

ORIGINAL THINKING

Insights into the health sector

Capsticks

NOVEMBER 2016

Introduction

Our lawyers work at the cutting edge of healthcare for both public and private organisations, frequently helping to craft policies and advise on new health sector strategies. As such, we have a helicopter view of the many issues affecting the healthcare sector. In this, and future editions of Original Thinking, we will be sharing our views and analysis of current topical issues.

The healthcare sector remains in flux and, in many parts, is under considerable strain. Given this background, the lack of confirmation of extra resources to either NHS or social care in the Government's Autumn Statement last week will underline the continued need to find savings and to work differently. In many cases, the easy wins have already been found and this will be a time for innovative and collaborative ways of approaching services. Our analysis on the health sector is below.

NHS trusts - how much consolidation will we see in the coming year?

As the financial pressure mounts on NHS providers, it is perhaps not surprising that increasingly trusts are looking to explore group and joint management options. Some of these models use shared decision making fora, such as committees in common whilst other trusts are making joint appointments, sometimes as part of wider initiatives to merge or work together across health economies in recognition that previous organisational boundaries may be preventing cohesion along care pathways.

There does seem to be an almost inevitable trajectory towards a smaller number of NHS providers - a move that some would say is overdue. But mergers have a mixed track record - both in the NHS and out of it, especially when transactions are sought as an answer to financial issues.

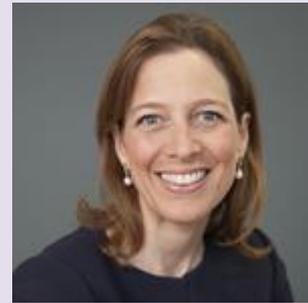
The key to success is bound to lie in a clear and articulated rationale for joining together, carefully researched and understood due diligence and an integration and implementation plan that works to improve patient care and bring together different staff and cultures as part of a streamlined unit - but all that's no doubt easier said than done, especially in constrained financial circumstances where trusts may not have the resources to build in all the right level of management and financial time.

What next for STPs? Making the plans work in practice

Now that the final drafts of Sustainability and Transformation Plans have been submitted, we look at the next steps for the 44 national footprints. STPs reflect a shift in ideology - a sea change in the approach to sustainability; rather than the relentless focus on achieving organisational sovereignty (through attaining and retaining foundation trust status), NHS bodies and local authorities have worked together to identify the future direction of services for the next five years.

The planning process itself has not always been easy - NHS legislation requires each body to make its own decisions. In some cases, that has led to confusion and

Welcome



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Welcome to Original Thinking - a new publication from Capsticks, which we hope will give you an insight into some of the issues currently affecting the health sector together with our analysis on how these could impact upon your daily work. We also plan to feature in each newsletter a quick Life Story from a well-known figure in the health service. Many thanks to Tracy Taylor, Chief Executive Officer of Birmingham Community Healthcare NHS Foundation Trust, who kindly agreed to talk to us for this inaugural issue.

Alongside both of these features we have links to legal updates on various topics in our News Room section and details about our upcoming events. Finally, we have included a brief update on our CSR activities. We know that so many people in the health sector give of their time to important causes, large and small, and that mirrors the ethos here at Capsticks, where we give back to local communities and support several charities. We hope you enjoy reading about our various projects.

questions - is the STP an entity, can the STP bind other parties, can the STP meet – and, if not, how will matters proceed? Complex governance structures have also led to confusion around meeting attendance and logistical challenges. Moving forward, it is essential that STP areas are able to accommodate these governance challenges – clear, straightforward decision-making and meeting structures are essential.

At the same time, STPs have been prepared at pace – this has led to concerns that proper process and engagement and consultation obligations have been left behind in the speed. Already, there has been an increase in the actual and threatened cases of judicial review of decisions. STPs have, in many cases, set out ambitious and necessary changes that will need further work – to make sure these plans happen in practice and are not stymied by legal challenge, will require careful assessment and engagement with patients and the public.

What has been clear is that STPs have harnessed renewed vigour and enthusiasm for closer working and integration, particularly in relation to new workforce models and integrated care. Whether through simple collaboration, a lead employer model or joint ventures, NHS bodies are bringing workforces closer together. This will usually be achieved through joint management arrangements, secondments or transfers of staff under TUPE to a new organisation. Whichever method is used, and each has its pros and cons, early engagement with the workforce and the unions will be key to a successful outcome. Robust mobility clauses and building greater flexibility into contracts of employment will also help to ensure that changes can be implemented more easily.

Independent health and care - the market reacts to the changing landscape

Whilst NHS markets continue to suffer from the constraints in public finance, the private health and care market has been increasingly active with the industry anticipating that patients are likely to turn to private providers to avoid waiting lists for care and recuperation.

At the same time, technology and digital health business companies such as Babylon and Doctor Care Anyway continue to grow – partnering both with NHS and private providers to help drive efficiency in provision.

Even though the Brexit decision has brought much uncertainty to markets and inward investment, there is a continued appetite for health and care businesses from overseas investors in the UK. For example, recently the Acadia disposal of certain of its acquired Priory and Partnerships in Care hospitals to BC Partners saw much interest from overseas investors spotting opportunities to maximise their return from a weaker pound and a buoyant sector.

We will publish this newsletter on a bi-monthly basis and welcome any feedback you may have,

Happy reading!



Corporate social responsibility:

CSR and Capsticks go hand in hand. We have always had a strong ethos of integrating with and supporting our local communities. From our early days fundraising for the Royal Neuro Disability Hospital in Putney to our recent continuing work with local communities at all our offices nationwide.

Here's a snapshot: Our Leeds and Birmingham offices have been involved in a very successful project with the "Make the Grade" Ahead Partnership, which supports local students with work and skills opportunities.

In London, employees can get involved in the Wimbledon Guild Community projects, including the Stroke Rehab classes and Gadget Workshops. We also support a Pro Bono legal clinic every week.

In addition to our corporate CSR many people at Capsticks raise funds for individual projects and charities including running marathons, climbing several mountains in one weekend, hosting cake sales, donating Christmas gifts and coaching youth teams. It's part of our DNA and something we feel is hugely important to the way we work as a firm. We hope you see that in the work we do for you too. Feel free to ask any of our lawyers who work for you about these different CSR initiatives....and there'll be plenty more they can tell you about too.

News Room

Capsticks publishes regular e-alerts for the health and care sector covering legal updates and providing analysis on major issues. See the list below for our most recent updates and news stories.

- Deprivation of Liberty - click [here](#)
- HRA - Helping Trusts reduce sickness absence - click [here](#)
- Consolidating shared services in your STP - click [here](#)
- Employment Appeal Tribunal – no requirement for workers to take rest breaks - click [here](#)
- Hot topics in Leasehold - click [here](#)
- Health and Safety prosecution - click [here](#)

Events

Capsticks runs a programme of events covering topics of interest to those working in the health and care sector. We also attend various conferences throughout the year. Click [here](#) to see the full current listing and to link through to our registration page.

Life stories



Tracy Taylor

Chief Executive Officer

Birmingham Community
Healthcare NHS
Foundation Trust

What was your first job?

Whilst studying for my O levels and A levels I used to work in an old fashioned hardware store where screws and nails were sold individually! There wasn't much I didn't know about what tools you needed for every DIY job.

What was your first role in healthcare?

I was a student nurse at what was then Dudley Road Hospital in West Birmingham.

Most uplifting work anecdote?

I protect time in my diary regularly to go back to floor and pride myself with the fact that I have a good rapport with all staff at all levels. Very early on as a CEO I spent an hour with the staff in the canteen at one of our community hospitals. We sat and had a cup of tea and talked about their jobs etc. and at the end they said we can't believe that you are just normal like us!! I took it as a great compliment and it was a great message to me that CEOs have to be real to their staff.

If you hadn't worked in the health sector what would be your dream alternative role?

It's not really my dream role but if I hadn't gone into healthcare I would probably worked in law!

How do you unwind after a busy week?

Time with my family often down in Devon, and with three boys it is still busy but very enjoyable!

Holiday destination recommendation?

Verona in Italy is my most favourite place in the world. It has a great history, relaxing ambience, opera in the Arena and great food and wine!

About Capsticks

"They really understand the healthcare sector and their clients very well. They really work hard for them." - Chambers UK 2017

You will know Capsticks as the national legal leader in healthcare law. We are consistently ranked in the top tier of law firms in healthcare by both the Legal 500 and Chambers Guide to the Legal Profession.

We act right across the health and social care spectrum in the UK and, increasingly, advise on international projects too. From private and public sector, primary, acute, mental health and tertiary healthcare service providers to commissioners, key policy makers and regulators including NHS Improvement, NHS England, and NHS Employers - we advise at all levels, all the time. non

Frameworks - working alongside you

We are panel members of all the nationwide frameworks including CCS, the NHSLA/NHS England framework, NHS Commercial Alliance and North of England CPC. This will give you comfort when ensuring you are working within procurement regulations and it means we can support you wherever you are located.

Awards

We frequently win the legal and health professions' major Awards. Last week we won Legal Team of the Year at the General Practice Awards 2016 and earlier this year we won Legal Advisers of the Year - public - at the HealthInvestor Awards 2016.

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