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CARE SECTOR LIABILITIES – HANDLING CLAIMS IN THE HEALTH & SOCIAL CARE SECTOR

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Learning Objectives

1. To explore the sector specific issues which arise in health and social care environments.
2. To explore the strategic approach to handling claims in the health and social care sector.
3. To examine emerging trends in disclosure, general procedure and new areas of psychiatric injury and chronic pain claims.
4. Questions and Answers.

Background Issues

1. Exponential growth in claims for damages in the health and social care sector – reasons.
2. Reduced funding, increased compliance requirements, increased uptake by Claimant firms = a perfect storm?
3. Sector specific issues creating a fertile environment for claims growth.
4. Education of the market.

The Role of the CQC

Purpose

To make sure health and social care services provide people with safe, effective, compassionate, high quality care and we encourage care services to improve.

Role

To monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety and the CQC publish what they find, including performance ratings to help people choose care.

Strategy

A more targeted, responsive and collaborative approach to regulation so more people get high-quality care.

Specific types of civil claims

1. Assault of an employee/carer by service user.
2. Claim by service user in relation to care provided.

Assault Claims

1. A difficult starting point – the underlying risk of injury
2. Strength of documentary evidence.
3. Turnover of staff and working conditions affecting value of witness evidence.
4. Familiarity/over confidence/complacency.
5. The importance of the early response to injury and support provided.

Documentary Evidence

1. Appropriateness of placement.
2. Appropriateness of assessment and way in which plans/RAs disseminated.
3. Staffing ratios and proof.
4. Training and proof.

Witness Evidence

1. Turnover of staff and working conditions.
2. Know your witness.
3. Risks of reliance on witness rather than documentary evidence.

Human Factors

1. Over-confidence.
2. Level of sympathy/support.

Disclosure Implications

1. Application of DPA 2018.
2. Competing obligations – disclosure/data protection/confidentiality.
3. SARs v PADs.

Claims by or on behalf of service user

- Medical Malpractice v PL
- Policy considerations

Contrasting Definitions

- PL claims – Claims for personal injury arising out of a statutory or common law duty made against a person other than the Claimant's employer in respect of matters arising other than the course of the Claimant's employment and which is not directly linked to the provision of medical or healthcare services.
- Medical malpractice – A claim involving the judgment, action or omission by a person in the healthcare or treatment setting during treatment or after care which results in bodily injury or aggravation of a pre existing condition or injury.

Med Mal or PL?

- Residents suffer food poisoning due to lack of food hygiene in the home kitchen.
- A resident with dementia falls from her bed as no risk assessment was carried out as to whether cot sides were needed.
- Allegations involving failure to adhere to a care plan leading to a care home resident developing pressure sores.
- Family unhappy with recommendations of case management professional.
- Patient lifted on hoist with incorrect sling leading to injury.

Important Procedural Differences

1. Med Mal = Multi Track therefore cost and strategic implications.
2. Separate Pre Action Protocol.
3. Causation in Med Mal cases will often require expert input and care is needed on any assessment of breach of duty before admissions are made.
4. Sequential exchange of quantum evidence.
5. Different legal test.

Key factors in claims handling

1. Guilt.
2. Quality of care plan documentation, and contemporaneous notes.
3. Witness evidence and corroboration.

Quantum Issues

1. Impact of fracture on delirium/dementia – risk of significantly increased of care.
2. Demographic of Claimant in assault claims.
3. Psychiatric factors in relation to injury – chronic pain, fibromyalgia, subtle brain injury.
4. Factors to alert concern.



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