

Coronavirus COVID-19: advice for the health and social care sector

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Please note: the information contained in this legal update is correct as of the original date of publication

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Organisations in the sector will most likely be facing the challenge of protecting the most vulnerable people in society, whilst at the same time balancing obligations to their employees and other stakeholders. Leaders and managers need to be able to make sensible, legally sound and clearly communicated decisions in a dynamic and rapidly changing environment. We are addressing a number of these issues ourselves and we have a responsive team covering a breadth of legal specialisms all of whom are providing support to clients during this difficult time.

Employment

We have captured the key employment questions our nationwide team have been asked by providers in the health & social care sectors, and a guide to assist in the unique challenges they face can be found [here >](#)

Public Law

Local authorities and the NHS have specific statutory obligations to respond to and co-operate when emergencies arise that affect the health and wellbeing of the public. That means they have clear processes in place already under the Emergency Preparedness, Resilience and Response Framework. Further, the government also has the ability to use certain powers when emergency situations arise such as those set out in the Civil Contingencies Act 2004 and make regulations so that they can protect life, health and safety, as well as protect and restore the infrastructure which exists to enable people to go about their day to day business. On top of which the Police have specific powers to restrict an assembly of people and take specific action in response to Coronavirus.

Specifically in response to the arrival of Coronavirus in the UK, the government have brought into force The Health Protection (Coronavirus) Regulations 2020 under the powers it has from the Public Health (Control of Disease) Act 1984. This enables the government to take extraordinary measure to protect the public in the event of a serious and imminent threat to public health existing, which is how they have now designated Coronavirus. Essentially, these regulations give the government the power to screen, detain and isolate either individuals or groups so as to protect public health, which will be done through the emergency services and wider health and social care sector.

Generally, the government does have powers to enable it to restrict assemblies be they for the purposes of watching a football match or protesting over perceived wrongful treatment. Equally, they can restrict the movement of the public as well, although the practicalities of applying these powers may be more difficult. However, in general it is reasonable to assume that many citizens will in fact act to protect themselves and their families, as far as possible in a sensible fashion, and abide by the guidance which is being issued and regularly

updated. That will then enable the government to make sensible decisions on protecting public health, informed by health experts, without having to resort to extensive use of its emergency powers.

The simple message is to make sure your organisations keep up-to-date with government guidance and apply a common sense approach to the provision of services and risk assess wider issues such as large scale meetings. In general, the emergency powers which have been introduced are to provide a back-stop position. Compliance with guidance should enable the sector to meet the challenges which Coronavirus creates.

Business Interruption Insurance

We are, inevitably, receiving a stream of inquiries from health and social care providers about the potential consequences for their business if they are forced, or decide to close. Many of those queries concern the triggering of business interruption insurance. Whilst it is ultimately necessary to consider the precise wording of each policy, we have produced the [attached guide](#) that we hope will point you in the right direction.

Commercial Issues

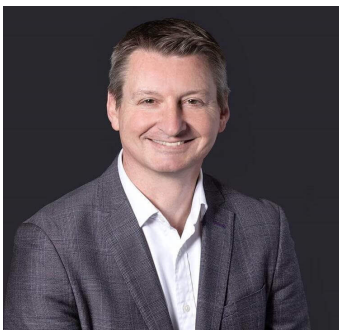
Operators and providers of care should be live to the impact of force majeure clauses in their contracts, both in terms of their own and commissioners in the delivery of care and in terms of those with suppliers. How each provision operates (and whether the pandemic would fall within such drafting) will vary from contract to contract. It may be that, in business critical contracts, the provision has been negotiated out altogether prior to signing. In a worst-case scenario, the provider may continue to be obliged to provide care (without a right to terminate or suspend through force majeure) but be in breach of that contract having experienced failures within key elements of its supply chain, with suppliers exercising their right to suspend or terminate.

With a service user base comprised largely of the elderly and vulnerable (and, by consequence, some of the most at-risk members of the population), providers and commissioners will watch progress of the pandemic with a keener eye than most. This brings to the fore the importance of business continuity procedures and greater due diligence on how the business mitigates disruption and maximises protection in such scenarios.

Buyers will be keen to ascertain what processes are in place for the replacement of staff at short notice in the event of sickness (to maintain levels of care) and how quickly the business has been able to take on new service users to maximise output (be that in replacement of sickness, death or otherwise). There is also the question of reputation, an intangible that is so crucial to success in the care market. An outbreak at a home, or the spreading of the pandemic via carers in a domiciliary setting, would damage most businesses. The extent of such damage is much harder to quantify through due diligence.

For more information on any of the above issues, please do not hesitate to contact us.

Contact



Gerard Hanratty

Partner

gerard.hanratty@brownejacobson.com

+44 (0)330 045 2159

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