

CQC

- a brave new world

2019 is turning into an interesting year as January saw the announcement of Kate Terroni as the new Head of Adult Social Care at the CQC. Time will tell how she will fill Andrea Sutcliffe's shoes and the Mum Test, but her arrival in May comes at a time when the outward perception of the CQC is changing.

January also saw the publication of details of CQC's first prosecution under the Duty of Candour rules that came into force in 1 April 2015. Bradford Teaching Hospitals NHS Foundation Trust found themselves subject to a £1,250 fine from CQC due to a delay in compliance with the Duty of Candour notification timeframes. CQC issued a fixed penalty notice (FPN) to the Trust (which generally amounts to 50% of the fine that could be ordered by the Court). In a press statement CQC said:

“Under the Duty of Candour, all providers are required to be open with patients or their families when something goes wrong that appears to have caused significant harm.

The action that we have taken against Bradford Teaching Hospitals does not relate to the care provided to this baby, but to the fact that the Trust was slow to inform the family that there had been delays and missed opportunities in the treatment of their child. Patients or their families are entitled to the truth and to an apology as soon as practical after the incident – which didn't happen in this case.”

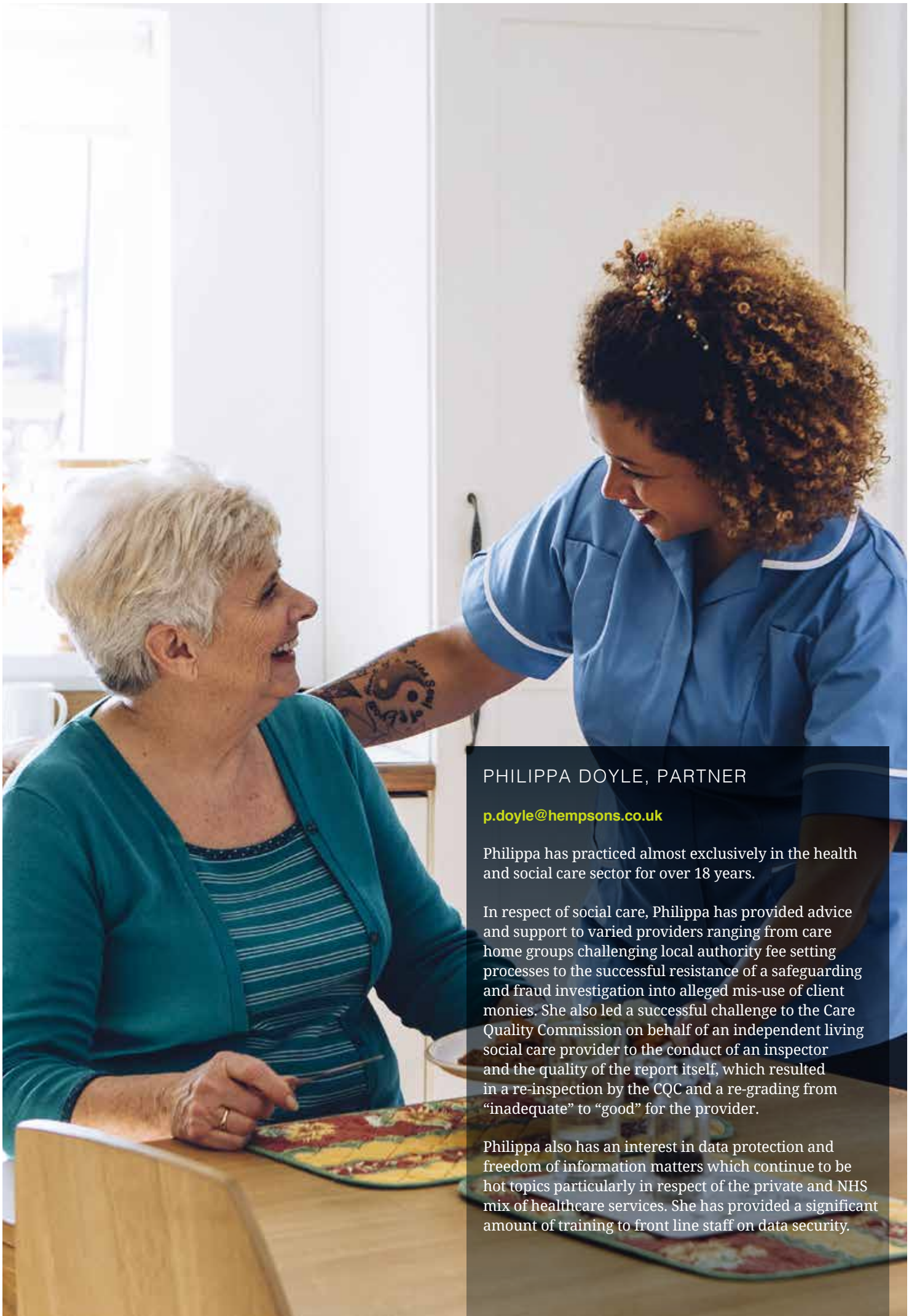
It demonstrates a change in approach by CQC, having never taken action against any Provider under Duty of Candour before, but comes at a time when we have seen an increase in the range of prosecutions, including:

- threatened prosecution for delay in securing a replacement registered manager at a care home, and for a home care service;
- threatened prosecution for the delivery of unsafe care to a hospital trust and an actual prosecution of a care home for delivery of unsafe care;
- threatened prosecution for failure to notify CQC of safeguarding concerns.

These are all matters that to date CQC might only have down graded in a Provider's report, but the last six months have seen CQC start to use the teeth they have had for many years.

Providers in all sectors need to be aware of their duties and responsibilities pursuant to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. They also need to be acutely aware that if they are found in breach, they are now apparently very likely to face prosecution or be presented with a FPN.

If you receive a notice of intended prosecution, this does not automatically mean the CQC will go ahead, so Providers are urged to use the 28 days available to them to seek to challenge their approach. We see many instances of an inconsistent approach being taken by CQC in different areas of the country – those Providers who operate across different counties may find one service challenged, and another not, over the same alleged misdemeanour. Do use the opportunity to bring this to the attention of CQC – don't automatically accept the FPN – you might save yourself money, and a blemish on your reputation.



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Philippa has practiced almost exclusively in the health and social care sector for over 18 years.

In respect of social care, Philippa has provided advice and support to varied providers ranging from care home groups challenging local authority fee setting processes to the successful resistance of a safeguarding and fraud investigation into alleged mis-use of client monies. She also led a successful challenge to the Care Quality Commission on behalf of an independent living social care provider to the conduct of an inspector and the quality of the report itself, which resulted in a re-inspection by the CQC and a re-grading from “inadequate” to “good” for the provider.

Philippa also has an interest in data protection and freedom of information matters which continue to be hot topics particularly in respect of the private and NHS mix of healthcare services. She has provided a significant amount of training to front line staff on data security.