

A short guide to the key COVID-19 legal developments in the health sector

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In light of the national COVID19 emergency, our health sector clients are under enormous pressure, facing a range of decisions that need to be made at pace, with a backdrop of emerging guidance and legal frameworks.

We have sought to summarise some of the key developments to date, whether they relate to decision-making for patient admissions to CCUs; implications of the Coronavirus Act for coroners; questions about information sharing or halting procurements right through to workforce implications and remote consultations.

We have produced a short form practical guide on many of the key legal issues as part of our commitment to knowledge sharing with the sector, and with guidance being produced very regularly, we will endeavour to keep this updated. However, this is not legal advice and if you would like to discuss this in more detail, please contact us via the details given at the bottom of each page.

1. Critical Care - Clinical Decision making and Ethics

In addition to NICE Guidance on Critical Care decision making, the BMA have issued guidance on ethical issues arising from clinical decision making in the COVID 19 pandemic and the Royal College of Physicians have also prepared their position. We discuss the guidance headlines and what this means for providers delivering critical care. [Read more here.](#)

2. Coronavirus Act - Death Certification Provisions

The Act has changed how death certification can be achieved in the pandemic, and has also been accompanied by guidance from the General Register Office on 1 April 2020. The Chief Coroner also continues to issue guidance to support Coroners and stakeholders in managing inquests through the current unprecedented events. [Read more here.](#)

3. Mental Health Providers: the challenges so far

Providers are dealing with many challenges in managing the legal and regulatory framework with particular issues relating to Hospital Managers, Tribunals, leave, facilitating discharge and the practicalities of managing patients (both informal and detained) through 'lock down'.

The Coronavirus Act contained a number of emergency provisions which, if enacted, would have amended certain aspects of the Mental Health Act regarding second opinion safeguards and detention periods. However, the Government has decided to expire these powers, meaning they will no longer be a part of the Act. Accordingly, no changes are being made to the MHA legislation and organisations should continue to operate in line with existing MHA law and Code of Practice as far as possible.

Guidance has been issued in a variety of areas, much of which focuses on the practical issues from a service provider perspective. [Read more here.](#)

4. Mental Capacity and Deprivation of Liberty

No amendments were contained in the Coronavirus Act in relation to the Mental Capacity Act 2005 (MCA) and the Deprivation Of Liberty Safeguards (DoLS). However, guidance has been given by the Department of Health & Social Care (DHSC) to apply only during the pandemic. [Read more here.](#)

5. Key Q&As relating to the health workforce

Our employment and pensions team have flagged up some of the difficult questions being asked in light of COVID19, and set out answers to each. [Read more here.](#)

6. Information governance issues - what do you need to know?

Health sector organisations have had to adapt quickly in light of COVID-19. We have seen a greater use of technology, for example, through remote consultations, as well as an increase in data sharing to help ensure risks can be identified and mitigated. With these changes come various information governance issues that need to be addressed. [Read more here.](#)

7. COVID19 - the impact on procurement over the coming months

We review and comment on the procurement policy note published by Crown Commercial Services, and consider the matters of urgency, direct award and extending or modifying contracts during their term in the context of the COVID19 pandemic. [Read more here.](#)

8. Streamlined governance to respond to an emergency

NHS organisations will need to make difficult decisions quickly. We have considered some of the governance challenges and set out some practical advice [here.](#)

9. Patient engagement, equalities and target duties

Do NHS organisations still need to comply with duties around patient engagement, equalities, and for CCGs target duties under section 14P to 14Z1 of the NHS Act 2006? [Read more here](#)

10. NHS Standard Contract developments

A number of guidance documents have been released from NHS England and NHS Improvement, to reduce the contractual burden under the NHS Standard Contract in order to allow commissioners and providers to work together to focus on the COVID-19 emergency. We have brought this guidance together and summarised the key points [here.](#)

11. Hospital Discharge Guidance - an overview

We review and summarise the DHSC guidance released on 19 March 2020 designed to improve patient flow and increase NHS capacity for hospital admissions in light of the current pandemic. [Read more here.](#)

12. New Competition Order to allow for enhanced co-operation between healthcare providers in the fight against Covid-19

On 28 March, the Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion Order) 2020 ('Order') came into force. The Order allows for wide-ranging co-operation between NHS and/or independent providers, without having to worry about competition rules, provided that the related agreement fulfils certain conditions of the Order. [Read more here.](#)

13. CQC Regulation and COVID-19

We review and summarise the guidance so far issued by CQC designed to ease the burden of regulation for health and social care providers during the current pandemic. [Read more here.](#)

14. Summary of Information and Advice from regulators of healthcare professionals in respect of COVID-19

Regulators of Healthcare Professionals including the GMC, NMC and HCPC have all issued guidance to their Registrants on managing the various challenges of COVID-19. [Read more here.](#)

15. Impact on the Care Sector

A review of the legislative changes and issues facing the Care Sector during the Covid-19 pandemic. [Read more.](#)

16. MHRA / COVID-19 updates and guidance

The Medicines & Healthcare products Regulatory Agency (MHRA) is continuing to update its guidance in response to the coronavirus pandemic and has made a number of decisions which affect life science companies and businesses in the health and social care sphere. [Read more.](#)

17. COVID-19 Deaths and Possible Exposure in the workplace - Chief Coroners Guidance no 37

The Chief Coroner published new guidance on 28 April 2020 to assist Coroners exercise their judicial decisions with particular reference to COVID19 deaths following potential exposure in the workplace. [Read more here.](#)

18. Managing admissions, readmissions, discharges and transfers within the Care Sector

We have been considering some of the key guidance and publications relating to admissions, readmissions, discharges and transfers affecting the care sector during the current pandemic. [Read more.](#)

19. Covid-19 personal protective equipment ('PPE')

Health and social care providers are dealing with a number of issues relating to the use of PPE and the implications of the guidance issued by Public Health England in respect of PPE. We discuss the headline guidance, recent updates and what this means in practice for Providers. [Read more here.](#)

20. RIDDOR Reporting Requirements

The Health and Safety Executive ('HSE') has issued guidance in relation to when organisations are required to make a report under RIDDOR (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) in relation to Covid-19 related incidents. [Read more here.](#)

21. Covid-19 - Consideration of potential areas for EL/PL claims

Emerging information from key clients in the commercial and health and social care sectors and our observation of Claimant behaviours around Covid-19 suggest that EL/PL claims are likely to follow. We have broken down some of the key issues relating to these potential claims. [Read more here.](#)

Free employment helpline for healthcare providers

We are acutely aware of the efforts that our clients in the healthcare sector (both NHS and independent) are making to deal with Covid-19 and the difficulties that they are facing. We have set up a free helpline for healthcare providers with COVID-19 related employment queries and this has now been extended to cover healthcare providers who are not clients of DAC Beachcroft. This service is designed to deal with queries that might take up to 30 minutes to deal with and is over and above the service which we provide our clients. The helpline is staffed by volunteers who are qualified employment lawyers with a switchboard that is in operation 24/7. The telephone number to access this service is **0800 048 5212**. If you need support please do call and we will endeavour to resolve your query.

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