



InsurewithCare

in collaboration with

Bevan Brittan 

Legal Services for Independent
Healthcare Providers

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CARE QUARTERLY

A quarterly update summarising recent
Government publications, legislation,
cases and other developments relevant
to those involved in the care sector.

Adult Social Services

LGSCO: Clarity for councils about way Ombudsman will investigate financial assessment complaints:

The Local Government and Social Care Ombudsman has confirmed that councils cannot take personal injury awards into account when carrying out financial assessments for social care packages, following the High Court's decision in *R (ZYN) v Walsall MBC [2014] EWHC 1918 (Admin)*. This follows an investigation into Wokingham BC, where the LGSCO upheld a complaint that the Council had failed to assess Ms K's daughter's finances properly by failing to disregard the daughter's personal injury payment.

[🔗 24th January 2018](#)

NAO: The adult social care workforce in England:

this report concludes that the DHSC is not doing enough to support a sustainable social care workforce. The number of people working in care is not meeting the country's growing care demands and unmet care needs are increasing. It recommends that the Department produces a robust national workforce strategy with the support of the Ministry of Housing, Communities and Local Government and that it encourages local and regional bodies to align their own plans to it. The Department also needs to invest more to enable commissioners to set appropriate fees for providers, so they can pay staff adequately and afford to offer career development and training opportunities.

[🔗 8th February 2018](#)

DfE: Social Work England – Secondary legislative framework:

seeks views on the policy underpinning draft regulations for Social Work England - the new regulator for the social work profession in England. Social Work England's primary objective will be protection of the public, which it will achieve through setting professional, education and training standards for social workers, and providing assurance that those registered meet the standards, are qualified and remain fit to practise. The consultation includes draft illustrative Social Workers Regulations, which show how the proposals document are likely to appear in the legislative framework. The consultation closes on 21 March 2018.

[🔗 8th February 2018](#)

VODG: Challenges can fuel change – A VODG contribution to Civil Society Futures:

this discussion paper outlines what social care providers believe are the future hopes for the sector as well as the barriers that block progress. Based on the views of VODG members, the paper argues that voluntary social care organisations must adapt to be sustainable. The publication contributes the national independent inquiry into English civil society, Civil Society Futures.

[🔗 26th February 2018](#)

Social care: care home market: This briefing considers the current structure of the care home market in England, as well as issues facing the sector and how private clients tend to pay more than local authority-funded residents.

[🔗](#)

Children's Services

T (A Child: Care Order: Beyond Parental Control: Deprivation of Liberty: Authority to Administer Medication) [2017] EWFC B1 (Fam Ct): the local authority applied for a final care order in respect of a 13-year-old boy, T, who had been diagnosed with autistic spectrum disorder and severe learning disability. He displayed extremely challenging behaviour and resided in a specialist residential unit under an interim care order. It was agreed that the circumstances in which T lived amounted to a deprivation of his liberty. The issues were: whether T was "beyond parental control" for the purposes of s.31(2)(b)(ii) of the Children Act 1989; whether a care order should be made; where T should reside; and whether, as recommended by a psychiatrist at X, Risperidone (an anti-psychotic) and Melatonin (a sleep aid) should be administered to T.

The court ruled that the local authority did need authorisation from the court to administer these medications, as this involved an interference with T's mother's art.8 rights. The court held that it was lawful for the local authority to deprive T of his liberty at the unit but the court limited that authorisation to a period of six months.

[🔗 5th January 2018](#)

Ofsted: Social care commentary – Children's homes: Eleanor Schooling, Ofsted's National Director, Social Care, writes about how it is possible for homes to support 'hard-to-place' children and still achieve a good or better inspection outcome.

[🔗 9th January 2018](#)

Ofsted: Guide to registration for children's social care services: updated guidance for social care providers on whether they need to apply for registration and what processes the application will go through before it can decide whether the applicant is suitable to be registered as a social care provider or manager.

There is also an updated **Checklist for children's social care application** listing the documents that must be submitted as part of a children's social care application.

[🔗 2nd February 2018](#)

Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2018 (SI 2018/146): these regulations, which come into force on 1 April 2018, amend SI 2014/2147 so as to introduce a net earnings threshold of £15,400 pa to determine eligibility for the 2 year old early education entitlement under Universal Credit. Local authorities will be under a duty to secure that free childcare is available to children who are eligible under the revised criteria. Local authorities will be required to ensure that appropriate provision is available for all eligible children and to enter into arrangements with providers to this end.

[🔗 7th February 2018](#)

DfE: Changes to statutory guidance – Working Together to Safeguard Children; and new regulations: Government consultation response: sets out the Government's response and next steps following the October 2017 consultation on significant revisions to the statutory guidance which sets out what is expected of organisations, individually and jointly, to safeguard and promote the welfare of children. These revisions reflect the legislative changes introduced through the Children and Social Work Act 2017 and new 'child death review' guidance. It states that the statutory instruments will be debated and voted on by Parliament in the Spring. Following commencement of the relevant provisions of the Children and Social Work Act 2017, an updated version of 'Working Together to Safeguard Children' will be published, and the new safeguarding arrangements will come into effect. Local areas will have 12 months from the date of commencement to develop and publish their arrangements, and a further three months to implement them in full.

[🔗 26th February 2018](#)

Employment

'Sleep-ins' and the minimum wage

On 20 March 2018, the Court of Appeal heard an appeal against the decision in **Focus Care Agency Limited v Roberts**, on the application of a 'multifactorial test' to determine whether a worker is entitled to the national minimum while they are present at work, even if asleep. The Court of Appeal decision at time of publication is not yet available. The Court decision will clarify whether employees who are required to sleep at work

are undertaking 'time work' for the whole time they are present at work; or whether they are only entitled to be paid the national minimum wage for the time that they are awake and carrying out their duties.

Health & Social Care

Shared Lives Plus: Guide to Personal Health

Budgets 2018: this report, produced in partnership with NHS England, demonstrates how voluntary, community and social enterprise organisations are driving innovation and supporting personal health budget expansion across the country, working in partnership with statutory services to provide a range of advice, support and care services, which fit around the lives of the people and community they are designed to support.

 [24th January 2018](#)

LGA: Meeting the health and wellbeing needs of young carers: the Children and Families Act 2014 and the Care Act 2014 place a legal duty on local authorities to identify young carers and carry out both a needs assessment and a transition assessment to consider the impact on the child and whole family. These case studies from the LGA highlight the good work being done by councils to minimise the impact of young carers' responsibilities.

 [25th January 2018](#)



Access to Information

Freedom of Information

(Amendment) Bill: this Private Member's Bill has been introduced into the Commons by Louise Haigh MP and received its 1st Reading. The Bill would extend the application of the Freedom of Information Act 2000 to private contractors performing public services. It would also implement recommendation of the 2015 independent review of FOI, including introducing a statutory time limit for internal reviews, and providing that an offence under the Act should be triable either way.

[↗](#) 24th January 2018

ICO: Former council worker fined for sharing personal information about schoolchildren and parents via Snapchat: reports that Westminster Magistrates' Court has fined a former local authority education worker £850 and ordered her to pay £713, after she

pleaded guilty to three offences of unlawfully obtaining and disclosing personal data, in breach of s.55 of the Data Protection Act 1998. The ICO brought the prosecution after the worker took a screenshot of a council spreadsheet concerning children and their eligibility for free school meals then sent it to the estranged parent of one of the pupils.

[↗](#) 22nd February 2018

NHS and social care data: off-shoring and the use of public cloud services: This guidance sets out expectations for health and care organisations who want to use cloud services or data off-shoring to store patient information. It aims to ensure that organisations know how to use these solutions safely and securely, particularly in relation to the introduction of GDPR. The standards will enable

NHS organisations to benefit from the flexibility and cost savings associated with the use of cloud facilities.

[↗](#)

2017/18 Data Security and Protection Requirements:

Guidance from the Department of Health and Social Care explains what all health and care organisations will be expected to do to demonstrate that they are putting into practice the 10 data security standards recommended by the National Data Guardian. It also includes more details about the assurance framework for April 2018 onwards.

[↗](#)

Mental Health - Publications/Guidance

Promising approaches to dementia. This AgeUK report identifies a number of interventions that are evidenced, cost effective and scalable, and which could be replicated by NHS Trusts, care providers and primary care services.

It highlights projects which provide counselling for the newly diagnosed; encourage people to get involved in arts and crafts activities; and help people to reminisce through dance.

[↗](#)

Don't be left in the dark: children and young people's mental health. At least one in ten children and young people are affected by mental health problems, and the unreported figures are likely to be even higher. This short guide

provides an overview of the challenges facing mental health and wellbeing services for children and young people.



Working with policing and social care organisations to protect and prevent harm to vulnerable people.

NHS England has supported the launch of a joint consensus statement between policing, health and social care organisations.



Power of attorney fee refund scheme launched.

Refunds are being offered to those who may have been charged more than necessary to apply to register lasting or enduring powers of attorney between 1 April 2013 and 31 March 2017. Those eligible for a partial refund are able to make an application from 1 February 2018 using an online service.

Taxation

Revenue and Customs v LIFE Services Ltd (Value Added Tax) [2017] UKUT 484 (TCC). LIFE was a profit-making private organisation which provided day care services for adults with a range of disabilities. LIFE appealed against HMRC's determination that LIFE's supplies were subject to VAT at the standard rate. LIFE contended that its services were welfare services which were exempt for VAT purposes as falling within Sch.9 Group 7 Item 9 to the Value Added Tax Act 1994, under which only charities, public bodies and state-regulated private welfare institutions or agencies were entitled to the exemption applicable to the supply of welfare services. The FTT allowed the appeal, ruling that, although LIFE's supplies did not fall within Item 9, the appeal should nevertheless be allowed on the basis that Item 9 was incompatible with the PVD by recognising as exempt from VAT, supplies made by charities but not those made by LIFE.

The UT ruled that Sch.9 Group 7 Item 9 was not incompatible with the PVD. The conferring of the exemption on a regulated body was a rational choice that was open to the UK. LIFE could not equate itself with entities which were subject to the sort of regulation regime which is applied to regulated bodies – those bodies were obliged to conform to certain standards but for LIFE that was optional, even if it chose for the time being to do so. LIFE could not say that it fell within the same class as a charity - it was not subject to the same constraints and regulation as a charity, and did not operate for the public benefit. Therefore LIFE could not demonstrate a breach of the principles of fiscal neutrality.



More information

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Bevan Brittan

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