

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Care standards

False or misleading information

Section 92 – Offence

517. This section creates a new offence so that providers of health services and adult social care in England, which supply, publish or otherwise make available information that is false or misleading, could be subject to criminal sanctions. The offence applies to a care provider as a corporate body. Section 94 sets out the circumstances in which a director, manager, secretary or similar officer of a care provider is also liable to be prosecuted for the offence.
518. [Section 92](#) outlines the scope of the offence, including which care providers are potentially subject to it and the type of information to which it relates (further detail will be specified in regulations as appropriate). It provides that the information must be required under a statutory provision or other legal obligation.
519. *Subsection (1)* enables the offence to apply to information that is supplied, published or otherwise made available by a care provider, and which is materially false or misleading. The offence will only be applicable, in practice, to those care providers set out in regulations, and in relation to such information as is described in regulations. Section 125(4)(m) states that such regulations will be subject to the scrutiny of both Houses of Parliament under the affirmative procedure.
520. *Subsection (1)(b)* states that this offence will relate only to information that care providers are legally obliged to supply, either by a statutory provision or by another legal requirement such as a contractual requirement. An example of information required by a contract, rather than by a statutory provision, might be information required to be supplied by the provider of health services in accordance with a term in its “commissioning contract”¹ with a clinical commissioning group. *Subsections (1) and (6)* provide that, in practice, the offence will only be applicable to information of a type that is described in regulations. It is envisaged that the offence will typically apply in cases involving the supply of information to the Secretary of State, the Health and Social Care Information Centre, regulators and commissioners, in accordance with those persons’ and bodies’ statutory powers to require information.
521. *Subsection (2)* provides a defence for care providers that can demonstrate that they “took all reasonable steps and exercised all due diligence”. This defence will be available to those care providers that have made a genuine mistake or administrative error, provided that they can demonstrate that they had adequate procedures in place to ensure that false and misleading information was not provided.

¹ “Commissioning contract” is defined in section 6E of the National Health Service Act 2006 (as inserted by section 20 of the Health and Social Care Act 2012).

522. The care providers that fall within the scope of the offence are described generically at *subsection (3)*. The offence thus applies to public bodies that provide health services or adult social care in England, such as NHS Trusts, NHS Foundation Trusts and local authorities; and to all types of GP practice, whether sole practitioners or partnerships (and whether they have entered into personal medical service or general medical service contracts with NHS England). It also applies to providers who are not public bodies, but who provide health services or adult social care on behalf of a public body, such as independent providers of hospital services and independent care homes, in relation to the publicly-funded care that they provide. Further, it applies to those who provide health services or adult social care for which they are paid, in full or in part, by a direct payment made to a patient or service user to procure services directly. “Adult social care” is further defined at *subsection (5)* and covers all necessary forms of personal care and other practical assistance. *Subsection (5)(b)* introduces a caveat in that any social care provided by an establishment or agency registered with Her Majesty’s Chief Inspector of Education, Children’s Services and Skills will not be subject to this offence. *Subsections (1) and (6)* provide that, in practice, the offence will only apply to care providers that are specified in regulations.
523. *Subsections (7) to (9)* ensure that that there is no overlap or duplication between this false or misleading information offence and certain offences under the Competition Act 1998, the Enterprise Act 2002 and the Health and Social Care Act 2008.

Section 93 – Penalties

524. This section provides for the penalties applicable when a court decides that a care provider, or subject to section 94, a director, manager, secretary or similar officer of a care provider, has committed the offence of providing false or misleading information. When the care provider is a local authority, the penalties are applicable to a member of the authority (see section 94).
525. *Subsection (1)* states that a person convicted of providing false and misleading information could be subject to an unlimited fine or up to two years imprisonment, or both.
526. *Subsection (2)* states that as well as, or instead of, a fine the court may also impose a remedial or publicity order by way of penalty on the care provider. Section 94(2) and (8) respectively provide that remedial or publicity orders are not applicable penalties in relation to a director, manager, secretary or similar officer of a body corporate and in relation to an officer of an incorporated association or a member of its governing body.
527. *Subsection (3)* states that a remedial order will permit the court to require the convicted care provider to take certain steps to remedy the breach that led to the conviction; this includes correcting any deficiencies in conduct, management of information, policies, systems or practices. *Subsection (5)* outlines the procedures to be followed in obtaining a remedial order. The prosecution must apply to the court and suggest the terms of the proposed order, and the court must consider the representations made on behalf of both the prosecution and the convicted care provider and any evidence presented by either party.
528. *Subsection (4)* concerns publicity orders, which require a convicted care provider to publicise information about the offence, including the particulars of that offence, and details of any fines or remedial orders made.
529. For both remedial orders and publicity orders, a time period must be stated within which the required actions must have been completed (*subsections (6) and (7)*).
530. Breach of either a remedial order or a publicity order would result in a further offence and further punishment on conviction by an unlimited fine.

Section 94 – Offences by bodies

531. This section provides for the offence of providing false or misleading information to apply to directors, managers, secretaries or similar officers of care providers in certain circumstances.
532. *Subsections (1), (2) and (3)* state that where the offence is committed by a corporate body and it is committed by, or with the consent and connivance of, or is attributable to neglect on the part of a director, manager, secretary or similar officer (or a member, in the case of a local authority), they too are guilty of the offence and liable to be prosecuted and punished. The court could impose an unlimited fine or custodial sentence of up to two years imprisonment, or both, on such an individual (section 93(1)). A remedial order or publicity order (section 93(2)) could not be made in respect of an individual.
533. *Subsections (4) to (8)* make provision where the offence is committed by a care provider that is an unincorporated association. Subsection (4) provides that where proceedings are brought against an unincorporated association they are to be brought in the name of the association not in the name of the members of the association.
534. *Subsections (7) and (8)* provide that an officer of an unincorporated association, or a member of its governing body, is also guilty of the offence, where an offence committed by the unincorporated association has been committed by, or with the consent or connivance of, or is attributable to neglect on the part of, an officer or a member of the governing body of the association. Subsection (8) provides that a remedial order or publicity order cannot be made in respect of an officer or member who is convicted of the offence. The maximum penalty available to the court is an unlimited fine or up to two years imprisonment, or both (section 93(1)).