

Coronavirus Edition

Firstly, we hope you and your families are safe and well as we seem to be finally easing out of the other side of the pandemic. The COVID-19 crisis has highlighted the vital role the health and social care sector staff play in safeguarding the wellbeing of elderly and vulnerable people. With lockdown restrictions and infection rates now beginning to ease, people's need for care and support do not lessen. Throughout the pandemic we have been working closely with our fellow professionals to ensure that the most vulnerable people in society with care and support packages and care arrangements which may amount to a deprivation of liberty are kept safe and protected in these uncertain times.

Care Act 2014 – A step closer to normality?

The introduction of the Coronavirus Act 2020 temporarily made changes (known as easements) to the Care Act 2014 which took effect on the 31st March 2020. The enactment of these easements allowed local authorities to discharge their usual duties under the Care Act 2014 to help councils meet the demands and pressures caused by Covid-19.

Alarmingly, five out of the seven local authorities which chose to enact these easements were based in the Midlands. Enacting the Care Act easements removed obligations on local authorities to conduct the following:-

- Detailed assessment of an individual's care and support needs;
- Financial assessment(s). Note, local authorities are able to charge individual retrospectively for the care and support they have received during this period;
- Review individual's care and support plans; and
- Meet a person's eligible needs for care and support or support needs of a carer unless failure to do so would breach an individual's human right.

This is not to say, that all seven local authorities' chose to enact the above. In making decisions to discharge part or all of their duties under the Care Act 2014 local authorities had to have regard to the guidance set out by the Department of Health and Social Care and the Ethical Framework for adult social care practice. Although seven councils chose to enact the easements granted by the Coronavirus Act 2020, only Derbyshire County Council and Solihull Metropolitan Borough Council implemented these changes to discharge their duties under the Care Act 2020. Currently, there are no councils suspending duties under the Care Act 2014 and they have now returned to full compliance with adult social care legislation.



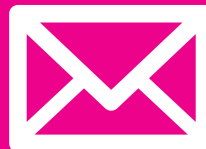
The Coronavirus Act 2020 is anticipated to remain in force for two years however, MP's can vote to remove provisions of the Act at six monthly intervals. With the lockdown restrictions easing and an expected increase in demand for adult social care expected, we wait to see if more councils will adopt them.

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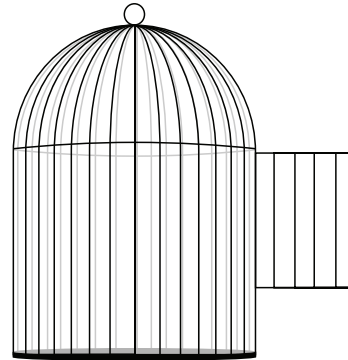
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The care sector is playing a vital role in accepting patients as they are discharged from hospital or indeed from a home setting. Some of these patients may have COVID-19 whether symptomatic or asymptomatic and details are provided within the guidance for care providers to safely care for these patients.

Duties and powers under the Mental Capacity Act 2005 still apply during this period.

If it is thought that a person may lack the relevant mental capacity to make decisions about their ongoing care and treatment, a capacity assessment should be carried out before a decision about their discharge is made. If there is a Health and Welfare Lasting Power of Attorney in place, the attorneys should be consulted and, subject to restrictions within the Lasting Power of Attorney, will have the legal authority to make decisions regarding ongoing care and support and particularly, should their loved ones health deteriorate, decide whether it is appropriate for the person to be admitted into hospital or nursed at Home or within a Care Home

Our solicitors are monitoring guidance issued by the Department of Health and Social Care on the use of the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards during this emergency period

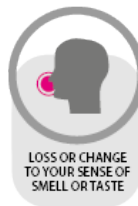


We are delighted to start welcoming you back to our offices

We respectfully ask that you consider the following:
DO YOU HAVE ANY OF THESE SYMPTOMS?



HIGH TEMPERATURE



LOSS OR CHANGE TO YOUR SENSE OF SMELL OR TASTE



NEW, CONTINUOUS COUGH

If you can ANSWER "YES" TO ANY, however mild, we ask that you please DO NOT ENTER THE BUILDING and reschedule your visit for when your answers are all a "no".

UPON ENTERING THE BUILDING WE ASK THAT YOU PLEASE:



Please use the hand sanitiser provided.



Please keep 2 metres apart.

Our health and community care team are available and here to do all we can to help and support you. We remain committed to offering you the same high level of service, expertise and quality legal services that you are used to.

FREE Legal Advice Clinics for over 50's | Telephone, email and video

We know that during this difficult and uncertain time, many people would be turning to our 'Free Legal Advice Clinics for over 50s' for the advice and support they need at this challenging time.

Although, we are unable to offer face to face appointments as we would have previously done, we are pleased to let you know that we are still available for these appointment – just over the phone instead. Our team are still able to offer you the same service but for the time being, it will just be from the comfort of your own home.

If you would like to book your telephone appointment with a member of the team, just call: 01926 354704 or email: debbiea@moore-tibbits.co.uk

FREE LEGAL ADVICE CLINICS FOR OVER 50'S

We're just a phone call away!

Contact **Debbie Anderson** at **DebbieA@moore-tibbits.co.uk** or call **01926 354704**

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Coronavirus (COVID-19) – Guidance for people receiving direct payments

Do you receive support via direct payments, personal budgets and/or personal health budgets?

Recent guidance published by the Government states that Personal Assistant (PA) employer should consider the following:

- Are there any care arrangements in place if a PA is sick or on annual leave?
- Have alternative options of providing essential ongoing care and support been explored? i.e. does the individual receive another source of paid support? Can family members step in?
- Can alternative care providers provide support as a contingency plan if there are issues in continuation of personal assistant support?

- Are individuals care and support plans easily accessible to PA/ care providers?

If a PA cannot provide care due to being in self-isolation because of contraction of COVID -19 the employer must contact the designated adult social care team or Clinical Commissioning Group (CCG) as the provider of the direct payments to arrange alternative care.



Do you or a relative buy care and support via direct payment (i.e. home care agency)? If so, you need to consider the following:

- Discuss with your care agency about your situation and the possibility of any contingency plans and procedures if your carer cannot provide a package of care.
- Ensure that all care providers have up to date details as to your specific care and support plans and needs.
- If you use Direct Payments to purchase other types of support – speak to the provider about the ability to deliver this service during lockdown.

If your care arrangements have been impacted and your care agency cannot provide any alternative options, speak to your designated adult social care team or CCG team who provide your direct payments.

During these unprecedented times, Local Authorities and CCGs are encouraged to adopt a flexible approach as to how direct payments are used to support individuals in the community with care needs.



Therefore requests to Local Authorities and CCGs for payment to family members to provide care should be acknowledged and considered in relation to the person's care needs.

If you have any queries regarding direct payments, our team are here to help you and provide support and guidance during these challenging times.

Please call 01926 354704 and speak to our friendly team.



Charlotte Bell



Debbie Anderson

Care and Contact Restrictions - COVID-19

The recent judgment in BP v Surrey County Council & Anor [2020] EWCOP17 addressed the issue of contact with a person in a residential setting during the COVID-19 lockdown.

BP is an 83 year old man with Alzheimer's who is deaf and uses a communication board to communicate. He currently resides in a Care Home. In light of the current Coronavirus pandemic, the Care Home decided to suspend all future visits to the Care Home by both family members and professionals. Note that this case was heard pre-lockdown and pre-dated the government guidance that all visits to care homes should be banned.

There were ongoing concerns, prior to lockdown, as to whether BP had capacity to make decisions in relation to his residence and whether it would be in BP's best interest to return home with a package of care. As a result an assessor was due to assess BP at the Care Home. As a consequence of lockdown the Court had to consider whether it would be in BP's best interest to live with his daughter pending completion of said mental capacity assessment.

Since the judgement handed down by Justice Hayden on 25 March 2020 (see our website for details), a second decision concerning BP has been released.

In the earlier judgment, Justice Hayden upheld that it was in BP's best interest to remain residing in the care home rather than being cared for by his daughter (FP) at home. Justice Hayden acknowledged that returning to FP's care would be unrealistic and there were significant practical difficulties in providing an appropriate care package for BP. BP's wife (RP) did not support, the application made by BP's daughter that it was in his best interest to return home to her care.

Since then, BP had become very unwell (unrelated to the Coronavirus). In accordance with the conditions stipulated by the Court, FP visited her father regularly from his bedroom window and made every effort to communicate with him from a distance. BP's family noticed a marked deterioration in BP, he was becoming very unresponsive and depressed. FP argued that BP struggled to understand why the social distancing policies were put in place and wrongly believed that he was being punished for something. In order to protect BP, FP continued to self-isolate and only left her home to visit.

This case was brought before the Court on 17th April 2020. Before the case was heard the parties came to an agreement that it was in BP's best interest to return home to FP's care subject to an assessment of his needs and implementation of an appropriate care package. This time, RP was in agreement with all parties that it was in BP's best interest to return home.

Despite Justice Hayden's original judgment a mental capacity assessment has not been conducted remotely for BP. Justice Hayden provides the following advice regarding assessment of capacity during these unprecedented times:

"If BP had remained at the home it would have been necessary to instruct a different assessor. I remain of the view that creative use of the limited options available can deliver the information required to determine questions of capacity. It may be that experienced carers well known to P and with whom P is comfortable can play a part in facilitating the assessment. Family members may also play a significant role in the process. I am aware that in many areas of the country innovative and productive approaches of this kind are proving to be extremely effective".



Charlotte Bell

If you are concerned about a loved one in a care setting, please contact our team on 01926 354704 for guidance and support.

 01926 354704

 CharlotteB@moore-tibbits.co.uk

NHS Funded Nursing Care rate increase

The government has recently announced an increase in the NHS Funded Nursing Care rates.

NHS Funded Nursing Care (FNC) is a flat rate payment made by the NHS to nursing homes towards the nursing care element of the fees.

Funded nursing care is not means tested and is therefore available for those paying privately for their care. It is essential that the wording in the care home contract is reviewed to clarify whether this payment will reduce the weekly amount of fees due. Eligibility for NHS continuing healthcare MUST always be considered first. For more detail on this, please contact us.

The government has announced the following rate increases:

- The rate for 2019/20 has been revised from £165.56 a week to £180.31. These payments will be backdated to 1 April 2019
- 2020/21, NHS Funded Nursing Care will be increased by 2% from £180.31 to £183.92. This will be backdated to 1 April 2020.
- The higher rate of NHS Funded Nursing Care will be increased by 9% from £227.77 to £248.06 per week for 2019/20 (only relevant to those on the higher rate in 2007). This will also be backdated.



- The higher rate of NHS Funded Nursing Care will be increased by 2% from £248.06 to £253.02 per week for 2020/21 (only relevant to those on the higher rate in 2007). This will also be backdated to 1 April 2020.

Professor Martin Green OBE, Chief Executive of Care England, said: "This has been a long time coming, but we must be grateful to the DHSC for launching a review of the 2019/20 FNC rate as a result of Care England representations. The outcome of the review moves us close to the rate Care England campaigned for and we put, as part of the review process, very detailed arguments and evidence to support it.

The 2019/20 FNC did not reflect nurse costs in nursing homes and this was the reason behind the decision of Care England to push for a review. In addition, coronavirus has put a significant strain on care homes as they are responsible for the provision of care to some of the most vulnerable members of our society again demonstrating the absolute need for properly funded nursing care."

If you have any queries relating to care home fees, please contact Debbie Anderson on 01926 354704 or email debbiea@moore-tibbits.co.uk

Press the pause button | Care Home contracts

We have recently seen an increase in the number of calls we are receiving from families who are making life-changing decisions for both themselves and their loved ones without seeking proper advice.

A recent example has been a family's loved one who was moved into a care home which, due to lockdown restrictions, the family have not been able to visit and could only rely on what they read about the home online. The local authority agreed initially to fund the placement on an emergency basis but after four weeks wanted the family to sign a permanent contract with the care home. The family were feeling pressured and not sure where to turn. It is ok to press the pause button and seek specialist legal advice. In this situation, the following needed to be considered:

- Had a choice of care home been given?
- Is the cost of the home sustainable or will the money run out?
- Is this the right care home placement for the individual's needs?
- How will the placement be funded?

Under the statutory guidance which underpins the Care Act 2014, there is specific guidance regarding temporary care placements which has implications as to how those placements are funded. There is all

too often pressure put on families to make a hasty decision. They are often given the impression that "temporary" can only last for a matter of weeks when in fact a placement could be temporary for as much as a year depending on the individual circumstances. In such case a person's property should then be disregarded and, depending on the person's level of savings, the local authority will be expected to help fund the placement.

In the case referred to above, we have liaised with the local authority and it has been accepted that the placement cannot be made permanent until the family have had the opportunity to visit the Home and make an informed decision.

Contact **Debbie Anderson** on
debbiea@moore-tibbits.co.uk
or call **01926 354704**

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We are here to help

We are seeing people not getting the package of support they are entitled to and paying for that support when they shouldn't be.

If you have concerns about a loved one, please call Debbie Anderson on 01926 354704 for free initial telephone advice. Following on from this, remote meetings can also be arranged if required.

Surge in Wills during Covid-19

During the pandemic, we have seen a surge in people making and updating their Wills. At Moore & Tibbits, we have an experienced team which also includes solicitors who are members of the Society of Trusts of Estate Practitioners and Solicitors for the Elderly, so whether your Will is straightforward or more complex, you can be rest assure you receive advice to ensure your Will is legally valid and your wishes will be carried out should anything happen to you.



Should I make a Lasting Power of Attorney?

Life was turned upside down for many with the message "Stay at Home" which left many people with questions about how their financial affairs can be dealt with whilst they are self-isolating.

A Lasting Power of Attorney (Property and Financial Affairs) can be used by your chosen attorney(s) as soon as it is registered with the Office of Public Guardian (OPG). Subject to any restrictions with the document, the Lasting Power of Attorney will enable your attorneys to pay bills, have access to bank/building society accounts, collect benefits such as pension payments and also, if needed, to sell your home.

Having a Lasting Power of Attorney for finances can help if you are ill, self-isolating or are otherwise restricted physically to undertake your usual financial activities. It can be used when you are still capable of making decisions as well as when you no longer have capacity.

For advice on all types of powers of attorney please contact our team of solicitors who are continuing to work remotely and can provide guidance and support through these difficult times.

If coronavirus has prompted you to also consider making a Lasting Power of Attorney for health and welfare, please do get in touch and we can discuss whether this would be appropriate for your own particular circumstances and find the best solution for you.

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Westgate House, Market Street, Warwick, CV34 4DE