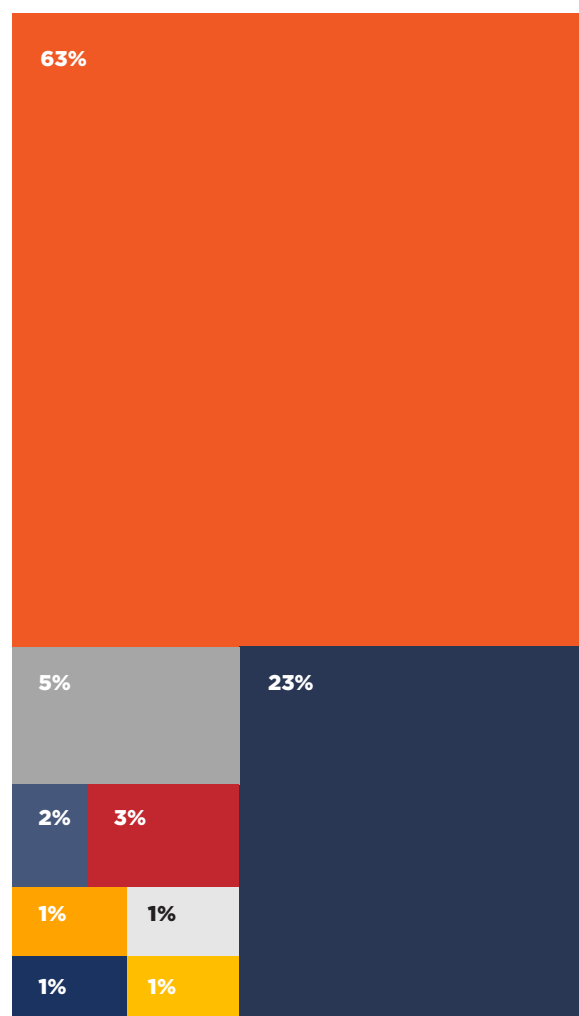




Is the CQC prosecuting more?

- ## Overview

After a downturn in activity during the Covid-19 lockdowns and some cases taking more than three years to be brought forward, we expect this could increase even further over the next few years.



Our findings

We analysed the list of prosecutions brought by the CQC, which details individual incidents since 2009, looking into seven health and social care services relating to care homes.

When comparing pre-pandemic (2017-2019) with pandemic and post-pandemic (2020-2022), prosecutions by the CQC have increased by 50% - from 30 to 45.

Furthermore, the average fine has amplified by 242% to more than £550,000. In comparison, the average fine pre-pandemic was just over £160,000.

The largest fine handed down pre-pandemic was £225,170 in 2019. During and post-pandemic, this was £2.5 million, which was delivered in 2021 - an increase of more than 1,000%.

Year	Total number of prosecutions	Average fine
2017	6	£80,139.45
2018	7	£49,595.20
2019	17	£33,820.50
Totals pre-pandemic	30	£163,555.15
2020	17	£56,456.32
2021	17	£237,819.65
2022	11	£265,137.03
Totals during and post-pandemic	45	£559,413.00

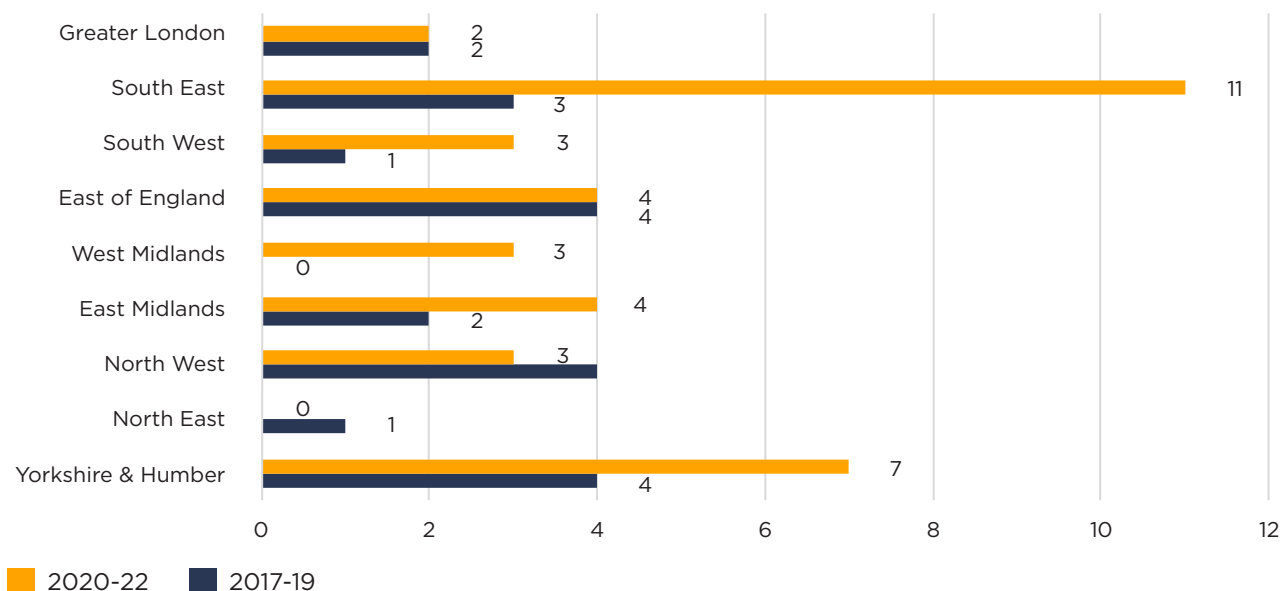


Is the CQC prosecuting more?

Regions: Prosecutions in the southern regions have doubled, and in the North and Midlands, they have increased by a total of 54%.

The data shows the most significant increase in prosecutions by region is in the South East, where the number of charges have risen by **267%**, from 3 to 11.

Prosecutions by region



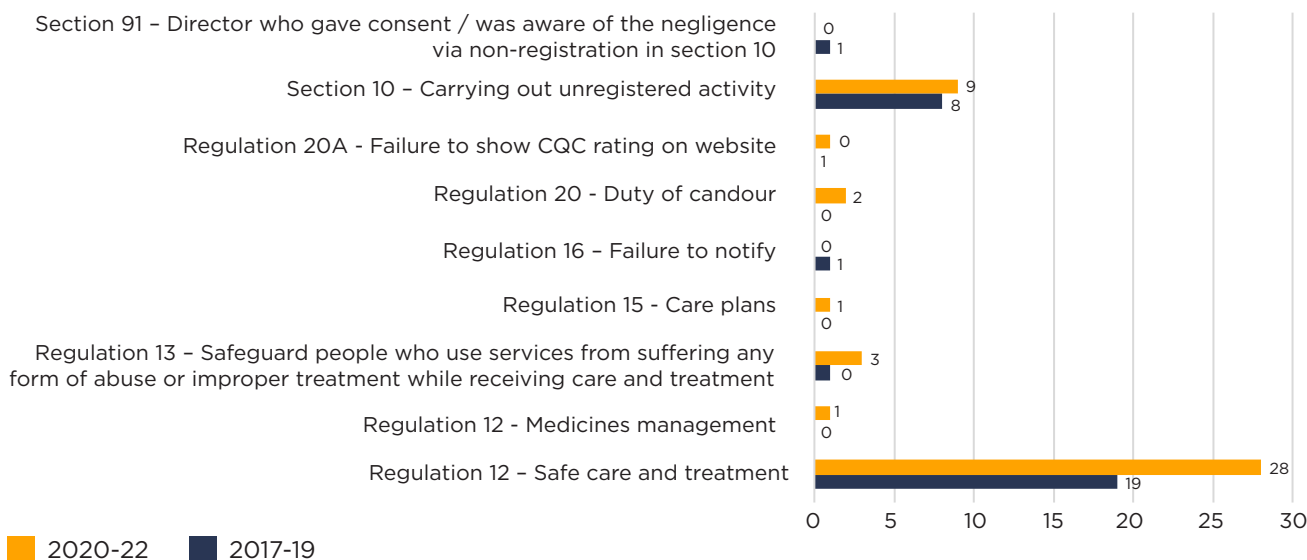
Reasons: Regulation 12 (safe care and treatment) has been breached the most over the past six years, accounting for 63% of all prosecutions.

During the pandemic and post-pandemic, the CQC seemingly extended its scope for prosecutions as medicines management, care plans, duty of candour and failure to show CQC rating on website were all listed as

breaches - regulations that did not appear in the data at all pre-pandemic.

The number of prosecutions brought as a result of regulation 13 (safeguard people who use services from suffering any form of abuse or improper treatment while receiving care and treatment) and section 10 (carrying out unregistered activity) breaches also increased.

Regulations breached



Case examples

The following cases demonstrate that the CQC will use its powers to hold providers to account for serious breaches of its regulations. They also highlight that the fines and costs ordered in such prosecutions can be substantial and

that they are dramatically rising; despite the prosecutions occurring only three years apart and being similar incidents, the total fine handed down increased by 197%.

	Pre-pandemic	During and post-pandemic
Background	A resident fell against an uncovered radiator at a care home in South London and received serious burns following prolonged contact with the appliance. The court heard there was clear evidence, given the nature of the burns, that had the radiator been covered, the resident would not have been harmed.	A resident of a nursing home accommodating older people in Suffolk became stuck against a hot pipe after falling – inflicting significant burns to her back. A subsequent CQC investigation found the care provider failed in its duty to implement systems and processes to protect people from hot surfaces, meaning the incident could have been avoided.
What the CQC said	“This incident was entirely avoidable. The risk of people sustaining serious burns from uncovered radiators is something all care homes should be aware of.”	“The risk of people sustaining serious burns from uncovered pipes is something all care homes should be aware of. We hope this result sends a message to all care home providers that they must always ensure people’s safety and manage risks to their wellbeing.”
Year the prosecution was brought	2017	2020
Total fines	£24,500	£72,733.89



Avoiding prosecutions

After conversations with clients over the past couple of years, these findings are not surprising. The CQC had virtually stopped all inspections – except in emergencies – during the pandemic and so, as a result of the backlog, an increase in prosecutions once normality started to resume was to be expected.

With more catching up likely to be done and the sector being placed firmly under a microscope during the pandemic, particularly in the eyes of the public, we expect this activity to increase further – especially as some cases have taken more than three years to be brought forward.

However, there are cautionary measures care homes and registered providers can put in place to mitigate the risk of prosecution, limit

the impact of prosecution and, in some cases, prevent it from proceeding to court.

For example, providers have a responsibility to promote an environmentally-sustainable health and care system. Therefore, when exercising their judgement, professionals and practitioners are expected to take this guideline fully into account, alongside the individual needs, preferences and values of their patients or the people using their service.

As the CQC is using its powers more than ever, it is vital providers ensure compliance with their regulatory and legal obligations; keep detailed and accurate records; stay up-to-date with any legal or policy changes; and seek specialist legal advice at the earliest opportunity.

Contact us

With extensive experience in the healthcare sector, our national team of experts support health and social care providers and are well-positioned to help with a wide range of regulatory and commercial issues, including:

- **Regulatory advice, compliance, and due diligence**
- **Social housing**
- **Later living**
- **Employment law**
- **Contractual disputes**
- **Commercial development**
- **Intellectual property**
- **Insurance**



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ⁱ<https://www.cqc.org.uk/about-us/how-we-do-our-job/prosecutions>

ⁱⁱThe regulated activities, as listed by the CQC, we analysed were:

- Accommodation for persons who require nursing or personal care
- Accommodation for persons who require treatment for substance misuse
- Community services – healthcare
- Diagnostic and screening procedures
- Nursing care
- Personal care
- Treatment of disease, disorder or injury