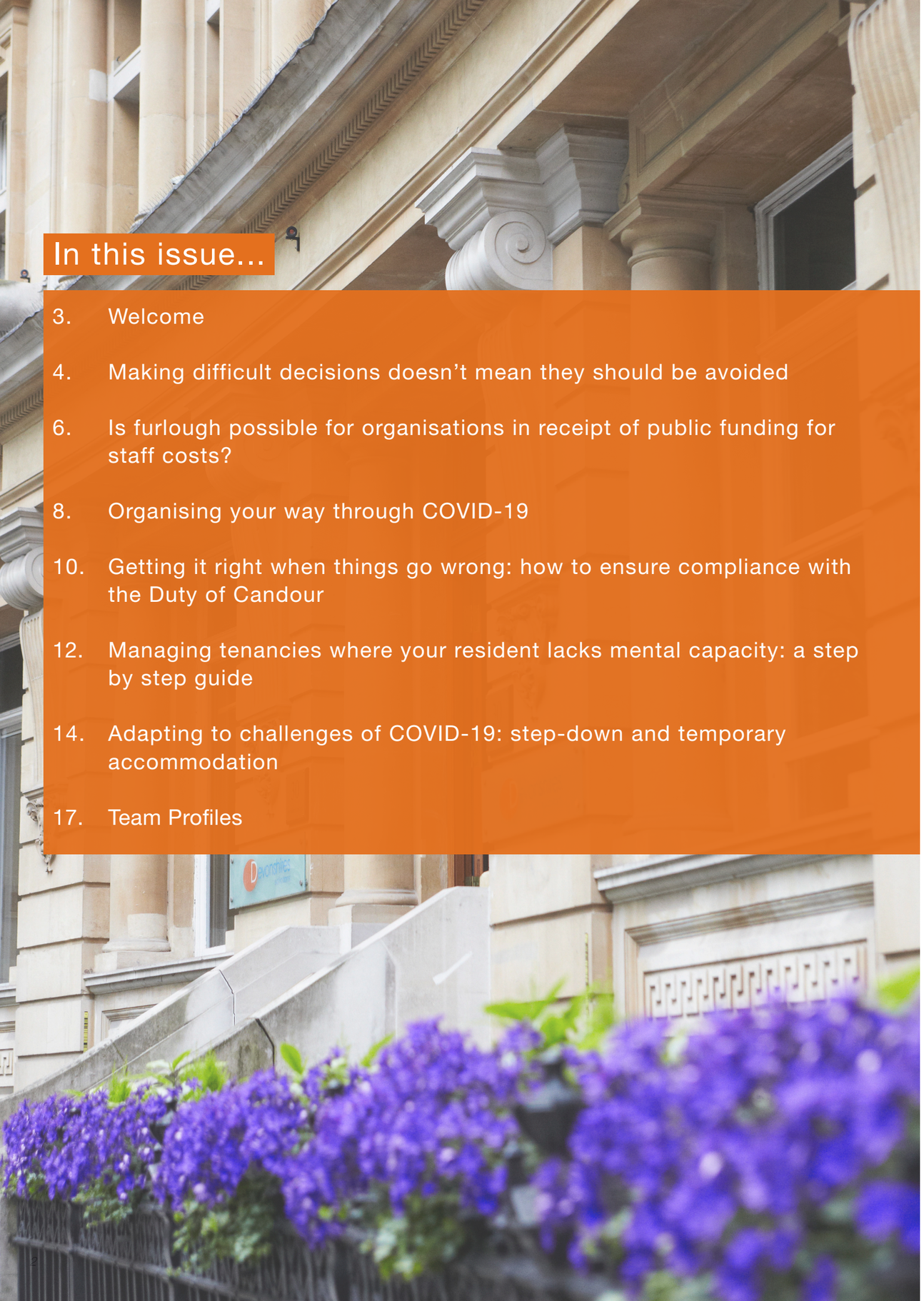
Devonshires

Care DBrief:

Spring 2020



In this issue...

Devonshires

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Welcome

In this issue, we have brought together a mixture of thought and response articles – looking at common issues faced by our clients providing care services or accommodation and thinking about the medium term future for these services.

Devonshires provides legal services to a diverse mix of clients providing care services; Not for Profit entities, mainly Registered Providers, and specialist For Profits all working in the care sector. Of the Registered Providers, many provide a limited number of care related services; and even for those with larger care related activities, these are largely accommodated within their main operational structures.

Whichever way, COVID-19 has brought a renewed focus on the critical nature of these services, many of which have been underfunded for some years and carry significant operational, regulatory and reputational impacts. However, generalisms like these understate the wide variety of services provided by our clients which could be termed as "care". Many of which may not fit snugly into the public perception of that description; for example, the provision of retirement living, sheltered or supported housing.

Each of these though are inextricably linked to services which would be understood to be care such as COVID-19 related end of life services. (All of this means that the legal advice clients ask from us comes from diverse sources within our clients. In this issue, we have tried to bring these all together.)

In this DBrief we hope we have provided articles which will be of interest to all of our clients involved in these important services. In doing so, we'd appreciate feedback on this DBrief and, if you would be interested on hearing more from us on this specific area, feedback on this and the names of people in your organisation who would like to hear from us on these subjects.

Making difficult decisions doesn't mean they should be avoided

It is acknowledged that the implications of COVID-19 will be felt for many years. For care services this will be particularly the case.

Currently clients are managing their clinical responses; whether through management of staff, provision of PPE and higher than usual operating costs.

It is clear that "business as usual" is unlikely to return for some time; and that public finances will be stretched with more difficult choices to be made in relation to public care services (currently without a longer term coherent plan).

Linked to this will be the currently uncertain outcome of public perception about these services which may lead to demand issues. In the interim clients will be faced with difficult decisions about many aspects of their services and little likelihood of a "business as usual" for the medium term.

For many clients this will mean that some difficult decisions will need to be taken. Both the Care Quality Commission and the Regulator of Social Housing see the preservation of reputation as a key factor to the running of regulated entities; and this can often seem at odds to the prudent management of the business.

The Charity Commission has taken a similar line too; but has also recognised that a difficult but unpopular decision can still be a necessary decision.

This is illustrated in its case report, issued in January this year, in relation to the St Margaret's Somerset Hospice where it found that trustees complied with their legal duties in making the decision to close its Yeovil in-patient unit and concentrate on out-patient care, despite a well organised social media campaign advocating the ongoing provision of the service.

The reported reasons given by the Hospice for the closure included financial pressure, demand and staff shortages. The compliance report sets out some useful parameters which led the Commission to this conclusion.

It concluded that the Board has:

- Taken appropriate advice.
- Consulted with stakeholders and regulators.
- Followed through these actions by making an informed decision; the minutes were critical in evidencing this.

The Commission concluded that "the decision to re-model the services was properly made and within the range of decisions that a reasonable trustee body could make". That is to say, it is not for a Regulator to act as a director of the regulated entity but simply to test whether the decision of the regulated entity was justifiable.

In making decisions boards should be guided not only by their duties to their client group, but also the preservation of the solvency of the legal entity. In many cases, there will be grey areas – where some aspects of a service are no longer justifiable to the wider beneficiary class of their clients. In these cases boards need to act swiftly, carefully and in a way which attempts to mitigate the reputational impact.

Examples here are wide ranging and include advice on a Company Voluntary Arrangement concluded by our clients First Priority on its supported housing leases.

For more information in relation to dealing with the implications of COVID-19, please contact Andrew Cowan.

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Is furlough possible for organisations in receipt of public funding for staff costs?

When the Coronavirus Job Retention Scheme (CJRS) was first announced, many organisations welcomed it with open arms.

However, as anyone will know who has been closely following its development, there have been various iterations of the CJRS guidance and when it was updated on 9 April 2020 to include commentary on organisations in receipt of public funding, many housing associations were concerned this meant they were prohibited from using the CJRS.

The CJRS Employer Guidance states that public sector organisations can benefit from the CJRS but with the caveat that "where employers receive public funding for staff costs, and that funding is continuing, [the Government] expect employers to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them".

Whilst it is clear that those solely in receipt of public funds are not expected to use the furlough scheme, the position for those in receipt of mixed funding (some public and some private) left housing associations unsure as to whether they can use the CJRS, and as to the precise meaning of "public funding for ***staff costs***".

The National Housing Federation (NHF) has confirmed that housing associations are able to furlough their staff, as most housing associations do not receive public funding for staff costs. Although their guidance is not binding in law, the NHF have confirmed that their guidance has been shared with the government and that they are confident of its interpretation.

In respect of those organisations that do receive public funding for staff costs, the NHF guidance makes reference to the CJRS Employer Guidance and emphasises that where such public funding is continuing, the guidance from HMRC is clear that it does not expect such employers to furlough such staff.

For many within the sector who are providing frontline care and support services, funding is a mixture of private and public funding.

Where local authorities commission care and support services to be provided, such funding is predominantly for staff costs and would therefore amount to public funding to pay staff costs.

Does this therefore mean that those organisation operating within care and support cannot seek to furlough staff and use the CJRS?

Like all employers, housing associations in care and support have staff that fall within the shielding category who are following the guidance of Public Health England and staying at home. Due to the nature of their roles within care and support, often it is the case that their jobs are such that they cannot carry out these roles from home.

This means for our clients, they are left with gaps in their workforce which they need to cover in order to continue the delivery of these key services. Given the CJRS Employer Guidance and NHF guidance above, we have been asked by a number of clients whether, notwithstanding the fact that they continue to receive public funding for staff costs, they can furlough such staff. The answer to this issue remains unanswered in terms of the guidance issued in relation to the CJRS.

We are aware that the Department for Education, for example, has issued guidance to education sector employers (including state and independent schools, further education colleges and Higher Education Institutions) which contains more detailed restrictions than in the Government's general guidance.

This encourages the consideration of alternatives to furlough (redeployment of staff or loans from the Coronavirus Business Interruption Loan Scheme or the COVID-19 Corporate Financing Facility) and indicates that furlough should be limited to staff whose salaries are not funded by public funding, work in areas where services are temporarily not required due to the COVID-19 pandemic and who would be otherwise made redundant or laid off. This will not necessarily apply to staff who are shielding.

Notwithstanding this, the CJRS Employer Guidance is guidance only. The Treasury Direction issued by the Government to HMRC takes precedence over the guidance and there is nothing in the Treasury Direction that legally prevents organisations in receipt of public funding for staff costs from furloughing employees.

However, the risk of doing so is that such organisations could be criticised for what has been referred to as "double dipping" into the Government's purse and therefore poses the risk for reputational damage.

For any organisation that is in receipt of public funding for staff costs and who is considering furloughing shielding staff, you should consider other options first and be able to evidence doing so, in order to seek to objectively justify the decision to furlough. The options that need to be considered first are:

1. Can you redeploy those staff into other roles temporarily that they can perform from home?
2. Is there any chance of obtaining additional funding from the local authority commissioning the care and support services? We are aware that a number of clients have done this. This would then pay for the cost of cover of such staff without the need to furlough the original staff who are unable to work.
3. We understand that CQC has reviewed and amended its guidance as to how many staff are required to work within a home and therefore an organisation can compliantly run a home with a reduced workforce. Does this therefore negate the need to recruit cover for such staff?

Only once you have exhausted the above do we consider that an organisation could then reasonably consider furloughing certain staff in limited circumstances. However, before taking such a decision, we would strongly advise that legal advice is taken first.

For more information in relation to this article or any other employment concern, please contact Katie Maguire.

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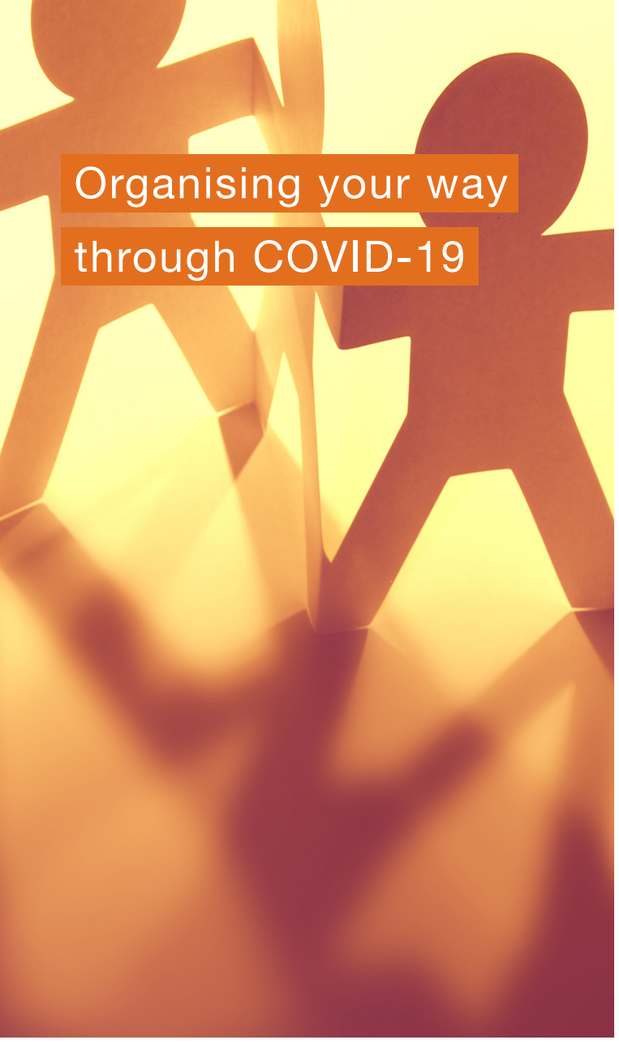

Organising your way through COVID-19

The writing was on the wall when it came to COVID-19: following the outbreaks of SARS and MERS, both related to COVID-19, it is fair to say the scene was set for the day when a more transmissible strain of this group of viruses would spread around the globe and affect individuals in our communities causing widespread illness at all levels of society.

It is a reality of these diseases that they will disproportionately affect the most vulnerable and frail people, including care home residents and other elderly people.

Government, regulators, care providers and the wider health and social care sector have been planning for this event for many years, and the implementation of those plans appear to have enabled the situation in the UK to be managed so as not to overwhelm the NHS.

Nonetheless, the unprecedented scale with which the COVID-19 pandemic has reached presents care providers with challenges that require swift decision making that can have implications for the ongoing success of the service they provide.

From speaking to clients, recurring themes that are proving to be challenges above and beyond those encountered in the normal course of delivering care services as part of their businesses include:

- Pressure from local authorities and NHS organisations to accept new, temporary or returning residents as the health service attempts to increase bed capacity;
- Accommodating residents who require isolation or segregation as a result of having been exposed to, suffering or recovering from COVID-19;
- Expectation to take on duties and roles not typically the domain of care providers;
- Concern over workforce health and supporting care staff to continue to provide quality standards of care; and
- Securing and maintaining supplies (in particular PPE) and other procurement and supply chain issues.

In rising to the challenges COVID-19 presents, care providers are required to strike the right balance between cooperating with local authorities and NHS organisations; stretching resources to go that little bit further to keep up with increased demand and protecting the interests of the organisation (such as carrying on 'normal service', delivering person-centred care, treating residents with dignity and respect, complying with its duties and obligations to stakeholders, protecting staff and securing the future success of the business). When evaluating where the balance should sit, and developing a response, decision makers should consider:

1. Escalating decision making up the organisational hierarchy early

Escalation to senior management and those who will ultimately be accountable for the outcomes the organisation reaches at an early stage gives greater oversight of the operation of the business as a whole and allows resources and assets not ordinarily available to be mobilised to meet heightened demand.

2. Have regard to existing business plans, risk management and business continuity strategies

Looking to business plans will assist in identifying where additional financial resources and reserves can be drawn from.

Looking to existing plans developed internally to mitigate risk and identify areas of weakness within the organisation can provide invaluable guidance to dealing with the challenges COVID-19 presents, and establishing just how far the organisation can stretch. This remains the case even in circumstances that are outside or exceed what has been contemplated as reasonable risk in the past: there is little benefit to re-inventing the wheel.

3. Ensure compliance with legal obligations

Observance of applicable laws at all times is an imperative. Legal obligations that should remain in the mind's eye of care providers at the moment include health and safety, safeguarding, data protection and information governance.

Both the Care Quality Commission (CQC) and the Regulator of Social Housing (RSH) have indicated that they will have regard to the current circumstances, and act in a proportionate manner when dealing with registrants, however, their expectations are clear that RPs and care provider will continue to meet their regulatory obligations.

CQC has indicated it is unable to relax the regulatory framework. However, in order to provide some relief to care providers it has issued guidance on how it is assisting care providers during this period. The requirement to deliver provider information returns has been suspended for the time being.

Care homes are asked to provide information through the NHS Capacity Tracker and homecare services are asked to complete the new form 'Update CQC on the impact of coronavirus (COVID-19)' on a daily basis.

Reporting of serious injuries or specific incidents and responding to preliminary reports should continue to be followed (but extension may be available on request and local offices should respond in a proportionate manner when dealing with care providers).

No timeframe has been given for how long these measures will apply, however, CQC's website is regularly updated.

Similarly the RSH has introduced measures to relieve the regulatory burden on RPs including pausing IDAs for the foreseeable future and extended the submission deadline for SDR and LADR to 31 October.

Submission of FFRs has also been delayed to later this year. No action will be taken where submission of accounts is delayed by up to 3 months for returns due up to 30 September 2020 and Financial Viability Assessments submission deadlines has been extended to 31 December 2020.

RPs with more than 1000 units, some RPs with over 500 units and/ or high proportion of care/ support and stock holding Local Authorities are required to complete the 'Coronavirus Operational Response Survey' on a monthly basis, and smaller RPs are encouraged to contact the RSH urgently where they are being overwhelmed due to COVID-19. It too is regularly updating its website with further measures to relieve the burden on RPs.

4. Record actions taken through reporting procedures

Keeping a clear records of what actions are taken, who was involved, the processes followed and outcome achieved will enable management to report up the organisational structure, ultimately to the board, on the response and performance of the business to current pressures.

Detailed contemporaneous records will be an invaluable resource to those looking to the future and planning how the organisation will respond to the next pandemic.

For more information in relation to this article or other governance issues, please contact Christian Barnes.

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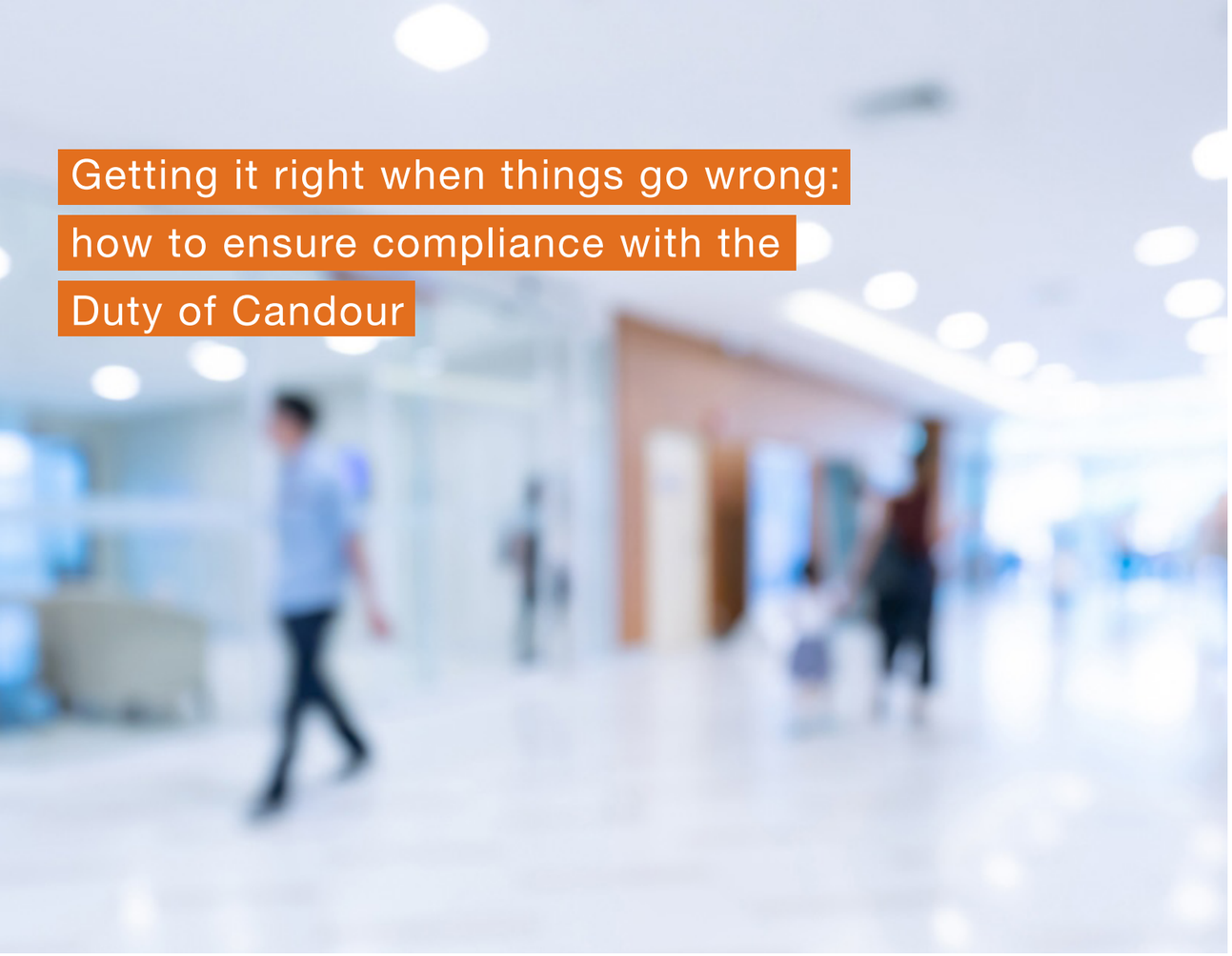


Getting it right when things go wrong: how to ensure compliance with the Duty of Candour

Regrettably there are going to be occasions where things go wrong when providing care and support.

While it is important to ensure the necessary steps are taken to put things right, do not lose sight of the duty of candour.

The duty of candour is a specific statutory obligation found at Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ('the Regulations'). In short, it is an obligation to ensure that providers are open and transparent with those who use their services (and anybody acting on their behalf) in relation to the care and treatment they receive. It also sets out some specific steps that must be followed when things go wrong.

In the context of registered providers of social housing, this will encompass activities where you are registered with the Care Quality Commission ('CQC') by providing, for example, personal care or accommodation for people who require the same and/or nursing.

This article will provide you with a short overview of the duty, details on how to comply with it and when to seek legal advice.

What is the duty of candour?

This obligation is placed on all healthcare providers who carry out regulated activities (as per Schedule 1 of the Regulations) and who are registered with the CQC. The regulation requires you to be open and honest with service users (or their families in appropriate cases) when something goes wrong that appears to have caused significant harm. The intention of the duty is to promote openness and transparency between providers and service users about their care and treatment.

The duty in full can be found on the CQC website here.

When will it apply?

The duty will only engage where there has been a safety incident (i.e. an unintended or unexpected incident) that has resulted in:

a. moderate harm;
b. severe harm or;
c. death of a service user.

Being able to spot severe harm should be relatively easy. The threshold of 'moderate harm' may be trickier however and this is further defined in the Regulations as either:

d. a moderate increase in treatment;
e. a significant, but not permanent, harm, or;
f. prolonged psychological harm.

This will therefore include examples like a return to surgery, an unplanned re-admission to hospital, a prolonged episode of care or perhaps extra time in hospital.

What do you have to do?

Once a safety incident has occurred the duty will be engaged. That sets in hand step by step obligations the provider must then comply with:

1. Notify

Tell the service user in person (which includes someone lawfully acting on their behalf) that the incident has occurred. This must also include an apology. Take legal advice if you think the service user lacks capacity to make decisions about their care or treatment.

2. Record

Make sure a written record of the meeting (providing the notification in step 1) is made.

3. Provide

Ensure a truthful account of the incident based on the information you have is provided all the while providing any reasonable support necessary.

4. Advise

Inform (and agree where possible) what further enquiries will need to be carried out.

5. Provide again

This step is to ensure all information relevant to the incident (once obtained) is provided to the service user.

6. Inform

Write to the service outlining the above steps and detailing what further enquiries are necessary (and then the results of those further enquiries once concluded). This must also include a written apology.

What if you don't comply?

Failure to comply can result in a summary conviction and a fine. While there is a defence available this will require you to show that you took all appropriate steps and exercised all due diligence to ensure that the duty had been complied with.

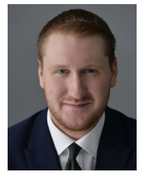
The duty remains a regulatory requirement and the CQC will be able to take enforcement action if it is breached.

When to seek legal advice?

Given the sensitivity and gravity of such incidents we recommend specific legal advice is taken on a case by case basis. Providers should seek advice urgently whenever a safety incident has occurred (or where a provider thinks the duty may be engaged). We are able to help providers understand their obligations and assist you in complying with them. We are also on hand to deal with any regulatory repercussions that could follow.

The CQC guidance also requires adequate policies and procedures are in place and we can assist in reviewing or preparing those where necessary.

For more information in relation to your regulatory obligations, or your policy or training requirements, please contact Lee Russell.



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Managing tenancies where your resident lacks mental capacity: a step by step guide

I am frequently asked to advise in relation to the administration of tenancy agreements where the resident (or prospective resident) lacks mental capacity.

The starting point is that if a person lacks the mental capacity to sign a tenancy agreement, anyone intending to sign the agreement on the person's behalf can only do so with the authorisation of the Court of Protection or where they have an Enduring/Lasting Power of Attorney ('LPA') or are a court appointed Deputy.

The same applies where a person wishes to end their tenancy. The general principle is that if somebody lacks capacity they cannot enter into fully binding contractual agreement and this will include a tenancy agreement.

Firstly, an issue specific capacity assessment should be carried out – i.e. an assessment as to whether they have capacity to enter into a tenancy agreement. Only if they do not will an application to the Court of Protection be possible.

Once this has been done the starting point should always be whether or not there is an appropriate person who can make the necessary decision (either to enter into or terminate a tenancy) through the best interest process outlined in the Mental Capacity Act 2005 ('the Act'). If there is a registered LPA in place or a Deputy for Property and Affairs has already been appointed, then the Attorney or Deputy would usually make that decision.

The Act places a limitation on signing legal documents (which would include a tenancy agreement or notice to quit).

Someone can only sign on the person's behalf if they are:

1. An Attorney under a registered Lasting Power of Attorney or Enduring Power of Attorney; or
2. A deputy appointed by the Court of Protection; or
3. Someone else authorised to sign by the Court of Protection.

If you are aware that there is a Power of Attorney or Deputy already in place then this should be your starting point. A small note of caution here - there may be some old Deputies (before the Act came into force) where they will not have sufficient authority to sign the agreement.

Otherwise, you would need to look to the Court of Protection to obtain the necessary order to sign or surrender the tenancy agreement.

Although it is not uncommon for landlords to accept an unsigned tenancy in these circumstances, this does carry some risk and is usually done while the landlord makes the necessary application for authority.

Making the Application

It is vital to ensure that the application is made in the correct form. The court will not make orders unless satisfied that all appropriate steps have been taken.

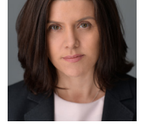
I have in the past been asked to advise where an application has been made in the incorrect form or where it has not contained the information required. This has led to unnecessary delay and further procedural hurdles before the landlord could secure the order. The process is very straightforward so long as it is made explicitly clear that the only order that is required from the court relates to the tenancy agreement and that no further directions are required.

In order to make the application you would need to produce a COP1 application form setting out the order or declaration required accompanied by a COP3 assessment of capacity, a COP24 witness statement which should set out the circumstances behind the move (that is either into the property at sign up or out of the property for surrender) and confirming that a best interest assessment has been carried out, including consultation where applicable.

This should be accompanied by a covering letter confirming that the application relates to a tenancy agreement only and providing the requisite application fee.

As stated, the best way to avoid complication is to ensure that the information provided at the outset is clear, complete and concise. If these steps are followed, obtaining the requisite order should be a straightforward process.

For more information in relation to managing tenancies, or your policy or training requirements, please contact Donna McCarthy.



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Adapting to challenges of COVID-19: step-down & temporary accommodation

Many Registered Providers, Care Home Operators and other building owners have been approached to assist in the response to the COVID-19 pandemic in various ways including permitting use of their buildings and facilities.

This may be as an overflow healthcare facility or more nuanced such as to provide varying degrees of step-down accommodation for those people who are well enough to leave a hospital environment but who are not yet well enough to return home or who may require new support packages to be assessed and put in place.

Step-down accommodation is not a new concept but the backdrop to new requirements is that as the COVID-19 emergency arose HM Government and NHS guidance identified that during the emergency period a “discharge to assess model” should be adopted in England to encourage early discharge with assessment of further need being carried out in non-hospital environments.

Interestingly, guidance indicated that of those discharged to short term reablement/rehabilitation pathways approximately 35% are likely to require long term care at home or placement in a 24 hour residential or nursing setting. To add to this, the Coronavirus Act 2020 brought in changes for social care provision to ease the burden on local authorities in fulfilling their duties under the Care Act 2014.

Whilst these provisions are temporary and will be reviewed some of the effects could be lasting and modify the approaches taken to discharge of older people from acute settings.

In negotiating temporary accommodation proposals during the COVID-19 emergency many issues are being considered at pace and with pragmatism; some may find their desire to help and contribute to solutions overriding protections which would ordinarily be sought in more normal times.

This section of the Care Brief sets out some of the core considerations for temporary use of buildings and accommodation and recommendations for successful arrangements. Devised with the COVID-19 situation in mind these considerations and recommendations equally apply to other temporary care facilities.

1. Does the building practically lend itself to the purpose?

If adaptations or alterations are required to a building, both parties need to agree what needs to be done, by who and when.

A licence to carry out works may be required and the usual allocation of risk and responsibilities during the carrying out of the works need to be considered along with whether those alterations and adaptions should remain once the purpose/use has come to an end. For any new buildings, the impact on existing warranty packages may need to be assessed.

The planning status of changes of use and development will require consideration – depending on the identity of the developer the proposed works may even qualify as being carried out under the coronavirus emergency permitted development rights introduced in April 2020.

2. What are the terms of occupation? Lease or Licence?

The projected length of arrangements will be important in considering whether occupation under lease or licence is appropriate. Landlords will need to consider the application of the Landlord and Tenant Act 1954 and whether security of tenure may be acquired by the tenant and consider contracting out of the Act.

If there is a head lease in place regard to superior landlord consents/approvals will need to be had. Lender consent may also be required.

In terms of rent levels for short term arrangements an all-inclusive rent or licence fee may be appropriate regard to any service provision may be necessary; who is responsible, the terms and costs.

The usual roles and responsibilities as in any lease/licence situation will need to be allocated such as responsibility for repairs, alienation, insurance and exercise of any rights and reservation of rights.

We would recommend heads of terms being drawn up at an early stage to crystallise each party’s requirements and establish a common understanding of the terms.

This will save time and expense to conclude any transaction and help identify how any such arrangement should be documented.

Make allowances for any due diligence necessary and if time pressures are too great the use of indemnities or other mechanisms to deal with risks may be an option.

3. What is temporary?

Taking care that an intended temporary arrangement doesn't in reality become long term arrangement with unintended consequences should be borne in mind. In the case of COVID-19 the situation is evolving and predicted timescales elongating.

Ensuring there are exit strategies such as break rights and notice periods with agreed handback standards could be important for both parties. The practicalities and cost of remobilisation for some building operators and owners may also be a concern and may need to be factored in to the level of rent or fees charged.

4. Who is providing care?

In most proposals for temporary arrangements it is the NHS Trust or the local authority who will procure the provision of care services to the individuals expected to occupy the property. However, where placements are being made into care homes then the care home operator will need to consider the impact on other residents and employees and the suitability of care needs and impacts of changing needs over time.

5. How do proposals impact existing property arrangements?

Target accommodation/buildings may already be occupied in whole or part by tenants or licensees. Where occupied an assessment will be needed of the terms of their occupation, re-gaining possession of the property, perhaps with considerations for alternative accommodation.

Registered Providers may have nomination arrangements in place with local authorities, NHS Trusts or other institutions which require consideration and possibly suspension, variation or termination. Care Providers may have contracts with local authorities which need varying or adapting to the circumstances.

Target accommodation/buildings may have existing third party contracts which need to be suspended, varied or terminated. If accommodation is already being occupied there will undoubtedly be staffing considerations and the cost of suspension of any business activities to be factored in.

6. Should formalities be relaxed?

In an emergency situation where parties are seeking to be co-operative and collaborative parties should also be advised of any rights they may be giving up or breaches they may be committing (inadvertently or otherwise) in forming a commercial or even benevolent view.

Situations have a habit of changing and ensuring there is clarity of arrangements between parties can be very helpful later down the line. It's not necessarily fatal if formalities have already been compromised but you may wish to regularise a position sooner rather than later whilst relationships remain good.

There is not necessarily a need to compromise on the practicalities of documenting arrangements. For example, only leases for a term of more 7 years require registration at the Land Registry and leases of 3 years or less may be able to be signed under hand rather than executed by deed so if execution is thought to be a barrier to a lease this may not in fact be the case and a lease may serve both parties better than a licence arrangement.

In summary existing buildings and accommodation (both care and non-care) can facilitate temporary health and other care needs and also potentially provide the owners of those buildings with an income stream which may be helpful for void accommodation. Four takeaway recommendations for these arrangements are:

- Agree heads of terms
- Assess the impact on existing arrangements
- Consider time and costs of facilitating arrangements
- Document arrangements to avoid any disputes later

With the news spotlight moving from hospitals to care homes in the midst of this crisis the fallout of the COVID-19 emergency may be that integration of health care and housing is given greater and well-deserved attention.

For more information in relation to this article or other property related issues you may have, please contact Caroline Mostowfi.

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Andrew leads our Banking, Corporate and Governance team and is Head of Social Housing. His work within the sector spans nearly 25 years and he is known for anticipating change, structuring transactions and dealing with problem cases.

In relation to Care, Andrew advises our care clients on their legal duties in relation to compliance, regulatory and governance issues.

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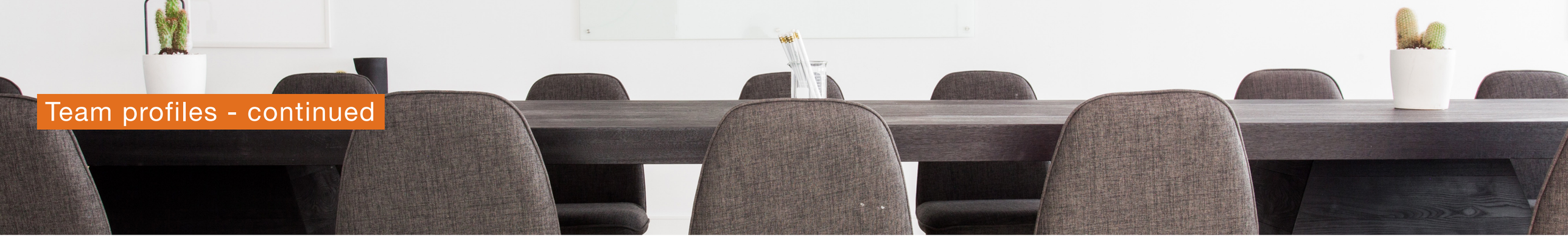
The majority of the projects that Caroline has advised on have had a housing focus, often with an element of service provision including care or extra care services. Her experience includes dealing with all aspects of real estate matters relating to care projects including contracts, transfers, agreements for lease, leases, title matters, section 106 agreements, nomination agreements and placement procedures and the interaction of such documentation.

Caroline regularly advises Registered Providers, Community Benefit Societies, investors and charities on care home acquisitions and disposals including through public procurement procedures and has acted for a local authority on their procurement of two new care homes and extra care accommodation. Most recently in light of the COVID-19 situation Caroline has been advising on the use of existing accommodation and buildings for temporary health care facilities and step-down accommodation and has been assisting clients to identify fast and effective solutions.



Team profiles - continued

Donna McCarthy
Partner
020 7880 4349
donna.mccarthy@devonshires.co.uk

Donna has a proven track record of advising care and support providers and has particular specialism in matters relating to the management of care homes, sheltered and supported housing as well as advising on issues relating to mental health, capacity and safeguarding.

Donna has a broad portfolio covering advice in respect of Court of Protection matters; disputes arising from nomination agreements, management agreements, and contracts for the provision of care services and/or management of accommodation; compliance with CQC requirements and dealing with adverse inspections and advice in respect of all aspects of Safeguarding including compliance with multi-agency policies and procedures and participation in Safeguarding Adults Boards.

Katie Maguire
Partner
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Katie advises on a wide range of non-contentious and contentious employment and pension issues. Katie's non-contentious experience includes providing corporate support work on mergers and acquisitions in respect of TUPE and pensions, advising clients in respect of TUPE on service provision changes as well as advice in relation to disciplinaries, grievances, whistleblowing and operational advice as to restructures. In respect of pensions, Katie has expertise in advising clients on issues arising under the LGPS, SHPS, the NHS Pension Scheme and the Teachers' Pension Scheme.

Katie's contentious work includes defending complex employment tribunal claims for discrimination, whistleblowing, unfair dismissal, breach of contract, breach of the Working Time Regulations and wrongful dismissal, as well as claims brought in the county court for unlawful deduction of wages. Katie has advised a number of clients in relation to safeguarding investigations, referrals to the Disclosure and Barring Service, mental capacity, and regulatory issues with the Care Quality Commission.

Lee Russell
Partner
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Lee's background in mental health, safeguarding and capacity sees him frequently advising on litigation involving those who lack capacity to do so. Lee also specialises in healthcare providers who are CQC registered, frequently advising registered providers of social housing on the health and social care aspects to their organisations, particularly on regulatory matters, safeguarding and dealing with adverse incidents.

Lee's broad range of experience includes advising on internal and regulatory investigations along with enforcement action by the CQC. Lee's experience in complex adverse incidents, includes training to Board members and 'lessons learned' exercises. Lee also assists with non-contentious care aspects including the preparation of policies and procedures. More recently, in light of the COVID-19 situation, Lee has been advising on complex regulatory issues and safeguarding.

Christian Barnes
Solicitor
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Christian is a solicitor in the Banking, Corporate and Governance team assisting clients, primarily Registered Providers, to achieve their organisational, legal and regulatory obligations and advices on commercial and data protection matters. He has a particularly strong client-focused approach to his work. Christian brings a unique set of skills and experience to the firm from his past career in healthcare.

Prior to Devonshires, Christian was a specialist Intensive and Critical Care Nurse. In a career that spanned over 13 years, Christian worked in a vast array of healthcare settings from caring for indigenous communities in outback New South Wales (Australia), through to the largest tertiary- level Intensive Care services in Central London.

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