if not** 40 days.



# Some exceptions

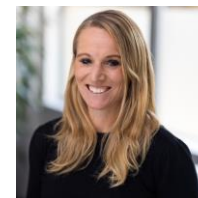
Applicants will not receive information about a deceased patient where:

- The records are not relevant to the claim
- The service user indicated whilst living that they did not want their health records to be disclosed in this way
- Disclosure is likely to “*cause serious harm to the physical or mental health*” of the applicant
- The information sought relates to, or was provided by, a third-party who could be identified from that information (unless they consent, or they are a health professional)

# Social Care Team

## Areas of expertise

- Sales, acquisitions and refinancing
- Development and leases
- Employment and immigration
- CQC registration and compliance
- Trouble-shooting and crisis-management
- Safeguarding
- Debt recovery
- Service user contracts
- Shareholder/ Partner protection and governance
- Contract disputes with suppliers
- Data protection and requests for information



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