

# Brunswicks' Healthcare Review

Volume 4 Issue 37  
16 September 2009



refreshingly modern, reassuringly traditional

## This week's article -

### 'You pay the piper – but the piper chooses the tune?'

This week Brunswicks' consultant Nancy Ritchie-Noakes considers the relationship between legal expense insurers and businesses who have insured their legal expenses.

Her advice is to carefully check what you have bought in exchange for the insurance premium.

To read the article [click here](#)

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## Parliament

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## Editorial

The past couple of weeks has marked an increase in the agitation of many in anticipation of the implementation of the new vetting and barring scheme introduced by the Protection of Vulnerable Groups Act 2006.

The legislation was, in part, the Government's response to the recommendations of Sir Michael Bichard who conducted the inquiry into the Soham murders.

However, in part (mostly, in my view) it was due to some poor ministerial decisions taken in relation to paedophiles who were employed in roles from which they ought to have been excluded.

At the time the Minister ultimately responsible for the errors of those around her was Ruth Kelly.

Readers will recall that in January 2006 it became apparent that Kelly's Department granted permission to Paul Reeve (cautioned

for viewing child pornography and he was on the sex offender's register) to work in a school – his, and a number of other sex offenders details had not been recorded on the Department's prohibited list, List 99. Rather than publicly apologising for the mistakes – mistakes will always occur – she said that there would be changes to the way the issue of barring people from the workforce would be dealt with.

This is the scheme we have as a consequence.

The system we had did need to be reviewed. There were, in my view, too many lists. All we need are three; the sex offenders list, a list of those excluded from working with children and a list of those excluded from working with vulnerable adults.

That could have been done in short order.

Too easy. What we now have is an over-blown reaction to a risk perceived to be greater than it is.

Ms Kelly should have publically apologised in the House of Commons for the errors of her Department, and, if she was so inclined (it appears she wasn't, because we are landed with this new system) offer her resignation!

There was a national 12 week consultation on the vetting and barring scheme beginning 22.06.2007

Interestingly, the recent clamour for a less draconian approach has seen Kelly's successor, Ed Balls, announce a review of the scheme and Sir Roger Singleton, chairman of ISA, has called for people to "*calm down*" and consider the issue "*rationality*".

Bichard thinks that the Government has gone too far.

Clearly many agree with him.



## Abuse/Dignity

### 1. Vulnerable babies call rejected

6 September 2009 – BBC News

The Government has dismissed calls from Barnardos, the children's charity, to take at-risk children into care earlier.

Barnardos chief Martin Narey said it was better to remove vulnerable babies soon after birth, than deal with resulting complex behavioural problems later, after the trial of two young brothers found guilty of a vicious attack on two other boys.

But Children's Secretary Ed Balls said removing babies born to problem parents should not be a first resort.

[For full report click here](#)

### 2. Increase in adult abuse

10 September 2009 Police Professional

New figures suggest that the number of adults in Edinburgh who are victims of verbal and sexual abuse, or financial exploitation, has increased by about 70% in the last six months taking the number to more than 400.

### 3. Vetting & Barring ...

11 September 2009 BBC Radio 4, Today

07:10 hrs - John O'Brien, civil servant seeks to answer probing questions posed by John Humphries.

08:10 hrs – Children's Minister, Baroness Delyth Morgan and Bob Reitemeier, Children's Society respond to further questioning by John Humphries.

Listen to each until 18.09.09.

### 4. Increase in adult abuse

10 September 2009 Police Professional

New figures suggest that the number of adults in Edinburgh who are victims of verbal and sexual abuse, or financial exploitation, has increased by about 70% in the last six months taking the number to more than 400.

A new campaign, 'It's In Your Hands', has been launched in Edinburgh to make people more aware of those adults who may be at most risk of attack.

### 5. Parents who take children to clubs face crime checks

11 September 2009 The Times

A summary of the independent safeguarding scheme due to become operational in October 2009.

### 6. Big Brother scheme has gone too far says Soham report chief

12 September 2009 Daily Mail

The world's largest vetting scheme is due to become fully operational next month; ahead, there has been growing criticism of the extent of the scheme. The latest voice to join that criticism is that of Sir Michael Bichard who conducted the inquiry into the Soham murders of Holly Wells and Jessica Chapman.

Ed. Much of the criticism of the past few weeks has been ill-informed and mistaken. However, it is correct that this new system (introduced in my view because Ruth Kelly was seemingly unable to accept and apologise for an error made in her name) would not prevent another Soham.

### 7. What kind of country has this become when we are ALL treated as potential paedophiles

12 September 2009 Daily Mail

A N Wilson writes in the Saturday Essay about the soon to be operation Independent Safeguarding Authority and the corrosive effect, as he sees it, of being over protective of children.

### 8. We are all child abusers now – until we can prove otherwise

13 September 2009 The Sunday Times

Minette Marrin points out that risk is "the heavy price of freedom" she points out that adults are "no longer innocent until proven guilty but guilty until certified innocent by the state". She opines that it will become more difficult for parents to ask for help and more difficult to offer it.

### 9. Safeguarding Vulnerable Groups Act September 2009 Care Management Matters

Jonny Landau takes a look at the Independent Safeguarding Authority using a Q&A technique.

### 10. Comparing Care Software

September 2009 Care Management Matters

A look at nine competing software packages in price and performance:

Blue Parrot Software  
Care Blox – First Software Solutions  
Plan2Care – Standex Systems  
CareSys – Integrated Support Systems  
COA Solutions  
CoolCare and StaffTrack – CoolBlue  
HET Software  
Saturn 3 Cerrus Ltd  
Select Software UK Ltd

## Business News

### Is the sun setting on Sunrise?

#### September 2009 Care Management Matters

See item 16 under Care Homes

### 11. Healthcare Locums profit up 64 %

#### 07 September 2009 Reuters

Healthcare Locums reported a 64% rise in first-half pretax profit helped by strong global demand for healthcare staff, and said it was confident about the rest of 2009 and beyond.

The company, which supplies staff to hospitals and social services, raised its interim dividend to 1.6 pence from 0.8 pence.

For the half-year ended June 30, the company posted a pretax profit of £9.5m, compared with £5.8m a year earlier. Revenue rose 8.5% to £86.5m. Healthcare Locum also said Chief Operating Officer Andy McRae had resigned, and he would be replaced by former Finance Director Mo Dedat.

### 12. Mears Group PLC Social Housing Division Senior Management Appointment

#### 07 September 2009

Mears announced Graham Eden will be joining as Managing Director of Mears' largest Social Housing division (London region). He will be joining the Group in October 2009.

Mr Eden was most recently Chief Operating Officer of Morrison Plc's Social Housing and Facilities Ser-

vices business, having worked in the sector for 29 years including the last 6 years with Morrison.

Bob Holt, Chief Executive of Mears Group, said: *"It has always been a focus of Mears to seek to strengthen the senior management team to ensure that we have in place a structure that can plan for and manage future growth. We have led the social housing sector for the past ten years and Graham's appointment is a tremendous accolade to the strength of our social housing brand that the best operators in the market have a desire to join the best service provider."*

### 13. Funding for MHA

#### September 2009 Care Management Matters

MHA Care Group has secured £20m from Barclays Bank to expand care services to older people.

### 14. 60 seconds with Paul Moran

#### September 2009 Care Management Matters

Former head of healthcare at Bank of Ireland has emerged from a long period of silence as chief executive of P J Care Limited.

## Care Homes

### 15. How to pay for care home fees

#### 11 September 2009 Daily Mail

A look at a variety of methods of paying for fees, including 'immediate needs annuities' from Partnership and Axa Sun Life's Lifetime Care.

### 16. Is the sun setting on Sunrise?

#### September 2009 Care Management Matters

A review of the current business model operated by Sunrise Senior Living, its approach to UK registration, US litigation and the market turmoil – can it survive?

Jon Gooding, chief executive of Retirement Villages Ltd., Keith Cockell, MD English Care Villages and Brunswicks' Keith Lewin comment on the company and the issues which it faces.

## Case Reports

## Law Reports

### 17. W Primary Care Trust v TB & Others

The Court of Protection, Mr Justice Wood, distinguished between hospitals and care homes for the purposes of Deprivation of Liberty Safeguards – the meaning of a 'mental health patient' is a person "accommodated in a hospital for the purposes of being given medical treatment for mental disorder" it does not include a care home registered under Part II Care Standards Act 2000.

## Disciplinary cases

### 18. Nurse struck off for mistreatment

#### 8 September 2009 – BBC News

Lynn Marshall, a former nurse from Angus who grabbed a patient by the arm and dragged him to a bed has been struck off the nursing register.

She manhandled Patient X while working as a community nurse for NHS Tayside Dundee Community

Health Partnership in 2006.

The Nursing and Midwifery Council (NMC) heard she had also administered drugs incorrectly to patients and ruled her actions had the potential to cause patient harm.

[For full report click here](#)

## 19. Paramedic struck off for misconduct

**10 September 2009 Health Professions Council**

Paramedic, Troy Hall has been struck off the HPC Register for making fraudulent entries in a controlled drugs register, being in possession of controlled drugs and breaching his contract by taking secondary employment whilst working with the Great Western Ambulance Service.

Hall was neither present nor represented at the hearing.

## 20. Fatal overdose GP 'irresponsible'

**11 September 2009 – BBC News**

A Cumbrian GP faces being struck off after been deemed "irresponsible" in his care of two patients who he injected with six times the correct dose of painkiller - killing one.

The General Medical Council (GMC) said Dr Michael Stevenson's actions fell "far below" expected standards.

[For full report click here](#)

## Cases in the news

### 21. Home neglect fears led family to inquest call

**04 September 2009 Wakefield Express**

An inquest undertaken following family pressure heard that while they accepted the death of Stanley

Whittles was due to natural causes but feared that neglect contributed.

The expert, tissue viability nurse Joanne Newbold, said that she found reasons to criticise all health professionals involved in Mr Whittles care including the hospital and district nurses. The inquest continues.

## 22. Social worker whistle blowing going unheard, GSCC poll finds

**9 September 2009 – GSCC**

A poll by the General Social Care Council (GSCC) shows that employers are failing to take action when social workers report concerns or barriers to their work.

Nearly 50% of respondents to the poll in Social Work Connections, the GSCC's newsletter for social workers and students, said that when they had reported operational difficulties or concerns about a colleague, their employer had not taken action. Similar numbers said they did not feel confident that their employer would take action if they spoke up.

*For full report go to <http://www.gsc.org.uk/News+and+events/Media+releases/9+September+news+release.htm>*

## Children

### 23. Rocking Horse Nursery closed and staff arrested after children sustain unexplained injuries

**10 September 2009 – Nursery World**

A Nottingham-based private day nursery has been closed down and two members of staff arrested after three children suffered unexplained fractures.

[For full report click here](#)

## 24. Checks on children's club drivers

**11 September 2009 – BBC News**

### Parent driver checks prompt row

**11 September 2009 – BBC News**

New rules mean that parents who regularly drive children for sports or social clubs at the request of school or club will have to be vetted or face fines of up to £5,000.

The Home Office has confirmed that they will fall under the scope of the Vetting and Barring Scheme, Along with parents who host foreign exchange students.

[For full report click here](#)

[For 2<sup>nd</sup> report click here](#)

## 25. Baby Peter council sent child to live in home used by bomber

**12 September 2009 Daily Mail**

Haringey council placed a child in the foster care of relatives of Abdulla Ahmed Ali, now convicted of terrorist plotting.

Ed. The council properly points out that the foster carers have not been charged with any offence.

## Conferences & Courses

To follow next week

## Consultations

### 26. Shaping the Future of Care Together

**The Green Paper on the Reform of Adult Care and Support in England: join the debate**

On 14.07.09 the Government launched the Green Paper 'Shaping the Future of Care Together' which contains ideas on ways the care and support system

in England can be improved, both in the way it is delivered and funded. The future system should be fairer, simple to understand and more affordable for everyone.

There will now be a period of public consultation until the 13.11.09. During this time the Government will be running a series of local events across the country at which the issues raised in the Green Paper will be discussed in detail.

Once the consultation has finished, the Government will publish the results and will set up a national leadership group, bringing together the leading experts and organisations across care and support to drive forward changes and to resolve issues where clear differences remain.

The Government will publish a White Paper on care and support in 2010, with detailed proposals for implementing a new National Care Service offering care and support for everyone.

### Join the big care debate

Everyone with an interest in the future of care and support is invited to join Ministers, Department of Health officials and other key stakeholders at the event held closest to you to debate the issues and air your views on the proposals outlined in the Green Paper.

Below is the list of all the regional events.

### North West

Carlisle, Thursday 17 September 2009: 13.00 - 16.30  
Carlisle, Thursday 17 September 2009: 17.00 - 20.30  
Manchester, Friday 18 September 2009: 13.00 - 16.30  
Manchester, Saturday 19 September 2009: 09.30 -

13.00

### East of England

Bedford, Thursday 24 September 2009: 13.00 - 16.30  
Bedford, Thursday 24 September 2009: 17.00 - 20.30  
Norwich, Friday 25 September 2009: 13.00 - 16.30  
Norwich, Saturday 26 September 2009: 09.30 - 13.00  
Yorkshire & The Humber  
Hull, Thursday 1 October 2009: 13.00 - 16.30  
Hull, Thursday 1 October 2009: 17.00 - 20.30  
Leeds, Friday 2 October 2009: 13.00 - 16.30  
Leeds, Saturday 3 October 2009: 09.30 - 13.00

### South West

Exeter, Thursday 8 October 2009: 13.00 - 16.30  
Exeter, Thursday 8 October 2009: 17.00 - 20.30  
Bournemouth, Friday 9 October 2009: 13.00 - 16.30  
Bournemouth, Saturday 10 October 2009: 09.30 - 13.00

### London

London, Thursday 15 October 2009: 13.00 - 16.30  
London, Thursday 15 October 2009: 17.00 - 20.30  
London, Friday 16 October 2009: 13.00 - 16.30  
London, Saturday 17 October 2009: 09.30 - 13.00

Follow the link below to register your place at one of the events:

[www.coievents.co.uk/careandsupport](http://www.coievents.co.uk/careandsupport) .

Alternatively, telephone 020 7261 8400 or email [careandsupport@coi.gsi.gov.uk](mailto:careandsupport@coi.gsi.gov.uk) .

If you are unable to attend one of the events, you are invited to contribute your thoughts and views on the Green Paper online at

[www.careandsupport.direct.gov.uk](http://www.careandsupport.direct.gov.uk)

### 27. Autism Strategy Consultation

There are some fantastic services out there for people with Autistic Spectrum Conditions. We need to ensure that excellent services are the rule and not the

exception. Many people with autism are undiagnosed, misunderstood and looking for help. There must be good services available everywhere and for everyone.

Of course, it is important to debate issues as important as this in Parliament, but the real answers are going to come from people with autism, their families and their carers. That is why the Government has launched a consultation for the first national strategy for adults in England with autism spectrum conditions.

The consultation will collect views, experiences and examples to inform this nationwide blue print which will ensure that every child and adult with autism, as well as the people around them, get the support they deserve.

The consultation will run until 15<sup>th</sup> September. To find out more and to respond to the consultation, go to:

<http://adultaautismstrategy.dialoguebydesign.net>, email [autism@dh.gsi.gov.uk](mailto:autism@dh.gsi.gov.uk) or call: **020 7861 2877** for more information. The Government are also encouraging local organisations to organise their own events: a toolkit will soon be available to be downloaded from the Department of Health website. For more information please email: [adultaautismstrategy@opinionleader.co.uk](mailto:adultaautismstrategy@opinionleader.co.uk)

[dh.gsi.gov.uk](http://dh.gsi.gov.uk) or call: **020 7861 2877** for more information. The Government are also encouraging local organisations to organise their own events: a toolkit will soon be available to be downloaded from the Department of Health website. For more information please email: [adultaautismstrategy@opinionleader.co.uk](mailto:adultaautismstrategy@opinionleader.co.uk)

### 28. Inspection of Children's Centres: Consultation

**Closing Date: 18 September 2009**

Consultation seeking views on proposals for inspecting children's centres.

[For full report click here](#)

## 29. Consultation on the De-authorisation of NHS Foundation Trusts

**Closing Date: 18 September 2009**

Consultation seeking views on proposed changes that will enable the independent regulator of NHS foundation trusts and the government to de-authorise failing foundation trusts and remove foundation status.

[For full consultation click here](#)

## 30. Health Protection Regulations: A consultation

**Closing Date: 30 September 2009**

A consultation wanting views on draft health protection regulations to be made under the amended Public Health (Control of Disease) Act 1984 to continue the process of modernising health protection legislation in England.

[For full report click here](#)

## 31. Essence of Care: A consultation on the reviewed original benchmarks

**Closing Date: 2 October 2009**

A consultation looking for views on all of the material belonging to essence of care, a versatile and structured system of benchmarks widely used in various health settings. This will help ensure the system continues to reflect best practice.

[For full consultation click here](#)

## 32. Review of the Children, Young People and Families Grant Programme: Consultation

**Closing Date: 5 October 2009**

A consultation seeking the views of the third sector and any other interested parties on the future approach and shape of the children, young people and families grant programme.

*For full report go to <http://www.dcsf.gov.uk/consultations/>*

*index.cfm?*

*action=*

*consultationDetails&consultationId=1612&external=no&menu=1*

## 33. Essence of care: a consultation on a new benchmark on pain

**Closing Date: 12 October 2009**

Essence of Care is a system of benchmarks widely used in various health settings. Essence of Care benchmarks are developed by stakeholders from focus groups that will use them. A focus group is made up of carers, patients and professionals have met to review the benchmarks and this has led to a proposed new benchmark for pain management.

[For full consultation click here](#)

## 34. New Horizons: Towards a shared vision for mental health – Consultation

**Closing Date: 15 October 2009**

A consultation wanting views on the Government's plans to target the root causes of mental illness and support the local development of higher quality, more personalised services.

[For full consultation click here](#)

## 35. Serious Case Reviews: Revised chapter 8 of working together to safeguard children - Consultation

**Closing Date: 23 October 2009**

Consultation seeks views on revised guidance that aims to improve the quality, consistency and impact of serious case reviews and is directed in particular at local safeguarding children boards that by law undertake a serious case review whenever a child dies or is seriously injured and abuse or neglect is known or suspected to be a factor.

[For full consultation click here](#)

## 36. Proposals to Complete the Transposition of the Framework Directive on Health and Safety of Workers 89/391/EEC into the Regulatory Reform (Fire Safety) Order 2005: Consultation

**Closing Date: 6 October 2009**

Consultation seeking views on an omission that has been detected in the transposition of the Framework Directive on Health and Safety of Workers into the Regulatory Reform (Fire Safety) Order 2005.

*For full report go to <http://www.communities.gov.uk/publications/fire/consultationhealthsafetyrro>*

## 37. Delivering Excellent and Effective Transition to Life Long Services for People with Autism

**Central London – Tuesday 6 October 2009**

This conference will explore the themes of the Adult Autism Strategy and the initial response from consultation on the strategy, managing the effective transition to adult services, developing effective care pathways for people with autism, secure care and the development of person centered planning. This timely and focused conference will offer the opportunity not only to listen to the distinguished panel of speakers but to join in an interactive panel discussion enabling delegates to interact with one another and with the speakers.

For further details please contact Irene Lo Coco on 020 7923 5390 or e-mail [irene@laingbuisson.co.uk](mailto:irene@laingbuisson.co.uk)  
View the [conference brochure](#) or [book online](#)

## 38. Shaping the future of care together (Green Paper)

**Closing Date: 31 October 2009**

The much delayed Green Paper sets out a vision for a new care and support system. It identifies the challenges posed to the current funding system by

the increasing population of older people and the need for radical reform, to develop a National Care Service that is fair, simple and affordable for everyone.

The Green Paper sets out a number of consultation questions and seeks views about how Government can make its vision a reality and develop a care and support system fit for the 21st century. The consultation runs from 14 July 2009 to 31 October 2009. A White Paper is expected next year.

*The Green Paper can be downloaded:*

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_102338](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_102338)

## 39. NICE: Current consultations

*To browse through consultations go to*

<http://www.nice.org.uk/page.aspx?=&consultations.current>

## Care Quality Commission, CSSIW & Scottish Care Commission

Nothing to report

## Dementia

### 40. Infections 'speed memory loss'

7 September 2009 – BBC News

UK researchers have found that infections outside the brain may speed memory decline in Alzheimer's disease.

A study of 222 elderly people with Alzheimer's revealed that they found that getting infections in

places like the chest or urinary tract could double memory loss.

[For full report click here](#)

## Domiciliary Care

### 41. Call for views and information: Investigation into home based social care for older Londoners

August 2009 London Assembly, Chair Health and Public Services Committee

"The London Assembly's Health and Public Services Committee is investigating home based social care services for older Londoners, and I am writing to you to ask for your views on this subject.

From our initial scoping work, we know that Londoners can face real difficulties in accessing home care services that meet their needs. At the same time, service providers and funders are facing immense challenges such as growing demands on care services, the rising costs of care, and pressures on public spending. We have therefore decided to investigate the problems that older Londoners face in accessing home care, as well as the problems faced by care providers and funders in delivering home care.

For this investigation we are defining older people as those aged 65 and above, and we are defining home care services as help older people receive in their own homes with personal care and domestic tasks. We are not focusing on services provided by the NHS, or services outside the home such as day centres, except in terms of how well these services are linked to home based social care services. More information about the project can be found at

[http://www.london.gov.uk/assembly/health\\_ps/2009/jul22/item06.pdf](http://www.london.gov.uk/assembly/health_ps/2009/jul22/item06.pdf)

We would be particularly interested to get your response to some or all of the following questions:

What difficulties do older Londoners face in accessing home care services that meet their needs? How could these difficulties be tackled?

What good practice exists in providing home care services that meet older people's needs?

What challenges are London's service providers and funders facing in providing home care services for older people? How can these challenges be met?

What impact do you think the proposals in the new Green Paper on long-term care could have on home care services for older Londoners?

What is the current role of the Mayor in terms of care and support for older Londoners? Is there anything else the Mayor should do to help ensure older Londoners can access care services that meet their needs?

How effective is joint working between home care services and other services such as NHS services for older people?

**Please send your response to Michael Cheeseman, Secretariat, City Hall, The Queen's Walk, London SE1 2AA or by email: [Healthandpublicservices@london.gov.uk](mailto:Healthandpublicservices@london.gov.uk) The deadline for responses is **Monday 28 September**. You can also call Michael on 020 7983 4510 or email if you have any queries about the investigation"**

The London Assembly intends to publish the responses we receive on its website, unless they are marked as confidential, or there is a legal reason for non-publication. However, it may be required to send out a copy of your written response if a member of the public or the media request it under the Freedom of Information Act 2000, even if it has been marked as confidential.

## Ireland, Scotland & Wales

### Ireland

**Nothing to report**

### Scotland

#### **42. Reports of adult abuse increase**

**7 September 2009 – BBC News**

There has been a 70% increase in six months of adults falling victim to verbal, sexual abuse and financial exploitation in Edinburgh.

Figures from December 2008 to May 2009 show 409 adults were referred to support services compared with 239 from June 2008 to November 2008.

It was revealed as a campaign called It's In Your Hands, urges people to be more aware of adults who may be at risk.

[For full report click here](#)

#### **43. Hospital patient safety improving**

**9 September 2009 – BBC News**

The Scottish Government has announced that small changes to the way patients are cared for in hospital are having a significant impact on infection rates.

Hospitals are being urged to adopt stricter treatment regimes as a way of cutting hospital deaths by 15% and "adverse incidents" by 30%.

[For full report click here](#)

### Wales

#### **44. Action on Elder Abuse damns Welsh adult protection system**

**Charity's report into case of Alzheimer's sufferer indicts regulator, Vale of Glamorgan Council and older people's commissioner**

**4 September 2009 – Community Care**

Action on Elder Abuse has condemned the Welsh system for protecting vulnerable adults in a report on the case of a former social services manager with Alzheimer's disease.

The charity initiated an investigation into the case of Derek Parker, who died last November, and includes attacks on regulator the Care and Social Services Inspectorate Wales, adult protection services in the Vale of Glamorgan Council and the Older People's Commissioner for Wales.

[For full report click here](#)

#### **45. Welsh government sets out care commissioning standards**

**Draft guidance issued for consultation on improving social care commissioning**

**8 September 2009 – Community Care**

The Welsh government has issued draft guidance to assist local authorities with improving social care commissioning.

[For full report click here](#)

Ed. reported in this publication last week - see Volume 4, Issue 36, item 2.

#### **46. Elderly tenant lay dead for days**

**10 September 2009 – BBC News**

An elderly man lay undiscovered for up to two weeks after his death at De Clare Court in Haverfordwest. The incident has led to a review of services at the complex where he lived.

Mr Tullet, who was 78 had no regular visitors and was not receiving care, died sometime between mid-August and 1 September.

[For full report click here](#)

## Learning Disabilities

#### **47. Steeton Parish Council**

**10 September 2009 Keighley News**

Healthcare manager, Sean O'Hanrahan the Willows Independent Hospital, in Steeton has made an impassioned plea to Steeton with Eastburn Parish Council for compassion and understanding as four mental health care patients are moved into a house near Steeton Primary School.

The house, Ghyllside, operated by Craegmoor Healthcare will be opening on 05.10.09 and staffed 24 hours a day. The service users are ready to move into a bonafide community living setting. Mr O'Hanrahan said "We need to move these patients into a community setting to allow them to develop independent living skills in the community."

Chairman of the council, Cllr David Mullen, said: "Since you (Mr O'Hanrahan) have arrived things really have improved but people are worried that these people are going to be let loose into the community and left to their own devices — but that is not going to be the case is it? They are going to be supported and supervised."

## 48. Hereford art exhibition for local people with learning disabilities

**11 September 2009 Craegmoor Healthcare**

A Craegmoor service in Herefordshire which supports people with learning disabilities has teamed up with Hereford Museum and Art Gallery to showcase the artistic talent of the people using the service in a new exhibition that opened this week.

Craegmoor – which works with over 4,000 people with learning disabilities, complex needs and mental health illnesses, as well as older people, across the UK – supported individuals who live at the company's Castle Farm service in Bartestree, Herefordshire, to attend weekly art classes with Alison Barter of local art and design company A and S Studios.

## 49. You're not intelligent enough to marry, bride told

**12 September 2009 Daily Mail**

Social workers in Scotland have intervened in the wedding plans of 17 yr old Kerry Robertson who says she is not mentally competent to marry. The registrar at Dunfermline Register Office has written to confirm it will not sanction the marriage after Fife Council wrote objecting.

## Legislation Update

### 50. No. 2376 The Mental Health and Mental Capacity (Advocacy) Amendment (England) Regulations 2009

**7 September 2009 – OPSI**

[For full legislation click here](#)

### 51. Pandemic influenza and the Mental Health Act 1983: consultation on proposed changes to the Mental Health Act 1983 and its associated secondary legislation

See in this issue of BHCR, 'Mental Health', item 55.

## Mental Capacity

### 52. Information sharing and mental health 9 September 2009 – DoH

Guidance setting out some issues relating to the exchange of information between mental health trusts and outside organisations and individuals. It sets out when, why and how information can safely be exchanged for the benefit of the individual and the public.

[For full report click here](#)

## Mental Health

### 53. W Primary Care Trust v TB & Others

The Court of Protection, Mr Justice Wood, distinguished between hospitals and care homes for the purposes of Deprivation of Liberty Safeguards – the meaning of a 'mental health patient' is a person "accommodated in a hospital for the purposes of being given medical treatment for mental disorder" it does not include a care home registered under Part II Care Standards Act 2000.

### 54. Information sharing and mental health 09 September 2009 Department of Health

This guidance sets out some of the issues relating to the exchange of information between mental health trusts and outside organisations and individuals. It sets out when, why and how information can safely

be exchanged for the benefit of the individual and the public.

Full information from:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_104949](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_104949)

### 55. Pandemic influenza and the Mental Health Act 1983: consultation on proposed changes to the Mental Health Act 1983 and its associated secondary legislation

**10 September 2009 Department of Health**

You are invited to comment on proposals for temporary amendments to the Mental Health Act 1983 which may be required in the event of the severe staff shortages that may be expected during an influenza pandemic.

Full info available from:

[http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH\\_103683](http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_103683)

## Miscellaneous

### 56. Review of the Medicines and Healthcare products Regulatory Authority (MHRA)

**8 September 2009 – DoH**

The Department of Health has a responsibility to carry out reviews of its agencies periodically to ensure they are fit for purpose and are operating in the most efficient way and therefore a review of the Medicines and Healthcare products Regulatory Agency (MHRA) was carried out between October 2008 and March 2009 and the report and recommendations can be found below.

[For full report click here](#)

## 57. Secret filming nurse up for award

9 September 2009 – BBC News

Margaret Haywood, the nurse who was struck off the register for secretly filming care for the elderly at a Brighton hospital has been nominated for a national award.

She has been shortlisted for the Nursing Standard's Patient's Choice Award.

[For full report click here](#)

## 58. The dangers of internet drugs?

9 September 2009 – BBC News

Views expressed by Professor Steve Field, Chairman of the Royal College of GPs of the dangers of buying internet drugs.

[For full report click here](#)

## 59. Failings found in child services

9 September 2009 – BBC News

Ofsted has found serious failings in child protection services at three councils in Yorkshire have been uncovered during an inspection.

The watchdog found social workers in Rotherham had such a wide range of work to do that it undermined their ability to protect vulnerable children.

[For full report click here](#)

## 60. Ex-CSCI chief Paul Snell to take temporary charge of GSCC

### Former chief inspector will become acting chief executive at workforce regulator

9 September 2009 – Community Care

Paul Snell, former Commission for Social Care Inspection chief inspector, has been appointed acting chief executive of the General Social Care Council.

He will replace Paul Philip on 01.10.09.

[For full report click here](#)

## 61. It all started with us

09 September 2009 The Times

A look at the 999 emergency services which were established after a fatal fire in Wimpole Street, London, on 10.11.1935.

## 62. Pandemic influenza paediatric clinical pathways: information for health care professionals working in primary care and the community

10 September 2009 – DoH

Guidance which should be used with the adult modules and provides additional paediatric information suitable for clinical staff in locations where acute medical care may be provided to children.

[For full report click here](#)

## 63. How care organisations see the proposals in the green paper

09 September 2009 Society Guardian

Martin Green, Chief Executive of ECCA, was one of the experts from the social care sector who gave his view on the proposals in the Green Paper in *Society-Guardian*. Mr Green argues that “*at the moment the resources are not there to do the job. At the same time people's expectations are constantly rising around things like personalisation and bespoke services... If we want this degree of personalisation, we have to provide the resources... I lean towards a national rather than a decentralised system because I'm so fed up with local authorities' failure to deliver fairness, clarity and consistency. The inconsistencies between one authority and another are never justified or explained... The needs assessment should actually be determined by need, not age*”.

<http://www.guardian.co.uk/careandsupportreform/vox-pop>

Ed. Thanks to ECCA for drawing this item to our attention.

## 64. Critical care strategy: managing the H1N1 flu pandemic (September 2009)

10 September 2009 – DoH

Strategy setting the proposed approach by the Department of Health to managing critical care during the swine flu pandemic by increasing the number of available critical care beds and preventing people becoming seriously ill as a result of swine flu.

[For full report click here](#)

## 65. Exercise Prometheus

10 September 2009 Department of Health

Exercise Prometheus is intended for the social care sector to assess and develop its resilience planning in readiness for a second wave of the pandemic swine flu. Designed as an 'off the shelf' package primarily for use by local authorities in partnership with their local providers of social care, the exercise has been developed by the Health Protection Agency from experience gained in previous pandemic influenza exercises.

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_104969Download\\_guidance\\_handbook\\_\(PDF\\_129K\)](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_104969Download_guidance_handbook_(PDF_129K))

[Download introductory PowerPoint presentation \(PPT, 209K\)](#)

[Download modeling spreadsheet \(XLS, 45K\)](#)

[Download scenario and questions \(PDF, 140K\)](#)

[Download lessons identified template \(DOC, 220K\)](#)

**66. A(H1N1) swine influenza: whole-systems strategy for managing critical care needs relating to swine flu - letter from the National Director of NHS Flu Resilience**

**10 September 2009 – DoH**

A letter to the Secretary of State on NHS critical care capacity and plans for increasing this to respond to increased demand during a pandemic.

[For full report click here](#)

**67. Managing critical care needs related to swine flu - letter from the Chief Medical Officer**

**10 September 2009 – DoH**

A letter from the Chief Medical Officer on the critical care strategy for managing the H1N1 flu pandemic.

[For full report click here](#)

**68. Your health, your way: a guide to long term conditions and self care - communications toolkit**

**11 September 2009 – DoH**

A toolkit providing all of the assets and artwork to enable you to implement a communications campaign at a local level.

[For full report click here](#)

**69. Top judge: I sympathise over assisted suicide**

**11 September 2009 The Times**

Lord Phillips president of the new Supreme Court has expressed what he says is a personal view that he has “*enormous sympathy with anyone who finds themselves facing quite hideous termination of their life as a result of one of these horrible diseases...*”

**70. Guidance for doctors**

**11 September 2009 The Times, Letters to the Editor**

Prof. Jim McKillop, Chairman of Undergraduate Board GMC, says The Times report on the undergraduate training of doctors was not entirely correct and refers readers to [www.gmc-uk.org/education/documents/GMC\\_TD\\_2009.pdf](http://www.gmc-uk.org/education/documents/GMC_TD_2009.pdf) for the full proposals.

**71. Thalidomide victim to go on hunger strike**

**13 September 2009 The Sunday Times**

Liverpool man Gary Skyner who offers motivational speaker and trainer announced that he and his mother are to go on hunger strike in protest at the Government's refusal to pay compensation to thalidomiders whose needs have increased unexpectedly as they age.

**72. Restraint – increased regulatory clarity**

**September 2009 Care Management Matters**

Peter Grose writes about the move by the state towards express recognition of restraint and setting out when and how. However, aspects of the CQC approach are problematic. For more information, see CQC draft guidance.

**73. Social care in England through the ages**

**September 2009 Care Management Matters**

Not quite through the ages, but, from the 1980s – useful for people new to the sector, or as a reminder, as if we need it, of the amount of change over the past 25 years.

## NHS

**74. Critical care flu planning 'weak'**

**8 September 2009 – BBC News**

The Conservative party has said that critical care is the weak link in the government's swine flu emergency plans.

Freedom of Information replies from 80% of hospitals in England show that intensive care units were already under pressure before the pandemic.

[For full report click here](#)

**75. National IT System for the NHS**

**07 September 2009 E-Health Insider**

The Conservative Party last month set out proposals to dismantle much of the planned centralised IT system for the NHS, including a national database of patient records. The proposals followed the publication of the independent review of health and social care IT, led by Dr Glyn Hayes. The Conservatives also floated plans for patients to be able to use commercial personal health record platforms, such as Microsoft Health Vault and Google Health.

**76. Bill Moyes tells foundation trusts to 'refuse to jump' to DH demands**

**08 September 2009 Health Service Journal**

Bill Moyes chair of Monitor which regulates foundation trusts has told them defend their independence by “*refusing to jump*” in response to Department of Health demands.

**77. Microsoft asks NHS what next for its EwA**

**08 September 2009 E-Health Insider**

Microsoft is running a consultation to ask NHS IT professionals what they want to see in a future Enterprise wide Agreement between the NHS and the company.

## 78. 'Lying down' NHS staff suspended

9 September 2009 – BBC News

Staff at Swindon's Great Western Hospital could be dismissed after they posted online pictures of themselves taking part in the 'Lying Down Game'.

Seven staff have been suspended for their part in the game, played in mid August.

[For full report click here](#)

## 79. HSJ Special Issue: Responding to the Cost-Cutting Challenge

09 September 2009 Health Service Journal

This week's HSJ presents an in-depth examination of the future of the health service in light of looming spending cuts.

## 80. Acute trust mergers expected to increase

09 September 2009 Health Service Journal

The co-operation and competition panel is expecting a surge in cases evaluating the costs and benefits of acute trust mergers, says its director Andrew Taylor.

## 81. Further drop in NHS infections

10 September 2009 – BBC News

New figures show that the number of MRSA infections in hospitals in England has fallen by 40% compared with the same period last year.

[For full report click here](#)

## 82. UK 'close' to winning flu fight

10 September 2009 – BBC News

Chief Medical Officer, Sir Liam Donaldson, has said that the UK is "tantalisingly" close to winning the battle against swine flu.

He explained while past pandemics claimed tens of thousands of lives, the death toll for the current one was being kept relatively low, but warned he was still

expecting a surge of cases during the autumn and winter months.

[For full report click here](#)

## 83. Michael Dixon: NHS 'must focus on primary care' in recession

10 September 2009 Health Service Journal

NHS Alliance chairman, Michael Dixon, said the NHS will need to shift the focus of resources to primary care "They need to work harder to re-engage frontline clinicians with the needs of the wider NHS, which go way beyond individual consultations with their patients."

*"This will only happen if the government allows a greater degree of local accountability, moves care closer to patients and reduces the use of expensive technology".*

## 84. NHS cost-cutting: how to save £20bn by 2014

10 September 2009 Health Service Journal

The McKinsey report sets out a range of advice to enable NHS organisations to achieve suggested savings.

- Reduce the tariff to enable strategic health authorities and PCTs to gain efficiency savings
  - PCTs to renegotiate GP and provider arm contracts
- Compress the broad range of [productivity](#) among [GPs](#). The least productive GPs have only 77 appointments per week, while the average is 126.
- Stop/reduce elective procedures that are ineffective (e.g. tonsillectomy), cosmetic (e.g. tattoo removal), have a narrow margin between risk and benefit (e.g. knee joint surgery) or where other interventions should be tried first (e.g. hysterectomy for

non cancerous heavy menstrual bleeding)

- Reduce routine referrals to outpatient appointments
  - Reduce variability in outpatient referrals
  - Increase nurses' patient facing time.
  - Review how much of their time nurses spend with patients. It is said that 15 mins of every 25 minutes nurses spend with patients is on "physical care" as opposed to "psychosocial care".
  - Increase clinical productivity. The least productive 10% of doctors and nurses see just 20% of the patients seen by the most productive 10%.
  - Increase the rate of patients treated as day cases.
  - Reduce the variation in prescribing by PCTs.
  - Reduce spending on supplies by £1.9bn. For example, GP supplies could be 15% cheaper if they used national procurement contracts and the NHS Purchasing and Supply Agency.
- Don't waste NHS space. Spare property could be sold for £8.3bn. Underused space should be taken out of use which would save £400m on heating and maintenance.

## 85. Labour's O'Brien: NHS safe in our hands

10 September 2009 E-Health Insider

Interesting times; having been told that DH would be spared deep spending cuts, Ministers now find both the Chancellor and the opposition auditioning for Mack the Knife. Even so, as E-Health Insider reports, it would be encouraging to see the Minister responsible for NHS IT a little better briefed on his subject, and how it might contribute to those magical "efficiencies."

Mike O'Brien, the relevant Minister, and his 'stumbles' matter because the coming financial restrictions could

have two broad impacts on NHS IT departments:

1. either they could find themselves in the firing line as trusts look to protect frontline services; or
2. they could find themselves taking on a more strategic role, facilitating change.

Top level leadership is needed now to steer trusts in the right direction and to preserve a focus on clinical and not just business IT. Mr O'Brien will need to raise his game.

## **86. We will limit spending on the NHS, admit Tories**

**10 September 2009 The Times**

The Tory Party has said it will limit spending on the NHS if it forms the next Government.

## **87. Hospital staff are the latest casualty as lying down craze sweeps internet**

**10 September 2009 The Times**

Seven doctors and nurses have been suspended for participating in the current internet craze – the lying down game, one posts a photo on the internet of oneself on facebook in a strict pose on an unusual item/object.

## **88. Thirty-four trusts not meeting minimum standards**

**11 September 2009 Health Service Journal**

Thirty hospital trusts and four ambulance trusts have been identified as not meeting minimum standards under the NHS performance regime.

## **89. Institute of Directors joins Tax Payers' Alliance call for 10pc job cuts**

**11 September 2009 Health Service Journal**

A 10% cut in non-frontline NHS staff is one of 34

measures mooted by the Institute of Directors and the Tax Payers' Alliance to cut the public debt by £50 billion.

## **90. Hospitals to be told to make patients happy**

**13 September 2009 The Sunday Times**

Andy Burnham, Health Secretary, says he wants to link hospital funding to levels of patient satisfaction – the changes might be introduced as early as next financial year.

## **91. Plan to help victims of NHS negligence is left to languish on statute book**

**30 August 2009 The Independent**

Patients in England are being forced to fight lengthy and costly legal battles to receive an apology and an explanation of what went wrong rather than have a quick and possibly fairer alternative to litigation in the NHS Redress Act 2006 which the Government has not yet implemented.

## **Nursing**

### **Nothing to report**

## **Older People**

### **92. Gran Scammers**

**07 September 2009 ITV 'Tonight' 20:00hrs**

A 24 minute programme in which Morland Sanders reveals the lengths to which con artists will go to trick the elderly out of their money, and meets the families who have caught thieving home carers on camera. In one instance Sanders confronts the care worker with the film footage of her apparent thefts.

Ed. This programme can be viewed on computers for another three weeks at <http://www.itv.com/ITVPlayer/Video/default.html?ViewType=5&Filter=100385>

## **93. Survey shows older people disadvantaged by digital divide**

**9 September 2009 – NCF**

New research commissioned Age Concern and Help the Aged shows there is a digital divide in Britain between pensioners and non-pensioners when it comes to bagging bargains online, and pensioners are missing out financially as a result.

[For full report click here](#)

## **94. Portrayal of older people in the media criticised by Lord Heseltine**

**11 September 2009 – NCF**

Lord Heseltine is bemoaning the portrayal of older people in the media.

The former Deputy Prime Minister addressed Counsel and Care's Annual Graham Lecture on the subject of Older People and the Media and said that, "*While older people are not alone in sometimes finding themselves uncharitably portrayed by the media, it is important for them to be represented in a fair and balanced way.*"

*"This proves especially important during a period when the economy is brittle, and when society needs to rediscover more traditional values that unite society rather than more self-centred views that divide it."*

[For full report click here](#)

## **95. How to pay for care home fees**

**11 September 2009 Daily Mail**

A look at a variety of methods of paying for fees, including 'immediate needs annuities' from Partnership and Axa Sun Life's Lifetime Care.

## 96. The silver rebellion

11 September 2009 Daily Mail

Residents of Lovat Fields Retirement Village, Milton Keynes have protested to the BBC over the portrayal of their community. 75 residents have signed an open letter to the BBC accusing it of creating a misleading impression by focussing on loneliness, bereavement and frailty.

The Silverville series can be viewed on BBC iplayer <http://www.bbc.co.uk/programmes/b00ly9bb>

## 97. UK Older People's Day 2009: Events

Page allowing local authorities to register details of any events they are organising under the Full of Life banner for Older People's Day 2009. It also lets them have this information promoted to the general public via a map on Directgov.

The page also gives more information about UK Older People's Day, which aims to raise the profile of the issues surrounding older people and the ageing society.

For full report go to <http://fulloflife.direct.gov.uk/events.html>

## 98. Access to Health for the Carer or the Cared for Over 65

June 2009

Age Concern in partnership with Lancashire County Council providing assistance for people attending appointments - the service is free of charge to users, although donations are requested for journey's over 10 miles.

Ed. I don't know how popular the scheme is; however, in my own neighbourhood I am aware of an unmet need which such a scheme might meet. As all the volunteers will need to be CRB and ISA

checked, I wonder if there will an exodus of volunteers.

## Parliament

**Parliament is in Summer recess until 12.10.09.**

While Parliament remains in recess we will be trying to keep up with events during the 'conference' season.

## Social Care

### 99. Guidance on Direct Payments for Community Care, Services for Carers and Children's Services: England 2009

4 September 2009 – DH

Guidance aiming to assist local councils in making, managing and administering direct payments. It has been updated to reflect recent legislative changes that extend direct payments to previously excluded groups.

[For full report click here](#)

### 100. Carers UK renews benefit overhaul call after damning report

**Public accounts committee slams DWP benefits services for carers**

8 September 2009 – Community Care

Carers UK is again calling for an overhaul of carers' benefits after strong criticism was received against the Department for Work and Pensions services for the group by a panel of MPs.

[For full report click here](#)

### 101. New guide on commissioning for carers published

9 September 2009 – NCF

Councils will soon benefit from new guide to help carers of vulnerable people.

England's five million unpaid carers of people provide up to £87 billion worth of care to family and friends with long term conditions or support needs, with one million people in England caring for 50 or more hours per week.

[For full report click here](#)

### 102. English councils face judicial review over adult care fees

**Fairer Fee Forum resolves to challenge alleged under-funding of providers in courts**

10 September 2009 – Community Care

A group campaigning for councils to meet the full costs of care in fees paid to adult providers will be seeking a judicial review against all English local authorities.

The Fairer Fee Forum it will lodge papers once it had got "all providers together", and that it could be in as little as three months time.

[For full report click here](#)

[Fairer Fee Forum website](#)

## Workforce

### 103. With effect from 01.10.09 the new hourly rates will be:

£5.80 for workers aged not less than 22 yrs  
£4.83 for workers aged between 18 and 22 yrs  
£3.57 for workers aged under 18 yrs.

## Article

### You pay the piper – but the piper chooses the tune?

**Fortunately for the lawyers, businesses always need them – at least from time to time. One of the occasions when a business will need legal advice is when the business is involved in an incident that has caused loss or damage. Sometimes such loss or damage has been insured, so the business can make a claim on its liability insurance. If a third party is responsible for causing the damage, the insurer may step into the shoes of the business in order to sue the person who caused the damage that led to the claim under the policy. This is called ‘subrogation’, a topic which is the subject of a separate article.**

Another occasion that generally requires legal input can arise when the business has to bring or defend a case against, for instance, a regulator; a contractor; an employee. In these circumstances, the business may have legal expenses insurance to contribute to its costs in bringing or defending the case. Liability insurance and legal expenses insurance are distinct, but both may involve lawyers appointed by insurers. Such lawyers may not be the ones the business owner himself would have chosen.

#### **Selection of lawyer**

The business owner has a basic right under English law to appoint a solicitor of his choice. This freedom of choice is protected by legislation, non-statutory

law and in the guidance and codes of conduct that underlie solicitors’ professional practices and consumer protection. However, the basic right can be restricted by the terms and conditions of a contract of insurance. It can come as an unpleasant surprise to find that having paid the premium for legal expenses cover, the choice of legal representative nevertheless remains with the insurer. This happens when the insured agrees by contract to forego some of his freedom.

To seek to avoid such surprise, follow the gist of the old adage: ‘First read the instructions’. Read the policy conditions. If in doubt about the meaning, ask the broker to clarify (getting written confirmation of the advice given). Standard wording includes the promise to pay legal expenses that are the reasonable and necessary costs chargeable by an ‘appointed representative’. Make sure there is a specific discussion with the broker about levels of indemnity; the range of costs that might be described as “reasonable” and/or “necessary” is wide. The phrase ‘appointed representative’ is a defined term that means the lawyer (or other suitably qualified person) who has been appointed under the terms of the policy. Appointment under the terms of the policy works on the assumption that insurers will choose the legal representative. However, this is not invariably the case. It all depends on the actual words used in the policy document.

If the policy has been written so as to give insurers the choice of solicitor, an insured who wants to nominate his own representative must get into a debate with insurers. The debate itself will be governed by the terms of a policy which typically lays down a pro

cedure for resolving the disagreement over the choice of appointed representative. Such procedures usually involve the appointment of a third party to decide the matter. The reference to the third party has to be in writing, and if no agreement results, the disagreement is to be referred to a body such as the Law Society.

This is all very well, and exquisitely fair on the face of it, but while the insured is going through this process, whatever matter that caused the notification of the claim for legal expenses has had to be put to one side. A care home provider with 28 days to file his appeal is in a poor position to postpone instructing a solicitor while he argues with insurers about who that solicitor should be. Further, unless and until insurers have approved the principle of making payments to a particular firm of lawyers, legal costs incurred are likely to be irrecoverable from insurers (as is clearly stated in all policies).

#### **Who would be a good solicitor to appoint?**

The business owner might reasonably ask why he himself would want to find his own solicitor. After all, health and social care law is a specialised sector, and the firm he uses for transactional work, tax advice, even employment law, may have little or no experience of urgent cancellations, ratings challenges, etc. Surely the insurer who provides care home cover might be best placed to appoint the right solicitor? In many cases this line is entirely correct, especially against the backup that all solicitors have a duty to act in the best interests of their clients.

In some cases, however, there are good reasons for the insured to exercise his right to choose. First, in

the case of a large corporate provider, there may be a long-standing relationship with a particular firm. This can result in lower legal costs, because the 'old' lawyers come to the new appointment already briefed on such aspects as structure, culture, finances and even personnel.

Second, if the case is unusual in any way, or particularly sensitive, lawyers who do nothing but this kind of work may be more efficient in dealing with it and/or they may have more personal knowledge of inspectors, councils, and others than it would be reasonable to expect from those who do a range of work broader than just health and social care. Lawyers with a great deal of experience are necessarily more senior, and therefore more expensive. Insurers (quite properly) always seek to contain costs, but sometimes this can result in a refusal to pay the market rate for the work in question. When this happens, the specialist firm simply takes itself out of the running.

Third, the relationship between insurer and insured can be delicate at the best of times. One has always to be on the lookout for a conflict of interest. Most insurers pay most claims. However, picture a claim for loss of registration, where the cover extends only to a cause outside the insured's direct control. This is a knotty area, because many insurers take the stance that loss of registration is invariably due to failings that were within the control of the provider. If there have been staff shortcomings, is it not the provider's responsibility to address and resolve these? If service users are not being treated with dignity, or the care workers are ignorant about looking after dementia sufferers, ultimately the provider is at fault.

The result is that insurers decline to pay the claim. The insured, having lost his registration, despite his

and his (possibly insurer-appointed) legal team's best efforts, not only has no claim under his insurance, but also cannot rely on his legal expenses insurance to fund any litigation against insurers through the courts. This scenario is mentioned more for illustrative than practical purposes, because it simply is not realistic for anyone with but ordinary means to contemplate suing an insurance company.

### **Tension between insurer and insured**

This inequality of bargaining power between insurers and smaller insureds underlies the difficulty of protecting the right to choose a solicitor. The insurance policy wording is in standard form. The broker is largely powerless to negotiate special terms. The business owner needs cover. He makes a commercial decision – and in so doing may sign away his freedom of choice. As mentioned above, it is essential to read the policy, and to quiz the broker as to its meaning and effect. At best, the policy may not prescribe the appointment of the legal adviser. At second best, the more clients who tell brokers that they want their rights preserved, the more likely it is that the insurance industry may respond. At worst, the insured will know beforehand that he has no choice of lawyer.

Of course, legal expenses insurance may be purchased as a stand-alone product. This is another question for brokers advising individual clients. Unfortunately, it is likely that such cover will not only include the restriction on freedom of choice of solicitor but will also cost significantly more in premium than the same cover that forms part of a broader, liability policy. Since legal expenses insurance sold as part of another policy is often presented as a free or low-cost addition, seeking to leave it out of the general cover is unlikely to result in any, or any significant, reduction in premium.

In 2003 the Financial Ombudsman Service published its then current thinking on legal expenses insurance. It looked at the subject mostly in the context of claims arising from car accidents; the recovery of uninsured losses from third parties; damages for minor injuries; and low value consumer disputes. These cases are claim-led, that is, related to the policyholder's claim to be indemnified under his liability policy; as such, they are different from many of the situations when the policyholder is defending himself in regulatory proceedings.

The conclusions of the Financial Ombudsman Service were:

*"In the absence of clear guidance from the courts in support of [an] alternative interpretation, we would not require an insurer to offer the policyholder a choice of solicitor at the start of the claim."*

*"...we have no reason to conclude that insurers' practice of using panel solicitors is inherently unreasonable or unfair to policyholders, as long as appropriate arrangements are made to handle cases that involve a potential conflict of interest."*

*"...in our view, there is generally nothing objectionable, from the policyholder's perspective, in insurers requiring policyholders (in most cases) to use the legal services of: the insurer's own (appropriately trained) staff; or a pre-selected panel of providers chosen by the insurer."*

*"Overall, we concluded that the terms of the policy [in question] that related to choice of solicitor were not expressed in plain and intelligible language. In our view, if the policy does not include a clear and intelligible statement of what it does and does not provide, then: prospective policyholders cannot make a fair evaluation of the policy at the point of sale; and poli-*

*cyholders may be disadvantaged when making a claim.”*

*“...in many ‘routine’ cases policyholders may well not be greatly disadvantaged or inconvenienced by any lack of clarity in the policy. But in more complex cases, or in cases with other special features, it seems to us that the policyholder’s position is likely to have been prejudiced. In such instances, the fair resolution of the matter, reflecting good industry practice, will be for the insurer to fund the advice that the policyholder gets from his or her chosen solicitor.”*

Of course, the circumstances leading to the purchase of legal expenses insurance to protect or preserve business interests are quite different from the circumstances in contemplation in what can be described as ‘*straight-forward (accident) claims*’. The need for a more sophisticated approach to the issues faced by the business is not always fully appreciated by some of the less specialised insurers. For instance, such insurers may not even consider the need for the management of short- and long-term management of media interest, protection of reputation, and so on, let alone have a thorough grasp of procedures before the Care Standards Tribunal and professional regulatory bodies such as the Health Professions Council.

## Conclusion

In summary, it will only be in exceptional circumstances that the insured is likely to be able to persuade his insurer to agree to the appointment of the insured’s preferred solicitor. Even so, it is more and more frequently my and my colleagues’ experience that businesses are succeeding in influencing the appointment of a lawyer under their policies of insurance – if the business owner knows his

rights and, with reasons, he asserts his entitlement to exercising them.

Whether it is ultimately better or worse to be an insured with a sufficiently exceptional case to warrant the argument is itself open to question. However, whatever the actual or possible claim or incident that has prompted the purchase of cover, or review of the policy wording, it is crucially important for the insured to understand what he is getting in return for his premium.

Read the small print.

Consult the broker.

Take these steps, first, before choosing cover and, second, before making a claim. By so doing, you can to some extent self-insure yourself against unpleasant surprises.

**If there are issues arising from any aspect of this article you are invited to contact the author, Nancy Ritchie-Noakes, consultant with specialist health and social care solicitors, Brunswicks LLP [nancy.ritchie-noakes@brunswicks.eu](mailto:nancy.ritchie-noakes@brunswicks.eu) 08455 190 690.**

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