

This issue covers important news on PBC and corporate manslaughter, recent and forthcoming developments in employment law and tax planning recommendations in respect of surgery acquisitions.

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1. Corporate Manslaughter and Practice Based Commissioning

We have been asked to comment on the potential implications of the new Corporate Manslaughter and Corporate Homicide Act 2007 ("the Act") for Practice Based Commissioning (PBC) Consortia making recommendations for the redesign of services.

The Act, which came into force on 6 April 2007, makes it easier for organisations and businesses to be prosecuted where there is a gross failure in the way its activities are managed or organised by its senior management which results in a person's death. Prior to the Act, it was necessary for a "directing mind" of the organisation also to be guilty of the offence; however, this is no longer a requirement for a successful prosecution. Under the new Act, the offence is concerned with corporate liability, and the sanction imposed against a convicted body will be a fine.

The creation of this offence does not impact on the offence of gross negligence manslaughter under which individuals who grossly breach a duty of care towards another resulting in their death may be prosecuted.

Only certain organisations are caught by the Act. Corporate bodies (such as companies and limited liability partnerships) are caught. Partnerships (within the meaning of the Partnership Act 1890) which are employers are also

caught. However, save for a couple of specified exceptions other unincorporated associations are not caught by the Act. This means that a loose association of practices working together for the purposes of making service recommendations to the PCT will not be caught by the Act, provided that it is clear they are not operating as a partnership.

An organisation that is caught by the Act must owe a "relevant duty of care" to the individual who dies and the death must be caused by a failing in the way its activities are managed or organised which amounts to a gross breach of the relevant duty of care. A duty of care is the obligation imposed by the law to take reasonable steps to protect a person's safety. The relevant duties are set out in the Act and include, for example, duties to employees and users of the organisation's services. Whether or not a duty of care is owed will be determined by the court on the facts of a particular case.

We believe that the PCT will owe a duty of care to take reasonable care in the commissioning of services, e.g. to take steps to ensure that it commissions services from capable providers. A provider will owe a duty of care to those it employs in the carrying out of such activities as it is commissioned to perform. For example, it will owe a duty of care to any patients it is commissioned to provide treatments to and to all visitors to any premises it occupies or provides services from, in addition to similar duties imposed on all business and individuals towards those they come into contact with. Whether or not a body that makes recommendations to the PCT regarding providers also owes a relevant duty of care to an end patient is less clear cut.

For example, a grossly negligent doctor performing clinical services for a provider company could be prosecuted as an individual for the death of a patient. The employing provider company could face a possible prosecution and fine under the Act were it considered that its management structures had caused the death. However, it is in our opinion very unlikely that without anything further a Consortium that originally recommended a provider to the PCT would be considered as culpable for manslaughter on the basis of this recommendation,

(whether as individuals or as a body caught within the Act).

As providers of medical services and employers, GP partnerships will of course continue to owe a duty of care collectively and individually to their patients, employees and visitors to their premises. The Act applies to partnerships and as such if there are gross failings in the way a practice manages or organises its work which results in a person's death, this could also result in a corporate manslaughter charge under the Act and a fine being imposed.

As stated above, individuals can already be prosecuted for gross negligence manslaughter and for health and safety offences and the Act does not change this position. Prosecutions will continue to be taken against individuals where their individual gross negligence is believed to have caused another person's death.

2. Compulsory retirement age held to be lawful

Recently, a partner in a small law firm was forced to retire at the age of 65 due to a compulsory retirement clause in the firm's partnership deed.

The aggrieved partner subsequently made a claim in the Employment Tribunal submitting that his retirement in these circumstances was an act of age discrimination. Whilst the firm conceded that he had been subject to less favourable treatment on the grounds of age, they argued that a compulsory retirement age was lawful.

Under the Regulations, discriminatory treatment is lawful where it can be objectively justified as 'a proportionate means of achieving a legitimate aim'. The legitimate aims upon which the firm sought to rely and which the Tribunal accepted were:

- Retaining associates within the firm by ensuring that they have the opportunity to become partners within a reasonable period of time;
- Preserving the supportive culture of the firm by avoiding the need to expel partners for performance related reasons; and,
- Giving solicitors and associates within the firm the reasonable expectation that new

vacancies would occur, thereby allowing for sensible workforce planning.

The Tribunal made clear that the case did not lay down a general rule for partnerships and that each case needs to be looked at individually.

In this case, the Tribunal took into account evidence that the partner, despite having been in a strong position to renegotiate the terms of the partnership deed, had not done so, and had signed a deed without raising any concerns over the compulsory retirement clause.

For advice on age discrimination and other areas of employment law please contact Lockharts Associate Paul Werrell.

3. Maximising tax relief on surgery acquisitions

From April 2008 certain items of plant not previously qualifying for tax relief will qualify, as new legislation places increasing importance on Energy Efficiency and Sustainability. The introduction of Energy Performance Certificates as an integral part of Home Information Packs for all commercial buildings has also brought the advantages of energy efficient plant to the fore.

Enhanced Capital Allowances enable a business to claim 100% first-year capital allowances on their spending on qualifying plant and machinery. The three schemes for Enhanced Capital Allowances are:

- Energy-saving plant and machinery
- Low carbon dioxide emission cars and natural gas and hydrogen refuelling infrastructure
- Water conservation plant and machinery

Businesses can write off the whole of the capital cost of their investment in these technologies against their taxable profits of the period during which they make the investment. This can deliver a helpful cash flow boost and a shortened payback period.

Consequently, those procuring surgery premises or involved in the refurbishment of surgery premises are urged to consider the importance of energy efficiency and seek advice from specialists.

If you want advice on practice purchases or mergers please contact Alison Oliver. For advice on partnership property and matters arising thereof please contact Varsha Pattni.

4. Increase in Employment Tribunal awards

New legislation has increased the amounts that can be awarded by Employment Tribunals in respect of various claims.

Two important changes include:

- The limit on a week's pay (which can be taken into account to calculate basic and additional awards for unfair dismissal, statutory redundancy payments, etc.) has increased from £310 to £330; and
- Limit on amount of compensatory award for unfair dismissal has increased from £60,600 to £63,000, thereby increasing the maximum possible award in 'normal' unfair dismissal cases from £69,900 to £72,900.

The Employment Rights (Increase of Limits) Order 2007 brings in eight changes in total having effect from 1 February 2008. For advice on unfair dismissal, Employment Tribunal awards and other areas of employment law please contact Paul Werrell.

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'... Lockharts leap frogs the lower tiers to the top, following market recommendation... Having acted for over 1,500 GP practices, the firm was pivotal in the formation of and structure of GP contracts, and regularly advises medical committees in London and across the country ... a team that "definitely knows its onions."

Chambers UK, A Client's Guide to the Legal Profession 2008

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