

CAN CQC INSPECTORS REFUSE TO SIGN CARE HOME VISITING DISCLAIMERS?



CQC has recently published guidance for operators confirming that inspectors will not sign disclaimers provided by operators against the bringing of personal injury claims should they contract Covid-19 whilst on-site. The reason cited is that inspectors have statutory powers to enter premises.

The picture is further complicated by CQC confirming that inspectors will not be subject to regular testing when conducting on-site inspections, which in our view is the bigger issue. This seems at odds with DHSC's message that all regular visitors to homes (bank staff, healthcare professionals and social workers) should be included in regular testing. In one way this works in favour of providers as, without regular testing it will be very difficult for an inspector, who visits several settings in a short period and tests positive, to pinpoint where they sourced the infection. However it does, of course, leave providers open to the risk that an inspector may bring COVID into their home.



HOW EXPOSED ARE PROVIDERS WITHOUT A SIGNED DISCLAIMER?

The first port of call should always be to check the terms of the provider's insurance document to ensure that the insurers do not require any specific measures, such as a disclaimer, to be signed by visitors to the home. Then it's a question of considering the law. To bring a claim for personal injury (or death) arising from Covid an inspector, or their estate, would need to evidence that the provider has been negligent. A disclaimer cannot exclude liability for death or personal injury arising from negligence. As a result, it's arguably more important that providers focus on the measures they are taking to protect against the bringing of Covid into the home rather than focus on whether a disclaimer has been signed.

In order to help providers evidence the measures they are taking to protect visitors (and refute allegations of negligence), we have been advising providers to require visitors to their homes to sign a checklist before entry. This sets out a number of statements, for example that the visitor has no symptoms of coronavirus, has not been contacted by track and trace or has not returned from a quarantined country in the last 14 days. It also states that the provider cannot guarantee that the home is free of Covid.

To protect against a claim it would be prudent for providers to provide this same list to inspectors before they enter the home and state that the terms apply to all visitors. This will need to be carefully managed to avoid setting the inspection off on the wrong foot. Perhaps providers should be positioning this along the lines of accepting that inspectors can't sign the document but showing it to them to ensure they are fully apprised of what the home is doing with others and making them aware of all the relevant circumstances. Whilst the inspector may refuse to sign the disclaimer, the fact that the home has informed the inspector of the terms should play strongly in the provider's favour in the event of a claim. Whilst the inspector has a statutory power to enter the home, it is ultimately their choice whether to do so in knowledge of the risks there may be of contracting Covid. This, along with implementing other measures detailed in the Government's guidance, will go some way to defending a claim.



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