



health

AND SOCIAL CARE

NEWS AND ADVICE FOR HEALTHCARE PROFESSIONALS
FROM BIRKETT LONG

Birkett Long's specialist health and social care team understands that the legislative and regulatory environment is complex, with a continued shift towards greater public scrutiny.

Our comprehensive understanding of the key issues for the health sector means that we can quickly provide you with concise and relevant advice whatever your business within healthcare.



Liz Jones
01206 217364
liz.jones@birkettlong.co.uk

Care homes

As the CMA investigates consumer protection in the care home market, Tracey Dickens explores what this could mean for owners and managers

Paying beyond retirement

Doctors must assign their surgery leases if they are to avoid liability, as Sian Taylor explains

Your business in 20 years' time

Liz Jones underlines the case for more detailed succession planning in the healthcare profession

Care homes

more protection for residents and their families

The Competitions and Markets Authority (CMA) has announced, as part of its market study into care homes, that it is opening a case to investigate consumer protection in the care home market. Tracey Dickens asks what this may mean for owners and managers.

The market study was announced by the CMA on 2 December 2016 with the intention of investigating the concerns that its predecessor, the Office of Fair Trading, had about the care homes market. The concerns surrounded information provided to care home residents, confusion around fees and contract terms, and difficulty for residents and family members in making complaints.

The CMA is obliged to update and publicise progress of any market study. The most recent update on the study announced the intention of the CMA to open up a formal case into consumer protection in this sector. The two chosen issues that are the subject of the case, relate to large up-front fees and after death fees. It has been reported to the CMA that residents were charged large

up-front fees labelled as 'management fees', as well as paying the first month in advance for their residency. Little explanation was given to residents as to what these fees were for and whether the money would ever be returned. After death fees were charged by care home providers to deceased residents' estates for the resident's room after their death, even when the room had been reoccupied. Some also reserved the right to charge fees to subsidise any monies that a Local Authority would have contributed had the person been alive.

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The power to conduct a market study, and to open any subsequent case, is given to the CMA by the Enterprise Act 2002 (EA). Part 8 of the EA provides that the CMA (along with other organisations described within the EA as 'enforcers') has the following powers:

- **To investigate**

The CMA has the power to collect information and conduct research into markets where there may be competition

Many doctors and healthcare professionals lease their surgeries. Few realise that their retirement does not automatically release them from their obligations.

Paying beyond retirement

Doctors or healthcare professionals that lease their surgeries need to consider assigning the surgery lease when they retire, or it could be a shock to find that their obligations as a tenant under the lease of their surgery continue, even though they are no longer working. 'Assigning' refers to transferring all rights and obligations that you have under the lease to another party.

or consumer problems. This includes carrying out market studies and requiring remedial action; for example, to require all care homes to comply with certain procedures or rules within a statutory deadline.

- **To consult**

The CMA may consult with businesses or individuals about possible breaches where appropriate. The purpose of consultation is to highlight infringement and bring it to an end. It is generally accepted that the CMA should consult with businesses or individuals before considering court action.

- **To accept undertakings**

Under Part 8 the CMA can accept an undertaking that the infringement will stop. Accepting an undertaking does not prevent the CMA from taking court action, but offers businesses or individuals a less costly way to deal with infringement.

- **Court action**

Any Part 8 'enforcer', including the CMA, can apply to the court for an enforcement order if resolution cannot

be made by consultation or by an undertaking. They can also apply to the court directly in urgent situations. The court order will identify the infringement and who the order is directed against, this can be the business itself but can also be (either instead of or as well as) those individuals who direct the running of the company. If the court order is breached this is contempt of court and is punishable by a fine or imprisonment.

The fact that the CMA has opened a case into consumer protection in this market is a clear declaration of its intention to take action against breaches of consumer law. If a request for information is made to a business or individual it is advisable to co-operate, given the wide enforcement powers available to

the CMA. If you are in any doubt as to your obligations under consumer law or what assisting in reviewing your terms to address CMA concerns please contact Tracey Dickens.

Tracey Dickens
01206 217326
tracey.dickens@birkettlong.co.uk



For example, if you are retiring but another doctor is taking your place and the surgery is leased by the partnership, you will need to transfer the lease from yourself and the current partners to the new and/or existing partners. If you fail to do so, you will remain liable under the terms of the lease following your retirement. If the lease still has years to run, this could be an ongoing liability!

Should you fail to assign the lease you will still be liable to pay rent due and comply with all other obligations under the lease, even though you have retired and may no longer have any financial interest in the partnership.

On occasions, landlord consent is required to assign the lease but it is quite common for GP surgery leases to allow doctors to assign the lease

without having to obtain consent from the landlord, but you should check the specifics of your own lease before proceeding.

If you have any queries about your surgery lease please do not hesitate to contact us.



Sian Taylor
01206 217337
sian.taylor@birkettlong.co.uk



Few people face as much pressure and time constraints as those in the health and social care professions. In an attempt to 'fire-fight' it can be tempting to overlook the necessity of planning for the future. As Liz Jones explains, it is of utmost importance that thought is given to what could happen with the business if the key person was no longer at the helm.

your business

where will it be in 20 years' time?

As a business owner, we understand that you are extremely busy, tied up with the day to day demands from patients or clients, along with the necessities of management and organisation. It is, however, vital to take some time out to give serious consideration to what would happen to your business should you no longer be there to steer its course.

All business owners should consider who they would want to take over the business and they should do that as part of the process of preparing and updating their will. It is one thing to take into account changes in personal circumstances and family dynamics but it is often true to say that the future of your business could be essential to the future financial security of those you love.

Whether you want your business to continue after your death or whether you prefer that it be sold and the proceeds divided in accordance with your wishes, these preferences need to be clearly set out in your will.

Your business may be run by your family, it may be a partnership or it could be a

business that is purely for investment; whatever its structure, it is essential to consider a number of factors for the future. For example, who could or would want to take over the business? What are the tax implications of doing so? Does the structure of the business allow it to continue after your death? What happens to the goodwill in the business? Would it be better to transfer the business to your future beneficiaries before you die? These are important points which require serious consideration.

As you would expect, we advise people from all walks of life and in all circumstances on making their will. Often, our conversations uncover opportunities or even pitfalls that our clients had not realised existed. Our experienced team helps many business owners with their succession planning and in doing so takes consideration of important factors such as tax mitigation. Please get in touch if we can help you further. We offer a free 15-minute phone consultation.

Liz Jones
01206 217364
liz.jones@birkettlong.co.uk

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EZ
T 01268 244144

1 AMPHORA PLACE, SHEEPEN ROAD
COLCHESTER CO3 3WG
T 01206 217300

FAVIELL HOUSE, 1 COVAL WELLS
CHELMSFORD CM1 1WZ
T 01245 453800

E HEALTHCARELAW@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK

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