

# Health and Safety Services from Napthens



## Failing to manage risk of service user – Care Sector HSE Prosecution

NAP-10747 QCS

Care Home Operators and Care Providers have significant legal duties which require them to protect the health, safety and welfare of their staff, service users and anyone else who may be affected by their activities. Failure to meet these duties can result in extremely serious, harmful, consequences for any individuals at risk, as well as serious financial and legal costs for any businesses and its directors.

**Recent news from the Health & Safety Executive should serve as a reminder to all care providers and care home operators that the risks associated with service users need to be identified and appropriate control measures and safe working practices put in place.**

The general duties of employers under section 2(1) of the Health and Safety at Work etc. Act 1974 make it clear that it is the duty of every employer to ensure, so far as is reasonably practicable, the health, safety,

and welfare at work of all their employees. In simple terms this means that you are balancing the reduction in risk that a particular control measure would produce against the sacrifices required to implement that control measure, in terms of cost, time and trouble to implement the control measure.

In addition to the above, Regulation 3(1) (a) of the Health and Safety at Work Regulations 1999 makes it clear that an employer has a duty to undertake suitable and sufficient assessment of the risks which employees are exposed to whilst at work.

All risks must be considered and analysed to determine the appropriate control measures to be put in place. If you are an employer in the care providing sector in control of workers who visit service users in their own homes, then you must ensure that a suitable and sufficient risk assessment has been carried out.

The Health and Safety Executive recently brought the prosecution of a care provider to Edinburgh Sheriff Court. The court heard that in 2018 a female employee

of a care provider was abducted, assaulted, sexually assaulted and raped whilst visiting the home of a male service user to provide support and care.

An investigation by the HSE was prompted following the police's investigation into the attack and it was found that the care provider failed to carry out a suitable and sufficient assessment of the risks to the safety of their female employees posed by this service user. This was despite evidence indicating that concerns had previously been raised by support staff in relation to their safety with this service user dating back to 1994.

The care provider was fined £20,000 for breaching Sections (2)(1) and 33(1) (c) of the Health and Safety at Work etc. Act 1974 and regulation 3(1) (a) of the Management of Health and Safety at Work Regulation 1999. The HSE Inspector remarked that *"This was a harrowing case for all involved and could have been avoided by carrying out a suitable assessment of the risks, particularly those posed to female members of staff."* The inspector went on to say, *"If this had been done, appropriate control measures and safe working practices could have been put in place that would have protected their staff and prevented this incident."*

In this latest HSE prosecution case, the consequences of not carrying out a suitable and sufficient risk assessment are clear to see. By implementing appropriate control measures and safe working practices incidents can be prevented.

[https://press.hse.gov.uk/2021/09/22/care-provider-fined-for-failing-to-manage-risk-of-service-user/?utm\\_source=hse.gov.uk&utm\\_medium=referral&utm\\_campaign=press-channels-push&utm\\_term=news-page&utm\\_content=care-provider-fine&ga=2.155126200.1208035072.1632487783-79017601.1631717419](https://press.hse.gov.uk/2021/09/22/care-provider-fined-for-failing-to-manage-risk-of-service-user/?utm_source=hse.gov.uk&utm_medium=referral&utm_campaign=press-channels-push&utm_term=news-page&utm_content=care-provider-fine&ga=2.155126200.1208035072.1632487783-79017601.1631717419)

<https://www.legislation.gov.uk/ukxi/1999/3242>

<https://www.legislation.gov.uk/ukpga/1974/37>

