

Response issued under the Freedom of Information Act 2000

Our Reference: CQC IAT 1415 0404

Date of Response: 16 September 2014

Information Requested:

“Freedom of Information request - Can the CQC investigate individual cases?

I formally request the following information under the Freedom of Information Act 2000.

1. Does the CQC have the jurisdiction to investigate individual cases that have exhausted the NHS complaint procedures, following which, the complainant has supportive evidence of an NHS and/or Ombudsman cover up?

2. If the answer to 1 above is yes,

(a) What can the CQC investigate in these circumstances? and

(b) What action can the CQC take if the allegation of cover up is substantiated?

3. If the answer to 1 above is no,

(a) Does the CQC have the jurisdiction to appoint and/or work in conjunction with any other NHS organisation to investigate an individual case such as the one described above? If so, please name these NHS organisations? and

(b) Does the CQC have the jurisdiction to appoint an independent person or persons and/or organisation, with no association with the NHS, to investigate an individual case such as the one described above?”

The Information Access team has now coordinated a response to your request.

CQC was set up under the Health and Social Care Act 2008 (“the 2008 Act”), and its functions are derived from that Act.

CQC is responsible for regulating the provision of health and social care, which we do through registration and inspection of providers, including enforcement where required standards are not met.

The information you have requested about the extent of CQC's powers (our 'jurisdiction') is publicly available in the 2008 Act (www.cqc.org.uk/content/legislation). The following answers are provided to further advise and assist you in understanding how CQC interprets and applies those powers.

“1. Does the CQC have the jurisdiction to investigate individual cases that have exhausted the NHS complaint procedures, following which, the complainant has supportive evidence of an NHS and/or Ombudsman cover up?”

CQC has the power to conduct a special review or investigation under section 48 of the 2008 Act. The purpose of this power is to review or investigate the wider issue of the overall provision of certain types of care, rather than an individual incident or set of circumstances, and this is the approach that we follow.

CQC's use of this power is explained in section 5 (page 23) and annex D (pages 30-31) of our [enforcement policy](#). This is available to view or download from our website:

www.cqc.org.uk/content/how-we-enforce

As set out in the enforcement policy, we would not normally investigate individual incidents or individual complaints. However, it is possible for CQC to consider an individual case as part of a thematically focussed review or investigation.

While the ability of other bodies to look into an individual case would be a relevant factor for CQC, the broader context for the decision to establish a CQC review or investigation are the criteria in section 48 itself, and CQC's statutory purpose of protecting and promoting the health, safety and welfare of people who use health and social care services.

When individuals raise concerns about a provider subject to CQC regulation, that information is used to inform the inspection process.

“2. If the answer to 1 above is yes,

(a) What can the CQC investigate in these circumstances? and

(b) What action can the CQC take if the allegation of cover up is substantiated?”

As indicated in annex D of the enforcement policy, the section 48 power is aimed at thematic issues, which CQC will not be able to explore through a standard inspection

of a single provider. This is not to say, however, that an individual case could not form part of an exercise conducted under section 48.

In relation to the second part of your question, CQC's functions do not enable it to make any finding of civil or criminal liability, nor can it determine what action it may be appropriate for a provider to take in response to a complaint.

If we found that a registered care provider was in breach of regulatory standards at the time of our review or investigation, we would take action using our normal, regulatory and enforcement powers. You may find the description of CQC's enforcement powers set out in the enforcement policy helpful in understanding the range of possible responses where standards are not met.

CQC is not part of the NHS complaints process, and we have no functions or powers to regulate the activities of the Ombudsman.

We would be required to publish a report of the findings of our review or investigation.

“3. If the answer to 1 above is no,

(a) Does the CQC have the jurisdiction to appoint and/or work in conjunction with any other NHS organisation to investigate an individual case such as the one described above? If so, please name these NHS organisations? and

(b) Does the CQC have the jurisdiction to appoint an independent person or persons and/or organisation, with no association with the NHS, to investigate an individual case such as the one described above?”

We have described CQC's jurisdiction in response to your earlier questions. On occasion, CQC may wish to draw on the expertise of others in fulfilling its statutory functions. However, there is no separate power to appoint others to conduct activity which CQC would not itself have the power to carry out.

CQC Complaints and Internal Review procedure:

If you are not satisfied with our handling of your request, then you may request an internal review.

Please clearly indicate that you wish for a review to be conducted and state the reason(s) for requesting the review. To request a review please contact:

Legal Services & Information Rights
Care Quality Commission
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

E-mail: information.access@cqc.org.uk

Please be aware that the review process will focus upon our handling of your request and whether CQC have complied with the requirements of the Freedom of Information Act 2000. The internal review process should not be used to raise concerns about the provision of care or the internal processes of other CQC functions.

If you are unhappy with other aspects of the CQC's actions, or of the actions of registered providers, please see our website for information on how to raise a concern or complaint:

www.cqc.org.uk/contact-us

Further rights of appeal exist to the Information Commissioner's Office under section 50 of the Freedom of Information Act 2000 once the internal review process has been exhausted.

The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone: 01625 545 745

Website: www.ico.org.uk