



Working together
to succeed

Health & Social Care

Newsletter

Issue 1

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“When the winds
of change blow,
some people build
windmills, others
build walls.”

**VealeWasbrough**
Lawyers



Long-Term Care for the Elderly: Has the landscape changed?

A warm welcome to the first edition of our Health and Social Care newsletter.

At the time of writing this, we in the legal profession are preparing for the impact of the Legal Services Bill which introduces far reaching changes to the way in which the profession will be regulated and the way in which law firms are owned and financed. We are entering a period of change and possible consolidation.

Providers of social care and care home operators face their own challenges. Having got to grips with the Care Standards Act 2000 and the introduction of the Commission for Social Care Inspectorate, it now needs to deal with the implementation of the new rating system, something which may open up its own can of worms. As from April 2007, children's homes have a new regulator, Ofsted and it remains to be seen how this will affect services in the longer term.

Some of the biggest changes will be in the way in which the Health and Social Care Sector organises itself.

The Government's 7th White Paper on Health, "Our Health, Our Care, Our Say" does a number of things and represents a fundamental shift towards integrated services provided in local communities. It is all about access to general practice and community services and seeks to provide a more "joined up" system of health and social care available closer to home. It is designed to introduce more choice (which is another theme from the Legal Services Bill).

This presents tremendous opportunities for Care Home Operators to develop their businesses to take advantage. We expect to see some care homes operating effectively as Community hospitals, providing services currently available in acute hospitals and becoming specialist centres for the care and treatment of medical conditions common in older people.

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Not all will have the resources to achieve this but there is plenty of scope for partnering and other commercial arrangements with local organisations to provide integrated care services.

We advise clients across the full spectrum of the Health and Social Care sector, including many GP practices and are currently acting for a number of practices buying care homes. Doctors are already taking advantage of the changing environment.

The care home sector remains in rude health, having enjoyed a good year in 2006. It continues to attract interest from private equity investors and banks and seems set to continue to show strong growth in the coming year.

This is the first of our Health & Social Care Team newsletters, which is intended to introduce you to our team and also to provide you with with an understanding of legal issues (including recent legal developments) affecting operators in the sector.

Veale Wasbrough Lawyers have a wealth of knowledge and expertise of the legal and commercial issues which affect the health and social care sector. Our team of specialist lawyers provide legal advice with the benefit of a sector knowledge which gives them a real understanding of the issues faced, from CSCI and Ofsted inspections, changes in employment legislation, property development and business sales and acquisitions.

We would be delighted to speak with you on a no obligation basis about the services we provide. Please contact me direct on 0117 314 5394 or at bwillis@vwl.co.uk.

A recent ruling of the Health Service Ombudsman has attracted widespread media attention when a former detective with Scotland Yard's Flying Squad received the news that £50,000 of nursing home fees of his mother would be repaid by the Torbay Primary Care Trust. Mike Pearce's Mother, Ruby, who was suffering from dementia was forced to sell her home to pay for care fees after the local Primary Care Trust ruled that she did not qualify for free NHS continuing care.

The success of this particular case rested on the fact that the local Torbay NHS Trust did not have up to date guidelines for assessing whether a person's care should be classified as nursing care and thus fall to be repaid by the NHS. As a result the Ombudsman decided the case based on the new draft guidelines published by the Department of Health known as "continuing care". Under the new proposed framework, eligibility for funding depends on an individual's overall care needs, not their disease, diagnosis or condition.

According to the statistics from the Alzheimer Society, more than 300,000 people in the UK have moderate to severe Alzheimer's Disease with the NHS currently funding around 25,000 patients. The Alzheimer Society believes that more than ten times the current number are eligible for NHS funding and the case of Ruby Pearce represents potentially good news for families that are all too often faced with selling the family home in order to pay for long term care.

The Alzheimer Society, Age Concern and Help the Aged all have extremely useful web sites for families who may wish to take advantage of the new guidelines and lodge an appeal in respect of NHS funding.

For further information please contact Michelle Rose.



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Smoking Ban effects

The wet weather this summer has meant that we have managed to avoid a hosepipe ban. There has, however, been another type of pipe subject to restrictions. On Sunday 1 July, the smoking ban came into effect in England. From this date it became illegal to smoke in almost all enclosed public places, workplaces and public and work vehicles

The legislation places managers of smoke-free premises and vehicles under a legal duty to prevent people from smoking and to display the required no-smoking signs. Failure to comply with the new law is a criminal offence and may lead to fines of up to £2,500.

It is an offence to smoke or to permit smoking in any 'enclosed' or 'substantially enclosed' premises which is open to members of the public or used as a place of work by more than one person.

In practice, this means that the ban covers virtually all non-residential indoor areas. In addition, public transport and enclosed vehicles which are used by more than one person for work purposes (even if used at different times) need to be smoke-free unless the vehicle is used primarily for private purposes.

Designated smoking rooms in care homes and hospices

Care homes and hospices are two of the handful of different types of premises which qualify for exemptions from the new law. These exemptions allow certain rooms within care homes and hospices to be designated as smoking rooms provided that various conditions are satisfied. In particular, any designated smoking room must:-

- be either a bedroom or a room used only for smoking.
- be designated in writing by the person in charge of the premises as a room in which smoking is permitted. In effect, all this requires is for a list to be kept showing every smoking room within the building. This list will need to be kept somewhere safe so that it can be produced for inspection by an enforcement officer.
- be completely enclosed by floor-to-ceiling walls (except for windows and doors).

- not have a ventilation system that ventilates into any other part of the building (apart from other smoking rooms). There is no requirement for a smoking room to have a mechanical ventilation system such as an extractor fan. However, if you have an air conditioning system, it would be advisable to check that it does not circulate air from smoking rooms to other parts of the building.
- Have a door which closes mechanically immediately after use. All this requires is for an automatic closing mechanism to be fitted to each door.
- Be clearly marked as a room in which smoking is permitted. Unlike the signs which need to be displayed at the entrances to buildings (which have to comply with the requirements outlined below), signs which are displayed outside designated smoking rooms do not have to follow a particular format.

This exemption permits managers of care homes and hospices to cater for the smokers amongst their residents by either allowing them to smoke in their bedrooms or by setting aside a separate designated smoking room. However, it is important to note that the legislation requires that a separate smoking room must be used "only for smoking". Therefore, it would not be permissible to use the room for any other purpose (e.g. as a TV room).

No Smoking signs

The other main obligation on managers of premises which are affected by the ban is to display the appropriate no smoking sign at all entrances. Each sign must be at least A5 size, must display the no-smoking symbol (i.e. a picture of a burning cigarette enclosed within a red circle with a red bar across it) and must carry the words "No smoking. It is against the law to smoke in these premises." If you already display a no smoking sign, it would be wrong to assume that no action is required because it will almost certainly not comply with the specific requirements of the legislation.



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Another important point to note is that it is not just the main entrance that needs a no smoking sign - the regulations require signs to be displayed at all entrances from the outside. However, less rigorous requirements apply to the signs that have to be displayed at those entrances that are used only by staff - these only have to contain the no-smoking symbol.

Signs that comply with the requirements can be downloaded and printed from the Smokefree England website (www.smokefreeengland.co.uk) or ordered from their information line on 0800 169 169 7.

What about staff?

Although a high proportion of employers already had a rule prohibiting staff from smoking indoors, many have used the introduction of the ban as an opportunity to review their existing arrangements and to put in place a written policy. A number of options are available, including:-

- have no rules on smoking breaks and leave it to trust that staff will exercise their judgement to limit the number of breaks so that it does not interfere with their work;
- continue to allow staff to take smoking breaks but impose limits on when and where they can be taken;
- ban staff from taking smoking breaks during working hours.

For further information please contact Marcus Rowland.



Vetting and Barring

The new vetting and barring scheme set out in the Safeguarding Vulnerable Groups Act 2006 is being phased in over a period of months with a view to full implementation in Autumn 2008.

Why a new scheme?

The scheme is based on recommendations by Sir Michael Bichard following the Soham murders. He found serious flaws in the systems for checking on people applying to work with children and vulnerable adults.

How will things change?

Under the new scheme, people who wish to work (paid or unpaid) with children or vulnerable adults will need to register with the Vetting and Barring Scheme. People who are known to be unsuitable for such work because of criminal convictions or other issues will be recorded as being banned. Relevant employers will be required to check an individual's status in the Scheme before offering them employment and it will be a criminal offence to employ someone who has been banned.

Who decides whether a person should be banned?

Applications to join the Scheme will be handled by the Criminal Records Bureau (CRB) which will pass information to a new body, the Independent Barring Board (IBB). Some criminal convictions will result in an automatic ban but in other cases, the IBB will decide whether to ban, taking all the circumstances into account and there will be a system of appeals.



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Will there continue to be separate lists for children and adults?

Currently there are 3 lists of people barred from working with children or vulnerable adults:

- List 99 covering education
- Protection of Children Act list covering children's care
- Protection of Vulnerable Adults list covering regulated social care settings

Under the new scheme there will be 2 lists; one covering work with children and one covering work with vulnerable adults. The IBB may decide, when barring a person from working with children, to bar them from working with vulnerable adults as well (and vice versa) but this will be discretionary, not automatic.

Is all this checking really necessary?

Only 1 in 10 CRB Disclosures reveal any information about applicants for roles working with children or vulnerable adults. However, in a recent survey by the CRB, 20,000 employers said that they had decided not to employ someone on the basis of information received from CRB.

How can I find out more?

The Home office and the Department for Children, Schools and Families are running a series of free "Information Sessions" on the new Scheme for interested parties across the country. Full details of the Scheme together with dates and venues for the Information Sessions can be found at www.everychildmatters.gov.uk/vetting&barring.

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Working together
to succeed

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" Health and social care is a special kind of business which needs specialist legal services. "

Christine Betts
Senior Lawyer - Regulation

" We recognise that ultimately you are running a business and can provide all the assistance that you require to make the most of opportunities and make a success of your business. "

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