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Care Team Newsletter

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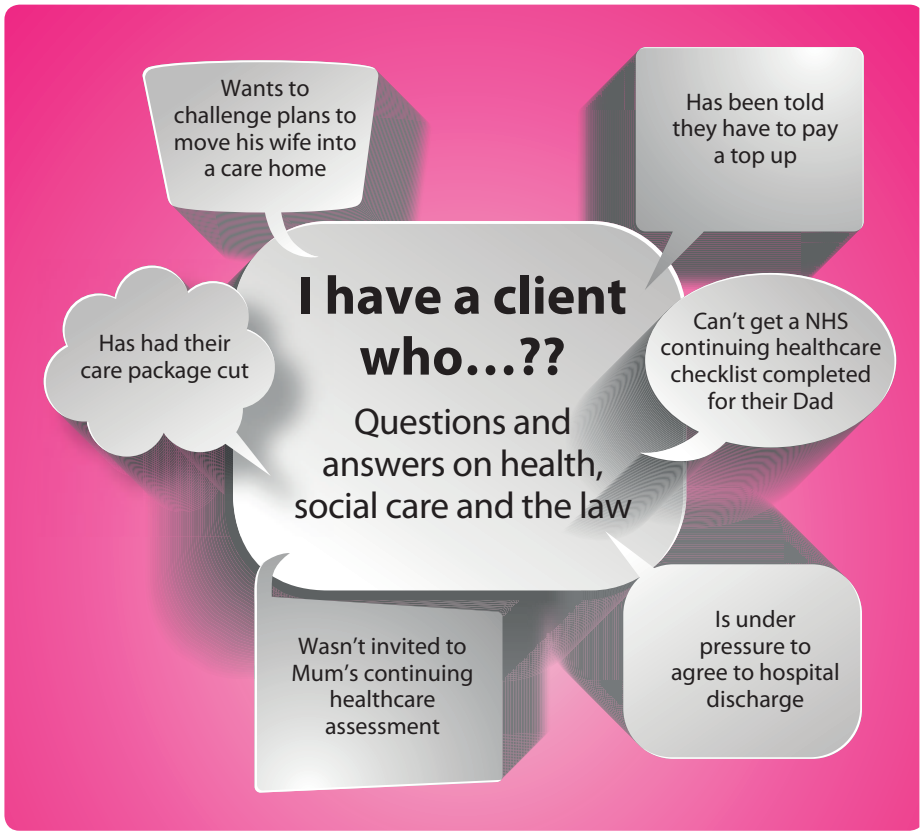


Are you a support worker, information officer or advocate whose job includes supporting adults with health and care issues?

Do you begin telephone calls, letters and meetings with "I have a client who..."?

Then we have the seminar for you! These free events, held in a range of venues across the region will answer questions, challenge misinformation and guide you through current issues and forthcoming changes to health and social law.

Held over a morning, each seminar will cover:

- Top ten questions about health and social care law
- How forthcoming changes will affect your clients: Examining the new DOLS proposals, the (alternative) green paper and changes to the National Framework for NHS continuing healthcare
- Ask the panel

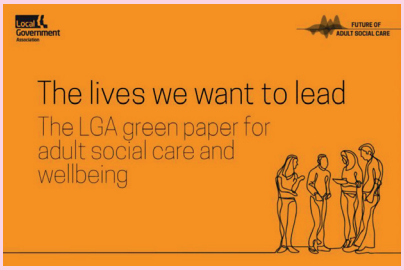
Register your interest by emailing Esme on **esmeh@moore-tibbits.co.uk** and submit your burning questions, queries or general musings in advance!

Revolution not evolution is becoming Judy's mantra regarding care records, which increasingly seem to 'make or break' eligibility for both continuing healthcare and funded nursing care contributions. Judy will be part of our 'Ask the Panel' at the forthcoming seminars, so if this is an area of concern come along and join Judy's revolution!

Latest annual report from the Local Government and Social Care Ombudsman is out now...

Available from their website (**www.lgo.org.uk**) the Ombudsman made 1625 decisions regarding complaints relating to adult social care, second only to complaints about education and children's services. 62% of complaints about adult social care were upheld by the Ombudsman following their investigations. It also published the greatest number of public interest reports into adult social care issues - 18 over the year - 8 of which unsurprisingly in our experience related to issues around charging.

The 'alternative green paper'



Tired of waiting for the Government to take proactive steps, the Local Government Association has launched its alternative green paper on adult social care. Available to read at **www.local.gov.uk/about/news/lga-launches-own-green-paper-adult-social-care-reaches-breaking-point** the LGA is also seeking YOUR views on local authority responsibilities, arranging and paying for care...could this be the start of social care coming out of the shadow of the NHS?

To sign up to receive our free legal updates and newsletter or to opt-out, please email esmeh@moore-tibbits.co.uk

Deprivation of liberty safeguards - What next?

Whether you're a family member, care provider, social worker or someone who is subject to a deprivation of liberty, the experience you have under the Deprivation of Liberty Safeguards ("DoLS"), is unlikely to have been a positive one.

Introduced in 2009 the scheme was intended to protect the rights of individuals who lacked mental capacity to consent to their stay in hospital or a care home and were therefore 'deprived of their liberty'. Since its introduction, DoLS has received significant criticism being described as unwieldly, overly complex and ultimately not fit for purpose.

In June this year the Joint Committee on Human Rights ("JCHR") published its report considering both the current system and the reforms proposed by the Law Commission, the Liberty Protection Safeguards ("LPS").

Its criticism of the existing scheme was scathing, with the Committee concluding (to no one's surprise) that the system is broken, leaving thousands of people unlawfully detained, and that the reforms proposed by the Law Commission should be implemented as a matter of urgency. From a care providers perspective, the Committee noted that those responsible for the care and treatment of a mentally incapacitated individual, are in effect having to work out how best to break the law.

Given the ongoing grappling with Brexit, no one anticipated that the Law Commission proposals would be given much thought by the Government. Imagine then the surprise of many commentators including ourselves, when in early July the Government published its new draft Bill, the Mental Capacity Act (Amendment Bill).

(Available at: https://services.parliament.uk/bills/2017-19/mentalcapacityamendment.html)

In announcing the Bill, the Department of Health and Social Care stated that "the new law seeks to protect the rights of people who do not have the mental capacity to make decisions about their care and to reduce the burden on local authorities".

We have detailed some of the key points below, but must echo the disappointment of many, and say that the Bill, in its current form is not fit for purpose. The Bill (at present) reads as rushed and many of the recommendations from the Law Commission are not included: the result is that whilst the individual is *supposed* to be at the centre of the process, they seem more of an administrative inconvenience.

The proposed new schedule "AA1" contains the nuts and bolts of the new administrative scheme. It contains the 'authorisation conditions' whereby a person who lacks capacity to consent to care arrangements which amount to a deprivation, can be lawfully deprived of their liberty if:

- The person lacks capacity to consent to the arrangements
- The person is of unsound mind, and
- The arrangements are necessary and proportionate

Like many others, we would question the appropriateness of the term 'unsound mind'. Whilst this is the language in Article 5 European Convention on Human Rights, things have moved on. Also, where are best interests in 'necessary and proportionate'?

Other issues include:

- There is no legal definition of deprivation of liberty. Therefore, the definition contained in Article 5 European Convention of Human Rights remains applicable, as does the acid test in Cheshire West. Clarity would be helpful.
- The new scheme will only apply to those 18 and over. Unlike the rest of the Mental Capacity Act 2005, which applies to those over 16, and contrary to the Law Commission proposals.
- The new schedule will not only apply to those in a care home or hospital setting but will also extend to those living in the community, whether this supported living, extra care etc.
- Authorisations are signed off by an Approved Mental Capacity Professional who must meet with the individual "if it appears appropriate and practicable to do so"...! When wouldn't this be appropriate?
- Responsibility for authorising deprivations will be split, between local authorities and health – according to where the individual is residing and the underlying funding arrangements. However, care home providers...yes, you read it right... care home providers will be the work horse behind these arrangements. If you are a care home provider you will be expected to identify a deprivation of liberty, arrange relevant assessments, consult with others, record and provide evidence to send to the local authority along with a 'draft authorisation'.
- Authorisations are 'renewed': the first authorisation can be up to twelve months, whereas, worryingly subsequent renewals can be for up to three years.

There will be much more information about the Bill at our seminars, as there is so much more to discuss, and we remain hopeful that some changes will still be forthcoming as the Bill goes to committee stage in the House of Lords on 5 September. We will be keeping a close eye on its progress: find out more by reading the updates on our website under news, follow us on facebook or twitter or attending one of the free seminars.

Continuing Healthcare Success!

We recovered over £60,000.00 for a family forced to use their own money to pay for a loved one's care.

In this case, it was clear from our first meeting with the client that they had been let down by the system and left to fend for themselves. As a result they were paying over £8000.00 per month for their Father's care: half to meet the 'normal' care fees – even though Dad's savings were well below the local authority threshold – and half to pay for one to one support for Dad, as his behaviour was putting himself and others are risk. Such were the costs that the family had sold their own property to meet the fees. They had done their research and requested a continuing healthcare assessment, but there were delays of 8 months before this took place. The baffling outcome was that continuing healthcare would only pay for one to one care...and still no local authority assessment was forthcoming. To top it all off, payment for the one to one care was not forthcoming from the Clinical Commissioning Group, which meant that family still had to keep paying.

We represented the family in all aspects of their claim: chasing payment for the one to one care, appealing the original decision and submitting a retrospective claim. Initial correspondence with the Clinical Commissioning Group was followed by many, many phone calls and chasing letters, resolutely emphasising the law in relation to continuing healthcare and after a year of work funding was finally awarded.

And the problems with continuing healthcare continue...

Judy, our Clinical Adviser – and former continuing healthcare assessor - rightly describes the issues surrounding continuing healthcare as so much more than assessment/appeal/review. Holding Clinical Commissioning Groups to account is a major part of what we do. As is often the case, those arranging and paying for their own care often miss out on vital help, as this recent case illustrates:

Janice contacted us after facing difficulties getting her Aunt Carolyn referred into the continuing healthcare assessment process. Carolyn lives in a residential care home and when her health deteriorated Janice asked for an assessment on her behalf. In these circumstances a residential care home requests that a checklist is completed by either a District Nurse or Social Worker from the local authority (as they are not a nursing home, they do not employ a Registered Nurse who could do this). However, as Carolyn is a self funder she is not known to the local authority, nor does she receive a service from the district nursing team. As a result, both services declined to get involved and Janice was understandably at her wits end. When Janice instructed us we encountered similar barriers so took the matter up with the local Clinical Commissioning Group. We are pleased to say that following our discussions with them, which led to them conducting their own investigations, they agreed that access to continuing healthcare assessments for self funders is problematic and that they would be instigating further training and altering current practice as a result. Given that Janice is one of a number of clients we have supported having difficulty accessing assessments we look forward to the process being made easier.

...and there are issues with funded nursing care contributions

The funded nursing care contribution – a fixed (non means tested) weekly amount payable by the NHS to nursing homes, to cover nursing care – used to be more or less assured for residents living in a nursing home. However, there are increasing reports from providers and families that this funding is being withdrawn, leaving care homes with financial shortfalls that families then have to pick up, or face moving their loved one. Challenging a withdrawal of this funding is done via the Clinical Commissioning Groups complaint policy: contact a member of our team if this affects you for more information.

Roles and competencies in Adult Safeguarding

A new intercollegiate publication (with contributors including the Royal College of Nursing, British Association of Social Workers, College of Paramedics and the British Geriatrics Society to name but a few..) sets out a framework for professional competencies around adult safeguarding.

This useful document sets out six levels of health and social care roles, identifying staff roles that fit into each level, for example receptionists and administrative staff in Level 1, registered nurses and care home managers in Level 3 and a Board level for chief executives and directors. Within each level the document then describes the expected core competencies, knowledge, skills, attidues and values that professionals in each Level should demonstrate. The document is available to view here: https://www.rcn.org.uk/professional-development/publications/pub-007069 and the expected standards will be explicitly referred to in our safeguarding training.

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