

# Guest editorial: A preface to the closure of Cawston Park Hospital

Margaret Flynn and Joan Maughan

Norfolk's appraisal of its services for people with learning disabilities and with autism resulted from the 2021, Safeguarding Adult Review (SAR) concerning Cawston Park Hospital. Necessarily, the deaths of three young adults in a specialist hospital over a period of 27 months led all the professionals involved to question:

- how they might have responded differently; and
- how best to address the conditions that led to these three placements, that is, in terms of reacting to emergencies and intervening with thoughtful strategies that will not result in future loss of lives.

The hospital was registered with the Care Quality Commission (CQC) for the assessment or medical treatment for persons detained under the Mental Health Act 1983 (MHA). The three adults were admitted under the MHA, even though two of them were not mentally ill. What they had in common was their behaviour. All too often, the children and adults who are vulnerable to becoming stuck in long term placements are those who display distressed behaviour which is typically described as "challenging." Belatedly, the CQC determined that Cawston Park Hospital "[...] was not working to the model of an assessment and treatment unit and therefore its operation was not in line with the expectations of the Transforming Care Programme [1]".

The CQC has ceased to register services which favour campus or congregate settings. Although this is a significant development for people with learning disabilities and autism throughout England, it does not address

1. the ongoing challenges of commissioning humane and effective services for Norfolk's citizens in 2023–2024;
2. the risky governance arrangements and financial expectations of provider services charging many thousands of pounds for one person for a single week; or
3. the ease with which owners, company directors and shareholders are enabled to side-step legal sanctions – unlike their lowly paid employees – when harms and criminal acts are evidenced.

The owners of Cawston Park Hospital did not base their business planning on Norfolk's population needs' assessment – they aimed to provide Assessment and Treatment, a clinical care service, to adults for whom placements were difficult to find. Joanna and John's families were not local and although Ben was, he did not have a mental illness, and yet he was placed there. Despite claims and promises to return people to their places of origin as quickly as possible, this did not and still does not happen. So, Norfolk re-learned the lessons of the former, segregated long stay hospitals: their existence means that they will be used; their employees struggle to achieve worthwhile objectives on behalf of patients; these units

Margaret Flynn is based at Chair of the National Mental Capacity Forum, Anglesey, UK. Joan Maughan is based at Former Chair of Norfolk's Safeguarding Adults' Board, Norwich, UK.

warehouse too many people; and few people with learning disabilities, and their families, regret their de-registration or re-purposing. Norfolk's Safeguarding Adults' Board Business manager, Walter Lloyd-Smith, initiated contact with Durham's Safeguarding Adults' Board colleagues to share ideas about the approaches taken, learning from the challenges underpinning the reviewing process as well as the bigger picture consequences. Walter's article sets out the tasks and challenges facing Safeguarding Boards' Business managers as they project manage reviews. He demonstrates the gains to be made from collaboration and straddling the worlds of legislation, health and social care policy and family activism. Next, John Spall's paper demonstrates the necessity of continuing to engage with and learn from people with learning disabilities when they leave the family home or transfer to a new service. Similarly, their families' perspectives and experience confirm the necessity of engagement. They notice the consequences of practices which may be unobserved by inspectors and regulators.

Jo Richardson's paper adds a rich dimension to this edition. By putting support staff whose experience of racism was a daily reality, we are reminded why single issue panaceas are no substitute for careful research and negotiated, revitalised responses to reverse the slide into a damaging status quo.

Cawston Park Hospital was one of many private hospitals which developed by stealth and with too little restraint following the closure of most long-stay hospitals. They present huge challenges to adult safeguarding practitioners and commissioners. The latter are typically too far away before and after services are de-registered and their refrain is identical: there is no network of community based providers willing to welcome and support people with challenging behaviour. From a commissioning perspective, the urgent planning and provision of alternatives is a hugely fraught undertaking.

In Norfolk and elsewhere, commissioners are working with a fragmented and increasingly fragile market of service providers. A principal lesson from the pandemic was the high cost of delayed social care reform. Its workforce pressures pre-date Brexit and they still prevail: there are recruitment, retention and staff shortages; overseas recruitment has become harder; some larger companies risk collapsing, particularly those that are backed by private equity; entitlement to social care is complicated; and well over a decade of austerity has resulted in providers receiving fees below a sustainable rate. Although social care is a major public service it is arguably an afterthought in the light of inadequate and reducing annual settlements, spiralling costs and inflation. It is disappointing that the Department of Health and Social Care and NHS England – both of which contributed to Norfolk's Progress Summits – were unable to contribute to this Special Edition.

Since the publication of the Cawston Park Hospital SAR, Norfolk has secured people's discharges from private hospitals and, necessarily, it can set out what has been achieved with, and on behalf of, some of its citizens. For example, Norfolk has embarked on some service re-positioning by co-locating commissioning and operational teams. Victoria Bunting's paper outlines the taut wire of securing hospital discharges and witnessing the admissions of others.

Crises do not provide long term solutions to the structural problems in adult social care. Fourteen years since Winterbourne View Hospital's very public exposure, Cawston Park Hospital gifted another scandal. There was no undercover filming but there was plenty of damning CCTV evidence. On 14 April 2021, during the scrutiny of the SAR, Cawston Park Hospital ceased to trade. Minimally, it meant that its owners, Jeasal Akman Care Corporation Ltd had no funds for former employees to be legally represented at the inquest concerning one patient's death – despite the indefensible levels of profit associated with "Assessment and Treatment" services. The fact that it ceased to trade begs questions which did not exercise the Transformation Programme in the wake of Winterbourne View Hospital:

1. why should the liquidation of one company protect all companies with the same directors from liability?
2. why is there no equivalent to “the fit and proper person test” for company directors responsible for providing health and social care services?
3. why is it still the case that “assessment and treatment” provision for people with learning disabilities and people with autism is enabled to place ever greater strain on NHS budgets?

The Cawston Park Hospital SAR recommended, *inter alia*, that “Norfolk’s SAB should write to the Law Commission proposing a review of the current legal position of private companies, their corporate governance and conduct in relation to services for adults with learning disabilities and autism.” The rationale hinged on the numerous and persistent scandals in the care of adults with support needs which confirm that the existing legal mechanisms for prevention, protection and punishment of abuse are wanting, not least because these services are radically unaccountable due to their offshore status and their ability to evade responsibility for negligent care by dissolving their companies. For example, half of England’s children’s homes are currently run by offshore private equity operators. As the Law Commission (2022) noted of the (corporate) offence of ill-treatment and willful neglect, “The degree of fault required for a provider to be convicted under this legislation is surprisingly high considering the way in which comparable offences in other fields have been formulated.”

Margaret Flynn, Aled Griffiths, School of Law, University of Bangor, Kirsty Keywood, School of Social Science, University of Manchester and Laura Pritchard Jones, School of Law, Keele University sought to advance this SAR recommendation by drafting a proposal for the Law Commission’s 14th Programme of Reform. In summary, three areas of reform were advised:

- Dedicated adult protection legislation to complement existing legal frameworks, to provide substantive powers of intervention in situations of actual or suspected abuse and other means of effectively ensuring that organisations prioritise people’s care, support, safety and well-being.
- Revised rules of corporate governance because the private shareholding companies responsible for care provision are bound by law to service their shareholders’ interests. As the Law Commission noted, “A corporation might be collectively negligent, precisely because there was no individual with the necessary responsibility.”
- Enhanced regulation to drive up standards. The CQC has struggled to meet the challenges posed by the rapid expansion of private companies in the care sector. Why does operating without a registered manager have no regulatory consequences?

Members of the Norfolk SAB met with Law Commissioners in the wake of the publication of the Cawston Park Hospital Review. Their contributions reinforced the view that regulatory intervention in a dysfunctional market of private shareholding companies primarily serves shareholders’ interests.

In addition, Jerome Mayhew MP [2] initiated an adjournment debate concerning the tragedies at Cawston Park Hospital. The principles of personal budgets and self-directed care, albeit compromised by social care spending constraints, were far removed from the reality of patients’ experience at Cawston Park Hospital. Yet the very powerful hold of the private sector on specialist and very separate NHS budgets has rendered transformation elusive in the lives of adults with learning disabilities and autism who are detained or are vulnerable to being detained under mental health legislation.

The woman and two men who died at Cawston Park Hospital had no say in their placement. Their deaths have highlighted, yet again, the pervasive programmes of medication,

seclusion, restraint, “observations” and inactivity. These chronic treatments, ostensibly for their behaviour, left the crises which gave rise to their admissions unaddressed [3]. Such a mental healthcare model is entirely without promise in advancing valued lives and sustaining trust [4].

Heather Roach is the Chair of Norfolk’s Safeguarding Adults’ Board. She was new to the post when the review of Cawston Park Hospital was published. The recommendations arising from SARs are effectively suggestions made to a complex operating environment. Typically, Safeguarding Adults Boards create action plans to demonstrate their adherence to spirit and letter of the recommendations, not least as a way of acknowledging that they can do better. Heather Roach’s paper outlines some of the imperatives that are not amenable to action-planning and yet provide an overview of the measures taken. This Special Edition hinges on some of the events and recommendations arising from the Cawston Park Hospital SAR and specifically, what has happened since.

## Notes

1. A Department of Health initiative which ended in March 2019.
2. <https://hansard.parliament.uk/Commons/2021-09-21/debates/42E742BF-AAB7-4C5B-866ED505068F9AB8/CawstonParkHospitalNorfolkSafeguardingAdultsBoardReview?highlight=cawston> (accessed 12 September 2022).
3. [www.norfolksafeguardingadultsboard.info/assets/SARs/SAR-Joanna-Jon-and-Ben/SAR-Rpt-Joanna-JonBen\\_FINAL-PUBLICATION02-June2021.pdf](http://www.norfolksafeguardingadultsboard.info/assets/SARs/SAR-Joanna-Jon-and-Ben/SAR-Rpt-Joanna-JonBen_FINAL-PUBLICATION02-June2021.pdf) (accessed 12 September 2022).
4. Glasby J, Miller R, Glasby A-M, Ince R and Konteh F. ‘Why are we stuck in hospital?’ Barriers to people with learning disabilities/autistic people leaving ‘long-stay’ hospital: a mixed methods study. *Health Soc Care Deliv Res* 2024;12(3), <https://doi.org/10.3310/HBSH7124> (accessed 9 February 2024).