

Number 37

Care homes to become public authorities?

The Human Rights Act is expressed to apply to public authorities. However, a draft bill has now been placed before Parliament which seeks to extend the definition of public authorities to include any body that is regulated under the Care Standards Act. This would include all care homes who would then be susceptible to challenge under the Human Rights Act in respect of their care of residents. There is obviously ample scope for this to be used to fuel complaints by disgruntled residents and their families.

If enacted, the Bill would mean that care homes would need to comply with the following rights set out in the Human Rights Act, and would need to ensure that their staff were aware of the implications of the Act which has already had a significant impact on the way the NHS delivers services.

The rights are:

- Right to life
- Prohibition of inhuman and degrading treatment
- Prohibition of slavery enforced labour
- Right to liberty and security
- Right to a fair trial
- No Punishment without law
- Right to respect for private and family life
- Freedom of thought, conscience and religion

- Freedom of expression
- Freedom of assembly and association
- Right to marry
- Prohibition of discrimination
- Prohibition of abuse of rights
- Protection of property
- Right to education
- Right to free elections
- Abolition of the death penalty

The rights likely to impact on care homes are the right to a private and family life (and the implications that this has on transfer of residents, termination of residents contracts and restrictions on visiting for difficult relatives), and the prohibition on inhuman and degrading treatment which will no doubt be alleged in complaints about care.

The Bill also seeks to place a duty on the Food Standards Agency to improve the health, wellbeing and nutrition of the elderly and to provide further powers for local authorities to protect those in need of care and protection.

The Bill will obviously be subject to the normal parliamentary process and may not ultimately be passed. However, if care homes do become public authorities the scope for legal challenge will increase considerably.

Government announces shake-up of Inquest Procedure

The government have announced that they will be changing the current procedures for Inquests. Changes will include:

- Relatives will be able to ask for a second opinion on a “suspicious”¹
- Judges instead of Coroners will handle complex or controversial matters
- Suicide and child death Inquests can be held in private to reduce “pain and grief”
- A Chief Coroner for England and Wales will hear appeals against Coroners’ rulings
- Coroners will be given new powers to obtain evidence.

At the moment the information available is only outline and many of these proposals will require detailed legislation. Further briefings will be provided in due course, however, it would seem that Inquests are likely to become even more “legal” and those attending Inquests will need advice and representation.

GMC Guidance for Doctors in Management

The GMC has published new guidance for Doctors who act as Managers, as well as those who work in managed environments. Although the GMC most obviously regulates Doctors’ clinical practice, their guidance also provides standards and rules for Doctors who work in a management role. The guidance makes it plain that doctors remain responsible to the GMC for their actions even if someone other than a doctor could have performed the same role (and would in that circumstance not be subject to such regulation). The guidance expands the previous guidance on matters such as:

- Making sound decisions in difficult situations
- Managing resources and planning work to maximise benefits
- Understanding what is affordable and achievable.

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¹ Undefined death