

## What's a lawyer got to do with care?

There is a well-known saying that when America sneezes, Europe catches a cold. Well, when the NHS sneezes, hospital discharge catches a cold and social care comes down with the 'flu'.

The Health and Community Care team at Moore & Tibbits provide advice and representation to clients 'from sneeze to 'flu' but we are often asked, what's a lawyer got to do with care?

Well, quite a lot actually.

ALL health and social care services are defined by laws, regulations and frameworks, including the Care Act 2014, the National Framework for NHS continuing healthcare (2012), and the Mental Capacity Act 2005. Most of the legislation gives providers some opportunity to apply their discretion in how and when to deliver assessments and services, with the idea being that as every person is different their response can be tailored to individual circumstances.

So far so good - but things get difficult when the money runs out.

We are all aware that both the NHS and social care have been at breaking point for some time. This creates two problems for service users, carers and families:

1. The pressures on services mean that short cuts are taken to save both time and money. This can lead to people missing out on vital assessments and in some cases much needed care and financial support.
2. To try and address the gap in funding, councils and health services are increasingly looking at the detail of legislation to see where they can make further cuts. 'Discretion' seems to disappear where it might cost providers more and the grey areas of the law are used as loopholes to try and save more money. One local council is taking this even further and considering charging private funders for a needs assessment which, if implemented will only put people off from seeking help.

This is where health and community care lawyers come in.

We provide advice, representation and clear explanations about the choices available to our clients to ensure that their rights, and just



as importantly, their health and wellbeing are central to any care provision. Specialist expertise is available from first diagnosis to NHS continuing healthcare funding, hospital discharge to social services assessments and everything in between.

Having a dedicated team in this area helps us to spot when a cold is turning into 'flu' in local services and tailor our advice accordingly. Current issues reflect problems with hospital discharge, delays in social care assessments and the related financial assessments, delays in NHS continuing healthcare assessments and appeals and families not being provided with the full information about care proposals (and their costs).

People can book a free slot at one of our legal clinics that are run in partnership with Age UK Warwickshire and Citizens Advice (Nuneaton).

However, we also recognise that not everyone wants to, or can afford to use lawyers. In the first instance there are some fantastic local charities who provide vital help and advice. That's why we believe that the best way we can help is to provide free training, talks and presentations to charities, care providers and support groups about the law relating to care and how they can support their clients with this information. For the first time, we have set ourselves a goal for the number of free sessions we offer - aiming for 30.

So far we have 13 in the diary, so if you would like to book a session please get in contact. We cover all the legal issues relating to care and in some areas offer professional accreditation.



### Delayed Transfers of Care Statistics

Delayed days in November 2016

**193,700**

Delayed days in November 2015

**153,200**

Proportion of delays attributable to social care has increased:

**34.8% in**

**November 2016**

compared to

**31.1% in**

**November 2015**



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## Do you know the current standards around hospital discharge?

The National Institute for Health and Care Excellence (NICE) provides guidance and quality standards relating to discharge for adults who have ongoing care and support needs (either at home or in a care home) [Quality Standard QS136].

These standards include guidance and expectations on all areas of discharge; including

- Information sharing
- Assessments
- Co-ordinated discharges and supporting plans
- Carer's involvement

**They are a useful tool if you work in this area or simply want to arm yourself with additional information. The standard links to NICE guidance [NG27] on the same subject, which includes recommendations on:**

- **person-centred care** and **communication and information sharing**
- **before admission to hospital** including developing a care plan and explaining what type of care the person might receive
- **admission to hospital** including the establishment of a hospital-based multi-disciplinary team
- **during hospital stay** including recording medicines and assessments and regularly reviewing and updating the person's progress towards discharge
- **discharge from hospital** including the role of the discharge coordinator
- **supporting infrastructure**
- **training and development** for people involved in the hospital discharge process

In the current pressured environment of hospital discharge, this guidance is easily overlooked **BUT** following it can ensure individuals and families have the right support and guidance at a very difficult time.

We have made enquiries with the National Audit Office regarding the system wide issues surrounding continuing healthcare. The National Audit Office have informed us that they are actively monitoring this topic and will shortly begin scoping work to consider whether they will publish an investigation into NHS continuing healthcare in 2017.



We receive lots of calls from Attorneys and Deputies who need advice regarding their role and responsibilities. The Mental Capacity Act, gifting and best interests are at the forefront of Attorney/ Deputy responsibilities but are often, not fully understood.



Attorneys and Deputies we speak to are keen to ensure they do the best for their loved one or friend and protect themselves. With this in mind, we will be holding two seminars this year in March and September (dates to be confirmed) on the roles and responsibilities of Attorneys and Deputies. This will cover all of the legal responsibilities above as well as care issues and planning in later life. The seminar will be free and aims to inform and reassure attorneys, families and support workers about this vital role.

If you or anyone you know would be interested in attending, please email: **esmeh@moore-tibbits.co.uk**.

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to receive legal updates and news

## Following on from our most recent seminars for Independent Financial Advisors, we were delighted with the positive response.

The CPD Standards Office  
CPD PROVIDER: 21467  
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[www.cpdstandards.com](http://www.cpdstandards.com)



“ Best **CPD session** for a very long time! ”

“ Very useful seminar and probably one of the best I've attended. Liked how it was **100% informational** and technical ”

“ Clearly passionate and knowledgeable about your subject ”



## In the News

### Self-funders

Northamptonshire Council are considering charging self-funders (those with over £23,250 in capital) £50 for a needs assessment. We have concerns that this will act as a further barrier to people accessing timely advice and support, not to mention the fact that the proposals go against both the spirit and the letter of the Care Act 2014. A decision is expected in February - follow us on [twitter @MandTCare](https://twitter.com/MandTCare) for further updates.

### Government Statistic Service

Latest figures from the Government Statistic Service show the continued increase in delayed discharge <http://bit.ly/2jXM7Va>. The figures highlight increasing delays whilst people wait for a package of care to be set up in their own home - something that is a real issue locally.

The figures also make interesting reading when it comes to other reasons for delays in discharge with **“patient or family choice”** causing a significant number of delays. We cannot help wondering though, given experiences of some clients locally who decides that this is the reason, and how?

### Healthcare Assessments

Local processes for completing NHS continuing healthcare assessments seem increasingly confused. Not only are appeals outsourced - yet more authorisation forms and delays anyone? Local assessments are being completed by independent providers with mixed results. Clients and members of the team are receiving mixed messages, from being told that the most an assessor can score is a 'high' to cursory assessments that seem more tick box than real assessment. To try and clarify what is happening we have completed a freedom of information request - watch this space!



## Another successful year supporting Myton's Make a Will Week

We were proud to support the Myton Hospice Make a Will Week again this year with donations totalling **£1,455**.

Making a Will is not just for the elderly or ill but essential financial planning for any family or individual to ensure your wishes are carried out.

Thank you to all those that made appointments and donated to support the Myton Will Week.

### List of changes made to the Care Act guidance

Updated 9 December 2016

1. Chapter 2: Preventing, reducing or delaying needs
2. Chapter 6: Assessment and eligibility
3. Chapter 8: Charging and financial assessment
4. Chapter 9: Deferred payment agreements
5. Chapter 18: Delegation of local authority functions
6. Chapter 19: Ordinary residence
7. Chapter 23: Transition to the new legal framework
8. Annex C: Treatment of income

## Further Statutory Guidance Updates

The supporting guidance for the Care Act 2014 was updated in December following the Supreme Court judgment in the case of **R (on the application of Cornwall Council) v Secretary of State for Health**.

The updates (which can be found in paragraphs 19.17 to 19.43) set out changes in the approach following the judgment regarding:

- Determining ordinary residence
- Disputes between councils in relation to adults who lack capacity to decide where to live

The Cornwall case considered which of three authorities, Wiltshire, Cornwall or South Gloucestershire should be responsible for the £80,000 annual costs of PH's care in a Somerset care home. PH himself lacks mental capacity to decide where he should live.

This case related to a dispute between Local Councils as to who would pay care costs of **£80,000 per year** and could have far reaching implications for Councils regarding their long term funding commitments, as they may be responsible for long term care costs for many years after a resident has moved out of the area. The judgment noted that this will provide continuity of care planning for individuals but it remains to be seen whether this will also trigger shifts between authorities in line with the new guidance that could be disruptive for the residents that are affected.

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