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Health
and Social Care

NEWS AND ADVICE FOR HEALTHCARE PROFESSIONALS FROM BIRKETT LONG

The social care commitment

In September 2013 The Social Care Commitment was launched by the Department of Health. One year on, has it actually made a difference?

What is The Social Care Commitment?

The Social Care Commitment (TSCC) is a voluntary agreement between adult social care providers and their employees to improve skills and knowledge. The employer signs up online and commits to making improvements against seven standards, and they then invite their employees to do the same.

The seven commitments the employer will agree to develop are public and include recruitment of staff who care, helping staff to develop their skills and taking responsibility for how staff work. Employees can then make private pledges to improve in their seven areas, including working responsibly, upholding dignity and communicating effectively.

Why sign up?

The idea behind signing up for TSCC is that it provides a framework of improvement for employers and employees, with a wealth of information available once the employer signs up. In addition to this, it improves the public's confidence. Care providers are making a statement that the services they provide can be trusted and are underpinned by certain values.

Has it made a difference?

One year from its launch, TSCC has gathered strength with over 2,000 care providers having signed up. According to TSCC's website, 85% of those who had made the commitment said that they already have, or expect to see, an increase in the quality of care they provide, whilst 83% said that it has led, or will lead, to improvements in how staff are trained and developed. Over 96% of employers who have already signed up state they are likely to renew next year. With such a positive response, it is likely that the public will look to TSCC more and more as a way of assessing the level of care that a provider can deliver.

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Be careful who you sleep in with!

Risks for the care sector

With the National Minimum Wage (NMW) planned to be one of the Labour Party's central policy items in the run up to the general election next year, involving significant increases in amounts paid, the subject remains a very pertinent one for all employers with a low skilled and/or low paid workforce. This includes, in particular, the health and social care sector.

One difficult area is precisely what counts as working time when the worker is paid by reference to the time that he or she works, such as hourly paid work, rather than receiving a set salary each week or month. In particular, do "sleep in" shifts count as working time?

When a worker is "on call", that is "required to be available for work" but not actually working, at or near the workplace, and is provided with suitable facilities for sleeping, time during the hours they are permitted to use the facilities for the purpose of sleeping is treated as working time but only when the worker is "awake for the purposes of working", or actually working. Time when the worker is asleep, or is awake for a purpose other than work, is not working time. Deciding what constitutes work, where the employee sleeps overnight at the workplace, can be very difficult.

This was demonstrated recently in the case of Esparon t/a Middlewest Residential Care Home v Slavikovska 2014 where the claimant was employed as a care worker at the respondent's residential care home for adults with learning difficulties and was required to work a number of "sleep in" night shifts and to be available for emergency purposes.

There were certain statutory provisions impacting on the care home that required it, for example, to ensure that at all times suitably qualified, competent and experienced persons were working at the care home in such numbers as were appropriate for the health and welfare of service users. The claimant argued that she was required to carry out certain duties during the nightshift whereas the care home maintained that she was not required to carry out any duties, save in case of emergencies, and was allowed to sleep using the facilities provided. The claimant received a £20 lump sum payment for each sleep-in shift, from 9pm to 7am, which was therefore at a lower rate than the hourly rate of NMW.

The Employment Appeal Tribunal recognised that it is very difficult to distinguish between cases where the worker is at work being paid to be on the

CQC ratings

what does it mean for your care home insurance?

We speak to many care home owners that are eagerly awaiting the new CQC rating system, albeit with nervous anticipation of how the inspection will go and, of course, what rating their home will receive.

When the star rating system was introduced some years back there was much more concern amongst care home owners about what effect this would have on their home. Despite several deficiencies in the system, overall it seems that when it ceased it left everyone in a state of limbo with the reports that replaced it not being as easily understood by the public. With the new rating system being based on the Ofsted system of outstanding, good, requires improvement or inadequate, anyone looking for a care home suitable for their needs, or those of a loved one, will form an instant opinion before reading the inspection reports. In the same way your care home insurance could be affected.

Insurers are using technology much more these days. Fraud databases, company information, credit checks and the like have been in place for some years; Google street view is often used to "see" the care home and make a judgement, not only on its standard of construction but also on its condition and maintenance. Now with the CQC ratings insurers, like potential residents, will form an opinion on the home. If rated excellent, insurers will be keen for employer's premises "just in case" and where the worker is "on call" and not deemed to be working the whole time.

The tribunal held that an important consideration in all of this was why the employer required the worker's presence. In this case, the worker was paid to fulfil the employer's legal obligations under Regulation 18 of the Care Homes Regulation 2001, and Regulation 22 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, to have staff available on the premises at all times. It was essential for the employer that staff be there even if they did nothing. In these circumstances, the tribunal found that the claimant was entitled to be paid simply for being on the premises, regardless of whether she was allowed to sleep on shift.

So, something for employers using sleep in staff to think about, and act upon, rather than to lose sleep over later. The claimant's NMW award in this case amounted to over £15,000.

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your business but if rated inadequate will insurers offer you a quote?

In the previous era of star ratings there were some insurers that would not offer cover to the low star rating homes and those that did applied a higher premium, so it is highly likely that a similar stance will again be taken by the care home insurance market.

In recent years several insurers have withdrawn from quoting care homes. Fewer insurers now than under the old star rating means that if anything less than a good CQC rating may leave few places to find insurance.

Your rating will stay with you until the next inspection so your insurance renewal could fall between this period and be taken into account by the insurers. Make sure that you have an action plan available to send to your insurance broker so that you can demonstrate what you have done to address the improvements required following the inspection. This way your insurance broker will be able to make good representation on your behalf to ensure the most competitive premiums are secured for you. Of course the best situation is to be awarded a good or excellent rating and I am sure that the majority will strive to achieve this status.

Good luck to you all over the coming year; please don't hesitate to call me if you have any care home insurance queries.

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Actions speak louder than words

Guest article from Christie & Co

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In the nine month period to 30 September 2014 we completed on the sale of nine care homes in the East Anglia area. Our statistics clearly show that the market has improved, illustrated by the number of viewings, offers and deals that have been agreed so far in 2014. An increasing number of well funded prospective buyers, keen to acquire across this region, are in contact with us. These buyers range from those looking to buy their first care business through to experienced operators looking to add to a group. Combined with this upturn we have also seen a variety of different types of care business that are in demand. There are more buyers for smaller family run care homes; managed units which can fit into regional group portfolios; purpose built care homes and development land. Specialist businesses and care agencies are again also attracting strong interest.

Examples of some of these deals include: The Gables, Dersingham – registered for 24 elderly – sold to the local medical practice; 42 bed St Edmunds, Gorleston on Sea – sold to a regional care group; Link House, Dereham, a learning disabilities residential/supported living group – sold to a local specialist operator; The Nunnery, Diss – a vacant care home sold to a developer; The Lodge Copdock & Winchley House, West Winch with a combined registration over 80 – sold together to an operator from London.

Activity and demand from buyers has substantially increased although the number of care business opportunities coming on to the market has not increased by the same rate, making this a good time to be contemplating a sale with demand outstripping supply. We believe that the improvement in sentiment witnessed this year across all parts of the sector will continue into 2015.

Valuation remains a key component in the majority of deals given that funding is normally required from a bank or other source in order to finance a deal, whilst the banks are generally very supportive of the sector, it is essential that strong accounting and management information is provided as part of this process with the market, and therefore valuers, not reflecting projected or unproven earnings.

There are numerous factors and questions that influence the value of a care home including location, specification, number of bedrooms with en suite facilities, room sizes, purpose built or converted residential? how strong is the competition, are the turnover and profits reported sustainable? Is there development potential/planning permission in place? Is the business over/underperforming? What are the average weekly fees? is the business reliant on one funding source? is the building single storey or arranged over multiple levels etc. It is important that professional advice is sought from suitably qualified and experienced healthcare valuers.

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