THE LAMPARD INQUIRY

OPENING STATEMENT ON BEHALF OF THE CARE QUALITY COMMISSION

I. INTRODUCTION

1. This written opening statement is made on behalf of Care Quality Commission ("CQC"), which was designated a Core Participant in this Inquiry in June 2024.[1] CQC recognises the importance of this Inquiry and its investigation into the circumstances surrounding the deaths of mental health inpatients under the care of NHS Trusts in Essex. It recognises, in particular, the suffering and loss endured by the families of those who have died and their need for answers.

2. CQC is the independent regulator of health and adult social care in England. It regulates the bodies which provide health and social care, rather than the people who work within them (many of whom will be subject to separate professional regulation, by regulators such as the General Medical Council and the Nursing and Midwifery Council). Providers of health and social care are required to register with CQC. Most providers are registered with routine or agreed conditions on their registration. CQC then monitors their compliance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Care Quality Commission (Registration) Regulations 2009 and the requirements of any other enactment which appears to CQC to be relevant and carries on inspections[2]. CQC publishes reports setting out the findings of its inspections.

3. CQC's aim is to ensure that health and social care services provide people with safe, effective, compassionate, high-quality care, and to encourage

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[1] The CQC does not seek to make an oral statement at the opening hearings which are taking place in September 2024.

[2] Since the introduction of the Single Assessment Framework, CQC has changed terminology from 'inspection' and now uses the term 'assessment' to mean the process of performance assessment of all registered providers CQC has the power to rate, from planning to review through to publishing its report. All of the performance reviews of the Trusts referred to in this statement use the terminology 'inspection' as all were reviewed prior to the introduction of the Single Assessment Framework.

improvement.[3] CQC wishes to assist this Inquiry in any way it can, and to play an active (though proportionate) role. This opening statement outlines CQC's primary functions relating to health services, and its specific powers and duties in relation to mental health inpatients detained under the Mental Health Act 1983, in order to provide a brief overview of the CQC's role as a regulator.

4. The NHS Trusts providing mental health care in Essex were registered with CQC from April 2010 onwards. A list of the registrations and the most recent inspection dates of the Trusts is set out below.

II. ROLE OF CQC

5. CQC was established in 2009, pursuant to the Health and Social Care Act 2008. CQC took over the functions of three previous bodies: the Healthcare Commission (which had the general function of encouraging improvement in healthcare, and also reviewed formal complaints and investigated serious failures); the Mental Health Act Commission (the monitoring body for the operation of the Mental Health Act 1983, which investigated complaints falling within its remit, and reviewed deaths of those detained under the Act); and the Commission for Social Care Inspection (the inspectorate for adult social care).

6. CQC's powers and duties are set out in legislation, primarily the Health and Social Care Act 2008, Health and Social Care Act 2012, Care Act 2014 and Health and Care Act 2022.

7. There are 35,626 registered providers on the CQC's register; 222 of these are NHS Trusts and 55 of those Trusts provide mental health care[4]. Providers of regulated activities (in essence, health and social care providers) are required

[3] Section 3(1) of the Health and Social Care Act 2008 provides that the CQC's main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services. Section 3(2) provides that the CQC is to perform its functions for the general purpose of encouraging (amongst other matters) the improvement of health and social care services. Section 4 sets out a number of matters to which the CQC must have regard when performing its functions: these matters include the experiences of people who use health and social care services and their families and friends, and the need to protect and promote the rights of people who use health and social care services (including in particular the rights of children, of people detained under the Mental Health Act, of people who are deprived of their liberty in accordance with the Mental Capacity Act, and other vulnerable adults).

[4] As at 19 August 2024

to register with CQC unless exempt.[5] It is an offence to carry on regulated activities without being registered, and CQC has powers to prosecute those who do so.

8. Registered providers are required to meet fundamental standards set out in regulations.[6] These include standards of person-centred care (that care and treatment of individuals must be appropriate, meet their needs and reflect their preferences),[7] dignity and respect,[8] safe care and treatment,[9] and safeguarding service users from abuse and neglect.[10] CQC conducts inspections of registered providers and makes findings about the quality of health and social care being delivered and recommendations for improvement. It also publishes an annual State of Care report containing its annual assessment of health and social care in England.[11] From time-to-time CQC undertakes thematic reviews: for example, in June 2015 it published a report *Right here, right now – People's experiences of help, care and support during a mental health crisis.*[12]

9. CQC's role is to monitor, inspect and regulate services, and to publish what it finds: it is required by statute to conduct reviews of the carrying on of regulated activities by service providers (as prescribed in regulations), assess the performance of service providers following such reviews, and publish a report of its assessment.[13] CQC has a range of powers to take enforcement action against providers of health and social care. It can take enforcement action for failure to comply with conditions,[14] or breach of regulations.[15] It can issue penalty notices for fixed penalty offences,[16] and bring prosecutions.[17] CQC

[5] Section 10 Health and Social Care Act 2008
[6] Health and Social Care (Regulated Activities) Regulations 2014
[7] Regulation 9 of the 2014 Regulations
[8] Regulation 10 of the 2014 Regulations
[9] Regulation 12 of the 2014 Regulations
[10] Regulation 13 of the 2014 Regulations
[11] The most recent report was State of Care 2022/23, published in October 2023. https://www.cqc.org.uk/publications/major-report/state-care/2022-2023
[12] https://www.cqc.org.uk/sites/default/files/20150630_righthere_mhcrisiscare_full.pdf
[13] Section 46 Health and Social Care Act 2008; see also s. 46A and s. 46B in respect of the duty to conduct reviews and assessment of the health/social care functions carried out by local authorities and integrated care boards.
[14] Section 33 Health and Social Care Act 2008
[15] Most often of Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and Care Quality Commission (Registration) Regulations 2009
[16] Section 86 Health and Social Care Act 2008
[17] Section 90 Health and Social Care Act 2008

has powers of entry and inspection of regulated premises,[18] and to require the provision of documents and information.[19] It can also require an explanation of any matter for the purposes of its regulatory functions.[20]

10. Providers are required to report the death, injury or abuse of patients to CQC.[21] Health service bodies may not be required to do so if they have reported these to NHS England. However, they are still required to report the death or unauthorised absences of those detained or liable to be detained under the Mental Health Act 1983.[22]

11. CQC is part of the UK National Preventive Mechanism ("NPM"). The NPM was established in 2009, following the UK's ratification (in 2003) of the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The UK National Preventive Mechanism is an independent monitoring body to carry out regular visits to places of detention to prevent torture and other ill-treatment. The UK NPM consists of 21 separate bodies that independently monitor places of detention across the UK: CQC is the designated NPM for deprivation of liberty in health and social care across England. It operates as an NPM whenever it carries out regulatory or other visiting activity to health and social care providers where people may be deprived of their liberty. A key focus of the NPM visiting role is CQC's activity in monitoring the Mental Health Act.[23]

12. CQC also 'hosts' a number of organisations, which are operationally independent of CQC but use its infrastructure. These are:
    (a) Healthwatch England: a "consumer champion", whose role is to gather and promote the views of users of health and social care services. Healthwatch England was established as a committee of the CQC by the Health and Social Care Act 2008 but is operationally independent of the CQC.

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[18] Sections 62-63 Health and Social Care Act 2008
[19] Section 64 Health and Social Care Act 2008
[20] Section 65 Health and Social Care Act 2008; regulation 10 Care Quality Commission (Registration) Regulations 2009
[21] Regulation s16 and 18 Care Quality Commission (Registration) Regulations 2009
[22] Regulation 17, Care Quality Commission (Registration) Regulations 2009
[23] The UK NPM issues an annual report, the most recent of which is *Monitoring places of detention 14th Annual Report of the United Kingdom's National Preventive Mechanism 2022/23* (CP 1008 – presented to Parliament in February 2024): https://nationalpreventivemechanism.org.uk/document/fourteenth-annual-report-2022-23/

(b) National Guardian's Office ("NGO"): the NGO was established following Sir Robert Francis' 2015 report "Freedom to Speak Up", which found that NHS culture did not always encourage or support workers to speak up about concerns. The NGO trains and supports a network of 'Freedom to Speak Up Guardians' and conducts reviews to identify any learning and support improvement.

(c) Maternity and Newborn Safety Investigations: this programme transferred to the CQC on 1 October 2023.

III. SPECIFIC POWERS AND DUTIES IN RESPECT OF MENTAL HEALTH

13. CQC has specific statutory duties under the Mental Health Act 1983 ("MHA"). It has responsibility for appointing registered practitioners to give second opinions (or SOADs) where these are required under the MHA,[24] and in such cases will receive reports from the doctor who is responsible for the patient's care on the treatment and the patient's condition.[25]

14. More broadly, CQC has a duty to keep under review, and if appropriate investigate, how services exercise their powers and discharge their duties when patients are detained in hospital, or subject to community treatment orders or guardianship.[26] CQC is, for example, currently reviewing and considering how to address the recommendations made earlier in the year by an independent review into a mental health unit in the Greater Manchester area; it is aware of the concerns regarding the safety of mental health provision in Norfolk and Suffolk which have led to calls for a public inquiry; and it is also aware of similar concerns regarding provision in Tees, Esk and Wear Valleys, where CQC has brought successful criminal prosecutions against an NHS Trust in relation to two deaths. As part of CQC's MHA assessment duties, it can visit and interview patients who are detained under the MHA.[27] CQC also investigates complaints about how services are exercising their functions under the MHA in respect of a patient who is or has been detained under this Act or who is or has been a relevant patient.[28] Each year, CQC publishes a

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[24] Sections 57, 58 and 58A MHA 1983
[25] Section 61 MHA 1983
[26] Section120(1) MHA 1983
[27] Section 120(3) MHA 1983
[28] Section 120(4) MHA 1983

report “Monitoring the Mental Health Act”. Its most recent such report (*Monitoring the Mental Health Act in 2022/2023*) was published in March 2024.[29]

15. CQC monitors the Mental Health Act Code of Practice and can make proposals to the Secretary of State for Health and Social Care as to the content of the Code of Practice.[30]

16. CQC also monitors how the Mental Capacity Act 2005 is used by health and adult social care providers and how they use the Deprivation of Liberty Safeguards (“DoLS”).

17. In January 2024 CQC was commissioned to carry out a special review of mental health services at Nottinghamshire Healthcare NHS Foundation Trust under section 48 of the 2008 Act; the final part of its review was published on 13 August 2024.

IV. CQC REGISTERED PROVIDERS WITHIN INQUIRY’S SCOPE

18. CQC has reviewed its records and believes that the following NHS Trusts which provided mental healthcare in Essex were registered with it during the period with which the Inquiry is concerned[31]:
    a. Mid Essex Hospital Services NHS Trust – registered 1 April 2010, most recently inspected in November 2019;
    b. North Essex Partnership University NHS Foundation Trust – registered 1 April 2010, most recently inspected in January 2023;
    c. South Essex Partnership University NHS Foundation Trust – registered 1 April 2010, most recently inspected June/July 2015;
    d. North East London NHS Foundation Trust (NELFT)– registered 1 April 2010, most recently inspected in June 2022;
    e. Essex Partnership University NHS Foundation Trust – formed by the merger of South Essex Partnership University NHS FT and North Essex

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[29] https://www.cqc.org.uk/publications/monitoring-mental-health-act/2022-2023. This report is based on findings from 860 monitoring visits during 2022/23, which involved speaking with 4,515 patients and 1,200 carers; the CQC also carried out a series of interviews with people who have lived experience of being detained under the MHA or of caring for someone who has been detained.

[30] Section 118(7) MHA 1983

[31] Dates of last on-site visits taken from most recent inspection report, correct as at 20 August 2024

Partnership University NHS FT; registered 1 April 2017, mostly recently inspected in July 2023;

V. CONCLUSION

19. CQC wishes to assist the Inquiry as far as it can, and appreciates the importance of openness, co-operation and candour. It considers that (amongst other matters) it may be able to assist the Inquiry in relation to the provision of information regarding the matters set out at paragraph 2 of the Terms of Reference (in paragraphs 2(j) "*the quality, timeliness, openness and adequacy of any response by or on behalf of the Trusts in relation to concerns, complaints, whistleblowing, investigations, inspections, and reports (both internal and external)*" and 2(k) "*the interaction between the Trust(s) and other public bodies (including, but not limited to, commissioners, coroners, professional regulators, and the Care Quality Commission)*"). CQC also anticipates that the Inquiry's work will inform its own ongoing work regulating mental health inpatient care across England.

20. This opening statement provides a brief overview of CQC's role and functions. CQC anticipates that the Inquiry will require disclosure of material relating to its inspections of the Trusts in Essex as well as detailed evidence as to how CQC carried out its functions and its interactions with the Trusts registered with it. CQC reiterates its intention to provide such assistance as the Inquiry may require.

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