

# Spot On

FOR HEALTH AND SOCIAL CARE



## Welcome to the new edition of Spot On for Health & Social Care, launching the new Healthcare Team for Harrison Clark Rickerbys.

As many of you already know, both Harrison Clark and Rickerbys have very strong Healthcare Teams who have joined seamlessly together to produce a strong, effective team going forward. We provide a full service to the health and social care sector, capable of dealing with all of your matters and concerns.

The Health & Social Care Team is led by Charlotte Thornton-Smith, strongly supported by Louise Crook, Derek Jones, Rebecca Leask and a much wider team.

We are able to help you with all manner of queries including; regulatory, fee negotiations/proposals, property issues, gas safety, fire regulations, corporate structures and immigration queries, amongst many others.

We are working hard with all of our partners including the Care Associations and are currently helping Hereford providers set up an association in order to negotiate fees.

Please take a look at the articles inside, don't forget to follow us on Twitter and do join us at our events which you can find on our website.

Watch out for profiles on each of the Team members in editions to come. We look forward to working with all of you in the coming years.

**Charlotte Thornton-Smith, Partner**  
**Twitter @HCR\_Healthcare**  
**[www.hcrlaw.com/sectors/abouthealthcare](http://www.hcrlaw.com/sectors/abouthealthcare)**

# We care

Harrison Clark Rickerbys  
Health and Social Care Team

We deal with contracts, paperwork and regulation all day, every day. We care about keeping your business safe, leaving you to keep your clients safe.



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## Care Fees Reforms

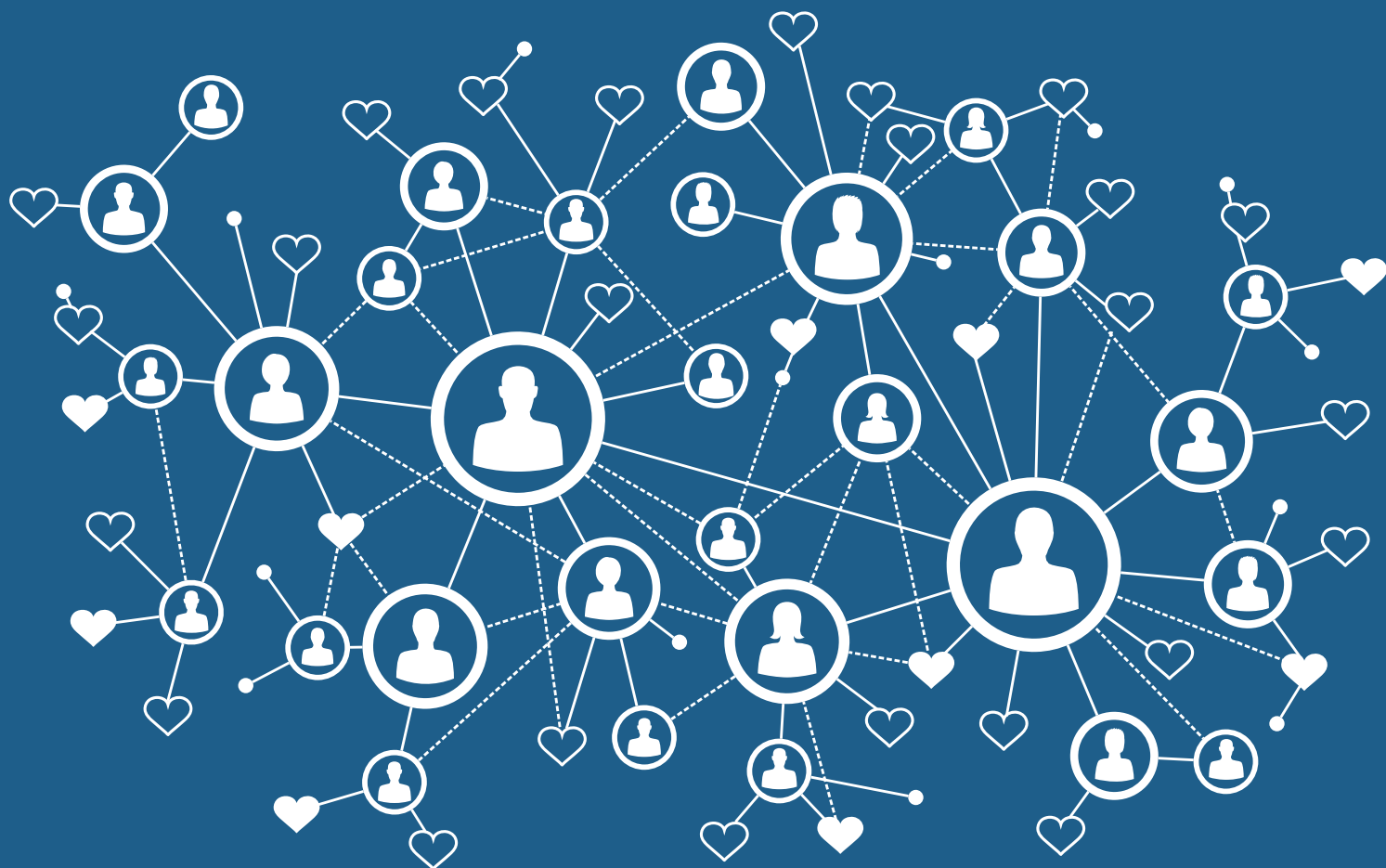
Although there is no formal legislation yet, the future arrangements for funding care based on the Dilnot Commission proposals are (in terms of structure) fairly clear from government publications. While it is older and vulnerable clients and their families who will be most directly affected by the changes, Care Home owners and managers may want to review their approach to processes on admission, while managing a resident's care needs. It may be appropriate to consider:

- How you structure your fees. Implicit in the new arrangements is a distinction between the element of charge relating to provision of care and that relating to 'hotel' costs. Is there any need to or benefit from distinguishing between the elements of your fees?
- At present all care providers make their own assessment of whether they can meet a potential resident's care needs. Will you want to adopt a process similar to the Local Authority's social services needs assessment, and keep your own records? As it seems likely money paid out by an individual will only be counted against the overall care (as opposed to hotel) spending cap of £72,000, when the level of care needs are greater than 'moderate', having some record of recording the level of care needs will be important.
- If a resident's care needs change, you may want to establish a process for recording the change, agreeing it with the Local Authority and establishing the resident's higher level of eligible spend on care needs.

While the last two are not necessarily concerns that are strictly the responsibility of the care home, most will (I suspect) want to be as user friendly to the resident and their family as possible. Awareness of these issues may well become a part of the outcomes which CQC will assess.

For further information please contact  
**Phillipa Bruce-Kerr on +44(0)1242 246430**  
or email [pbkerr@hcrlaw.com](mailto:pbkerr@hcrlaw.com)





## The Care Association Network

Louise Crook and Justine Bennett, both of Gloucester Care Association attended the latest Care Association network meeting in London at the Skills for Care Office on 5th June 2013.

This is a meeting of all of the care associations nationwide to discuss issues which are relevant to them and to provide a common voice.

Representation comes from as far and wide as Cornwall, through to Surrey, through to West Midlands, including Care and Support West and Lincolnshire along the way. A number of issues were discussed including safeguarding, Judicial Review, benchmarking and skills for care. Each of the care associations gave a general update.

Safeguarding took up a good deal of the conversation with feedback from various associations on the different approaches being taken by local authorities across the regions. Some local authorities are being more heavy

handed than others; driven by fear and as a knee-jerk response to recent bad press.

The day did illustrate that Gloucestershire seemed to be working ahead of the curve with good initiatives in respect of safeguarding and with various members of the Board from Gloucester Care Providers Association being involved at any early stage with the local authority safeguarding teams.

The next meeting is again to be held in the Skills for Care Offices in London. If you would like any particular matters to be raised in order to receive advice and experience from other care associations then please do let us know.

The next meeting is to be held in the Skills for Care Offices in London once again but if any of you would like any particular matters to be raised in order to get the advice and experience of other care associations then please do let us know.

For further information please contact  
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# Event Update

## **Dementia -Recent developments in Diagnosis, Treatment and Care**

10th October 2013  
1:30pm-5:00pm

Ellenborough House,  
Cheltenham

For more information  
or to RSVP email

Francesca Mathews  
[fmathews@hcrlaw.com](mailto:fmathews@hcrlaw.com)

## **Employment Update**

The Independent Safeguarding Authority and the Criminal Records Bureau merged on the 1st December 2012 to form the Disclosure and Barring Service (DBS).

The DBS launched its new update service on the 17th June 2013 which is anticipated will reduce bureaucracy by allowing the Disclosure and Barring Service certificates to be re-used.

Previously called the "portable DBS/CRB check" job applicants and employees can pay an annual fee of £13.00. This will keep their DBS certificate up to date and allow employees to take their certificate from role to role. In exchange, prospective

employers can carry out a free "update search" to check their new recruits' DBS certificates remain valid and up to date.

You will be pleased to hear that it is envisaged that this is going to be a much cheaper and quicker way for employers to keep up to date with such checks, hopefully minimising administrative tasks. This system does of course shift the cost of maintaining the certificates to the employee, which may mean we see lapses in the use of the service or the employer paying the cost of this service for its staff.

In addition, the certificate can be taken between roles within the same workforce where the same type and level of check is required. The Government envisages that millions of

employees and volunteers will no longer have to apply for a new certificate when they apply for a similar job. If an individual has subscribed to the update service, their employer will be able to go online, with the individual's consent, to obtain a free instant check to find out the information released on the DBS certificate is current and up to date.

There is lots of guidance on this subject and this can be found on the DBS website. This will undoubtedly be a much quicker and easier way for you to keep up to date with your staff checks.

If you would like any more information on this service please contact **Rachel Roberts** on **+44 (0)1242 246455** or email **[rroberts@hcrlaw.com](mailto:rroberts@hcrlaw.com)**

# Regulatory Update

The Disclosure and Barring Service assists employers to prevent unsuitable people from working with vulnerable groups, including children, through its criminal record checking and barring functions.

It was established when the Independent Safeguarding Authority and the Criminal Records Bureau merged in 2012.

In January 2013, a Court of Appeal judgment ruled that the disclosure of all cautions and convictions on a Disclosure and Barring Service (DBS) Certificate did not comply with Human Rights law.

The Government is seeking leave to appeal the decision in the case of R (T et al) v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice [2013] EWCA Civ 25.

The Court of Appeal did not prescribe any solution to the incompatibility between the current disclosure scheme and Article 8 and stated that **"it would be for Parliament to devise a proportionate scheme"** to deal with this issue.

Leaving aside the issues of the appeal, the Home Office has decided to relax the rules on the disclosure of old and

minor cautions and convictions on DBS Certificates. Damien Green, Minister for Policing and Criminal Justice has confirmed that the changes would have retrospective effect.

They will be introduced through secondary legislation and require Parliament's approval before they can come into force. The legislation is presently being considered by Parliament.

The proposed changes are as follows.

An adult conviction will be removed from a criminal record certificate if:

1. 11 years has elapsed since the date of conviction;
2. It is the person's only offence;
3. It did not result in a custodial sentence.

The conviction can only be removed if it does not appear on the list of specified offences (which includes sexual and violent offences). In the event that a person has more than one conviction, details of all of their convictions will always be included.

An adult caution will be removed when 6 years has elapsed since the date of the caution. Again, the offence must not appear on the list of specified offences.

If a person is under 18 at the time of the offence a conviction would be eligible for removal after 5.5 years. However, this is subject to the offence not appearing on the list of specified offences. It would not be filtered if a custodial sentence was received or the individual has more than one conviction.

If a person below the age of 18 receives a caution, it will not be disclosed once 2 years have passed since the issue of the caution unless it appears on the list of specified offences.

It is noteworthy that the proposals do not appear to deal with the role that the person is applying for and the relevance of the caution and conviction to it. The impact of this issue is likely to be raised when these issues are considered by Parliament.

Harrison Clark Rickerbys' Licensing and Regulatory team have extensive experience of advising clients in the Healthcare sector in relation to all types of regulatory issues and disputes.

Please contact **James Lowe** on **+44 (0)1905 746485** or email **[jlowe@hcrlaw.com](mailto:jlowe@hcrlaw.com)**

## Your contributors this issue.

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