

Health & Care Matters newsletter - February 2022

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15 February 2022

Welcome to our first health newsletter of 2022. I'm temporarily sitting in the editor's chair for this comment while Gerard Hanratty (our Head of Health) takes a well-deserved short break.

Business (or challenges, not least ever lengthening NHS waiting lists) may be piling up for the Government, but health and social care reform remains near top of the pile. Its second White Paper on integration is hot off the press, published on 9 February, almost a year to the day after its first one that initiated the Health and Care Bill.

What makes the new one different is that (unusually for a White Paper) it does not announce more new legislation beyond the relatively small detail of a review of the section 75 NHS and local authority partnership regulations. Instead further integration will be by policy rather than-statutory constructs - more on this in our ICS article.

As well as integration and the Health and Care Bill, other legislative reform is a theme of this edition. Carl May-Smith's review of key issues for 2022 includes (amongst others) social care and mental health reform, Peter Ware discusses progress with procurement law reform and Chris Stark updates about the (yet further delayed) liberty protection safeguards.

And alongside legislative reform are topical case law developments. Alex Berkshire considers an employment case about compulsory Covid vaccination, Hannah Wallace considers psychiatric injury claims, and Tim Johnson looks at an important case on aggregation clauses in insurance contracts.

In case you thought that was enough about legal developments, there's more. Rebecca Hainsworth explains why now might be a good time for NHS foundation trusts to review their constitutions, Ann Cojeen considers the challenges for NHS estates' development and Emma Hinton reviews deal activity across the health and social care sector.

All in all, you may already be flat out coping with Covid recovery and other demands, but coming your way is even more to do. We're always pleased to be at hand to support the health and care sectors, so please don't hesitate to let us know if you need help.

Themes in health and social care for 2022

There have been some enduring themes in health and social care over the last two years, Carl May Smith looks into five themes going forward into 2022.

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Deal activity and market update in health and social care sector

In the last nine months of 2021 we saw a huge amount of activity across all sub-sectors of health and social care. In the face of the COVID pandemic the sector has demonstrated real resilience and continues to perform well against the backdrop of ever rising demand.

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NHS Foundation Trust Constitutions: 5 Reasons why you should review your constitution

A constitution with inadequate or outdated provisions can result in difficulties when it comes to implementing change and making decisions. It is therefore important that the constitution is regularly reviewed and updated to reflect best practice.

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The Liberty Protection Safeguards

The Liberty Protection Safeguards (LPS) will be used to authorise the proportionate and necessary deprivation of liberty for people aged 16 and above who lack the mental capacity to consent to their care arrangements.

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Building Blocks: health and care buildings in 2022

Expectations are understandably high whilst waiting for any Chancellor to announce their budget. The last Spending Review of the UK Government, in October 2021, was curious because several announcements about funding for health had already been made in the weeks before. However, there were also new pledges made which could benefit the health and social care sectors and they lend a note of cautious optimism for 2022.

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Progress of procurement reforms - A new procurement bill

As we look ahead to planned and potential legal developments in 2022, one area we have been keeping a close eye on is the progress of the Government's planned reforms to procurement law.

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Paul v Royal Wolverhampton NHS Trust and Purchase v Ahmed

Court of Appeal judgment on three cases where close relatives claimed for psychiatric injuries after witnessing the collapse of loved ones.

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Care home worker fairly dismissed for refusing Covid-19 vaccination

The Tribunal considered whether a care home worker was unfairly dismissed following her refusal to be vaccinated against Covid-19.

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"Original cause" – Aggregation clauses in insurance contracts – Spire Healthcare v Royal & Sun Alliance [2022] EWCA Civ 17

A recent Court of Appeal judgment has provided some useful and much-needed clarity on the interpretation and application of aggregation clauses in insurance contracts.

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Covid-19 Public Inquiry

The start of the public inquiry into Covid-19 in the UK has moved one step closer with the appointment on December 17 2021 of Baroness Heather Hallett to chair the inquiry. The inquiry was announced in May last year and is due to start in the spring of 2022.

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Integrated care systems: accountability for place based health and care

The Government's White Paper Joining up care for people, places and population is its second within (just) under a year about health and care integration following its first one Integration and Innovation: working together to improve health and social care for all.

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