

Health and care newsletter - December 2020

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10 December 2020

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The questions driving your research agendas today in biotech and pharma—and the problems we’re trying to solve in global health—are starting to converge in exciting ways. Many of the solutions you’re working on—harnessing the immune system to tackle cancer, unraveling the mysteries of the brain to treat Alzheimer’s, and learning how bodies absorb nutrition to address the obesity epidemic and other diseases—also have clear applications in global health. (Bill Gates)

When Bill Gates talks about health and innovative technology, as in the above quote, he is always clear that his key message is ‘that health is getting better, and it’s getting better faster than ever before’. That speed of health improvement is now being matched by the speed of HealthTech development, something which the world has just seen from the pharma industry in developing multiple Covid vaccines in months. Indeed, it is clear that continuing to develop and improve HealthTech will be an even more significant endeavour as we emerge from the Covid enforced lockdowns across the world in 2021.

This newsletter brings together a number of different topics that those engaged in developing new HealthTech and improving those already in existence need to think about. This includes the developing legislation relating the provision of health services across the UK, some of which needs to be introduced as we formally exit the European Union, and how technology can help us to tackle the environmental issues we face. Other articles look at the development of health apps and how we have moved towards remote consultations through using digital technology, which not only provides a safer way to have an appointment with your clinician but will significantly improve the ability to access health services as we move forward. Naturally, no newsletter on HealthTech development would be complete without looking at how artificial intelligence (AI) is being used to improve health provision in diagnosis and treatment, or the liability issues which arise as new technologies are introduced.

As you all know, at Browne Jacobson we pride ourselves on working with health industry innovators and some of the exciting clients we are working with at present will drive forward health improvements which will support people’s health ‘getting better faster than ever before’. We also believe we have a responsibility to support new people seeking to develop their ideas and do that through our Grow programme. Please do not hesitate to contact me or any of the contributors to this newsletter if you want to discuss how we could support you or your organisation.

I hope you all have a good Christmas and we look forward to meeting up with you in 2021.

Health care apps – Part 1 of 2 - Exploring the ins and outs of IP

The adoption of smart technology solutions by the health and care sector has exploded in 2020. The pandemic has driven the sector to increase its use of smart phone technology solutions (“Apps”), an example of which is conducting video consultations and assessments. Adoption has historically been slow to develop across the sector generally, potentially due to perceived risks in maintaining integrity of special category personal data.

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Digital transformation, integration and collaboration

The Covid-19 pandemic and reactive measures from governments to restrict us meeting face-to-face have particularly highlighted the vital need for organisations to utilise technology to provide goods and services. Those operating in the health sector are no different. For most organisations, this means some form of digital transformation, whether it be the use of new healthcare technology to deliver front-line services such as digital GP apps (see our article "[consent in the Covid-19 world and beyond](#)" in our first issue), or the implementation of a new or replacement tower within an organisation's core IT infrastructure.

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The AI will see you now: Liability issues from the use of AI in surgery and healthcare

In this article, we explore the potential issues surrounding liability in clinical negligence cases involving the use of AI and robotics and consider where and with whom liability may lie. In looking to the future, we hope to answer these questions insofar as their answers lie within the current frameworks for clinical negligence cases, or else to pose questions that need grappling with.

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In conversation with... Paula Dumbill

In the third of the series we talk to Paula Dumbill, Partner in our Commercial team with responsibility for heading up our HealthTech strategy. Paula gives us the lowdown on what it's like to work at the forefront of digital transformation projects with a number of leading public bodies responsible for the delivery of our health and social care services, and for the goods, services and structures that enable our health and care providers to function, and also with key sector regulators.

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Remote consultations: evolution or revolution?

For centuries, primary healthcare has been built on a foundation of doctor and patient together in a room discussing ailments and conducting physical examinations. Indeed, as recently as pre-March 2020 (the point at which Britain entered its first Covid-19 lockdown), even in an increasingly digitally connected world, only around 1% of consultations with primary care doctors and nurses per year were conducted online. As we all adapt to a different way of living, so too have we as patients changed the way we are engaging with our clinicians.

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‘For a Greener NHS’ – what does this mean for the role of HealthTech?

Despite the pressure and challenges facing the NHS and wider health and social care sector in tackling the Covid-19 second wave and winter pressures, the NHS remains committed to playing its part in tackling climate change. The role that technology can play in this fight is very much in its sights. Indeed we can expect to see an increased focus on the NHS' aims in this area in future public procurement processes.

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The watching brief: The Medicines and Medical Devices Bill continues its passage through Parliament

As the UK Government continues to pass legislation in preparation for the end of the Brexit Transition Period, we take a look at what to expect from the Medicines and Medical Devices Bill 2019-2021.

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Passing the Turing Test: The promising future of AI

The introduction of AI in reading and calculating mammograms now ensures results are delivered 30 times faster than before and with increased accuracy of 99%. Across the country people are strapping wearable technology to their wrists which provides regular updates on their heart rate. This technology could, one day, perhaps soon, use artificial intelligence (AI) to warn of early signs of heart disease or even a cardiac arrest.

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Health care apps – Part 2 of 2: Delving into data confidentiality

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R&D agreements: why one size doesn’t fit all

“Research and development” or “R&D” often invokes the concept that these activities are non-commercial or non-profit-making in nature, often due to the internal or grant funded nature of many projects. The result of this is that R&D agreements are often not subject to hard negotiation and do not specify the same bottom-line deliverables required in commercial supply contracts. What is often seen, is that the agreements setting out each party’s rights and obligations in connection with these innovative and potentially IP-generating activities are often neglected.

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Covid proofing

In this article, we summarise five ways in which contracting parties can adapt their services procurement contracts in response to the challenges presented by Covid-19 and related government-imposed mobility and social distancing restrictions. These top tips will apply to both public and private healthcare providers who intend to procure health technology or research services, medical equipment, HealthTech software support services, patient data processing services and even outsourced treatment programmes.

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Social value takes on increased importance in central government procurement processes

Ahead of the end of the Brexit transition period the Government has taken steps to place increased importance on the role of social value in public procurement exercises. As the country comes to terms with both the human and economic cost of the Covid-19 pandemic, the risks posed by climate change and the need to address social inequality, the Government has taken steps to put these issues at the heart of its new social value model.

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Your team up close...

We shine a spot light on two of newly promoted Health Partners to find out a bit more about the work they do, what they enjoy and which mystery has them baffled...!

Read on to hear from [Charlotte Harpin](#), a Partner in our Healthcare Public Law team and [Ed Pollard](#) a Partner in our Health Advisory & Litigation team.

Keep an eye out for...

As we head towards the end of 2020 and the new year there are a number of recent developments and issues we continue to keep an eye on. Here are the issues and developments which made our watch list for this edition.

[Read our update >](#)

Hear direct from your team

Our 2021 webinar and forum programme has been packed with some great sessions over the last month and there is still more to come. Sir Neil McKay chairs our 'Statutory ICS's? Planning for 2021' webinar, Paula Dumbill hosts our 2020 HealthTech webinar and our fortnightly Shared Insights call and monthly Procurement Matters forums continue through to January.

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