



CLIFTON INGRAM: KEEPING YOU POSTED WITH NEWS OF THE LAW | SPRING 13

CITATION

[HEALTH & WEALTH]

CARE TO RECONSIDER?

MARCH DEADLINE IS LOOMING FOR RETROSPECTIVE HEALTH CARE CLAIMS

People who have been receiving and paying for care from 1 April 2011 may be eligible for reimbursement of the fees, including care homes fees.

The Department of Health has set the deadline of Sunday, 31 March 2013 for individuals or their personal representatives to notify their relevant Primary Care Trust if they believe there was a period of care between 1 April 2011 and 31 March 2012 where there is evidence that the individual concerned should have been assessed as being eligible for NHS Continuing Health Care.

The September 2012 deadline for claims between 1 April 2004 to 31 March 2011 has now passed with many people registering claims before the deadline.

To be eligible for NHS Continuing Health Care the main or 'primary' need for care must relate to health. For example, people who are likely to be considered eligible may:

- have a medical condition that requires substantial care and support; or
- need highly specialised nursing support.

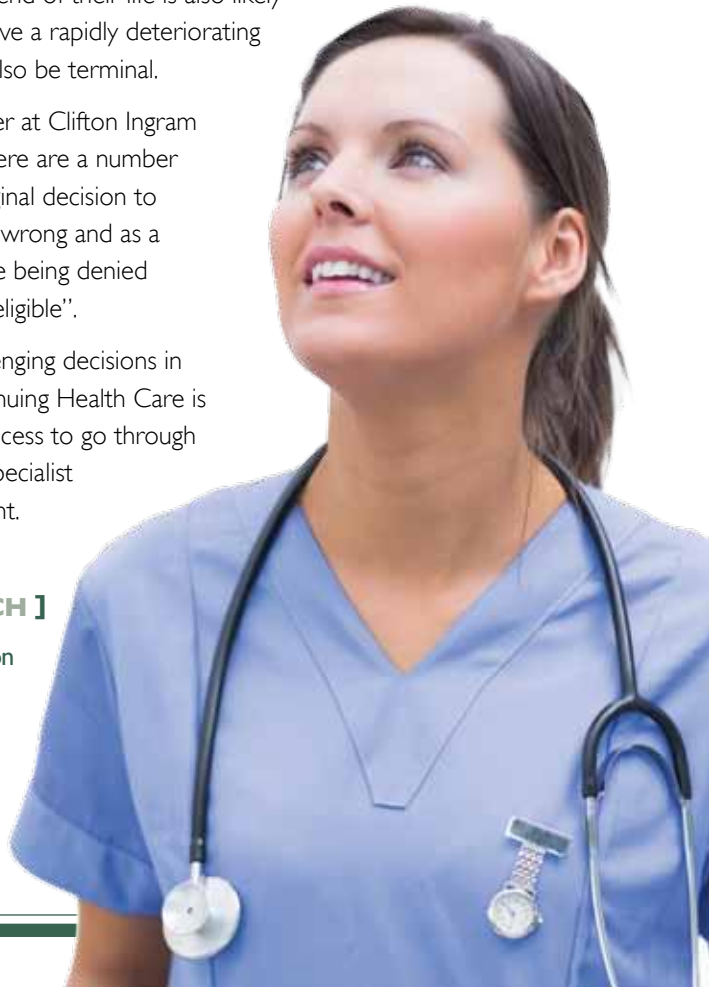
Someone nearing the end of their life is also likely to be eligible if they have a rapidly deteriorating condition which may also be terminal.

Stephanie Rose, Partner at Clifton Ingram LLP Solicitors said "There are a number of reasons why an original decision to refuse funding may be wrong and as a result, many people are being denied funding despite being eligible".

Applying for and challenging decisions in respect of NHS Continuing Health Care is not always an easy process to go through and understand, and specialist advice should be sought.

[GET IN TOUCH]

For more information please contact **Stephanie Rose** at stephanierose@cliftoningram.co.uk



NEW CONSUMER BILL OF RIGHTS

Within the next 18 months, all UK businesses who contract with consumers by means of distance communication (such as sales by telephone, internet or post) will need to review their contracting procedures to ensure they comply with the new European Consumer Rights Directive (the Directive).



The Directive is being incorporated into a new catch-all piece of legislation, implementing a new 'Consumer Bill of Rights'. The Bill will merge all 12 existing laws and regulations relating to consumer protection in the UK.

Businesses who sell by distance communication need to be aware of the changes in the Directive which include:

- the right for consumers to return and receive a full refund for all goods bought online within 14 days of receiving them, without giving a reason or incurring any cost. This is an increase from the current 7 days. Customer-specified or personalised products are among the goods to which the new right of return will not apply.
- traders will have to issue online consumers with a 'model withdrawal form', along with clear and comprehensible information about the goods or services, before a contract will be deemed binding. Other

information that must be provided are details of "the main characteristics" of the goods and services being sold, contact information such as name and geographical address of the business and the total price of what is being sold, including extra fees and charges.

- traders will generally be expected to deliver goods to consumers within 30 days of an order being placed. Consumers will be entitled to terminate the contract and receive a refund if the business does not deliver the goods during "an additional period of time appropriate to the circumstances".
- traders are prohibited from introducing surcharges for payment methods, such as for using credit or debit cards, above what it costs them to deliver the means of payment. Also traders will not be able to use premium rate phone lines for communicating with consumers via telephone following the conclusion of a contract.

- traders must ask for the explicit consent of the consumer to any extra payment required to complete a transaction before the sale is concluded. This is designed to eliminate hidden charges and cost traps online. Consumers will be entitled to a refund of any extra payment if the trader has not received their "express consent" prior to the charge.

If you think your business falls within the scope of the Directive, you will need to check your standard terms of business as well as your website terms to ensure that you are compliant with the new rules once they are brought into force before 13 June 2014.

[GET IN TOUCH]

For more information please contact Caroline Lindon-Morris at CarolineLindon-Morris@cliftoningram.co.uk

DIY DIVORCE

DIY divorces aimed at saving time and money for splitting couples can actually have the opposite effect due to unfair or unresolved financial settlements.

Anyone can conduct their own divorce by obtaining the forms from the local County Court. However Court staff cannot give legal advice and if you go wrong, you have to accept the responsibility.

The divorce process is divided into three parts (not all of which will apply to every case):

- 1 the process of obtaining a divorce (culminating in obtaining the decree absolute which allows both parties to remarry if they wish)
- 2 disputes over how the matrimonial assets are to be divided up,
- 3 disputes about children where the parents cannot agree such issues as residence and contact.

Many people who undertake a DIY divorce think that once the decree absolute has been obtained, the process is done and dusted. In reality, if the divorcing couple have not obtained a Court order specifically dealing with the financial matters, then either spouse could make a financial claim in the future. And even if they do get their financial agreement approved by the Court, the process is complex and it's easy to make significant mistakes, which could still leave the door open to future claims.

So whilst divorcing couples many wish to keep the costs down, they need to be aware that this can be a false economy if they don't seek legal advice, particularly about the financial aspects. This professional advice costs a lot less than trying to undo 'DIY' mistakes and can help avoid misery and additional expenditure years later.

[GET IN TOUCH]

For more advice on divorce please contact Marilyn Young at marilynyoung@cliftoningram.co.uk



EMPLOYMENT NEWS

IT'S BEEN A BUSY TIME FOR EMPLOYMENT LAW – HERE ARE A FEW HIGHLIGHTS...

Lap Dancer not an employee after all

In our last Citation we told you about a lap dancer who was claiming unfair dismissal from Stringfellows and the debate regarding her employment status.

The Employment Appeal Tribunal ("EAT") had found that she was an employee which would have allowed her to proceed with a claim for unfair dismissal and would have provided her with a number of other rights such as sick pay, maternity leave and pay and paid holidays.

Stringfellows appealed to the Court of Appeal who have overturned the EAT's decision and held that she was not an employee because she negotiated her own fees with clients and took the economic risk of being out of pocket on a particular night.

This case shows how complicated it can be for employers to determine the status of their staff. However, it is important to consider this as it will affect employers' obligations including in relation to the new pensions auto-enrolment scheme.

Pensions: Auto-Enrolment.

This new scheme was introduced in October 2012. There are staggered staging dates depending on the size of the employer but, over the next five years, all employers will be obliged to comply.

Employers can choose which pension scheme they use as long as it is a qualifying scheme.

Auto-enrolment means workers are automatically enrolled into their employer's pension scheme without any active decision on their part. When fully in force, employers will be obliged to pay a minimum employer contribution equivalent to 3% of a band of earnings (although this may increase in time).

We recommend that employers start to plan for auto-enrolment at least 12 months before their staging date, so that they have plenty of time to carry out the necessary administration. It is also crucial that employers properly assess the status of their workforce (are individuals self-employed, workers or employees?) as this will directly affect their entitlements and how much the employer will have to contribute.

Employee Ownership

In addition to the current employee, self-employed and worker statuses, from April 2013 there will be a new "employee owner" status.

With employee ownership, the employee will give up various employment rights including the right to claim unfair dismissal or a redundancy payment, the right to request flexible working (in most circumstances) or to ask for time off for training and will have to give longer notice of their intention to return early from maternity or adoptive leave. In return, they will receive between £2,000 and £50,000 worth of shares in the employer company. Employee owners could be required to sell back shares if they leave or are dismissed at "unrestricted market

value". Any gains in value would be free of capital gains tax but, as with other employee shares, the shares would be subject to tax and national insurance.

The new employee owner status will create complex issues for both employers and employees and seems to introduce more rather than less red tape, contrary to the Government's stated aim. The proposal could create a two-tier workforce with different rights. If you are considering employee ownership, we recommend that you seek legal and accounting advice.

Religious Discrimination

The European Court of Human Rights ("ECHR") has ruled that English courts failed to protect British Airways employee Nadia Eweida's freedom of religious rights to wear a crucifix in the workplace.

However, the ECHR endorsed the English courts' findings that there was no discrimination in three other cases relating to (1) a nurse being told that wearing a crucifix outside of her uniform was a health and safety risk to patients; (2) a registrar being dismissed for refusing to carry out civil partnership ceremonies; and (3) a Relate counsellor being dismissed for refusing to provide psychosexual therapy for same-sex couples.

In the latter two cases, the ECHR ruled that employers were right to promote equal opportunities and to require employees not to discriminate against others on the grounds of sexual orientation.

It is important to carefully review each situation if an employee raises a concern about religious discrimination.

Parental Leave Reform

A new system of statutory parental rights will be introduced in 2015 to allow parents to choose how best to balance their work and childcare responsibilities between them. As an alternative to maternity leave and pay, flexible parental leave and pay will be available to be shared by parents consecutively or concurrently, as long as the total amount of

leave does not exceed the amount which is jointly available to the couple.

Additional paternity leave and additional paternity pay will be abolished.

In addition, from March 2013, the entitlement to unpaid parental leave will increase from 13 to 18 weeks per child and, from 2015, each parent will be able to exercise the right to unpaid parental leave for children up to the age of 18.

Extension to the right to request flexible working

The Government plans to extend the right to request flexible working, making it available to all employees from 2014, as long as they have 26 weeks continuous employment.

[GET IN TOUCH]

For advice on any of these employment issues please contact Alison Gair at alisongair@cliftoningram.co.uk



EXCITING NEWS!

WE ARE PLEASED TO ANNOUNCE THE LAUNCH OF OUR NEW WEBSITE.

The new site has stacks of free legal information for businesses and individuals, written by our specialist law teams, as well as details of upcoming events, links to newsletters and ebulletins. You can also follow us on Twitter.

To view the site, please visit our usual website address at www.cliftoningram.co.uk

PROPERTY LINE

WELCOME TO PROPERTY LINE, THE PROPERTY COLUMN WHERE OUR RESIDENTIAL PROPERTY TEAM ANSWER YOUR QUESTIONS ABOUT HOUSE PURCHASES AND SALES.

UNWELCOME VISITOR

QUESTION: We are selling our home and the woman whose offer we accepted has now seen the house five times, including twice with her builders. We don't want to upset the buyer and lose the sale but can we limit her visits as we're getting a bit fed up?

ANSWER: To date you have been very accommodating and given your buyer access to the property whenever she requested it. First, have a word with the selling agent but if that doesn't work a more formal approach may be required.

You need your buyer to proceed to exchange of contracts so that there is a binding agreement between you. Your solicitor can put matters on a formal basis by having a clause or special condition in the contract that specifically details the amount of access the buyer can have between exchange and completion e.g. one maximum two hour visit accompanied by one other person.

LED DOWN THE GARDEN PATH

QUESTION: I am selling our house and my property agent has said that the buyer wants a statutory declaration from me about the footpath that runs along the back of the property. Apparently it's because the path doesn't belong to the local council. Is a statutory declaration a legal document?

ANSWER: Yes it is a legal document and an important one. Your buyer's solicitor is probably seeking a statutory declaration because your title deeds don't include a right of way over the path. A statutory declaration is a written statement, the contents of which must be totally truthful and accurate.

A statutory declaration must be signed and authorised by a solicitor, notary or legal executive for which they will normally charge a nominal fee. You will need to provide relevant information for the declaration such as how long you have had access to the path, if you have ever been asked for payment for access or if you have ever had any issues with obstruction etc.

NEW AND APPROVED?

QUESTION: We are buying a property built 18 months ago by the seller. There is no NHBC agreement but the seller has provided an architect's certificate dated just after the property was completed. We are worried that the architect's agreement might not cover all the points we need and may affect our ability to get a mortgage.

ANSWER: You are right to be concerned. Lenders will generally only lend on a new build (or new conversion) where it is covered by a new home warranty scheme such as a NHBC certificate. A lender may be prepared to accept a Professional Consultants Certificate (PCC) in a form approved by the Council of Mortgage Lenders (CML). A PCC can only be signed by a qualified consultant, for example a fellow or associate of the Royal Institution of Chartered Surveyors. By signing the certificate the consultant confirms he has monitored the construction of the property and that he will remain liable to the owner and any lenders for 6 years.

If the certificate provided by your seller does not satisfy the stringent requirements of the CML it will be unacceptable to lenders. Some insurers will provide a new build warranty retrospectively but the seller will need to be able to satisfy the insurer's requirements and the premium may be hefty.

[GET IN TOUCH]

If you need advice on residential property please contact Tina Crow at tinacrow@cliftoningram.co.uk



FREE LEGAL SEMINARS

CLIFTON INGRAM LLP SOLICITORS IS DELIGHTED TO OFFER A RANGE OF FREE SEMINARS DESIGNED TO HELP BUSINESSES AND INDIVIDUALS.

EMPLOYMENT UPDATE CO-HOSTED WITH WILSON & PARTNERS



Time: 3.30-5.30pm
Date: Wednesday, 27 March 2013
Place: Wokingham

A free employment seminar providing practical insights into recent developments including Employment Ownership, one of the most radical and controversial changes to employment law in recent times.

Topics covered will include the planned changes to all of the following:

- Employee Ownership - new "employee owner" status under which unfair dismissal and other rights can be exchanged for shares
- Employment Status - recent Court of Appeal case and its implications
- Equity based incentives for employees
- Tax treatment of termination payments
- Parental Leave Reform - new system of statutory parental rights
- Flexible Working - extension of rights
- New statutory payment rates and compensation levels for 2013

WILLS, TAX AND ESTATE PLANNING UPDATE CO-HOSTED WITH AGE UK



Time: 9.00am-12.00pm or 2.00pm-5.00pm (please specify)
Date: Thursday, 18 April 2013
Place: Wokingham

Another of our popular wealth management events, for individuals concerned about preserving their wealth now and later in life, which will cover the following topics:

- Tax efficient charitable donations, including the new reduced rate of Inheritance Tax of 36% (reduced from 40%)
- Protecting your inheritance
- Powers of Attorney

Registration: To reserve your place, at either of these events, or for more information, please contact Melissa Baxter on email melissabaxter@cliftoningram.co.uk or call 0118 912 0210.

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