

“ Our clinical negligence service is officially among the best. ”



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at Charles Lucas & Marshall

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UK legal 500 entry

CLM are listed in the specialist category for recommended claimant clinical negligence firms in the South East. The Legal 500 is a guide for clients to give an insight into the quality of service available to them.

It is particularly gratifying that the information from which CLM were selected for inclusion is researched from client recommendations and information provided by other specialist lawyers in this field. ■



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Claims statistics – what compensation culture?

The latest figures produced by the NHSLA (National Health Service Litigation Authority) show a drop in both claims and costs. The number of claims for clinical negligence received in 2003 – 2004 dropped by 20%. The expenditure on settling claims dropped by 5%. ■

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Small claim pilot scheme

The NHSLA (National Health Service Litigation Authority) is to launch its own 'fast track' small claims scheme shortly. Key points are:

- Claims will be decided on the basis of a single jointly instructed expert witness report
- Small claims will be defined as those up to £20,000
- Claims should be determined within 6 months

Further details to follow. ■

Complaints procedure changes

Some good news for the users of the NHS Complaints Procedure is that from the 30th July 2004 they have been able to make requests for an independent review of the local resolution decision to the Healthcare Commission.

The Commission is to employ specialist staff to deal with these requests. Furthermore, if local resolution takes more than six months, complainants can apply directly to the Healthcare Commission. ■

"They should have at least given me an explanation"

Paragraph 22 of the GMC's 'Good Medical Practice' now provides 'if a patient under your care has suffered harm... you should act immediately to put matters right if that

is possible. You must explain fully and properly to the patient what has happened and the likely long and short-term effects. Where appropriate you should offer an apology.' ■

Records – lost or destroyed

If relevant evidence is destroyed and a Court has difficulty in deciding whose evidence to accept it may use the presumption, so as to resolve the dispute, in favour of the patient (Melhotra v Dhawan). ■

Mental capacity bill

The Mental Capacity Bill provides a statutory framework to codify what has become an increasingly complex ethical and legal minefield for medical practitioners, carers, and general practitioners over recent years.

Up to 2 million people are affected by lack of capacity in the UK while 10-15% of the population will suffer a severe head injury each year and there are an estimated 120,000 people in the UK suffering from the long-term effects of brain injury.

The Bill provides:

- A new functional test of capacity
- Enduring Powers of Attorney will be replaced by Lasting Powers of Attorney
- A new Court with jurisdiction to consider applications for financial decisions and serious healthcare issues that are currently dealt with by the High Court is to be established
- There will be a code of practice for dealing with people who lack capacity

The Bill aims to protect the rights of the most vulnerable in society such as the elderly and mentally incapable and also provides statutory recognition of living wills. These express a person's wishes regarding their future medical treatment should they become incapable of making those decisions themselves.

The new legislation will make them legally binding in the same way as a normal will.

For further information about Wills & Estate Planning contact:



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