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1. Need Premises Advice? Think Lockharts!

Healthcare professionals need expert advice from specialist legal advisors, whether they are proposing to rent or own their surgery premises. Our specialist Property Team at Lockharts combines extensive commercial property expertise with specialist knowledge of the healthcare professions and NHS law and guidance.

Our Property Team can manage any size of project, liaising as required with other

parties such as the PCT, the District Valuer, mortgage lender, developer and the Local Authority. The experts in our Property Team specialise in:

• Health Centre Developments

- Development projects including PFI and LIFT Schemes;
- Negotiating Heads of Terms for LIFT Schemes and other third party developments;
- Negotiating development agreements, leases and subleases (including LPAs for LIFT Schemes);
- Liaising with District Valuers and the development team to ensure compliance with the NHS guidance;
- Negotiating Put Options between PCTs and the healthcare provider; and
- Securing and acquiring sites for development.

• Landlord and Tenant

- Advising on all landlord and tenant law;
- Producing, negotiating and reviewing leases and licences appropriate for the NHS Sector; and
- Advising on the renewal of leases and security of tenure protection.

• Commercial Conveyancing

- Carrying out all commercial conveyancing for NHS healthcare providers;
- Carrying our searches and advising on the same;
- Drafting transfer documentation;

- Liaising with any lenders;
- Advising on any potential Stamp Duty Land Tax liability; and
- Dealing with post-completion formalities.

If you would like further information please contact Varsha Pattni at vap@lockharts.co.uk or Stephen Carter at sac@lockharts.co.uk.

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2. Spot checks on GPs from Care Quality Commission

GP practices are to face unannounced spot-checks from the new health and social care regulator, it was recently revealed.

Baroness Barbara Young, chair of the Care Quality Commission (CQC), said plans were underway to extend lightning checks, in line with moves in hospitals which she admitted had already shocked secondary care bosses.

Practices face checks on cleanliness, quality of prescribing and information governance procedures, among a range of other powerful CQC measures, with practices facing a fine if they refuse to allow in inspectors.

The Baroness - speaking at the NHS Alliance Conference in Manchester- said the CQC was developing an 'absolutely new form of inspection' looking at how services interact. Baroness Young stated:

"We're not going to do it in the same way as it's been done in the past; we're developing an absolutely new form of inspection. It will look at data and talk to users, it will look at complaints, it will talk to commissioners and service providers.

We did an [unannounced] inspection recently at a major teaching hospital. I said to the receptionist on the front desk could you tell your chief executive that

the Care Quality Commission has arrived. The poor chief executive came down, and as he walked across the front hall and spotted me I thought, this must be the worst day of this guy's life", she said.

GPs will come under the powers of the CQC from April 2012 and an indication of what is in store came from the Airedale Trust, a hospital trust which described the unannounced inspections as 'extremely thorough', with a representative of the CQC and a specialist nurse inspecting dust on high shelves, the back of store cupboards and unzipping mattress covers to look for 'ingressed stains'.

Dr Tom Frewin, a GP and LMC member in Avon, said: "We have lost the plot a bit. What checks are they doing that other people haven't done? We already have appraisals and revalidation. This is just another layer of bureaucracy".

But other GPs are less concerned. Dr Andrew Mimmagh, chair of Sefton LMC, said: "The Baroness would be very welcome here, we have nothing to hide".

"I just hope it would be in a manner that would not disrupt or delay the care of patients, and she would have a good understanding of general practice", he said.

A spokesperson from the CQC said it was still developing its methodology for regulating GPs, but expected to conduct a 'small number' of unannounced spot-checks on practices as part of its scheduled programme of inspections.

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3. GMC continues to demand right to check EU doctors' English

The GMC has said it will continue to lobby the EU for a change in the law in order to allow it to language-test doctors, despite another regulator admitting defeat.

The 2005 EU directive on the recognition of professional qualifications enabled the free movement of clinicians around Europe, by requiring the GMC and other

regulators to accept overseas medical qualifications. However, it also prevents them from carrying out any formal testing in regard to language skills. As a result, European clinicians may be registered with the GMC, despite struggling to understand English.

The potential risks of hiring doctors whose English is not fluent is highlighted by the recent case of Dr Daniel Ubani, a German doctor who accidentally killed a patient on his first UK out-of-hours shift.

Polly Kettenacker, EU and international officer at the Nursing and Midwifery Council (NMC), said the regulator had been lobbying the EU to change the directive 'in the interests of patient safety'.

'But we have established that is not going to happen,' she said. 'The NMC is now focusing on warning employers that professional registration does not imply fluency', she added.

However, a GMC spokeswoman said that the regulator's 'long-standing position' was unchanged. 'We want to be able to systematically test doctors' English language ability at first registration,' she said. 'We continue to press for change both as an independent organisation and with other healthcare regulators.'

She reminded employers that they have a responsibility to conduct interviews to ensure applicants' language skills were up to the job. Other regulators, including the Royal Pharmaceutical Society of Great Britain, have issued similar warnings.

The NMC, meanwhile, may write to all employers because it fears some are not sufficiently aware of their responsibilities in this area.

'Some nurses currently require interpreters to talk to the NMC', Ms Kettenacker said. 'We know there are people who are on the register whose English is non-existent. We cannot say if they are working.'

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4. Overhaul of GP sick note system 'not realistic'

GPs will need significantly more training and support if they are to play a role in the drive to get patients on long-term sick leave back to work, according to a new study published online by the journal Family Medicine.

A recent survey of 441 Nottinghamshire GPs found GPs lacked the necessary experience and were reluctant to advise employers about how to ensure patients continue working.

The study comes as the latest blow to controversial plans from the Department for Work and Pensions for GPs to send thousands back to work by issuing 'fit notes' offering suggestions about what the patient is capable of doing in a work environment.

The General Practitioners Committee (GPC) has criticised the proposed changes as 'open to manipulation' and potentially a risk to health and safety. Another recent study showed GPs required more training on the use of sick notes as their use varied widely.

The survey published this week found only 2.5% initiated communication with a patient's employer about managing back pain while at work, and 77% did not accept responsibility for managing the work problems of patients with low back pain.

A third of GPs provided written information for patients about managing health problems and back pain at work but 71% said they lacked up-to-date information that may prove helpful for patients with work problems caused by back pain.

The study concludes that the Government's plans for GPs to fulfill this role 'may be unrealistic' and that a dramatic change in the training and perception of GPs would be required.

Mrs Carol Coole, research occupational therapist at the University of Nottingham and lead author of the study, said the study demonstrated how difficult it was for

GPs to get involved with providing advice about employment.

'They see themselves as the patient advocate and they want to protect that and build up trust and confidentiality. They need more support and training. The training they are offered is a half day, but we don't know if that will change practice,' she said.

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5. GPs under pressure as NHS Choices reveals disparity between online ratings and patient surveys

GPs are set to come under enormous pressure to further improve access on the say of individual patients, as evidence of a big disparity between NHS Choices ratings and patient survey scores start to emerge.

The website has received thousands of comments in its first two weeks of operation, with many practices who scored highly in the patient survey finding themselves on the receiving end of negative patient feedback.

In its first two weeks, the site, which the Government hopes will drive competition between practices, has attracted around 3,500 comments.

An analysis of the first 1,000 of these, carried out by NHS Choices, reveals the vast majority (874) were accepted by moderators.

Of those, 60% of patients said they would recommend their practice, with 17% not recommending their practice and 23% with no view.

These figures are lower than the GPC was quoting last week, with Dr Laurence Buckman saying their analysis showed a figure of around 80% recommending their practice.

Closer examination of the figures reveal striking disparities between the

comments made on the site and the scores of practices on the patient survey.

Only 66% of patients say they could always or usually book an appointment when they wanted one, compared with the 82% of patients in the patient survey who said they were satisfied with access at their practices.

Half of patients on NHS Choices say they can always get through to their practice, compared with 70% of patients in the patient survey who found it easy to get through on the telephone.

For one practice in Essex, despite a 94% satisfaction rating under the advance appointment booking question in the patient survey, patients complained on NHS Choices about 'difficulty with access' and 'rarely' being able to get an appointment when they want one.

Dr Brian Balmer, chief executive of Essex LMCs, said it was early days, but the results so far did show that the site could be distorted by patients with an axe to grind.

'It is human nature that this would be the case and that was probably in the minds of those who created it. It is too early to say if this NHS Choices experiment is going to be helpful for patients. I have my doubts, but I would, wouldn't I?' he said.

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6. New regulations for health and adult social care providers

The draft Regulations, issued under the Health and Social Care Act 2008, detail the new framework against which the Care Quality Commission will regulate providers of health and adult social care.

The requirements set out the essential levels of safety and quality of care that providers must deliver for people who use their services, but crucially also gives them flexibility on how they do it. Subject to Parliamentary approval, the new system will be established for NHS healthcare providers in April 2010 and for private and

voluntary health care and adult social care providers from October 2010, making it illegal for organisations to provide services that fall under the new framework without registering. The system will be extended to providers of primary dental care and private ambulances in 2011 and to primary medical care in 2012.

The Care Quality Commission will develop guidance on how it will judge compliance with the regulations and take appropriate action against those who fail to meet the essential requirements.

Health Minister, Mike O'Brien said:

'People rightly expect the same level of quality and safety of their care regardless of which organisation is providing it – this single registration framework gives them that assurance.'

'All providers of health and adult social care services can now use this framework to ensure they demonstrate an ongoing ability to meet all the requirements.'

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7. Lockharts' Tendering Masterclass

The Lockharts' Tendering Masterclass is fast approaching. Our seminar on the public procurement process will take place on 21 January 2010 and will include tips on how to make your tender application stand out and the legal and structural issues relevant to tendering.

More and more primary care services are now being put out to open tender, but the public procurement process is always challenging and is fraught with potential pitfalls. At Lockharts we have guided numerous clients through the tendering process.

Spaces on this seminar @ £75 + VAT are going quickly and so to be sure of a place, please contact us before Wednesday 6 January at csd@lockharts.co.uk

8. Freedom of Information Act Update

As of 1 September 2009, the Information Commissioner's Office has confirmed that GPs are defined as Public Authorities with regard to the Freedom of Information Act as they provide NHS services.

However, they are still to pay a £35 fee for registration under the Data Protection Act and not the £500 generally paid by those defined as Public Authorities.

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9. DVLA and Patient Confidentiality

On 17 August, the DVLA implemented new rules concerning the release of medical information for patients applying for driving licences.

The BMA has given agreement that the DVLA no longer needs to provide a patient's written consent for access to the relevant parts of their records for the purposes of granting a driving licence.

The GMC website advises that doctors should:

"Obtain, or have seen, written consent to the disclosure from the patient or a person properly authorised to act on the patient's behalf. You may, however, accept written assurances from an officer of a government department that the patient's written consent has been given".

The BMA has taken legal advice about such a system and received a written legal indemnity from the DVLA.

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10. Mediation

Lockharts are delighted to announce that Ros Parkin is now a CEDR Accredited Mediator and is available to assist in the resolution of healthcare disputes. In the first instance contact us at csd@lockharts.co.uk

Previous Issues

If you would like to receive previous issues of the Lockharts Newsletter please contact Andrew Meadows at csd@lockharts.co.uk.

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