The legal lowdown: insights for health & social care organisations and investors

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The health and social care sector is going through a significant period of change with major new employment measures, reforms to the Care Quality Commission and NHS restructuring. Whether you are delivering frontline services, shaping strategy or planning an acquisition, the right legal advice can help you stay ahead of these changes and identify new opportunities.

This guide highlights some of the many legal developments and risk areas that we see affecting operators, investors and partners across the sector. From opportunities with debt funding and ways to mitigate regulatory risk on mergers and acquisitions (M&A) transactions, to legal risks around AI and environmental legislation, we provide an overview and some practical considerations to help you anticipate challenges, ensure compliance, grow your organisation or make a successful investment.

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Opportunities for debt funding

Despite ongoing challenges, including economic headwinds, an evolving political landscape, and regulatory and workforce pressures, the healthcare sector continues to demonstrate considerable resilience.

Coupled with strong demographic drivers, a shortage of high-quality assets and increasing focus on Environmental, Social and Governance investment criteria, we are continuing to see robust funder appetite across the sector for the right assets. This is creating more opportunities for those organisations looking to grow or refinance.

"Successful funding processes are built on preparation."

Key considerations

With an increasingly diverse funding market, organisations have access to a wider range of lenders than ever before. However, each lender has its own risk appetite, credit approval process and due diligence requirements, often requiring different levels of information both before indicative terms can be issued and before formal credit approval is granted.

Successful funding processes are built on preparation. It is important to ensure that property, operational and regulatory information is readily available and presented in a way that meets lender expectations. We regularly advise clients well before funding discussions commence, providing strategic input on proposed funding terms, reviewing due diligence requirements and identifying issues that could impact lender appetite.

CQC reforms underway, but buyer exposure in M&A transactions still needs to be mitigated

Following Dr Penny Dash's critical 2024 reports, which prompted the then Health and Social Care Secretary to declare the Care Quality Commission (CQC) 'not fit for purpose', the Commission has spent the past year in a rebuilding phase.

Inspection activity has increased, running roughly 50% higher than a year earlier, with a target of 9,000 published assessments by September 2026. A draft replacement for the Single Assessment Framework was published in March 2026, moving away from the widely criticised numerical scoring model, with a final version expected to go live by the end of the year.

Even so, the backlog built up over several years will not be cleared for some time to come, and a meaningful proportion of providers remain unrated or are sitting on ratings that predate the framework now being replaced.

Key considerations

Outdated, missing or soon-to-be-superseded CQC ratings continue to increase risk exposure for buyers. The transition to a new assessment framework adds a further layer of uncertainty, since inconsistent outcomes between old and new methodologies are a documented risk during rollout.

Enhanced due diligence remains essential while this persists, and is a key feature of M&A processes on which our corporate and regulatory teams support clients. This due diligence should cover compliance systems, patient safety records, workforce stability and reputational factors, rather than relying on ratings alone.

Boards and investors should factor framework transition timing into diligence planning, prepare for deeper audits, and continue to monitor CQC's reform progress to judge when its ratings can once again be treated as a reliable benchmark.

Reform of time limit for CQC enforcement

The Health Bill currently before Parliament confirms what last October's edition flagged as a proposal: the statutory time limit for the CQC to bring criminal proceedings against a provider will be extended from three to five years.

The Bill goes further, transferring the Health Services Safety Investigations Body's investigation functions into the CQC and granting the regulator new statutory access to NHS and other publicly held datasets to support a more "intelligence-led" model of oversight.

Key considerations

Longer limitation periods mean historic incidents can resurface as prosecution risks well after the event, so contemporaneous documentation and early legal engagement in serious incidents remain essential.

Providers should also expect the CQC's expanded data access to surface issues proactively, rather than only in response to a complaint or inspection, and should reassess internal escalation and reporting protocols accordingly.

The end of NHS England: preparing for the biggest NHS restructure since 2012

The Health Bill will abolish NHS England and transfers its functions, staff, property and liabilities to the Secretary of State and to Integrated Care Boards (ICBs), with the change expected to be in force by April 2027.

ICBs will take on over 90% of NHS commissioning, including primary care, dentistry, pharmacy and ophthalmology work currently held by NHS England, while the Secretary of State gains broader direct powers to intervene in ICBs.

The Bill also creates a statutory single patient record, requiring all NHS providers to disclose data into it, and abolishes Healthwatch, transferring its functions to ICBs and local authorities.

'Boards should also prepare for a more centralised performance and direction regime...'

Key considerations

Providers should review existing NHS England-facing contracts and relationships now, since commissioning responsibility may shift to a different body without novation or re-procurement.

Boards should also prepare for a more centralised performance and direction regime, and begin scoping the data-sharing and governance implications of the single patient record ahead of implementation.

Neighbourhood health moves from strategy to delivery

The Neighbourhood Health Framework, published in March 2026, sets out ten core steps that ICBs and local government must take in 2026/27 to deliver the 10-Year Health Plan's shift from hospital to community care.

Single and multi-neighbourhood provider contracts are now rolling out, backed by a funded commitment to 120 Neighbourhood Health Centres by 2030 and 250 by 2035. The National Neighbourhood Health Implementation Programme is already live across 43 places in England.

250

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Key considerations

GPs, Primary Care Networks and community providers should assess their strategic position within emerging neighbourhood contracts now.

Landlords and investors should track the pace of Neighbourhood Health Centre rollout and the balance between new-build and existing-estate upgrades, both of which will shape property and funding decisions over the next several years.

MHRA sets out its post-Brexit device regime, but AI rules are still to come

The Medicines and Healthcare products Regulatory Agency (MHRA) published the draft Medical Devices (Amendment) Regulations in May 2026. This introduced an International Reliance Pathway that lets manufacturers rely on Food and Drug Administration (FDA), Health Canada or Therapeutic Goods Administration (TGA).

This pathway provides approvals for faster access to the GB market, alongside tighter post-market surveillance, mandatory unique device identification, and new Predetermined Change Control Plans for software and AI-enabled devices. CE-marked devices remain recognised on a transitional basis, currently until June 2030 for those compliant with the EU Medical Device Regulation and In Vitro Diagnostic Regulation frameworks.

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Key considerations

Manufacturers should review product portfolios now to identify which route to market suits them best, and should not assume EU approval alone will suffice long-term.

Software and AI-enabled device provisions were deliberately left out of the May 2026 draft, pending recommendations from the National Commission on the Regulation of AI in Healthcare, so a second wave of AI-specific regulatory change should be expected soon.

Supreme Court overhaul of the Deprivation of Liberty test

On 2 June 2026, the Supreme Court handed down judgment in the Attorney General for Northern Ireland's Reference, unanimously overturning the "acid test" set out in the 2014 Cheshire West decision.

Courts must now apply a broader, multifactorial assessment of whether someone is deprived of their liberty, giving significant weight to a person's expressed wishes and feelings even where they lack capacity to consent in the strict legal sense.

The judgment has immediate effect and applies across England and Wales as well as Northern Ireland, since the Mental Capacity Act 2005 ties deprivation of liberty to the same Article 5 framework.

Key considerations

The CQC has confirmed that providers should adjust practice immediately rather than wait for further guidance.

Providers should review current Deprivation of Liberty Safeguards authorisations and care planning processes against the new multifactorial test. They should expect continued uncertainty in the short term as case law develops around how much weight a person's expressed wishes should carry.

AI scribes: procurement must keep pace with adoption

AI-enabled ambient voice technologies are moving rapidly from pilot projects into routine health and care workflows. New NHS England and MHRA guidance provides greater clarity on their adoption and regulatory status.

However, inclusion on the NHS supplier registry is not an endorsement or commercial framework, and responsibility for safe deployment remains with the adopting organisation. Products supporting diagnosis, treatment or automated clinical action may also qualify as medical devices.

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Key considerations

Contracts should clearly define the product's permitted functionality and address changes as its capabilities evolve.

Providers should scrutinise how recordings, transcripts and outputs may be used, including for model training, controller, processor and sub-processor arrangements, international transfers, accuracy, uptime and integration requirements. They should also consider human review and liability, cyber incident reporting, and data portability, deletion and transition support on exit.

Environmental legislation is becoming a significant operational, property and financing issue

Healthcare property has some unusual characteristics – some operate 24/7, infection control can conflict with energy efficiency, management of waste is highly regulated and it is difficult to pass these costs on to NHS England or patients.

There is more pressure to move towards energy efficient buildings but who will pay the cost of bringing buildings up to the required standard. This can be a source of landlord and tenant tension.

'There is likely to be more demand for compliant assets and developers...'

Key considerations

For operators, it is important to identify what capex you will need to cover environmental compliance over the next 5-10 years. For funders, environmental considerations are increasingly becoming a credit issue and more detailed surveys and inspections will become the norm as funders scrutinise compliance and the type of properties they want on their loan books.

For investors, environmental due diligence should sit alongside the building survey. There is likely to be more demand for compliant assets and developers, and landlords offering these assets to the market are likely to see increased interest.

There is also an opportunity for sub prime property to be repurposed, which should attract investment and unlock currently unused property for use in the sector.

Employment Rights Act: new protections reshape workforce risk

The Employment Rights Act 2025 is being implemented in phases and introduces significant changes for health and social care employers. Measures already in force include:

- Statutory sick pay from the first day of absence and without a lower earnings threshold
- Day-one rights to paternity and unpaid parental leave
- Enhanced whistleblowing protection for disclosures about sexual harassment
- New holiday record-keeping duties
- A doubling of the maximum protective award for failures in collective redundancy consultation.

From October 2026, most Employment Tribunal claim time limits will increase from three to six months, materially extending the period during which workplace decisions may give rise to claims.

Further reforms, including enhanced unfair dismissal protection, guaranteed-hours rights and restrictions on dismissal and re-engagement, will follow.

'Health and social care providers should audit contracts, policies, payroll arrangements and record - keeping systems against the implementation timetable. '

Key considerations

Health and social care providers should audit contracts, policies, payroll arrangements and record-keeping systems against the implementation timetable. Particular attention should be given to sickness absence costs and processes, the management of probationary periods and dismissals, the use of casual, bank and agency staff, and the quality of contemporaneous records.

Organisations contemplating service redesign, site closures or workforce restructuring should also review collective consultation processes, given the increased financial consequences of getting them wrong. The reforms should be incorporated into workforce planning, transaction due diligence and budgeting rather than treated simply as an HR compliance exercise.

Harassment duties extend to patients, residents and other third parties

From 30 October 2026, employers must take all reasonable steps to prevent sexual harassment at work and may be liable where workers are harassed by third parties, unless they have taken all reasonable steps to prevent it.

The third-party provisions are particularly significant for healthcare and social care organisations, whose employees routinely interact with patients, residents, service users, relatives, visitors, commissioners and contractors, sometimes in challenging or isolated working environments.

Key considerations

Providers should carry out role-specific harassment risk assessments covering foreseeable risks in wards, care homes, community settings, home visits and lone-working arrangements.

Practical safeguards may include clear standards communicated to patients and visitors, effective reporting and escalation channels, manager training, support following incidents and contractual expectations for commissioners, agencies and other partners.

Generic policies and one-off training are unlikely, by themselves, to demonstrate a sufficiently proactive approach. Providers should be able to evidence how risks were identified, what preventative measures were selected and whether those measures remain effective.

A new framework for pay in adult social care

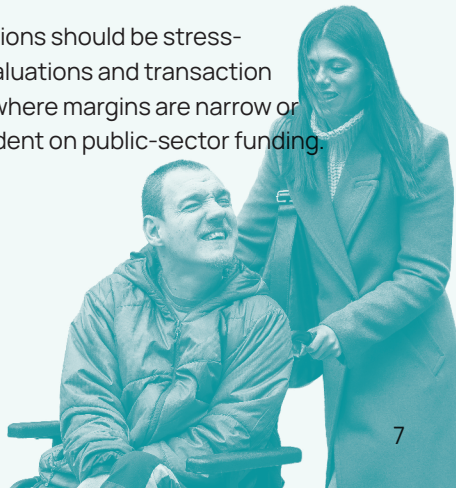
The Employment Rights Act establishes a new negotiating framework for adult social care, with a negotiating body due to begin operating in October 2026.

The framework is intended to support negotiated minimum standards in areas such as pay and employment conditions. Its development will be of particular interest to independent providers operating within tightly constrained local-authority and NHS-funded fee models.

Key considerations

Adult social care operators, commissioners, lenders and investors should monitor the emerging framework closely and model its possible effect on staffing costs, recruitment and retention, commissioned fee rates and contractual sustainability.

Employment-cost assumptions should be stress-tested in business plans, valuations and transaction due diligence, particularly where margins are narrow or services are heavily dependent on public-sector funding.



New 'Right to Work' scheme and extended liability provisions

The Home Office has published its new draft code of practice for the prevention of illegal working, and employer's guidance on Right to Work, both set to come into force on 1 October 2026.

While the changes will affect employers across all sectors, they are particularly relevant for health and care organisations, which frequently depend on a diverse workforce comprising employees, agency personnel, contractors and overseas recruits.

Broadly speaking, the key changes include:

1. Expanding the definition of 'employer' for the purposes of Right to Work check responsibility and liability for illegal working penalties.

   An 'employer' will not just refer to someone who employs an individual under an individual contract or employment and can now refer to those who engage workers as individual sub-contractors; under a worker's contract; and when operating as an online matching service.

2. Extending liability for illegal working beyond the employer who holds the direct contractual relationship with the worker in certain circumstances. Extended liability situations will include:

   - where an entity is contracted to provide work or services to a third party, and enters into a contract with a different entity to provide workers to carry out those work/services to fulfil that contract;
   - an online matching service matches a service provider with a client or customer, and the service provider enters in a contract with that client or customer; and
   - where an employer employs an individual to provide work or services, and the contract permits that individual to substitute their work or services to be carried out by another individual.

£60K

fines of up to £60,000 per worker found to be working without the appropriate permission.

Key considerations

The health and social care sector has become increasingly reliant on flexible staffing arrangements to address ongoing workforce shortages. As a result, organisations often engage with multiple agencies, recruitment providers and third-party suppliers.

The proposed changes mean providers may need greater visibility and oversight across those arrangements to ensure immigration compliance risks are effectively managed. Failure to comply can result in substantial penalties, including fines of up to £60,000 per worker found to be working without the appropriate permission. In more serious cases, organisations and individuals may face criminal sanctions.

For providers holding a Sponsor Licence, the consequences can be even more significant. Suspension or revocation of a licence can jeopardise an organisation's ability to employ sponsored workers, creating operational challenges at a time when many employers continue to face recruitment difficulties.

Increase in Home Office enforcement activity

Alongside these legislative developments, Home Office enforcement activity continues to increase. Greater numbers of compliance visits, investigations and enforcement actions demonstrate a continued focus on illegal working and Sponsor Licence compliance.

The Home Office has reported a 31% increase in visits and 20% increase in resulting arrests between 1 January 2026 and 30 June 2026 compared to the same period in 2025 and that businesses found to be employing illegal workers face fines of over £74 million.

The health and care sector remains an area of particular scrutiny due to its reliance on international recruitment, it is therefore of critical importance to maintain compliant workforce practices.

£74M

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Sponsor Licence holders should be mindful that common areas of concern include:

- Inadequate Right to Work checking procedures;
- failures in record keeping and reporting;
- salary compliance issues for sponsored workers;
- weaknesses in governance and oversight; and
- insufficient training for staff responsible for immigration compliance.

Key considerations

With implementation due on 1 October 2026, entities should be identifying any commercial arrangements that may fall within scope of extended liability provisions, as well as putting into place new internal processes to ensure Right to Work checks are conducted on all who must be checked.

Sponsor Licence holders who depend on migrant workers for the operation of their business must further be aware that their duties are numerous and onerous. Internal audits should be conducted regularly to ensure compliance, and staff members associated with the operation of a Sponsor Licence must ensure they remain up to date and competent in the duties associated with their licence.

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About Ashfords Healthcare team

We are trusted legal partners to health and social care operators and digital health and life sciences organisations and their owners and investors. We can advise on strategic transactions and complex regulations, and assist with managing workforce challenges, protecting assets and resolving disputes.

With a responsive and straightforward approach, our experienced lawyers use their industry expertise to help clients overcome challenges, seize opportunities, and achieve the results they need today and for the future.

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'...our experienced lawyers use their industry expertise to help clients overcome challenges, seize opportunities, and achieve the results they need today and for the future.' **Legal 500**

Helping you stay ahead

If any of the legal challenges outlined resonate, or if you're navigating other complexities, please get in touch. We'd welcome the opportunity to support you in managing risk and unlocking opportunity.

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