

# Fire Safety in Care Services



## YOUR TEAM TODAY



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# Key fire safety legislation

- **Regulatory Reform (Fire Safety) Order 2005** – Requires the responsible person (“RP”) to assess the risk of fire and implement appropriate fire safety measures to mitigate risks identified and creates obligations on anyone with an element of control over fire safety.
- **Fire Safety Act 2021**- Clarifies the scope of the Fire Safety Order and requires that fire risk assessments for buildings with two or more sets of domestic premises take account of the structure, external walls, anything in or on those walls and flat front doors / doors in communal areas.
- **Fire Safety (England) Regulations 2022** - Creates additional obligations for RPs, which apply based on the height of a building:
  - **General obligations:** apply to buildings with two or more sets of domestic premises and common parts which residents would need to evacuate through in an emergency.
  - **Additional obligations for buildings over 11 metres in height** (typically a building of 5 storeys or more).
  - **Additional obligations for high-rise buildings** (building is at least 18 metres above ground level or 7 storeys or more).



# Key fire safety legislation

## Building Safety Act 2022

Introduced significant changes to the regulatory regime for higher-risk buildings (“HRBs”).

- Part 3 BSA 2022 – covers design and construction phase of HRBs. Includes care homes.
- Part 4 BSA 2022 – covers occupation phase of HRBs. Excludes care homes.
- Part 4 may apply to housing with care services that meet the requirements for a HRB.



# Fire Service enforcement

- Verbal advice.
- Non-statutory notice.
- Statutory notices – enforcement, prohibition and alterations
- Prosecution – maximum penalty is an unlimited fine in the Magistrates' Court or at the Crown Court, an unlimited fine and/or term of imprisonment not exceeding two years.
- Prosecution may be brought against:
  - RP or any other person or organisation with any element of control over fire safety;
  - Manager of the company who had responsibility (e.g. under their employment contract) for fire precautions;
  - A director, manager, secretary or other similar officer if an offence was the result of their neglect; and / or
  - Employee who failed to take reasonable care or failed to co-operate with their employer.

Cardiff care home fined nearly £500,000 for serious fire safety failings. The offences related to the home's fire safety arrangements including:

- Inadequate fire protection to prevent the spread of fire and smoke
- Poor fire risk assessments
- Insufficient smoke alarms
- Inaccessible blocked fire escape routes
- Deficient emergency lighting
- Failure to conduct appropriate evacuation drills
- Substandard fire safety management

District Judge Shomon Khan said

*“This is firmly in the category of high culpability...these are the most vulnerable members of our society...each of them was put at risk...there was a risk of a large scale tragedy. These are very serious offences...it's very difficult to imagine a more vulnerable class of individual...(two of the) offences were committed whilst the company was being investigated.”*



## Supported living care provider fined £135,000 for fire safety breaches.

LFRS were first alerted to the premises in July 2019 when fire crews responded to an arson incident at the property – one resident died while another suffered smoke inhalation.

Officers identified “serious fire safety deficiencies”, including issues with the protected escape routes, the automatic fire alarm system, management of the premises, and the fire risk assessments.

Potensial Limited pleaded guilty to two breaches:

- Failure to take such general fire safety precautions so as to ensure the safety of residents and staff; and
- Failure to make a suitable and sufficient fire risk assessment.

Protection Department Group Manager for LFRS, Ian Armistead said:

*“Potensial Limited is the responsible person for these premises, and as such they have a legal duty to ensure that people who use their premises are provided with a safe environment. This prosecution should serve as a reminder to **anyone** with responsibility for fire safety to ensure the standards of their properties are kept within the requirements of the law and their legal duties.”*

# CQC Regulations

## Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

### Regulation 12 – safe care and treatment

- 12(2)(a) assessing the risks to the health and safety of service users receiving care or treatment;
- 12(2)(b) doing all that is reasonably practicable to mitigate any such risks;
- 12(2)(c) ensuring that persons providing care or treatment to service users have the qualifications, competence, skills and experience to do so safely;
- 12(2)(d) ensuring that the premises used by the service provider are safe to use for their intended purpose and are used in a safe way;
- 12(2)(e) ensuring that the equipment used by the service provider for providing care or treatment to a service user is safe for such use and used in a safe way.



# CQC Regulations

## Regulation 15 – premises and equipment

15(1) All premises and equipment used by the service provider must be—

- 15(1)(c) suitable for the purpose for which they are being used;
- 15(1)(d) properly used;
- 15(1)(e) properly maintained.

Also consider **Regulation 18** – regarding training and competence of staff



# CQC Enforcement

Civil powers and criminal powers for enforcement.

Criminal powers include:

- Cautions
- Penalty notices
- Prosecution
- Fit and proper person requirement
- Prosecution of individuals.

Where another regulator has the power to prosecute, CQC will co-ordinate accordingly to ensure the proceedings taken are the most appropriate for the offence.



Residents were asked to leave a care home in Blackburn after it was issued a restriction order by LFRS over fire safety concerns.

CQC carried out an unannounced targeted inspection of the home to “check the provider’s fire safety arrangements”, with two fire safety officers from LFRS also attending.

The fire safety inspection found that the care home was in breach of Regulation 12, as the “provider had failed to thoroughly assess, manage, and mitigate the risks to people's health and safety in the event of a fire (Regulation 12 (1) (2) (a) (c) (d))”.

**CQC:**

*“We considered enforcement action under the regulations; however, this was superseded by enforcement action taken by Lancashire Fire and Rescue Service in line with Article 31 of the Regulatory Reform (Fire Safety) Order 2005.”*

# Scrutiny at Inquests

Ashlie Timms, aged 46, died in supported living accommodation in April 2018 after staff failed to call 999 promptly and evacuate Ashlie during the fire. The Inquest found that the death of Ashlie Timms was caused by the following:

- A fire detection system which was not installed to automatically alert the emergency services
- An incorrect address location on the alarm display, that Sequence Care knew to be incorrect
- Staff departed from basic fire evacuation procedures
- Up to a 45-minute delay to summon emergency services, demonstrating a significant lack of urgency
- The resetting of the fire alarm on at least two occasions
- Ashlie was not evacuated, despite her PEEP requiring staff to do so
- The presence of an electronic keypad lock at the main point of escape presenting an obstacle in a highly stressful situation
- Absence of an effective fire safety audit in 2017
- Departures from British fire standards and recommendations, conflicting organisational fire policies and fire risk assessments that went unchallenged
- Lack of a bespoke fire related policy and fire risk assessments



# Applying the law to different care services

Care provider operates Anthony Care Home. It owns the property and has full responsibilities for maintenance, repairs and upkeep.

Care provider operates Collins Care Home. The local authority owns the property and has responsibilities for the maintenance and repairs to its structure.

- **Workplace** – Care provider's staff
- Care provider has **full control**
- Care provider is **RP** under the Fire Safety Order and must comply with relevant **CQC obligations** also.
  
- **Difference with Collins Care Home?** Local authority will also have duties alongside Care provider.



# Applying the law to different care services

No.30 Collins Close is a detached house where two people supported by the care provider live. Each has a tenancy agreement for the whole property with a third-party landlord.

No.31 Anthony Avenue is a detached house where two people supported by the care provider live. Each has a tenancy agreement for their room and a right to use the rest of the house. Care provider's staff are at the property 24/7 and there is a dedicated bedroom for staff to use.

- Tenancy agreement for the **whole** of the property = “*domestic premises*”
- Fire Safety Order **would not** apply but CQC obligations **would**.
- What is the difference at Anthony Avenue? Individuals only have **exclusive possession** of their rooms, **shared communal areas** and **dedicated staff bedroom**. Order applies and care provider **RP**?



# Applying the law to different care services

Mr A owns his property, and the care provider is commissioned to provide three care visits each day.

- “Domestic premises” so Order **does not** apply but would still have to comply with **CQC obligations**.
- *What if Mr A refused changes to his property?*

# Applying the law to different care services

Anthony Collins House is a 3-storey building containing 30 self-contained flats for older people. Individuals have a tenancy agreement with a third-party landlord for their flat, and access to communal areas such as a coffee room. The care provider has a dedicated office area and staff room granted under the SLA with the third-party landlord.

- **Fire Safety Order** and **general obligations** from the Fire Safety (England) Regulations 2022 **apply**.
- Remaining obligations from the Regulations and Building Safety Act 2022 **do not apply due to height**.
- Care provider RP for office and staff room and third-party landlord for remainder – **however in reality both likely to have responsibilities for all areas**.
- **Key is cooperation**.



# Key issues that arise in respect of fire safety in care homes

- **Sprinklers** – Updates to Approved Document B.  
Makes provision for sprinklers in all new care homes and existing building projects from March 2025 regardless of the building's size or height.
- **Accounting for risks relating to the day-to-day use of the home** – e.g., oxygen tanks, use of emollient creams, mobility scooters and residents smoking  
Care home provider fined £1.04 million following death of a resident. Smoking risk assessment did not consider the use of emollient creams.
- **Evacuation of residents** – including PEEPs, staffing levels and training.



## Key issues that arise in respect of fire safety in Housing with Care

- A lack of understanding as to responsibilities and requirements.
- Disputes about person with responsibility.
- Finger pointing – “that’s a housing problem.”
- “No one ever asked us to do that.”
- Evacuation – “where’s the funding?”
- PEEPs in housing with care.
- Treating the building and the person separately.

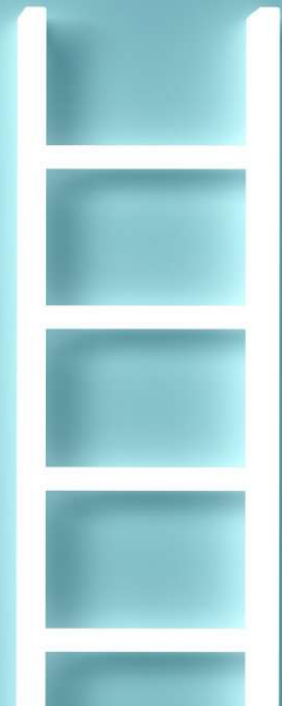


- **Clear Roles**
- **Clear Responsibilities**
- **Clear Approach**
- **Clear documentary evidence**
- **Clear understanding of the specific residents at the specific building**



# Fire Responsibilities in SLAs

- Responsibility for fire safety and FRAs comes up time and time again with landlords when negotiating SLAs.
- It is important to be clear in SLAs as to which party is responsible not just for compliance but also costs.
- Some housing providers do try and delegate fire safety responsibilities to care providers – for this reason it is worth taking legal advice on this before signing up to the SLA.
- Usual practice, based on the regulations, is the landlord will complete the FRAs and be responsible for remedial work (such as fixing fire doors etc) along with responsibility for the cost of the remedial work.



# Enhanced Housing Benefit

- Enhanced Housing Benefit does include allowances for the cost of FRAs and ongoing fire compliance / remedial works. The party who carries out the FRAs and remedial works in practice should be the party in receipt of the allowances in the Enhanced Housing Benefit.
- Even if the Landlord is completing the FRAs – care providers will still be on the hook for PEEPs and regular fire alarm testing. The provider will also be on the hook for notifying the landlord of defects in fire safety equipment and escalating fire safety issues if the landlord does not initially respond.
- It is important to carefully read and check the fire responsibilities listed in the responsibility matrix in each SLA – cross check the responsibilities with operational colleagues / care staff so everyone is aware of what they need to do.
- Up to date FRAs are required on transactions as part of due diligence and it is important to check not only whether FRAs are in date but also that the actions have been taken. If actions are outstanding, then consider the costs of such actions and whether provisions for the costs need to be included in your accounts.





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# QUESTIONS?

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