



Department  
of Health

# False or Misleading Information

A consultation on the application of the offence by  
regulations

Title: False or Misleading Information
Author: SER-PS-QR/17160
Document Purpose: Consultation
Publication date: April 2014
Target audience:
Contact details: False or Misleading Information consultation team Room 3E58 Department of Health  Quarry House Quarry Hill Leeds LS2 7UE

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/)

© Crown copyright

Published to gov.uk, in PDF format only.

[www.gov.uk/dh](http://www.gov.uk/dh)

## **False or Misleading Information**

**A consultation on the application of the offence by regulations**

**The Department of Health**

# Contents

<b>Contents</b> .....	4
<b>Foreword</b> .....	5
<b>Introduction</b> .....	6
<b>Policy Background</b> .....	8
<b>How Will the Offence Work?</b> .....	10
<b>How the legislation works</b> .....	11
<b>Purpose and Approach of Regulations and consultation questions</b> .....	13
<b>Responding to the consultation</b> .....	18
<b>Consultation Questions</b> .....	19
<b>Annex A - The Bill clauses</b> .....	20
<b>Annex B – Draft Regulations</b> .....	23

## Foreword

*Dr Dan Poulter - Parliamentary Under Secretary of State for Health*

Accurate, reliable information is at the heart of what makes our NHS work. Without it, patients and healthcare commissioners cannot make informed choices about what services to use. As a Doctor, I want to be able to reassure patients that the hospital they'll be referred to will provide the high quality care they deserve, in a safe and responsive environment. Families want to be reassured that when their loved ones are unwell they will be in a hospital that offers them the best possible chance of recovery.

Yet we know from the findings of the Mid Staffordshire NHS Foundation Trust Public Inquiry that sometimes NHS Hospitals publish information which is inaccurate. Information which might lead us to believe that everything is fine; when in reality patients may be suffering. Not only does false or misleading information mean that failings in patient care are hidden from the rest of the health and care system, they distract from the very real concerns the general public may be trying to raise.

When we published *Hard Truths* in November 2013, we committed to making it an offence for our NHS to provide or publish false or misleading information. The offence will also apply to directors and senior managers who have consented or connived in (or are negligent in relation to) an offence committed by a care provider. For the first time it will be possible to take decisive action against a healthcare provider who is found to have made significant falsifications in information related to patient care that they are required to provide by law.

NHS Hospitals that can demonstrate they took all reasonable steps and exercised due diligence, will have nothing to fear. The offence should be applied only to the most serious cases, where patient lives have been, or may be, put at risk by the provision of false or misleading information. I look forward to receiving views in consultation as we build a more open, transparent NHS, driven by the reporting of accurate data.

# Introduction

1. **This purpose of this consultation is to determine the application through Regulations of the new criminal offence for supplying or publishing False or Misleading Information (FOMI). This new offence, introduced in the Care Bill<sup>1</sup> in response to the findings of the Mid Staffordshire NHS Foundation Trust Public Inquiry, will apply to specified organisations and certain individuals within those organisations where false or misleading information has been supplied or published in response to a statutory or other legal obligation.**
2. The Mid Staffordshire NHS Foundation Trust Public Inquiry was established to consider the operation of the commissioning, supervisory and regulatory bodies in relation to their monitoring role at the Trust. The extent of the failings at the Trust, and the fact that they went undetected by organisations external to the Trust for so long, raised the very serious question as to why those organisations did not detect them.
3. The Inquiry found that the Trust repeatedly made inaccurate statements about its mortality rates (paragraphs 22.4-22.11 of the report) which led, in part, to a lack of action to investigate issues regarding the quality of care both within the Trust and by other bodies. This also raised difficult issues about the accuracy of public information in the light of poor handling of the raw data.
4. Robert Francis QC, who chaired the Inquiry, recommended that:

*“There should be a statutory duty on all directors of healthcare organisations to be truthful in any information given to a healthcare regulator or commissioner, either personally or on behalf of the organisation, where given in compliance with a statutory obligation on the organisation to provide it.” (Recommendation 182)*

*“It should be a criminal offence for a director to sign a declaration of belief that the contents of a quality account are true if it contains a misstatement of fact concerning an item of prescribed information which he/she does not have reason to believe is true at the time of making the declaration.” (Recommendation 250)*

## **– Report of the Mid Staffordshire Public Inquiry – February 2013**

5. The Government agreed with the recommendation to make it a criminal offence for a provider to supply or publish false or misleading information (FOMI). The Care Bill will implement the offence in the following way.
  - extends to any information supplied, published or otherwise made available in response to a statutory or other legal requirement, and not just to information provided to a regulator or commissioner, subject to the information being specified in regulations;
  - is focused at an organisation level, whether corporate bodies or partnerships (referred to as “care providers”). It will only apply to Directors and other senior

---

<sup>1</sup> Care Bill 2014 – Section 2 - Clauses 91-93

## False or Misleading Information

- individuals where the offence is committed with their consent or connivance or through their neglect, and the provider organisation is also guilty of the offence; and
- is a strict liability offence at care provider level. This means that the prosecution would not have to prove that there was intent to supply or publish false or misleading information on the part of the corporate body or partnership (whether dishonestly, knowingly or wilfully).

*“The Care Bill will introduce a new criminal offence applicable to care providers that supply or publish certain types of information that is false or misleading, where that information is required to comply with a statutory or other legal obligation.” – **Hard Truths – January 2014***

### **Purpose of the Consultation**

6. This consultation document sets out in more detail the policy thinking behind the proposed regulations, which will set out both the types of care providers and the types of information to which the offence will apply. The focus of this consultation is on our proposals as to which care providers and which information the offence will apply.

# Policy Background

## Why is the provision of accurate information necessary?

### Accuracy

7. The health and social care system relies on accurate information to deliver services which best meet the needs of patients and the public.
8. The accuracy of data varies considerably across health and social care for different reasons. NHS providers, in particular hospitals, are used to submitting large volumes of data in specific formats to central systems to meet certain needs. These needs might be reporting the volume of activity undertaken to receive payment under Payment by Results or reporting waiting times data for performance management purposes. Although best endeavours are made to ensure that the majority of the information provided by the NHS is accurate, data errors do still occur. While efforts are being made to reduce errors over time through the development of increasingly robust IT systems, the reliability of submitted and published data remains a concern., Progress across the NHS is highly variable with the information of some care providers more vulnerable to manipulation than others.
9. In some NHS Trusts and Foundation Trusts, the electronic patient record is updated by clinicians as a matter of record, so the decisions made about what treatments to use at a later date are clear rather than relying on a hand written record. NHS Trusts and NHS Foundation Trusts now use information to create more effective care pathways, using real time data to see where delays in the system occur and develop innovative solutions to address them. Although the use of such systems are not yet widespread, in those NHS Trusts where they are present, the falsification of such data to mask delays or other performance issues would be counterproductive, as this would only serve to hinder any attempts at improvement. While this is not absolute assurance against false or misleading information being produced, in such systems it would be a self-defeating action on the part of the care provider. The falsification of clinical records in these circumstances would certainly present a very real risk of harm to patients.
10. By comparison with the NHS, the social care arena is less rich in data rich and less familiar with submitting information to a central body. Computerised NHS performance indicators have been around for over 30 years and they are constantly evolving as the breadth and quality of information improves, but performance indicators for social care are still relatively new

### Data flow from providers

11. Health and social care providers have access to more information on their service provision and quality of care than other parties in the system. Care providers are the source of the information used throughout the rest of the system to assess the quality and safety of services. If the information from the care providers is incorrect, this will impact on the accuracy and validity of analysis of that information, as well as on the care providers' ability to deliver a quality service.
12. For example, the data supplied by NHS care providers to the Health and Social Care Information Centre and stored in its Secondary Uses Service (SUS) is used for



## False or Misleading Information

purposes such as healthcare planning, commissioning services, Payment by Results, improving public health and developing national policy. SUS data is 'cleaned' and used to produce Hospital Episode Statistics (HES) which are, in turn, used by others to develop many key statistics on NHS performance. Dr Foster Intelligence uses HES to develop the Hospital Standardised Mortality Ratio (HSMR) indicators. If the data submitted by an NHS Trust into SUS is not correct, invariably it will mean the published HSMR data, and other performance measures, do not present an accurate picture of what is happening at that care provider.

13. The public, commissioners and regulators therefore rely on providers of health and social care to share this information and ensure that it is accurate. The majority of care providers and their leadership teams recognise that the provision of accurate information is important to the effective running of healthcare services. Accurate information allows commissioners to make informed decisions about which providers to make arrangements with for the referral of patients and, where patients are able to choose a provider, it helps them to make an informed choice. The provision of accurate and reliable information by care providers is of great importance to the management and oversight of care in England.

### **The Mid-Staffordshire Public Inquiry**

14. This view expressed by Robert Francis QC in the report of the Mid Staffordshire Inquiry was that in principle misleading information can undermine commissioning and regulation and preclude corrective action, In practice in Stafford, misreporting of mortality data inhibited intervention by the supervisory and regulatory bodies.
15. The Inquiry therefore recommended that there should be a statutory duty on directors of healthcare organisations to be truthful in any information given to a health care regulator or commissioner, either personally or on behalf of the organisation, where given in compliance with a statutory obligation. Offences under the Fraud Act, the Theft Act and the Perjury Act do not adequately cover the type of misreporting of information that can undermine the ability of regulators and commissioners to oversee care providers.
16. The Care Bill will, subject to its Parliamentary passage, put in place a new offence on care providers who generate certain types of information that is false or misleading.

## How Will the Offence Work?

### Structure of the legislation – primary and secondary

17. The offence is in two parts, depending on whether the provider is found to be at fault and whether or not a director or other senior individual are found to have been culpable in the offence. The second offence depends on the first, which means the provider must first be found to have committed the offence before any individual can be prosecuted.
18. The primary legislation requires that regulations specify which information and which care providers the FOMI offence applies to. The FOMI offence does not require that providers undertake any additional action beyond that which is already required of them in supplying information. This will ensure that there are no additional burdens on those providers who already have robust systems in place to submit accurate information. Providers who do not have robust systems in place may need to change their approach in response to this new offence

### Data Errors

19. It is understood that in any system where large amounts of data are being processed, errors do sometimes occur. The FOMI offence is not about punishing providers or individuals where minor errors in data entry occur, but about ensuring that those organisations which persistently provide false or misleading information can be properly held to account. For example: a provider which has a high error rate in the data it submits would have to show that it had taken all reasonable steps and exercised all due diligence to prevent the error; something more difficult to show if errors are persistent.

## How the legislation works

### How FOMI is applied.

20. The FOMI offence as drafted in the Care Bill states that: “(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.*

And

(6) “*Specified*” means **specified in regulations**.

21. In summary, this means that in order for the FOMI offence to take effect, the care providers to whom it applies and the information, to which it applies must be specified in regulations and be required on a legal basis. Unless these requirements are met, the FOMI offence will not apply.

22. The first requirement (1A) is relatively straightforward, in that the regulations must specify the care providers to which the offence applies. This could be NHS Trusts or NHS Foundation Trusts or both. It could be applied to providers of social care or independent healthcare if they provide services pursuant to arrangements with a public body, or they provide services which are paid for by (health or social care) direct payments.

23. The FOMI offence will also apply only to information specified in regulations that care providers are required to publish:

(a) Where specified information is published or supplied on a voluntary basis the FOMI offence will not apply.

(b) Where there are statutory or other legal requirements on health and social care providers to supply or publish information, then FOMI can be applied.

24. For example, under Section 259 of the Health and Social Care Act 2012, the Health and Social Care Information Centre has the power to require providers to send it information. Other bodies, such as the Care Quality Commission and Monitor, also have powers to request information from providers, in addition to legislation which places specific requirements on providers to submit information to those bodies. The Secretary of State also has powers under the NHS Act 2006<sup>2</sup> to require NHS Trusts and FTs to provide information

---

<sup>2</sup> Paragraph 13 to Schedule 4 of the NHS Act 2006 and section 48 of the NHS Act 2006, respectively.

for the purposes of his functions. A further specific requirement on the NHS is imposed by the Health Act 2009<sup>3</sup>. This places a requirement on NHS providers to publish Quality Accounts, which are required to contain certain information, specified in regulations. Information may also be required to be provided to commissioners of health or social care under contracts to provide services. Where the information is specified in regulations and supplied or provided subject to such a legal requirement, the FOMI offence will apply.

### **A worked example - quality accounts**

25. In order to ensure that the FOMI offence applied to Quality Accounts or any other information, we therefore need to specify Quality Accounts or such other information in regulations. We would also need to specify the providers that the offence applies to, which in the case of Quality Accounts would mean NHS Trusts and NHS Foundation Trusts.
26. Once the regulations are agreed by Parliament and commenced, the offence could be applied to any instance where a body required to publish a Quality Account did so and the Quality Account contained false or misleading information.
27. It would be a matter for the Crown Prosecution Service to decide whether it was in the public interest to pursue a prosecution. At this stage, the Courts first must establish if the provider had committed the offence, and if the prosecution was successful, consideration could be given as to whether any “controlling minds” in the organisation also committed the offence by consenting or conniving in the offence committed by the provider.

---

<sup>3</sup> section 8(1) or (3) of the Health Act 2009.

## Purpose and Approach of Regulations and consultation questions

28. As stated in the previous chapter, in order for the FOMI offence to operate, the information and providers to which the offence will apply must be specified in regulations.
29. The initial focus of the Regulations is to address the issues raised in the Francis Inquiry about information supplied by providers of NHS funded secondary care.
30. The regulations will be limited to information which either informs mortality data or where the provision of information in a false or misleading way could lead to harm. This focus is in part to address the concerns raised by the Mid Staffordshire Inquiry and also to focus the offence so that evidence of its impact can be understood.
31. The offence will be specific to the patient level information on outpatient, elective and accident and emergency activity that providers of publicly funded NHS secondary care are required to provide to the Health and Social Care Information Centre and also Quality Accounts. There are a number of reasons for proposing the regulations be focused on this way:
- there are well established processes in place for the NHS to submit these data returns.
  - the report of the Francis Inquiry makes clear that the provision of false or misleading information by providers can significantly impact on the care provided to a large number of patients in particular mortality and xyz types of data.
  - to focus the offence so that evidence of its impact can be understood.
32. As stated previously, the regulations will only cover information requests that NHS funded secondary care providers are legally obliged to provide. However, in order to keep the regulations focused, but not overly prescriptive we recognise that:
- a) Much of the information submitted by the NHS is fed into different reporting systems and a list of all those reports in the regulations would be overly prescriptive. (In addition, some of the report requirements change over time or are no longer used, which would require regular revisions to the law).
- b) Instead maintaining a list of the core data requests which are used to feed the various reports published by the NHS ensures as much data as possible is captured. However, it does not require NHS providers to constantly check the regulations to see what has changed.
- c) Any list of data requests out with the core data in b) should be kept as short as possible in order to avoid a scenario as described at a).

**Q1 - Do you agree with the proposed, focused approach to regulations?**

## Information to be specified in the Regulations

33. In order to meet our requirement to avoid overly prescriptive regulations, whilst ensuring that a broad range of data is captured by the information specified, we propose to use existing Commissioning Data Sets (CDS) and Quality Accounts as the specified information as the starting point for the regulations.
34. CDS cover most NHS activity and are submitted at provider level. The need to submit commissioning data sets is well understood by the NHS. The CDS also cover the data used by the Health and Social Care Information Centre to develop its Summary Hospital-level Mortality Indicator (SHMI) some of which issued by Dr Foster in the development of their Hospital Standardised Mortality Ratio indicator.

<i>CDS Type</i>	<i>Description</i>
CDS 010	Accident and Emergency
CDS 020	Out-patient
CDS 030	Elective Admission Datasets
CDS 120	Finished Birth Episode
CDS 130	Finished General Episode
CDS 140	Finished Delivery Episode
CDS 150	Other Birth (including home birth)
CDS 160	Other Delivery (including home delivery)
CDS 180	Admitted Patient Care - Unfinished Birth Episode
CDS 190	Admitted Patient Care - Unfinished General Episode
CDS 200	Admitted Patient Care - Unfinished Delivery Episode

### Applying FOMI to other datasets

35. The CDS form the starting point for the regulations, but they do not in themselves encompass all the information submitted by the NHS which might result in harm to patients if provided in a false or misleading way. At the same time, we recognise that it is not possible

to list every dataset where falsification might result in harm and therefore we propose to apply FOMI to the following data collections:

- National Cancer Waiting Times Dataset
- National Maternity Services Dataset (NMDS)
- Cancer Outcomes Dataset

36. These datasets cover areas where the provision of false or misleading information could lead to harm to patients (such as errors in reporting the length of a patients wait to receive treatment) or are areas where significant mortality or morbidity would be cause for concern. However, we also propose including a further dataset.

- Hospital and Community Health Services (HCHS) Complaints

37. Our rationale for including this dataset is on the basis that complaints data can be a useful indicator of where the quality of providers services is at risk. The provision of false or misleading data on complaints could hide problems with services that need to be investigated by regulatory or supervisory authorities.

**Q2 - Do you agree that the proposed list of specified information requests should fall within scope of the FOMI offence?**

**Q3 - Does the proposed list capture information of importance to the public, commissioners and regulators that should not be provided in a false or misleading way?**

### Applying FOMI to Quality Accounts

38. In the Mid Staffordshire Foundation Trust Public Inquiry Robert Francis recommended that ... *“It should be a criminal offence for a director to sign a declaration of belief that the contents of a quality account are true if it contains a misstatement of fact concerning an item of prescribed information which he/she does not have reason to believe is true at the time of making the declaration.”* (Recommendation 250).

39. NHS Trusts are required by law to publish Quality Accounts of their annual performance and these accounts must also contain certain information which is specified in regulations. The information required includes, but is not limited to, the following items:

- SHMI – mortality data
- Ambulance Response Rate Times
- Data related to care provided for Myocardial Infarction.
- Data related to care provided for Stroke
- Trust’s responsiveness to the personal needs of its patients during the reporting period.
- Friends and family test
- Risk assessment for Venous Thrombo-Embolicism
- C.difficile rates
- Patient safety incident reporting
- Details concerning a provider’s registration with CQC
- Details of recent inspections by CQC and action required as a result of those inspections.

40. We share the view of Robert Francis that if the above information is presented in a false or misleading way it could mask failings in patient care and hinder investigation or intervention by supervisory bodies. It is important to note that Quality Accounts are not limited to the data above and also require NHS trusts to publish finance and performance data not related to patient care. One approach to addressing this issue in consultation is to draft regulations that exclude information not in the prescribed list.

**Q4 - Should the FOMI offence be applied to Quality Accounts?**

**Q5 - Should the FOMI offence only apply to the information required for publication in Quality Accounts listed at Para 39?**

41. Once there has been the opportunity to assess the impact of the FOMI offence, then consideration will need to be given as to whether the application of the offence could be widened.

**Q6 - Do you have any suggestions for a process of specifying future health & social care data to which the FOMI offence could apply?**

**Equality Impact**

42. This policy proposal impacts on providers of NHS funded secondary care. The costs will not impact service users or any group of individuals. The benefits of improved quality of care through better information exchange across the system will be realised by users of NHS health care. This policy will not disproportionately affect any one demographic or social group. In general, the NHS patient population tends to be people from older age groups, lower income distribution and those with disabilities or long-term conditions.

43. The general equality duty that is set out in the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

44. The general equality duty does not specify how public authorities should analyse the effect of their existing and new policies and practices on equality, but doing so is an important part of complying with the general equality duty.

45. Although we do not envisage that these regulations will have an impact on individuals sharing protected characteristics under the Equality Act 2010, we would be grateful for any comments or concerns you have where these regulations may have an equality impact.



**Q7 - Do you have any concerns about the impact of the proposed regulations on people sharing protected characteristics as listed in the Equality Act 2010?**

**(The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.)**

## Responding to the consultation

46. This section outlines the areas where we are seeking a response to this consultation.
47. In this document we have set out our aims and intentions, shared our reasoning for the proposals we have made, and in Annex B have set out draft regulations to meet these aims.
48. The scope of this consultation is to establish whether the regulations we have drafted will meet the aims we have set out. The consultation questions are listed in the next section
49. In order to accommodate the Parliamentary process associated with laying and making regulations, this consultation will run for six weeks, closing on **Thursday 5<sup>th</sup> June**.
50. To respond to this consultation, you can:

Answer the questions online, at <http://consultations.dh.gov.uk/fomi/>

Email your responses to [fomi@dh.gsi.gov.uk](mailto:fomi@dh.gsi.gov.uk)

Post your responses to:

False or Misleading Information Offence Regulations Consultation  
c/o Giles Crompton-Howe  
Room 2E11  
Quarry House  
Quarry Hill  
Leeds,  
West Yorkshire  
LS2 7UE

An **Easy Read** version of the document is available online at:  
<http://consultations.dh.gov.uk/standards/>

## Consultation Questions

**Q1 - Do you agree with the proposed approach to regulations?**

**Q2 - Do you agree that the proposed list of specified information requests should fall within scope of the FOMI offence?**

**Q3 - Does the proposed list capture information of importance to the public, commissioners and regulators that should not be provided in a false or misleading way?**

**Q4 - Should the FOMI offence be applied to Quality Accounts?**

**Q5 - Should the FOMI offence only apply to the information required for publication in Quality Accounts listed at Para 39?**

**Q6 - Do you have any suggestions for a process of specifying future health & social care data to which the FOMI offence could apply?**

**Q7 - Do you have any concerns about the impact of the proposed regulations on people sharing protected characteristics as listed in the Equality Act 2010?**

**(The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.)**

# Annex A - The Bill clauses

## *False or misleading information*

### 91 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.
- (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).

## 92 Penalties

- (1) A person who is guilty of an offence under section 90 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 90 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 90(1),
  - (b) any matter that appears to the court to have resulted from the conduct,
  - (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 90,
  - (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.

## 93 Offences by bodies

- (1) Subsection (2) applies where an offence under section 90(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 91(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 90(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 90(1) brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 and 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 90(1) is to be paid out of the funds of the association.

(7) Subsection (8) applies if an offence under section 90(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 91(2) does not apply).

# Annex B – Draft Regulations

*Draft Regulations laid before Parliament under section 123(4)(k) of the Care Act 2014, for approval by resolution of each House of Parliament.*

---

D R A F T   S T A T U T O R Y   I N S T R U M E N T S

---

**2014 No. 0000**

**1.NATIONAL HEALTH SERVICE, ENGLAND**

**2.PUBLIC HEALTH, ENGLAND**

**False or Misleading Information (Specified Care Providers and Specified Information) Regulations 2014**

<i>Made</i> - - - -	<i>2014</i>
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	<i>1st October 2014</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 91(1) of the Care Act 2014<sup>(4)</sup>.

A draft of these Regulations was laid before Parliament in accordance with section 123(4)(k) of the Care Act 2014, and was approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

—(1) These Regulations may be cited as the False or Misleading Information (Specified Care Providers and Specified Information) Regulations 2014 and shall come into force on 1st October 2014.

In these Regulations—

“the Act” means the Care Act 2014;

“commissioning data sets” means the patient-level data on the activity of a care provider specified in regulation 2 as referred to in the table in Part 1 of the Schedule;

“Health and Social Care Information Centre” means the body established by section 252 of the Health and Social Care Act 2012<sup>(5)</sup>.

---

<sup>(4)</sup> 2014 c. 00.

<sup>(5)</sup> 2012 c. 7.

## Specified care providers

The care providers specified for the purposes of section 84(1) of the Act (offence of supplying etc false or misleading information) are—

- (a) an NHS trust established under section 25 of the National Health Service Act 2006<sup>(6)</sup>;
- (b) an NHS foundation trust; and
- (c) a person who, pursuant to arrangements made with a public body, provides health services in England from a hospital, as defined in section 275(1) of the National Health Service Act 2006, that is not a health service hospital as defined there.

## Specified information

The information specified for the purposes of section 84(1) of the Act is—

- (d) the information referred to in the table in Part 1 of the Schedule, supplied to the Health and Social Care Information Centre for the purposes of the commissioning data sets listed in that table, and
- (e) the information listed in Part 2 of the Schedule.

2.

## SCHEDULE

Regulations 1(2) and 3

### PART 1

#### Commissioning data sets

<i>CDS Type</i>	<i>Description</i>	<i>Data Flow</i>
CDS 010	Accident and Emergency	All monthly accident and emergency attendances
CDS 020	Out-patient	All monthly out-patient attendances (including ward attenders and nurse and midwife attendances)
CDS 030	Elective Admission Data Sets	Monthly data of patients remaining on elective admission lists
CDS 120	Finished Birth Episode	Monthly data of all episodes that have finished
CDS 130	Finished General Episode	Monthly data of all finished episodes of Admitted Patient Care
CDS 140	Finished Delivery Episode	Monthly data of all finished episodes
CDS 150	Other Birth (including home birth)	Monthly data of all finished episodes
CDS 160	Other Delivery (including home delivery)	Monthly data of all finished episodes
CDS 180	Admitted Patient Care – Unfinished Birth Episode	Data relating to episodes that were unfinished as at midnight on 31st March and have not been included in the Detained or Long Term Psychiatric Census, and have not been

---

<sup>(6)</sup> 2006 c. 41



		submitted to the Health and Social Care Information Centre Secondary Uses Service in either finished or unfinished commissioning data set data
CDS 190	Admitted Patient Care – Unfinished General Episode	Data relating to episodes that were unfinished as at midnight on 31st March and have not been included in the Detained or Long Term Psychiatric Census, and have not been submitted to the Health and Social Care Information Centre Secondary Uses Service in either finished or unfinished commissioning data set data
CDS 200	Admitted Patient Care – Unfinished Delivery Episode	Data relating to episodes that were unfinished as at midnight on 31st March and have not been included in the Detained or Long Term Psychiatric Census, and have not been submitted to the Health and Social Care Information Centre Secondary Uses Service in either finished or unfinished commissioning data set data

## PART 2

### Other specified information

#### *National Cancer Waiting Times Monitoring Data Set*

1. Information supplied to the Health and Social Care Information Centre for the purposes of the National Cancer Waiting Times Monitoring Data Set.

#### *National Maternity Services Data Set*

Information supplied to the Health and Social Care Information Centre for the purposes of the National Maternity Services Data Set.

#### *Cancer Outcomes Dataset*

Information supplied by providers of cancer services to the National Cancer Registration Service of Public Health England<sup>(7)</sup>.

---

<sup>(7)</sup> Public Health England is an executive agency of the Department of Health.

### *Hospital and Community Health Services Complaints Collection*

Information supplied to the Health and Social Care Information Centre for the purposes of the Hospital and Community Health Services Complaints Collection (which monitors written hospital and community complaints (by service area and type) received by the National Health Service each year).

### *Quality Accounts*

The information contained in documents published under section 8 of the Health Act 2009 (duty of providers to publish information)<sup>(8)</sup>.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 91 of the Care Act 2014 (“the Act”) creates an offence of supplying, publishing or otherwise making available information under a legal obligation which is false or misleading in a material respect. The offence will apply to such care providers and such information as is specified in regulations.

Regulation 2 specifies NHS trusts in England, NHS foundation trusts and other persons who provide health services, pursuant to arrangements with a public body, from a hospital, for the purposes of section 91(1) of the Act.

Regulation 3 specifies certain commissioning data sets required by the Health and Social Care Information Centre and other information listed in Part 2 of the Schedule as the information to which section 91(1) of the Act applies.

---

<sup>(8)</sup> 2009 c. 21. The National Health Service (Quality Accounts) Regulations 2010 (S.I. 2010/279, as amended by S.I. 2011/269 and 2012/3081) set out the prescribed information, general content and form of quality accounts to be published under section 8 of the Health Act 2009.