

The Law

With Jonathan Goldring

31st March 2020

TRANSCRIPT

Please note, this is not a verbatim transcript – some elements (repetition or time-sensitive material for example) may have been removed. In some cases, related material may have been grouped out of chronological sequence)

Steven:

I'm joined, joined by Jonathan Goldring, a very, very experienced barrister, particularly experienced in fitness to practise issues.

The statutory instrument that was brought into force a few days ago. Does that affect us in any way?

Jonathan:

This is the public health England coronavirus restriction regulations. I think it clarifies the situation. For those of your audience that, that aren't aware, although I suspect most people will be now the government published the regulations or I think it was Thursday of last week, and came into force at 1:00 PM in the afternoon.

In effect, what they do is they provide an exception for various health professionals which include osteopaths and chiropractors. They provide an exception for them to stay open. They also provide an exception to the general public to travel to visit osteopaths and chiropractors for what's described as to seek medical assistance. So any person that falls within that exception is entitled to see a chiropractor or an osteopath.

So it clarifies the fact that clinics can stay open from the legal perspective. It would be lawful for you to keep your premises open.

What it doesn't do obviously deal with the second and probably more important question, which is whether you should stay open.

Steven:

It doesn't create an obligation to stay open.

Jonathan:

No, I think there's an inference within the, the act that chiropractors, osteopaths.... fall within the exception. I think for that you can probably infer that they consider the services of chiropractors and osteopaths to, to fall within the definition of key worker. it doesn't specifically say that, but I think there's a recognition of the professions which is useful but not, it doesn't provide a positive obligation.

Ultimately the decision to stay open or not is going to be done to the individual clinic, association, regulation, et cetera. So it provides some clarity but doesn't answer the question.

Steven:

And I guess then, then of course we're simply bound by chiropractic Code or the osteopathic practice standards to make sure we keep patients safe. And the guidance that's been issued by the associations, which is no face to face consultation except for urgent or critical cases.

Jonathan:

It's, it's an old one because ultimately it's not the associations that hand out guidance from a legal point of view. It is the codes. And it is the act. And they put a requirement on any health professional to act in the patient's best interest. And within that is the need to ensure that patients are safe.

So it's ultimately it's down to the individual that the associations can give useful guidance as to what they expect and, and unusually in these circumstances, because this is so fast changing, different associations have got different guidance, different regulators, different guidance .

so some are saying close your doors completely, some saying emergency appointments. Some are saying, well it's not really up to us, just the government guidance.

It just depends on where you look. But, but what I would say from, from a legal point of view is that if you do decide to stay open, which you're entitled to, obviously you have to ensure that you keep patients, staff members, et cetera, safe.. That might not be that easy unless you've got the right clothing, protective equipment, etc. Etc.

Steven:

If I turned that on its head, I had some inquiries to me a few days ago saying that they had patients who were very, very grumpy and were saying that they were neglecting their duty of care by not offering treatment. Is that actually an Avenue which could be exploited by the patients in law?

Jonathan:

I think it's possible. I'm not a personal injury lawyer. I deal with the regulation side of things. But, but yes, I mean if you have a patient that's in severe pain and you have closed your doors to the general public full-stop, arguably the patients could, if they wanted to make a complaint that you deprived them of urgent necessary care, particularly because the government has provided the exception to the rule. I think in reality, any practical term that's fairly highly unlikely because all you need to do this, I on balancing the safety of the public in general over and above this individual patient's needs.

I can't imagine for a moment that a court is going to, ...

Steven:

I suspect it was just a knee jerk comment from the patients themselves because they're grumpy because they're in pain, which is understandable.

Jonathan:

Understandable. Yeah. Yeah.

Steven

We were, we were actually going to move on more to talk about fitness and practice or practice in general. And of course you from, you've dealt with a hell of a lot of chiropractors and osteopaths going through the professional conduct committee.

Jonathan:

I've dealt with quite a few...

Steven:

How's your record. Is it 100%?

Jonathan:

I can't claim under 100%. We're not actually supposed to put figures out there. But, but it's, it's really good. But I've represented a lot of osteopaths, a lot of chiropractors, probably of the last 10 or so years

Steven:

It must be, I mean it's nearly impossible to get a a hundred percent record, isn't it? Because some of the people who come to you probably are guilty

Jonathan:

Okay. It doesn't really work like that. The job of a lawyer is to instead obviously give advice. I wouldn't be doing my job if I tried to pretend that people had good cases when they didn't, so that's all.

I'd like to think that when a case is in very robust and when the evidence is overwhelming, it's my job to tell a chiropractor or an osteopath exactly that and the chances of success are poor, and 9 out of 10 times they follow that advice. They put their hands up and they do the right thing.

Steven

Do you deal with physios as well because we've got quite a few physios watching at the moment.

Jonathan:

I haven't dealt yet. The regulations are not dissimilar. I do a lot of work at the ACPC so I'm very familiar with all the regulations. But as of yet, I haven't represented physios, but it's a similar, very similar framework.

Steven:

So I said there'd be two aspects to what we discussed today. What are the common reasons that people find themselves in front of the PCC, the professional conduct committee, and then the other side is, well, what should they be doing to avoid that if possible, or at least to give them a chance of success if a complaint does get to that far

Jonathan:

Yeah. I mean that's quite a broad question. Effectively anything that falls below the standards of a reasonable practitioner, osteopath, physio, chiropractor, anything that falls below those standards technically could put, put a person before their regulator. There are all sorts of cases at higher end of the spectrum. There are cases of dishonesty, cases of clinical incompetence, cases or sexual boundaries being crossed. Those are the sort of ones that tend to end up in the, the erasure category if approved. And it works

Steven:

Erasure meaning removal from the register effectively.

Jonathan:

Removal from the register And then going down the scale right down to the very bottom, which might be an isolated incident of note keeping and that sort of thing. But there is a, there is a very wide range of reasons why people end up for their regulators. Patients might complain for myriad reasons.

Steven:

One of the things that I think, you know, a lot of people find it difficult to get to grips with is the sort of complaint which is legitimately the preserve or the remit of the PCC. And for example, I mean, I noticed on your website you had one chap, had you successfully defended him after he had, he or she had given false information when they were nicked for speeding. And someone asked me if speeding offences count. Can they get your removed? Particularly if you, let's say you've done more than a hundred miles an hour, does that give you a criminal conviction? If you, if you exceed that

Jonathan:

Again, I stopped doing criminal law some time ago. So I'm not gonna give you any advice there, but as far as I'm aware of fixed penalty offenses such as speeding wouldn't normally count within a regulatory framework. As I conviction there were certain things that fall under what they call conviction and caution cases. As far as I'm aware, you don't get a conviction as such for speeding. You might want to explained to your regulator, but I doubt that you're gonna get hauled up in front of the committee for a speeding offence.

Steven:

Right. So if you had been hauled up, you'd expect reasonable success if you have a decent brief?

Jonathan:

Obviously I'd say that. Yes.

Well, let's just take that then. If, if I think we are obliged to report any convictions, aren't we? So, if I appear in front of the magistrate's court for, I don't know, doing 60 miles an hour in a 30 mile an hour zone I have to report that. So the GOsC wouldn't automatically refer it to the PCC.

Jonathan:

Again, it depends on the regulator and their rules. The osteopathic and chiropractic acts are almost identical. The rules that they've adopted from those acts are slightly different. The osteopathic council have a filter that they can apply if they want to, once a complaint is made, so if you were to report yourself, before it goes to the investigation committee, GOsC have what they call screeners and the screen is looking at the case and they ask themselves, well, is this case something that the investigating committee can deal with? In other words, is this a case that is capable of amounting to a conviction of caution for misconduct. And if the screener says no this is just a speeding offence it doesn't go any further, then they can stop it before it gets to the next stage.

Chiropractic council for whatever reason, don't have that filter mechanism and any complaint that is sent to the investigating committee or to the council in general is ultimately looked at. So, so it is an odd difference between the two.

The bottom line is you're probably better off with the osteopathic council than the chiropractic council in those specific circumstances.

Steven:

I think we discussed this at that that last broadcast that we did didn't we, because there was a big issue then probably still now of chiropractors under a lot of fire from the good thinking society for

advertising. I think cranial treatments or treatments for babies and things like that. And, and actually I think, I think you said then it's an advertising standards issue, which could have been referred straight back to the advertising standards authority. But the chiropractic council didn't have that flexibility so they had to investigate all of them.

Jonathan:

They, they, they took that, they took that view. And obviously that that's a matter for them as to how they do with it. But yeah, they dealt with it very differently. I think the osteopathic council were able effectively to, to push it back. The chiropractic council had a huge number of cases that had to go before the IC.

Ultimately most of the times cases dismissed at the IC because they said that it didn't amount to unsatisfactory professional conduct. But they still had to go through that process.

Steven:

I was gonna say, how does the role of the IC, the investigating committee differ from the screeners? Because I were thought that's what they did. They screened it out as, whether it was worth putting forward to a full hearing.

Jonathan:

No, the screens at the osteopathic council have quite a limited role, but they're not there to look at prospects of success. They're not there to decide whether or not a case is likely to be found, proved or not. Their sole job is to screen out cases that that shouldn't go before the IC as a matter of law. So if for example, somebody complained about a financial dispute or something along those lines, which was something on the civil side, the screener can say, well, even if this were to progress, there is no way the IC could then send it up to the PCC. The screen is like, they have a limited role, but they can be used quite effectively. Particularly when you get massive complaints like we're talking about with the good thinking society. But it's an odd, it's an odd scenario.

Jonathan:

An example: when a patient might've complained about a chiropractor or an osteopath and it gets sent to the chiropractic council and the chiropractic council say, okay, we're going to send us up to the professional conduct committee because there's a prima facie case, even if the patient decide later to withdraw, even if expert evidence comes along and says we don't agree with this, they've done nothing wrong. And even in fact, if the general chiropractic council themselves don't want to proceed, we still have to go through this process before professional conduct committee because there was no legal mechanism for them to drop the case. So you have to turn up in front of the committee and say, we're not offering any evidence and explain why and ultimately it's down to the committee to decide whether they want to go with that or not.

So there is room for improvement in my opinion.

Steven:

What would you say to the large number of osteopaths and chiropractor who have actually found themselves in front of the professional conduct committee, who to my knowledge invariably come away saying that they felt that the general council was hostile to them as practitioners, which they felt was unreasonable.

Jonathan:

I'll say get a good lawyer! Next time. My view generally speaking is that the, these committees tend to be pretty fair. I appear in front of them all the time and, and if it's down to did we get a fair crack of

the whip? Did we get a chance to argue a point? Do they go through the procedures correctly? Yes, they, in my experience they do. Anyone that's going to be facing one of these types of hearings is bound to be feeling that that is the world against them. And that's natural. It's a horrible experience. I don't want anyone to go through. But once you're in the system and the wheel starts turning you're stuck with it, unfortunately.

Steven:

Is it fair to say though, this is what I usually say to people, that if you were appear in front of the PCC, it's much like any other court, like a magistrate's court with three people looking at you, the lawyer who is attacking you is no different from the crown prosecutor. It doesn't mean the government is against you.

It's just they've had to put somebody up to argue the complainants case.

Jonathan:

Yeah, ultimately that, that job of the Crown prosecutor *shouldn't be* to win the, the philosophy from the Regulator side is not win at all costs. Their job is to present.

So yes, in an ideal world, your opponent will always simply be presenting. At times it can feel they've gone a little further than that and that does happen from time.

Steven:

I suspect there's some professional pride in every lawyer that says that they want to do some really clever devious questioning. And I'm not saying reduce the witness to tears, but that may happen in the process.

Jonathan:

It does happen. Unfortunately it's, it's an adversarial system as much as people like to say that knowledge. And as much as people like to say that it's not, it's adversarial. And as such, it means cross examination. It means digging deep into the details. So yeah, it's not something that I would wish, as I said, upon anyone. But people do feel sometimes singled out.

I can assure them they're not - I've represented enough guys to, to, to know it can happen to anyone.

Steven:

Yeah. Do you think there's any need for the, the very long flash to bang time in, in having complaints dealt with? I mean, there are lots of people who were under enormous stress for nine months, a year, two years while they wait to go in front of the PCC only to be to have the case dismissed.

Jonathan:

We, we would all like to improve the turnaround time. I think one of the reasons I think there are delays it because in order for one of these hearings to be convened, you have a number of people that have to attend. You have the hearing committee members. Obviously you have the lawyers, you have the witnesses, you have the experts, and, and to get a date where potentially sometimes five, 10, 15 people need to be available can be tricky. So I'm not, I'm not entirely sure that it's always because people dragging the heel, sometimes the delay is just as consequence of that. There are cases, don't get me wrong, that do seem to just sit on the bottom of the in tray for, for months or years. And in those circumstances, yes, something should be done about that. Again, in my experience, it depends on the number of lawyers that have been assigned to, to the council and what their workload is.

But generally speaking I would say if a complaint comes in today, Obviously the coronavirus pandemic is going to change everything but, but, but if that wasn't going on in the background, you

normally look at a turnaround time between I'll say nine to 12 months from start to end and that has to include a number of stages, the representation at the IC stage. It's the sending for the PCC. It's getting a listing. There's a lot there. But in, in comparison to other systems such as the criminal justice system or the family courts or the employment tribunals, not much difference.

Steven:

I should have actually mentioned at the beginning that you actually have inside experience of the GOsC - you used to, used to be employed there, I believe. Didn't you?

Jonathan:

I briefly served as legal assessor. So yes, I, I got to see things from the other side. The job of legal assessor, is to advise the committees. So I advised the investigating committee, the health committee, the professional conduct committee as to the law. They're not involved in the fact finding exercises at all. They're there to make sure things are done properly. So yes, I sat on a number of cases advising committees

Steven:

I've got some questions. Many of these might fall outside your remit, but you, I'm sure you'll have an opinion on them. Somebody asked about telehealth consultations and the possibility of complaints as a result of handling patients via video, or telephone. Do you think we're more vulnerable? Are the things that we ought to be taking into account to protect ourselves then?

Jonathan:

One of the things you should be aware of is that the patient may record these consultations, obviously not something that they had available to them before. So there is a risk potentially that if you say or do something during these consultations, there will be more evidence than the other ones would be in terms of how you conduct yourself during those consultations. It's going to be down to each practitioner. I'm from my part struggling to see how you can form an examination any way, shape or form remotely. And people might be susceptible to complaints because they didn't do what was necessary before giving the advice that they gave, which they would otherwise do in clinical settings. So I can see potential problems there. Yeah.

Steven:

I guess the importance of writing down exactly what you did in your notes is even more significant in these circumstance, isn't it?

Jonathan:

Yeah. Notekeeping is always at the fore. I think almost every allegation and every case I have that comes before the professional conduct committees, there's a been note keeping in there somewhere. Something you didn't write down or something you should've written down. So would say yes. I think at the moment is it's vital that you keep the note and that that doesn't just extend to the consultations, that if you are keeping the clinic open, seeing people, I think it's really important that you make a note of all of the safety procedures you do put in place when you cleaned, had notices up and make sure that you if you're remotely screening patients that come in to check they're not vulnerable patients with symptoms - make notes of when you spoke to them, what time, that sort of thing, you know. But yeah, note keeping is going to be important here.

Steven:

Are you aware of any limitations on insurance for people doing tele-health consultations?

Jonathan:

I don't know the answer to that. I'm afraid your members will have to contact their insurance companies to, to, to chat.

Steven:

Baylens said that we were covered as long as we acted responsibly within our scope of practice. So yes, we can do the telehealth consultations. But you know, you mustn't start giving people things to do, which are clearly risky, given our limited ability to examine them over the telephone or by video link. And I doubt the Baylens will be any clearer about that. I can't speak for the other insurers.

More on the statutory instrument. Is that just England or does that refer to the rest of the United Kingdom?

Jonathan:

There's a separate statutory instruments for England, Wales I haven't seen the Northern Ireland one yet. It wasn't available on Friday, but as far as I'm aware, there's a similar statutory instrument for Wales similar for Scotland. I haven't checked it to compare it, but as I understand it, they, they, they give the same exceptions.

Steven:

Yeah. I think the devolved governments said that they will be following the lead of the, the English parliament, didn't they? In the regulations they put out for coronavirus.

Jonathan:

Yeah, I can check that, but I'm, but I'm pretty sure they're the same. I've had a brief look at the Wales one, but I'm pretty sure they've got the same exceptions. If your members want to check it themselves, you can type in legislation.gov.uk on the internet and then do a search for coronavirus legislation. You'll see that there's not many acts, but there's a few recent ones and you're looking for the health protection coronavirus regulation 2020 and if there is one, it'll say Scotland or Wales.

Steven:

Okay. This one will open a can of worms. Someone's asked why they have to be a member of the general osteopathic council. Why could cases not simply be handled under common law?

Jonathan:

You don't have to be a member Is the answer to the question. If you want to call yourself an osteopath, then you have to register with the council. Do you want to call yourself a chiropractor? You have to register with the council. That's the requirement. And obviously holding yourself out to be an osteopath or chiropractor, Well not being registered is a criminal offence.

Steven:

I presume the same applies to physiotherapists. Being members of the health and care professionals council.

Jonathan:

I suspect that's probably the case. So I'd have to check and see whether it's a criminal offense. I know it is for osteopaths.

Steven:

Yeah, well I guess the nub of that is for example, if I de-registered myself and I actually registered myself today as non-practising in accordance with the guidance from the general council. But if I

were to deregistered completely from the osteopathic council and call myself an osteomyologist or something and carry on practising in much the same way as I do at the moment, presumably then the only course of action for someone with a complaint is to, is to deal with the police...

Jonathan:

It depends what you've done. If, if, if, obviously if it's a criminal offence being complained about then, you wouldn't have to go to the council anyway, but if it's a complaint about the way that you've been handled at the clinic in terms of practice or procedure or something along those lines, you have to go to the regulator that regulates you and if you're not regulated then there was no recourse. One of the reasons people like to be part of an association will like to be part of a, a regulator is because it provides the public with reassurance that there is a, a mechanism if things go wrong. And, but if you, if, if you don't want to register that's a personal choice.

Steven:

The reason that I thought this might open a can of worms of course is because there is considerable suggestion out there that people will use the professional conduct committee as a testing ground for a case, which they can then put to a higher court for greater criminal damages or damages.

Jonathan:

Yeah. I mean the, the, the, the, the whole principle of regulation is to protect the public that that's the foundation of which regulation bill and the public have a right to make complaints against practitioners for myriad reasons. And once they've made those complaints, if there is sufficient evidence to bring the case forward, it's free. It's not them, that's the party in the case. They the witness, it's the council who act as the party.

But it's not uncommon. It is not unheard of for people to do exactly what you just suggested, which is use it as a, as a testing platform. Because of course, if there is a finding against health professional that they have fallen below the reasonable standards of their profession and they've acted with misconduct, it'd be a lot easier to then go to a civil court and, and get damages. So it does happen. It shouldn't, but it does happen

Steven:

The PCC can't award any damages to the complainant, can it

Jonathan:

They PCC can't award any damages, they can't even award costs for a successful and unsuccessful case, which also causes problems. But the answer is no, they can't.

Steven:

But those costs are minimal for the complainant because they get a barrister appointed by the GOsC or general chiropractic council.

Jonathan:

Okay. Again, you've got to remember that the complainants aren't the party. They are the witness. So although you say they get appointed, it's a council that appointed a barrister to present their case and they call the complainant as witness. But yes, quite often the witness is funded, they're put up in hotels, their travel is paid for, they're brought to London for the hearing and put up for a few days. So yes, there is a, an inequality between the two. But that's what insurance is for. People that have legal expenses, insurance get a barrister as well,

Steven:

Just to draw that parallel again, that's no different to someone in a normal criminal court, the state will prosecute and they will call the complainant if that's the right word, as a witness. So we're not doing things differently. It's just a different level of hearing really.

Jonathan:

Yeah. In criminal cases it's the victim, in these cases it's the complainant?

Steven:

You talked then about legal expenses, insurance. Does that come as standard with a medical malpractice or public indemnity insurance or any of these other things?

Jonathan:

Again, it depends on the profession, depends how the associations work. The purpose of legal expenses insurance is to cover you if you got a complaint made against you. The duty to have insurance in place that, that every osteopath or chiropractor needs is not actually for legal expenses. It's for a medical malpractice insurance. So you have to have that type of insurance, professional indemnity insurance in place. Legal expenses, some association bolt on and include in their packages. Some don't. Some don't offer insurance at all. They just offer a service. And they say that we provide you with lawyers if you subscribed to our membership fee, so it does depend. I'm going to say this because I'm a lawyer that works on legal expenses insurance, but, but I think it's vital because I've seen a lot of cases where people are unrepresented and struggling to understand the process. And, and you're at a huge disadvantage frankly. If you turn up at a hearing on your own without legal assistance and you walk against a barrister, that's provided for by the the regulator that you're having to deal with it, it puts you on unequal footing. So my, my own view is that I think it's, it's worthwhile, but I'm bound to say that!

Steven:

I think I know the answer to this question, but are all lawyers equal?

Jonathan:

I can really answer that. There are lawyers that have different experience in different fields. It's, it's not for me to say lawyers are, are equal or unequal, but it's down to the individual. Do your research, check the lawyer out, ask questions about what they've done, what experience they've got in particular how many hearings I had done, that sort of thing.

Steven:

I guess you kind of answered my question there because it's a bit like anything isn't it? You don't take your, Maserati to a bicycle repair shop because they don't have any experience in dealing with it. Even if they know about how nuts and bolts work.

You do lots and lots of fitness to practice hearings. I don't know if that's the bulk of your work, but I mean certainly you do a lot of it. And there are a few barristers in your position who would be well recognized in the professional conduct committees, I imagine.

Jonathan:

Yeah. Same in any field of law, you get people that specialize in particular field. That's what I happen to do. I really pretty much do 100% professional conduct work. The ACPC, chiropractic council, osteopathic council,

Steven:

But you've said people should check out their solicitor, their lawyer, whoever it might be. A lot of us will be unclear about the difference between a solicitor who can also advocate and a barrister, and most of us won't have any choice in that because the lawyer is appointed by the insurance company.

Jonathan:

Yeah. It depends on the package from the association you're with. Some associations will have a selection or panel of lawyers that they use. Some will say, no, we're gonna use this one. So when I say check out, I mean anyone that's been represented should do due diligence on the legal team of representing them. There are all sorts of insurance regulations that, that, that can prevent insurance companies from singling out a specific team.

So when you do have the right insurance in place, you can insist on certain lawyers. But again, it has to be reasonable costs, et cetera, et cetera. Not really my field of expertise. But what I would say is that if you, if you have a lack of confidence in your legal team, then as a member of the public, you're entitled to raise that issue.

Everyone should be comfortable with who the lawyer is and be comfortable that their lawyer knows what they're doing.

Steven:

Who would you raise it with?

Jonathan:

The lawyer

Steven:

He's probably not going to agree there is he or she?

Jonathan:

Well, we as lawyers have duties to make sure that, that, that our clients are comfortable and, and if we believe that a client has lost confidence in our ability, we actually have got to choose in most circumstances, to withdraw from the case. Obviously you want to speak to them and try to resolve the situation. But if I can't actually I'm not supposed to continue.

Steven:

That's will probably be useful to a number of people that I can think of.

Jonathan:

Well bear mind that there's always a risk. If you've been appointed a lawyer and you're not happy with them for whatever reason, just because you're not happy doesn't mean that you get a new one. Sometimes it just means that that one has to withdraw and you end up representing yourself. So I wouldn't advise anyone just to go and, and approach it in that way.

Steven:

Fiona has asked whether you think there'll be any more clarity given by the general osteopathic and general chiropractic council about whether we should keep our practices open and who we should treat, because you said they're the only ones you can make the rules. The associations give guidance.

Jonathan:

Even the councils themselves can set out their guidance, but, but it's going to be very difficult I think for them to determine exactly what is safe and what isn't because there's going to be so many different circumstances. I don't know is the answer what. What I have noticed, and I look to a lot of regulators outside of this field, for example, dentists and doctors, et cetera, a lot of people are simply saying, follow the government advice so they're not setting down their own set of standards. And at the moment, if you look at the general chiropractic council rules I think they're saying you fall within the exception but stay safe, follow the government guidance. So I'm not sure whether they're going to narrow that guidance down.

Jonathan:

But at the moment I think it's, it's a good idea to get advice from your association and before you decide what you want to do.

Steven:

Jonathan has asked whether you're currently dealing with any telehealth complaints.

Jonathan:

No, I had a remote hearing at the osteopathic council yesterday where we convened a full committee, which was interesting. It was the first one that they did. But as it currently stands, I haven't seen any telehealth complaints coming through,

Steven:

We're only two weeks in this current situation, since the lockdown came into force. So it's a bit early for any complaints to surface through the various committees.

Jonathan:

I don't tend to see the complaints until it gets to a slightly later stage in the process. But, the short answer is no, I haven't, but that's not to say there haven't been any made.

Steven:

We've had a question about those chiropractors, osteopaths and physiotherapists are working for the NHS. Is it legal that staff are redeployed to other areas of the health service, for example, intensive care units without their consent, regardless of not being offered extra training and so on?

Jonathan:

So very good question. I'm afraid I'm going to say I don't know the answer to that because again, I'm not an employment lawyer. But, but I had seen it was on the news yesterday. There are a lot of physios that have been brought in to help A&E departments to help with breathing and lungs and that sort of thing.

So if you've been asked to redeploy to the department that you're not comfortable with because they haven't got the right PPE or whatever it might be something you really need to take up, I would imagine with your line manager

Steven:

Somebody else has a question about PPE. Actually it was several of them, most of us about what is it, what constitutes PPE? Is there, is there a legal guide on and what, what we need as a minimum in the

current circumstances? Are carbon activated masks considered viable PPE. We're getting you well outside your comfort zone.

Jonathan:

And there's no guidance that I've seen at the moment that suggests that chiropractors, osteopaths, physios have to wear PPE. Obviously PPE as far as I'm aware is designed for the frontline NHS work that are dealing with people that have confirmed cases.

Steven:

I'm sure I saw that in the public health England's guidelines that you need PPE if it's a suspected or confirmed case of COVID-19, but you don't need it to treat people otherwise just normal.

Jonathan:

I'm not gonna say either way. I don't know the answer to that. But, but that's certainly my understanding at the moment. What I can say is that I haven't seen any guidance issued by the chiropractic council, osteopathic council or the government for that matter that specifically requires people within that exception to the rule to wear PPE.

But one would think as a matter of common sense, if you were trying to keep your patients safe and that would be a good way of doing it.

Steven:

Somebody just clarified the issue with insurance. There's a popularly held misconception in the professions, that if you don't charge for your appointments, then you're not covered by your insurance. Baylens have clarified, you don't have to charge for your appointments and you are covered for telehealth stuff. Again, you're covered under insurance, but you've still got to stick within your scope of practice to avoid presumably a complaint.

Jonathan:

Yeah, absolutely. The, the fact that you got to charge for appointments doesn't matter at all when it comes to the regulation of the professions,

Steven:

Gus has asked why osteopaths can't be recognized by the health and care professionals council.

Jonathan:

You have to ask the GOsC that.

Steven:

Yeah, I think, I think it's a simple answer isn't it? You know, if you want to be called an osteopath, the HCPC cannot authorize that. And only the GOsC can. The same would apply for a chiropractor as well. What you would call yourself if you did register with the HCPC or whether they would let you, if you're not one of the recognized professions. I don't know.

Jonathan:

I don't, I don't think you can register the HCPC voluntarily. You're either, within one of their recognised professions or you aren't. Who knows what's going to happen in five or 10 years from now, we might all be under the same umbrella, but as it currently stands, osteopaths have, their own regulator.

Steven:

Someone's asked about the definition of urgent cases and again, it's, it's, it's not, I guess your field. Your field is dealing with complaints that the council, but I suppose what they're saying is that it's very hard to work out exactly what constitutes urgent. But the guidance that's been has been amplified by the IO as if we're keeping people away from A&E or their GP, then that's legitimate. But at the same time, you know, you're, you're making this judgment based on a telephone call by a patient who says, I'm in awful pain. Do you think we'd be subject to complaints if we fail to see someone or if we saw someone and they contracted the virus or we contract with the virus as a result and passed it on?

Jonathan:

I think it's going to be difficult. Again, I don't do personal injury law, but I think it's gonna be difficult for people to prove the transmission chain and the causation because just because you might have walked out in the morning and not had corona virus, went to your chiro or osteo and in the afternoon you started getting symptoms, it doesn't necessarily mean you picked it up there.

The kind of complaints that are going to come through are, I went into the clinic and he was coughing all over the place, there was no hand-sanitizer anywhere, he didn't change the bed because there was no cloth on it. That sort of thing, if a patient's going to complain it's not going to be the fact that they caught corona virus, it is going to be the fact that they haven't taken the necessary precautions. Complaints will be made just on the basis that they've acted recklessly. Effectively.

As to what constitutes an emergency? Again, it's going to boil down to the individual circumstances of each case. But it's interesting some of the questions, I've fielded this week. One of the questions was whether or not emergency would include a front-line key worker, who has to be well in order to go to a hospital and work and arguably you could put those patients in a different category that you might, someone that's self-isolating, staying at home.

Steven:

Falcone has sent in that was WHO that said, if you've got an aspiration risk with a patient who has COVID- 19, you need masks. If it's just a hand contact risk, then you need gloves. But that's with patients who have got the disease, not just every, any other patient.

Several questions about rent and people's liability for rents if they close their clinics. And one chap has asked about rooms which are used by other practitioners, different disciplines. They all want the clinics to stay open, but it's his clinic. What should he do? He gets rent from those people - who's more responsible if difficulties arise. Is he going to be held responsible if there's a problem.

Jonathan:

There's also a misconception that barristers know every area! I specialize in regulation not landlord and tenant. Sorry.

Steven:

It would be impossible to get somebody who dealt with all these different aspects. You've talked about criminal law, you've talked about personal injury law and now you're talking about employment, whatever it is.

I suspect we'll be talking to you again Jonathan, because there are people who are very worried about what happens if they do get a complaint. And it's not just people who are guilty who get complaints is it you get some people who are perfectly innocent, perfectly well intentioned, and they get complaints, going through this horrific process.

Jonathan:

Absolutely. and, and if everyone was guilty that had a complaint against them I'd be without a job. So I've seen a lot of people whether there's going to be an increase in whether there's gonna be a surge, I don't know, we have to wait to see. It's still early days,

If people have concerns or questions that they want to raise with you or me directly by all means do,

Steven:

Just to finish off something a little bit more salacious, you actually said that there'd been an increase in sexual misconduct complaints recently. Is that true?

Jonathan:

Only in my experience. You're talking the cases that I have for some reason, I have no idea why, it's more where people have had an inappropriate relationship with patients. But yes, it's just an anomaly for my particular practice, whether it's across the board, I have no idea.

Steven:

So the bit that I failed to address in this broadcast, if you had 20 seconds to tell people what to do to protect themselves either against the complaint or to help defend themselves in, in a hearing, what would you say is the most important thing?

Jonathan:

Well, I'll say to protect yourself against the complaint, don't do the conduct complained of in the first place. If you have done it, get a good lawyer. You can't stop complaints coming through, they will happen. The, the key issue is to make sure that from the outset you get good legal advice because what you do in the early days can come back to bite you later.

Steven:

What about the business of, you know, presumably your notes are paramount and people are really worried about, you know, just what detail do they put in their notes? You don't write down in your notes all the things that didn't happen.

Jonathan:

You have to act reasonably when you say notes, do you mean appointments...

Steven:

Case histories

Jonathan:

Again, it's what is reasonable. You're not expected to, to, to write verbatim everything that's said in an appointment, but you have to have sufficient data. We're all familiar with the soap principles [subjective, objective, assessment, and plan] as long as you've got some detail and you don't just write ditto on every appointment. But also bear in mind that the standards of misconduct... if it's an isolated occurrence, it's a one off, it's one patient and you happened on that occasion, not to mention that they had difficulty sleeping, it's unlikely to amount to misconduct but if it is a problem that's systemic throughout your practice and note keeping then you've got more of an issue.

Steven:

And what when someone becomes aware that a complaint has been made - they should be told immediately by the general council believe,

Jonathan:

Believe it or not, there's not a requirement for them to be told immediately that the complaint's being made, there is a requirement once the complaint has been sent to the investigating committee for them to be notified to make responses within a certain period of time. But actually in practice, a lot of complaints are notified quickly. But we, we have had scenarios where a complaint was made and we heard about it in a month or so later.

Steven:

What should they do? What's the first action to take when you're aware of that happening?

Jonathan:

Call their association, check their insurance policy and get a lawyer.

Steven:

Okay. Thank you very much Jonathan. I'm very grateful for your time. I'm sure I've racked up a huge legal bill for this service, 45 minutes that we've ran together. Really appreciate you appearing again and as I said, I'm sure we'll, we'll get you on again in the future to help people out.