

Health and care newsletter - October 2020

This health newsletter talks about the focuses on topics relevant to the resolution of healthcare disputes.

21 October 2020

Welcome to the second edition of our Health and Care newsletter, which this time focuses on topics relevant to the resolution of healthcare disputes. In the last few years the claims landscape has changed considerably, with increasing emphasis on alternative dispute resolution, and earlier investigations. There has been a recognition that earlier resolution of claims, and avoiding litigating through the courts where possible, not only has the potential to result in considerable savings in legal costs (which are often borne by the public purse) but often provides patients and clinicians with better opportunities for closure and the chance to learn and improve their practice. The Covid-19 pandemic has of course introduced fresh challenges to everyone involved in this field and it has never been more important to resolve health and social care disputes as swiftly and as fairly as possible. In this edition we look at some of the positive developments we have seen, as well as providing a refresher on some key topics relevant to healthcare disputes.

In considering how well the different health regulators, commissioners and providers have worked together to address the pandemic then it will be important to capture that spirit of partnership working and collaboration as we re-ignite the move towards integrated care systems (ICSs) and meet the objectives of the Long Term Plan, from both a national and local perspective. The bringing together of commissioners has been on-going for several years but hopefully the ways in which providers, both NHS and independent, have been working together to deal with the pandemic will support the development of provider collaboratives across acute, mental health and community care. Currently, we are working with a number of clients to look at the mechanisms for provider collaboratives so that integrated care arrangements can be established at place level to move forward the ICS agenda.

Equally, it is apparent that the care home and social care sector is under pressure and struggling to cope with demand. That has meant working with our health and care clients to develop support options and look at what may need to be long term to maintain and develop out of hospital care options. Clearly, the government's views on this will be essential to putting in place a flexible legal framework but, even now we can look at options within the current statutory framework to help clients address the pressures they are under.

The one clear lesson we have got from the pandemic is that if people are prepared to work together and build relationships, then solutions to just about all issues can be found.

Mediation Matters

In recognition of the success of its claims mediation service, NHS Resolution has recently been shortlisted for a Mediation Innovation Award at the National Mediation Awards. Reflecting on how NHS Resolution is improving the role of safety and learning in resolving claims, we look back at how mediation has developed the aim of achieving early and fair resolution.

[Read more >](#)

Spotlight on Sian Brown and her work with NHS Resolution's Early Notification Scheme

Sian Brown is one of Browne Jacobson's Partners and the head of the Early Notification Team. The Early Notification team is part of Browne Jacobson's healthcare department dedicated to helping NHS Resolution in realizing the Government's goal of halving the rates of stillbirth, neonatal death and brain injuries associated with obstetric delivery.

[Read more >](#)

Relationships with patients and their representatives

At Browne Jacobson we aim to put the injured patient at the heart of the work we do. In order to understand how best to do this, we meet regularly with the Claimant law firms we deal with the most, to discuss ways in which we can work more collaboratively to achieve resolution of patients' issues.

[Read more >](#)

Fundamental dishonestly

In *Simpson v Payne*, the Defendant Applicant (Defendant) was successful before His Honour Judge Murdoch in their application for a finding of fundamental dishonesty against the Claimant resulting in an enforceable costs order against the Claimant directly.

[Read more >](#)

Claims arising from death – recent developments and a refresher

In this article we explore some recent changes to claims arising from death and provide a brief refresher on how these are calculated.

[Read more >](#)

Vicarious liability

When considering vicarious liability, healthcare organisations need to consider not only the “relationship” and “close connection” test but also whether there is someone else who could or should be vicariously liable.

[Read more >](#)

Breach of confidentiality claims

We have seen a rise in recent times in claims resulting from breach of confidentiality. Here we explain how these claims arise and what to do if you become aware of a breach of confidentiality.

[Read more >](#)

Target date set for Shared Care Records across all integrated care systems (ICSs)

ICSs and individual organisations will need to consider what the impact of implementing a shared care record across organisations with different underlying record and IT systems will be and how that may impact on existing contractual arrangements. In addition data security and information governance are often referred to as concerns when shared care records are considered.

[Read more >](#)

The Care Quality Commission (CQC) prosecutes an NHS Trust for the first time for breach of the Duty of Candour

In September 2020, for the first time the CQC successfully prosecuted an NHS Trust for breaching the Duty of Candour.

It is important for all NHS organisations to take heed of this prosecution and review the approach that is being taken in your organisation to candour.

[Read more >](#)

Your team up close...

For this edition of Health matters we grabbed five minutes with Jessica and Peter, both of whom recently qualified as solicitors to find out whether they have always wanted to be lawyers and what it is they actually do. Read on to find out why fighter pilots and flying fighter jets crop up in both their responses and why a cup of tea is important!

[Read more about the team >](#)

Keep an eye out for...

Changes and developments continue at pace in the health and care space and to help you keep on top of those developments, we are sharing with you the issues at the top of our watch list.

In this section we bring news of some of the recent developments which attracted our attention and those we continue to keep an eye on ...

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