

Contents in this issue:

1. [Data Breaches Could Lead To £500,000 Fine](#)
2. [GPC's Warning On 'Fit Notes'](#)
3. [GPs Under Increased Pressure From Government on Extended Hours](#)
4. [Health Minister Admits GPs Upset By Clawbacks](#)
5. [Small Practices Outperform Larger Ones On QOF](#)
6. [Registration With The Care Quality Commission \('CQC'\)](#)
7. [The Bribery Act 2010](#)
8. [BT Priority Fault Repair Service To Be Withdrawn](#)
9. [MPs Call For End To NHS Funding Of Homeopathy](#)

Information Commissioner such as an enforcement notice or, in limited circumstances, a criminal prosecution.

However, Dr Nick Clements, the Medical Protection Society's head of medical services in Leeds, said 'It is important for practices to have robust systems in place to ensure the appropriate management of data' but it is 'highly unlikely' that any such breaches would attract the maximum fine'.

'Since most GP practices are small compared with a hospital trust, we would hope that any penalty would fall towards the lower end of the spectrum'.

In any event, practices must be increasingly vigilant with regard to patient data to minimise the risk of breach and thus incurring liability. Practice data reviews should cover responsibility for confidentiality, data protection and security, training and systems for keeping track of laptops and memory sticks where relevant.

[^ Back to Contents](#)

1. Data Breaches Could Lead to £500,000 Fine

From 6 April, GPs can face fines of up to £500,000 for any serious data breach. Any such fine would naturally not be covered by insurance.

GPs and practices have been warned to review their approach to data protection in light of the new fines which have been introduced for carelessly losing patient's sensitive information.

The government has handed the Information Commissioner new powers to impose these heavy fines, known as civil monetary penalties, in amendments to the Data Protection Act 1998.

Prior to this, practices which lost patient data only faced limited sanctions from the

2. GPC's Warning On 'Fit Notes'

Chair of the General Practitioners' Committee ('GPC'), Dr Laurence Buckman, has stated that GPs must 'be careful' when issuing 'fit notes', as a wide-reaching revamp of the sick note system comes into effect.

The 'fit note' - a new version of the Med-3 form - was officially introduced on 7 April, in a shift the BMA maintains will place the onus on employers to help get ill patients back to work by assigning them tasks for which they have been assessed fit enough to perform by a GP.

Dr Buckman said, 'The BMA is pleased that the sick note system has finally been overhauled. It should reduce the number of forms used and will provide a better way for a GP to give advice about a patient to their employer'.

However, he warned that 'GPs need to be careful they are not drawn into making comments they are not qualified to make, because, unlike occupational health doctors, they are not often in a position to know the details of the patient's working conditions, neither do they have specialist knowledge of workplace hazards'.

'Occupational health doctors have a central role in helping people back to work, but, unfortunately, only one worker in eight has access to an occupational health doctor'.

'Employers have a responsibility to provide adequate occupational health services and the government must encourage them to provide that if the overall plan to help more people back to work is to be truly effective'.

[^ Back to Contents](#)

3. GPs Under Increased Pressure From Government on Extended Hours

The Government has launched the next step in its push to increase primary care access.

New guidance has been given to PCTs urging them to boost the number of practices offering extended hours, with trusts being required to offer all practices the opportunity to sign up to the Directed Enhanced Services before 30 April 2010.

PCTs are also instructed to expand the number of extended hours appointments at practices already providing the service, to give patients a wider choice of appointments, and increase pressure on any practices which are not providing extended hours.

Trusts are also urged to increase the number of Saturday appointments available by using GP patient survey results to gauge demand and increase Saturday opening.

Further, the guidance crystallises plans to draft in other providers to provide extended hours where a practice does not wish to partake.

The result of this could be out-of-hours providers, private companies and GP-led health centres taking on extended hours shifts.

The guidance says: 'PCTs should encourage as many GP practices as possible to enter into an extended hours access scheme under the DES Directions (or equivalent local arrangements).

'PCTs should take into account patients' preferences for the days and times when additional hours are delivered, as demonstrated through the GP Patient Survey'.

[^ Back to Contents](#)

4. Health Minister Admits GPs Upset By Clawbacks

Mike O'Brien, Health Minister, has acknowledged that many GPs have been upset by the clawing back of funds and expressed his sympathy for those having to take on additional work without financial reward.

During a recent Health Select Committee debate on commissioning, O'Brien said that he appreciated that GPs were upset at providing additional services without being remunerated but stated that there would be no monetary inducement for take up of practice-based commissioning.

O'Brien said, 'They do a good job and we've asked a lot more of them. I can understand why they are a bit ticked off that sometimes we seem to be pulling money back as well as asking them to do more'.

However, O'Brien stated that practice-based commissioning uptake was going well and, on the suggestion that the Government could offer monetary inducement to sign up for practice-based commissioning, stated that the sympathy he expressed would be unlikely to extend to extra funding for GPs.

O'Brien said, 'We know that where practice-based commissioning is working, 80% of GPs say it is going well and 77% say they do feel [they are] being listened to'.

'Doctors, by and large, are reasonably well paid, particularly if they are partner in a practice. If you're a partner in a large-scale practice, you'll be on a very good whack. I'm not sure I'm in the game of paying them a lot more money at the moment'.

[^ Back to Contents](#)

5. Small Practices Outperform Larger Ones On QOF

Local and national policy that favours large practices will result in a 'very unsatisfactory service', according to Andrew Rouse, a consultant in public health at Heart of Birmingham PCT.

Mr Rouse studied the performance of 10,055 UK practices according to their list size and then assigned a 'clinical performance score' out of 62 to each practice based on QOF data.

'There is a clear downward trend in clinical performance as practices got larger', said Mr Rouse, 'my findings strongly suggest that such a policy (away from small practices) may drive down quality of care significantly.'

Smaller practices (fewer than 10,000 patients) scored 35-36 points on average, while larger practices (over 20,000) scored 24-27 points on average.

Mr Rouse will now present his research to Heart of Birmingham PCT, which has been encouraging around 70 small or single-handed practices to move into 24 larger health centres since 2007.

Dr Peter Swinyard, chairman of the Family Doctor Association, said the perception of small practices being poor was 'firmly ingrained' within the DoH. 'We are certainly aware of the high quality of small practices. But it's very useful to be able to take research like this to the DoH and say 'if you want quality, go small'.'

Mr Rouse believes the perception that small practices are poor is outdated, saying, 'There was reason to think that small practices were sub-standard, but that was in a different era - when you found little practices that couldn't use a keyboard. Once

we get rid of those old-fashioned, small practices, it is not so clear.'

Mr Rouse also said when there are fewer partners there is greater responsibility for the performance of the practice. 'In a huge practice, what is everyone's responsibility becomes no-one's responsibility. Nothing gets done,' he said.

However, Dr Swinyard said doctors had a more personal relationship with patients in small practices, which meant they were happier to comply with QOF processes. He said, 'we don't have a problem with practices of any size. It's about getting to know patients and patients getting to know their doctor'.

[^ Back to Contents](#)

6. Registration With The Care Quality Commission ('CQC')

From April 2010, all health and adult social care providers who provide regulated activities will be required by law to be registered with the CQC. To do so, providers must show they are meeting new essential standards of quality and safety across all of the regulated activities they provide.

New registration comes into force on 1 April 2010 for NHS trusts (including primary care trusts as providers) and on 1 October 2010 for adult social care and independent healthcare providers (registration under the Care Standards Act 2000 continues until 30 September 2010).

Regulated activities that require registration are described in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2009. They include:

- personal care
- accommodation with nursing or personal care
- accommodation for persons who require treatment for substance misuse
- accommodation and nursing or personal care in the further education sector

- treatment of disease, disorder or injury
- assessment or medical treatment for persons detained under the Mental Health Act 1983
- surgical procedures
- diagnostic and screening procedures
- management of supply of blood and blood-derived products
- transport services, triage and medical advice provided remotely
- maternity and midwifery services
- termination of pregnancies
- services in slimming clinics
- nursing care
- family planning services

It is a serious offence to carry out a regulated activity without being registered. Under section 10(4) of the Health and Social Care Act 2008, a person who carries on a regulated activity without being registered is liable:

(a) on summary conviction, to a fine not exceeding £50,000, or to imprisonment for a term not exceeding 12 months, or to both;

(b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 12 months, or to both.

[^ Back to Contents](#)

7. The Bribery Act 2010

The Bribery Act 2010 recently received royal assent and constitutes not only the largest change in this area of UK law in living memory but also a clear signal of the UK's desire to demonstrate its commitment to fighting corruption.

The main features of the Act are:

- Territorial application: the Act applies to all commercial organisations that carry out any part of a business in the UK and also actions which take place in overseas locations.

- The creation of a corporate offence which is the 'failure of commercial organisations to prevent bribery'.
- A defence to the corporate offence where the organisation can demonstrate that it had 'adequate procedures' in place to prevent such bribery. The burden of proof of this defence rests with the organisation.

The penalties for this offence are potentially very onerous and include 10-year prison sentences, unlimited fines and exclusion from participation in government contracts.

It is therefore essential for commercial organisations to review the anti-bribery procedures they have in place and assess their efficacy in light of the new legislation.

If you are uncertain about the implications of the Act for your business or about whether the anti-bribery measures you have in place are adequate, then it is advisable to seek legal advice.

[^ Back to Contents](#)

8. BT Priority Fault Repair Service To Be Withdrawn

A letter from Peter Dyke of NHS Connecting for Health says that from 1 April, BT will no longer provide priority fault repair services to telephony infrastructure at GP premises.

The existing agreement for this service is being terminated due to new regulations introduced by OFCOM stating that a priority repair service should no longer be provided for non-emergency infrastructure.

[^ Back to Contents](#)

9. MPs call for end to NHS funding of homeopathy

An influential group of MPs has called on the Government to scrap the funding of homeopathy on the NHS.

The House of Commons Science and Technology Committee also claimed the

Medicines and Healthcare products Regulatory Agency (MHRA) should not allow homeopathic product labels to make medical claims without evidence of efficacy.

They are not medicines and homeopathic products should no longer be licensed by the MHRA, it concluded.

The DH said it would consider the report over the coming weeks, but added: 'Our view is the local NHS and clinicians, rather than Whitehall, are best placed to make decisions on what treatment is appropriate - including homeopathy'.

[^ Back to Contents](#)

Previous Issues

If you would like to receive previous issues of the Lockharts Newsletter please contact Andrew Meadows at csd@lockharts.co.uk.

Distribution of our Newsletters

We prepare newsletters for practitioners at approximately monthly intervals and occasional newsletters for LMCs. LMCs are welcome to distribute these to their constituents in their entirety.

If LMCs or other persons or bodies wish to circulate only part of our newsletters, we are happy for them to do so provided that the following acknowledgement and disclaimer are printed immediately below the relevant extract:

This article originally appeared in the Lockharts Solicitors' Newsletter dated [insert date] and is reproduced with their permission. The content of this article is only intended as information and should not be considered to be legal advice. Lockharts cannot be held liable for any loss caused by any act or omission as a result of information in this article.

If you have any questions about this, please contact Andrew Lockhart-Mirams on alm@lockharts.co.uk.

Cessation

If at any stage you decide that you no longer wish to receive the Lockharts Newsletter, please inform Andrew Meadows by post or email at csd@lockharts.co.uk.

Disclaimer

The content of this newsletter is only intended as information and should not be considered to be legal advice. Lockharts cannot be held liable for any loss caused by any act or omission as a result of the information in this newsletter.

Contacting Lockharts

Lockharts Solicitors
Tavistock House South
Tavistock Square
London WC1H 9LS

Tel: **+44 (0)20 7383 7111**
Fax: **+44 (0)20 7383 7117**
Email: csd@lockharts.co.uk
Web: www.lockharts.co.uk



"Recognised for its comprehensive understanding of the medical sector, the firm impresses clients with thorough partnership agreements for complex matters"



"Headed by Andrew Lockhart-Mirams, Lockharts advises over 1,800 GP practices, plus numerous dental practitioners, healthcare professionals and professional bodies throughout the country. The practice also helps to establish companies and LLPs tailored for the delivery of healthcare services"