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Healthcare intelligence

WEBINAR

Rights & Regulation Post Covid-19

In partnership with

Bevan Brittan

CM Care Markets

CWC the care workers' charity

TURN2US FIGHTING UK POVERTY

Setting the scene

Key themes

- Local – National
  - Local systems
  - National, consistent standards
- Integration of health and care – CQC already regulate both
  - Delivery
  - Accountability
  - Funding
- Practical solutions
- Public Health

- A POSITIVE TONE FOCUSSED ON WHAT WE CAN DO BETTER

Key questions from attendees

Changes to regulation from Covid

- Should CQC be looking more to promote best practice. If not then are they condoning bad practice by only reporting errors
- Will the CQC be looking for care homes to upgrade their interiors to something that minimises the spread of infection
- What is expert opinion on the way CQC would handled the pandemic & associated impact on the healthcare sector in a better way
- Will there be increased regulation of new-build room sizes
- Will CQC empower employers to act more independently to take positive action but still mitigate risk e.g. when accepting (potentially infectious) urgent discharges from hospital or hiring agency staff who have worked (untested) in other care settings

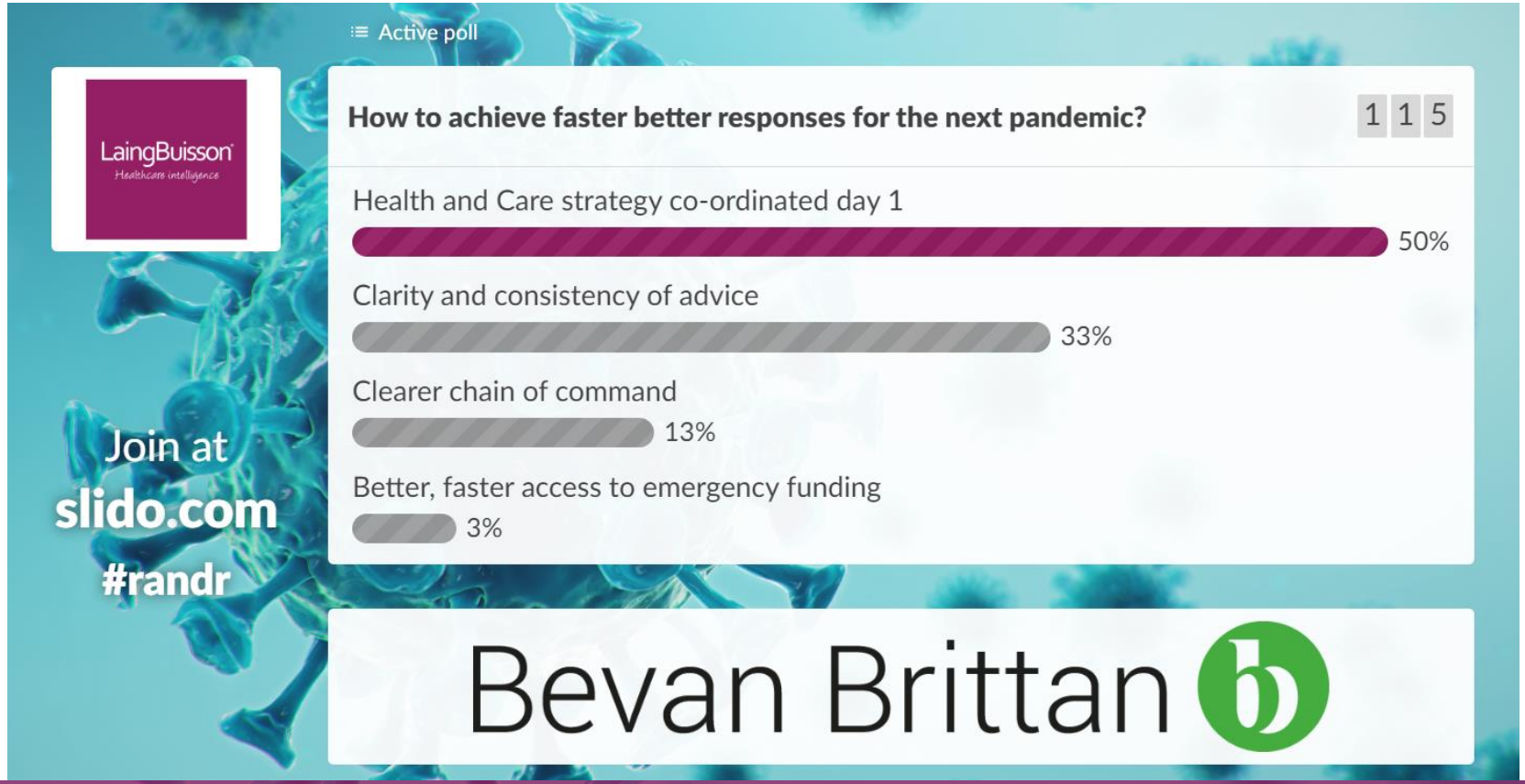
Changes to the market from Covid

- How might judicial review benefit residents, staff and relatives
- How do you think Private Equity involvement in the market might change post-COVID

Rights of residents, relatives, staff and employees

- With different clinical picture in older people & lack of tests, will any legal challenge fail as cause of death is a guess
- What rights do small businesses in the healthcare sector have who are not eligible for government grants
- What risk is there of corporate manslaughter charges being brought against employers and of being successful
- How possible is it that the government's contingency planning (lack of track and trace readiness compared with countries such as South Korea and Singapore) will have a bearing on the outcome of any such corporate manslaughter cases brought.
- What rights do relatives and residents have to see their loved ones
- Should CQC be found wanting in their regulation of care homes by not requiring a pandemic plan of care providers

Live polling



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WEBINAR: Rights & Regulation Post Covid-19

Chris Day
Director of Engagement
CQC

Vic Rayner
Executive Director
National Care Forum

Carlton Sadler
Partner
Bevan Brittan

Jeremy Richardson
Chief Executive
Four Seasons Health Care

Robert Kilgour
Executive Chairman
Renaissance Care (Scotland)

Lynn Fearn
Managing Director
Healthcare Management Solutions

Stuart Marchant
Partner
Bevan Brittan

Submit your questions at sli.do - Event code: randr

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Bevan Brittan

Chris Day

Director of Engagement
CQC

Submit questions at Sli.do #randr

Our role and purpose

The Care Quality Commission is the independent regulator of health and adult social care in England

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

CQC and COVID-19

- We have **paused routine inspections** but are **continuing responsive inspections**

- Instead we've developed the **Emergency Support Framework** during the pandemic

- Focus on:
  - safe care and treatment
  - staffing arrangements
  - protection from abuse

Learning from the COVID-19 crisis

- **What's important**?
  - Information sharing
  - Voice of people
  - Voice of care providers

- **Local systems** have an impact beyond providers of care, and into the public health and commissioning response – critical to the response of people use services

- **Transparency** promotes learning – one doesn't happen without the other

COVID-19 Insight reports

- First in a regular series of insight reports – 19 May
- COVID-19 gathering evidence from the ESF and:
  - from direct feedback from staff and people receiving care
  - regular data collection from services who provide care for people in their own homes
  - insight from our regular conversations with providers and partners
- The next issue covers:
  - How leaders in NHS and ASC organisations are helping to control the spread of COVID-19 through collaboration and planning
  - The importance of local systems in managing COVID-19
  - How the care for people from different groups is being managed through the COVID-19 crisis

www.cqc.org.uk/covid19insight

Looking forward

- We will look at **systems of care** and examine what works well and where there are still tensions
- Describe what **good looks like during the pandemic to support future planning**
- Use what we have **learnt to improve** the way we operate as we move forward

Vic Rayner

Executive Director
National Care Forum

Submit questions at Sli.do #randr

What have we learned about Rights and Regulations?

* Regulation – Tale of two cities
* Local Role
* National Role

Rights

* Assessment rights reduced – impact on choice and control
* Right to be heard
* Terrible toll on some parts of our community – older people, people with dementia, people with learning disabilities, BAME population
* Measure what you Treasure

NCF
THE NATIONAL CARE FORUM

What do we want the CQC to do differently?

* System reviews? Oversight
* Act fast and hard when clear systems are letting people down
* Sharing information much earlier
* Data – you have it – use it
* Leadership and Independence
* Evaluation going on -get your voice heard in it

NCF
THE NATIONAL CARE FORUM

How do we embed and enhance Rights in the next 6-12 months?

* Learn from people
* Flags must be raised much earlier
* All citizens count – and must be counted
* Blanket policies have detrimental impacts
* Embed rights – visiting, connection, communication

NCF
THE NATIONAL CARE FORUM

How do we embed and enhance regulation in the next 6-12 months?

* Regulation stirring back into action. Need to remember the eye of the storm.
* Supportive mode – things are not 'normal'
* Make or break organisations
* Localised data sharing will never be more important – or sensitive
* Shock waves unwelcome

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Carlton Sadler

Partner
Bevan Brittan

Submit questions at Sli.do #randr

Regulation - the Context

- Hospital Discharge Service Requirements - 25,060 patients discharged to care homes between 17 March and 16 April – testing not widespread,
- Visitors – PHE guidance 13 March – 2 April “Anyone who is suspected of having COVID-19, with a new continuous cough or high temperature, should not visit care homes or people receiving home care, and should self-isolate at home”
- PPE
  - Belated and frequently changing guidance
  - National stockpile deliveries often a box of 300 masks
  - ‘On paper’ supply support – National Supply Disruption Response
  - “Marigolds and bin liners”
- 6225 (40%) care homes in England suspected or confirmed COVID outbreaks - PHE (as at 31 May 2020) -
- 19% DCAs with at least one service user with suspected or confirmed COVID-19 (CQC data as at 8 May)

PPE- CQC Domiciliary Care Agency Survey as at 8 May 2020

Risks of non-compliance (in peak and easing)

- Direct Covid
  - infection control
  - “Managers of smaller providers are having to choose whether to self-isolate or continue working due to the levels of staff sickness.”
  - facilitating contact
- Indirect Covid
  - Access to healthcare services for non-Covid conditions
  - DNARs
  - Staffing levels/ agency issues
  - Multi-compartment compliance aids (MCAs)
  - Staff morale and ‘burn out’
  - new and unfamiliar working practices
  - Financial impact
- Regulation 12 ‘Safe care and treatment’

The Regulator's Response

- "We expect services to continue to do everything in their power to keep people safe. … We will continue to inspect where we see evidence of risk of harm, deliberate abuse, systematic neglect or a significant breakdown in leadership. We will use our powers, or work with the relevant system partners, to take action against those responsible where we find unsafe or poor care." - Joint statement of Chief Inspectors (30 April 2020)

- **Emergency Support Framework**

  "Our Emergency Support Framework, developed … to inform system partners, to target additional support and resource, or to trigger inspections.

  CQC working with local authorities … have even arranged loans of PPE from other providers to cover immediate need". - Coronavirus (COVID-19) insight

- ESF summary record

  Disclosure/ challenge?

Inspection and Enforcement

- “We will share good practice where we find it and will seek further assurance where necessary, including targeted inspections. We will use our enforcement powers if we find unsatisfactory practice that puts people receiving care at risk.

- This also applies to controlling the spread of COVID-19 between different services. … In a very small number of cases where care homes have told us that a patient’s positive COVID status was known to the hospital but not disclosed at the point of discharge, we are considering whether the hospital breached regulations.” – Ted Baker

- “We'll make sure our judgements about what counts as avoidable harm or a provider failure are proportionate. And we'll consider the pressures on providers and staffing levels, and whether you are taking sufficient action to ensure your care is safe and effective.”

- How to show “took all reasonable steps and exercised all due diligence to prevent the breach”?

- Emergency support framework: discussion questions for adult social care services (May 2020)

Jeremy Richardson

Chief Executive
Four Seasons Health Care Group

Submit questions at Sli.do #randr

Rights & Regulation post Covid - 19

1 Who we are

- Four Seasons Healthcare Group is one of the UK's largest care home operators.
- 187 care homes across England, Scotland, Northern Ireland and Jersey.
- The Group operates 2 brands, Four Seasons and brighterkind. Previously operated independently, the two divisions of the business were combined in December 2019.

2 Impact of Covid

- Significantly affected, in line with all other operators.
- Covid or suspected covid cases in c65% of all homes (currently 13.7%)
- 531 deaths, 400 of which have occurred in our homes.
- At its peak 11.3% of team were off work either shielding or self isolating, (now substantially reduced).
- Occupancy has dropped from a peak of 89.5% to 79.8%, a decline of 9.7%.
- PPE and other infection control costs have risen YoY from c£250k to £2.7m.

3 The future of regulation

• Complicated	▶	Simplified
• Disjointed	▶	Aligned
• Reactive	▶	Proactive
• Culture of fear	▶	Mutual support

Robert Kilgour

Executive Chairman
Renaissance Care (Scotland)

Submit questions at Sli.do #randr

Robert D. Kilgour - Background

RENAISS

- Born and brought up in Scotland
- Founded Four Seasons Health Care in 1988
- Left FSHC in 2000: 101 care homes and 6,500 staff = fifth largest in the UK
- Final financial exit from FSHC in 2004
- Founded Renaissance Care in 2004 and currently Executive Chairman
- 15 care homes in Scotland and 1,100 staff
- Appointed Macmillan Cancer Support's first Ambassador in 2018
- Lives and works between London and Scotland

Renaissance Care's Timeline

- 1 March 2020 – Partial lockdown
- 11 March 2020 – Full lockdown
- 1 April 2020 – Masks for all staff
- 3 April 2020 – First positive test

Renaissance Care's Experience

- PPE supply
- Hospital discharges
- Testing
- Funding
- Regulators

Renaissance Care's Data

- 141 residents in nine homes tested positive
- 48 deaths following positive tests in eight homes
- 10% residents with no symptoms tested positive
- 7% staff with no symptoms tested positive
- Maximum 15% staff off sick or shielding

Renaissance Care Today

RENAISS

Where are we now?

- 8% staff sick or shielding
- Only 2.8% Covid-19 related
- 91 residents tested positive have recovered
- Only two positive residents in one home

Current issues

- Regular staff testing needed
- More funding support needed
- Relatives returning in a safe manner
- Staff 'burn-out' and mental health support
- Scottish Government's 'Test & Protect' scheme
- Covid-19 'Second Wave' threat

Renaissance Care's Future?

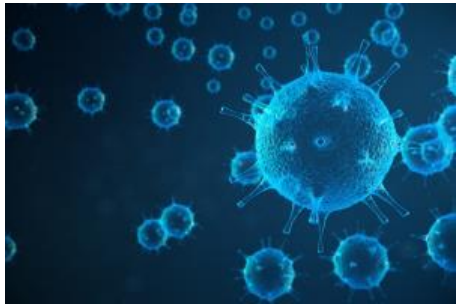
Lynn Fearn

Managing Director
Healthcare Management Solutions

Submit questions at Sli.do #randr

Our Guiding Principles:

- Collaborative working across flattened organisational structures
- Clarity of decision makers and identifiable visible leadership
- Swift analysis and implementation of national guidance
- Timely and responsive decision making
- Clarity of the message – Comms, Comms, Comms!!!!!
- Maintain essential supply lines at all times
- We will do what we say we will do



What Did We Do?

- Set up a Covid-19 Action Team that met daily
- Daily Home Managers Briefing including time for Q&A
- Produced a single Q&A guidance report that was updated daily
- Set up Home Manager WhatsApp Groups
- Focused on staff morale initiatives – having fun, making life easier
- Daily meetings with our suppliers with specific focus on PPE
- Set up our Head Office as a logistics hub and warehouse
- Used technology to support new ways of working
- Adopted an approach of total transparency with our all our stakeholders -

This was new to us all and sometimes we got it wrong; "Review, Revise, Learn & Move On"

Was our experience:

- Challenging? – of course we expected nothing less
- Frustrating? – Yes at times
- Did we feel abandoned? – No
- Was it a war zone as portrayed by the media? – Not for us
- Are we learning every day? – Yes

What Is the outlook for us for the next 6 Months?

- Continued need for PPE
- Ongoing restrictions on visiting
- Occupancy will be slow to recover
- Continued cost pressures
- Reduced need for agency staff
- Improvements in the recruitment landscape
- New ways of working across the whole organisation

What do we need as we recover?

- Consistency of approach from central government and local authorities
- Less duplication of inspection from multiple agencies
- Joined up funding between health and social care – funds following the person
- Transparency of data so we can plan and prepare

Stuart Marchant

Partner
Bevan Brittan

Submit questions at Sli.do #randr

Human Rights - An exercise in balancing

- Article 2 – the right to life
- Article 5 – the right to liberty
- Article 8 – the right to a family life

- Whose rights?
- Residents and patients
- Staff
- The public

Finding the balance, making compromises, maintaining relationships

Council of Europe's European Committee for the prevention of torture

20th March 2020 - Statement of Principles on the treatment of individuals deprived of their liberty in consequence of the COVID-19 pandemic.

4) Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures.

5) …concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty…. reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes…"

Restrictions on visits: BP v Surrey - Part 1

- BP was resident in care home with Alzheimer's. He was also deaf.
- The Local Authority "unhesitatingly recognized" that the visiting restrictions at the home were "undoubtedly an interference with BP's right to family life".
- The Family submitted that the restrictions on visiting were designed to apply generally to all residents and visitors so didn't make sufficient allowance for BP and his deafness.
- Hayden J: Care home's application of Government guidance on restrictions on visitors was proportionate in these exceptional times.
- "This court is required to evaluate the interference entirely from BP's own perspective" to assess his best interests.
- Requires an understating of what BP would want when looking at the options.

BP v Surrey - Part 1: finding a compromise

- BP's daughter's preference: BP to stay at the care home with some arrangements put in place for contact with her and his family.
- If not possible - her father would be better at home with her – although she eventually accepted not realistic to provide care without carers and father would not have wanted to impose that burden.
- BP's deafness very much limits the available options for contact.
- Deafness is a separate and protected characteristic, as defined in the Equality Act 2010. As such, it requires to be identified and considered as a unique facet of BP's overall needs.
- The compromise: BP's education in to the world of Skype with creative use of a communication board and the exploration of concurrent instant messaging. Additionally, the family can, by arrangement, go to BP's bedroom window which is on the ground floor and wave to him and use the communication board. "All this will require time, effort and some creativity."

The right to die at home

VE v AO and Others, [2020] EWCOP 23

- AO was discharged from hospital to her care home on 23 March with terminal cancer - restrictions on non-essential visits meant VE could not see her mother at all.

  Lieven J, "The ability to die with one's family and loved ones seems to me to be one of the most fundamental parts of any right to private or family life. That how a person dies can fall within the ambit of article 8 is now well established, … it would seem to me self-evident that such a decision by the state that prevents someone with a terminal disease from living with their family, must require a particularly high degree of justification under article 8(2)."

- Discharged home on 20 April, died at home on 22 April.
- NB - Each case will turn on its facts – what if the person is dying from, and at risk of spreading, Covid-19?

The BP case – Part 2: "Time to Go Home"

- Early April: BP became very low in mood to the extent of not eating, sleeping much more than usual and becoming unresponsive.
- Became unwell and displayed minor symptoms of Covid-19 but recovered quickly and it was thought to be an unrelated illness with no reported cases in the care home.
- His daughter visited by sitting outside the window and communicating that way.
- BP could not fully understand why social distancing measures were in place and his daughter suggested BP felt he was being punished for some reason.
- Between the hearings, BP's daughter had secured a home care package

The BP case – Part 2

- The balance had shifted
- P's human rights must always be considered as both a positive and negative obligation – i.e. to protect life but also to ensure liberty and security.
- The balance in this case tipped and living with his daughter was the least restrictive option in his best interests.

Other matters

- Capacity assessments – virtual assessments: roles for staff
- The need for DoLS in care homes
- People who need to be restricted due to Covid-19
- The health protection team and public health officer
- Business as usual…Challenges to DoLS under s.21A

Balancing rights, maintaining proportionality

- Risks of infection decreasing
- Track and trace
- Lockdown easing
- Staffing capabilities to facilitate
- Developing policies
- Individualised plans
- Communication
- Preparing for a second wave

Thank you again to our partners

Content

Bevan Brittan

Media

CM Care Markers

Coronavirus Toolkit
Knowledge, intelligence and insight

Charity

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