

Number 28

## Compensation For Negligent Nursing Care

A favourite target for the media is the quality of nursing home care. Newspaper reports often seek to 'highlight' failings in care, disregarding the excellent care provided in many homes across the country.

As a result of this media attention there are increasing incidences of claims being made alleging poor quality or negligent care. Claims are made on one of two bases, either:

- a) On the basis that (as a matter of contract) the quality of the care provided was not of a standard expressly provided for under the contract for the resident's admission or to the quality that will be implied into all contracts by the Supply of Goods & Services Act, or
- b) The quality of the care was in breach of the duty to provide reasonable care such that the care was negligent.

### Reported Case

Notwithstanding the increase in allegations of this sort there is a dearth of reported case law on this subject and in particular the quantum of compensation payable.

A recent case<sup>1</sup> has reported the allegations made and quantum of the compensation.

**The facts:** The resident was admitted to the defendant nursing home from hospital having been admitted to hospital following a fall. She was mobilising well and appeared normal.

About a month later the staff suspected that she was suffering from a urinary tract infection. They arranged for a urine sample to be sent for analysis at the local hospital but, crucially, failed to chase up the results and failed to involve the resident's GP to prescribe antibiotics.

The resident's condition deteriorated and she was admitted to hospital by ambulance following a recent history of 48 hours severe vomiting, lethargy, confusion and hypertension. She was diagnosed as suffering from a severe urinary tract infection. Despite antibiotics being prescribed she continued to deteriorate, suffered respiratory impairment, systemic sepsis and died two days later.

**The claim:** The resident's estate brought a claim for damages for negligent care. Compensation was sought in respect of her pre-death pain and suffering based upon the poor handling of the suspected urinary tract infection and the failure to involve her GP.

**Quantum:** Compensation of £6,000 was paid. This consisted of approximately £2,000 in respect of funeral expenses and the remainder (£4,000) was for pain and suffering reflecting approximately three weeks from when the urinary tract infection was suspected up until the time of the deceased's death.

<sup>1</sup> K (deceased) –v- A Nursing Home 2005 (May) Healthcare Risk Report

CARE HOMES BRIEFING

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## Comment

It is interesting to see the level of compensation agreed, particularly the level of compensation for the alleged period of her pain and suffering which is often difficult to quantify because of the dearth of judicial guidance on this subject.

Care Home providers can expect claims of this sort to increase, particularly in response to claims for unpaid fees due from privately funded residents (or their estate).

**Andrew Parsons**  
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CARE HOMES BRIEFING

### OFT Report on Care Homes

The Office of Fair Trading have recently completed a 10 month study on pricing, access and complaints procedures in Care Homes. It is critical of the level of information provided in some cases and has called for a one stop shop to provide information to prospective residents and their families.

The OFT study again criticises the contracts provided to self-funded residents. It says these are often unfair or unclear about fee structures.

The OFT has commented on unfair terms in Care Homes contracts previously and has provided guidance on what terms could potentially be construed as unfair. This study serves to highlight this issue once more and operators should ensure that their contracts are up to date and reflect the latest guidance from the OFT.

If you would like your contracts reviewed for compliance with the OFT Guidance, please contact Andrew Parsons ([andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com)).

For more information on Care Home Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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