

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

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We are living through extraordinary times and the health and care sector is rapidly developing and responding to the Pandemic. However, whilst there are a number of anticipated Covid-19 developments to keep an eye out for there are also a number of other issues likely to make headlines in the legal press over the next few months. To assist you in knowing what to keep an eye out for we are sharing with you the issues at the top of our watch list.

| Time frame | Development | Why is it important? |
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| Imminent | Liberty Protection Safeguards were due to replace Deprivation of Liberty Safeguards from 1 October 2020 with a one year transition. The long awaited and anticipated announcement has now been made that the implementation date will now be April 2022. In the meantime you should expect to see transitional arrangements and plans, including the draft Regulations and Code of Practice. | LPS will fundamentally change the process for authorising deprivations of liberty both in hospitals and in the community. All health and care sector organisations will have significant planning and training requirements. |
| Permission to appeal sought. Decision anticipated in 1-2 months | Appeal to the CA of the decision in Parminder Paul v Royal Wolverhampton Hospital NHS Foundation Trust | 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. |
| Judgment awaited | CA decision in Swift v Carpenter | Clarification of the method for calculating capital cost of special accommodation in serious injury cases. The outcome will potentially be worth millions when lump sums are awarded. |
| Summer/Autumn 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. |

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| This year | <p>Public Procurement: Judicial review action brought by the Good Law Project against the DHSC over the direct award of a PPE contract in reliance on Regulation 32(2)(c)</p> | <p>If this litigation runs its course we could see limitations on contracting authorities' rights to rely on grounds of urgency to directly award contracts. Similarly a decision in favour of the DHSC could give contracting authorities much certainty as to when they can do so without risk of a successful challenge.</p> |
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