



# Care Act 2014

## 2014 CHAPTER 23

### PART 2

#### CARE STANDARDS

VALID FROM 15/07/2014

#### *False or misleading information*

#### **92 Offence**

- (1) A care provider of a specified description commits an offence if—
  - (a) it supplies, publishes or otherwise makes available information of a specified description,
  - (b) the supply, publication or making available by other means of information of that description is required under an enactment or other legal obligation, and
  - (c) the information is false or misleading in a material respect.
- (2) But it is a defence for a care provider to prove that it took all reasonable steps and exercised all due diligence to prevent the provision of false or misleading information as mentioned in subsection (1).
- (3) “Care provider” means—
  - (a) a public body which provides health services or adult social care in England,
  - (b) a person who provides health services or adult social care in England pursuant to arrangements made with a public body exercising functions in connection with the provision of such services or care, or
  - (c) a person who provides health services or adult social care in England all or part of the cost of which is paid for by means of a direct payment under section 12A of the National Health Service Act 2006 or under Part 1 of this Act.

*Status: Point in time view as at 07/07/2014. This version of this cross heading contains provisions that are not valid for this point in time.*

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- (4) “Health services” means services which must or may be provided as part of the health service.
- (5) “Adult social care”—
- (a) includes all forms of personal care and other practical assistance for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but
  - (b) does not include anything provided by an establishment or agency for which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of the Care Standards Act 2000.
- (6) “Specified” means specified in regulations.
- (7) If a care provider commits an offence under either of the provisions mentioned in subsection (8) in respect of the provision of information, the provision of that information by that provider does not also constitute an offence under subsection (1).
- (8) The provisions referred to in subsection (7) are—
- (a) section 44 of the Competition Act 1998 (provision of false or misleading information) as applied by section 72 of the Health and Social Care Act 2012 (functions of the OFT under Part 1 of the Competition Act 1998 to be concurrent functions of Monitor), and
  - (b) section 117 of the Enterprise Act 2002 (provision of false or misleading information) as applied by section 73 of the Health and Social Care Act 2012 (functions of the OFT under Part 4 of the Enterprise Act 2002 to be concurrent functions of Monitor).
- (9) If a care provider commits an offence under subsection (1) in respect of the provision of information, the provision of that information by that provider does not also constitute an offence under section 64 of the Health and Social Care Act 2008 (failure to comply with request to provide information).

VALID FROM 01/04/2015

### 93 Penalties

- (1) A person who is guilty of an offence under section 92 is liable—
- (a) on summary conviction, to a fine;
  - (b) on conviction on indictment, to imprisonment for not more than two years or a fine (or both).
- (2) A court before which a care provider is convicted of an offence under section 92 may (whether instead of or as well as imposing a fine under subsection (1)) make either or both of the following orders—
- (a) a remedial order,
  - (b) a publicity order.
- (3) A “remedial order” is an order requiring the care provider to take specified steps to remedy one or more of the following—
- (a) the conduct specified in section 92(1),
  - (b) any matter that appears to the court to have resulted from the conduct,

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- (c) any deficiency, as regards the management of information, in the care provider's policies, systems or practices of which the conduct appears to the court to be an indication.
- (4) A “publicity order” is an order requiring the care provider to publicise in a specified manner—
  - (a) the fact that it has been convicted of an offence under section 92,
  - (b) specified particulars of the offence,
  - (c) the amount of any fine imposed, and
  - (d) the terms of any remedial order made.
- (5) A remedial order may be made only on an application by the prosecution specifying the terms of the proposed order; and any such order must be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution or on behalf of the care provider.
- (6) A remedial order must specify a period within which the steps referred to in subsection (3) are to be taken.
- (7) A publicity order must specify a period within which the requirements referred to in subsection (4) are to be complied with.
- (8) A care provider that fails to comply with a remedial order or a publicity order commits an offence and is liable on conviction on indictment to a fine.

VALID FROM 01/10/2014

## 94 Offences by bodies

- (1) Subsection (2) applies where an offence under section 92(1) is committed by a body corporate and it is proved that the offence is committed by, or with the consent or connivance of, or is attributable to neglect on the part of—
  - (a) a director, manager or secretary of the body, or
  - (b) a person purporting to act in such a capacity.
- (2) The director, manager, secretary or person purporting to act as such (as well as the body) is guilty of the offence and liable to be proceeded against and punished accordingly (but section 93(2) does not apply).
- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—
  - (a) to any other similar officer of the body, and
  - (b) where the body is a local authority, to a member of the authority.
- (4) Proceedings for an offence under section 92(1) alleged to have been committed by an unincorporated association are to be brought in the name of the association (and not in that of any of the members); and rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.
- (5) In proceedings for an offence under section 92(1) brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 and

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Schedule 3 to the Magistrates' Courts Act 1980 apply as they apply in relation to a body corporate.

- (6) A fine imposed on an unincorporated association on its conviction for an offence under section 92(1) is to be paid out of the funds of the association.
- (7) Subsection (8) applies if an offence under section 92(1) is proved—
  - (a) to have been committed by, or with the consent or connivance of, an officer of the association or a member of its governing body, or
  - (b) to be attributable to neglect on the part of such an officer or member.
- (8) The officer or member (as well as the association) is guilty of the offence and liable to be proceeded against accordingly (but section 93(2) does not apply).

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