

Shared Insights: Managing PPE and Inquests

Carl May-Smith, Partner at Browne Jacobson specialising in regulatory and criminal law with a particular focus on the health and care sector, spoke about guidance and risk assessments for PPE, documenting decisions about PPE strategy and responding to PPE shortages. Dr Robert Hunter, HM Senior Coroner for Derby and Derbyshire explained that new guidance to Senior Coroners was expected imminently about resuming inquests with social distancing in place, and set out likely plans for remote hearings going forwards.

The Shared Insights were:

PPE guidance from HSE remains definitive in respect of the fit-testing of PPE. This may have repercussions for civil liabilities, even if any regulatory liabilities are likely to be avoidable.

Individual risk assessments need to consider individual characteristics of staff members, including ethnicity. Although not covered by the general HSE guidance on vulnerable workers, the NHS Employers guidance makes it clear that specific consideration needs to be given to the risks to BAME staff.

It is vital to document the reasoning behind any departure from national guidance on PPE and to get decisions signed off at an appropriate level.

A number of documentary inquests are being carried out but going forwards many inquests will be heard remotely by video or telephone. Smaller inquests with 1 or 2 witnesses and family are theoretically possible in court subject to risk assessment of practicalities by the Local Authority.

Trusts might be required to provide a room for witnesses so they are not disturbed whilst giving evidence. There will be safeguards to confirm no one in the room is coaching the witness.

If patients die in a care home or hospital from COVID -19, coroners treat it as a natural death unless there is evidence of failure of or inappropriate infection control measures. It would have to be a gross breakdown in policy for an inquest to be triggered.