

Health sector: Keep an eye out for... November 2020

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Time frame	Development/Opportunity	Why is it important?
Recent	The standard of proof for Suicide and Unlawful Killing conclusions in Inquests has changed.	Following the Supreme Court ruling in R (on the application of Maughan) v HM Senior Coroner for Oxfordshire the standard of proof has changed from the criminal to the civil standard being “on the balance of probabilities”.
Ongoing	Inquiry into the safety of maternity services in England.	The focus of the inquiry is failings in maternity services and the action needed to improve safety for mothers and babies. The inquiry plans to examine evidence relating to ongoing concerns and will build upon the investigations which followed East Kent Hospitals University Trust and Shrewsbury and Telford Hospitals NHS Trust along with the inquiry into the University Hospitals of Morecambe Bay NHS Trust. Consideration will be given as to whether the clinical negligence and litigation processes need to be changed to improve the safety of maternity services and the extent to which a “blame culture” affects medical advice and decision making. The Committee invited written submission on various points including the impact of work already undertaken to improve patient safety, the contribution of clinical negligence and the litigation process to patient safety, the advice, guidance and practice in relation to choices available to pregnant women as to mode of delivery, the effectiveness of training and support given to maternity staff and the role of HSIB in

		improving maternity services. The call for evidence closed on 4 September and we will be closely following developments.
Appeal to the CA of the decision in Parminder Paul v Royal Wolverhampton Hospital NHS Foundation Trust	Permission to appeal sought. Decision anticipated in 1-2 months	Clarification of the law on proximity in secondary victim psychiatric injury claims. If the relaxation of the previous strict control mechanisms is permitted, this will lead to a significant increase in secondary victim claims.
Autumn/Winter 2020	Supreme Court judgment expected in Mencap case on National Minimum Wage for sleep-in shifts	For many years the practice among care providers has been to pay staff carrying out sleep-in shifts a flat rate, on the basis that NMW was not payable. If the appeal is successful it will mean that this approach was incorrect and this will have massive cost implications for care providers. Various care charities have warned that as many as two-thirds of employers in the care sector face insolvency if they were required to pay the back-pay bill.
Winter 2020	It has long been expected that in the wake of Brexit we may see reform of the current Public Procurement regime although the outcome of any trade deal with the EU may impact on this.	Any proposed legislative reform will be preceded by a consultation exercise. We recommend that both contracting authorities (those organisations subject to the Public Contracts Regulations 2015) and suppliers alike engage with this exercise to ensure that their views can inform the consultation process. If a consultation is forthcoming we will host a number of roundtable events to look at the impact of the potential reforms.

Our legal updates will bring you news of these and other key legal developments as soon as they happen.

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