Aston Brooke Solicitors have been representing the interest of care home providers, residents and care associations for over a decade. The multidiscipline practice can assist you in a variety of legal scenarios. In light of the current coronavirus outbreak, we are proud to be at the forefront of providing our valued clients with up to date news and advice on the Regulations and the Coronavirus Act 2020. Our information will be updated as the Government guidelines change and financial assistance packages are announced.

Testing solution: why do we need it ?

In short, to restore consumer and staff confidence. The NHS has started a campaign to reassure the public that hospitals are a safe environment and the public will not necessarily contract COVID-19 when entering a hospital.

Care Home providers have exactly the same battle on their hands, if not worse. The sector has to go about reassuring their users and users' family members that the care home environment is safe and COVID-19 is in control.

The care home sector has to be proactive, like hospitals are, in ensuring the public and ultimately their service users do not perceive admission into a care home as high risk. This can be achieved by ensuring that the news narrative is changed from focusing on the mortality rates in care homes to the proactive approach adopted by care homes to test, trace and isolate all staff and residents that utilise the care home service.

Society as a whole have to start a rebuilding exercise when emerging out of this pandemic. However, if occupancy levels within care homes do not return to pre-COVID-19 figures then the financial implications will be devastating on the sector.

Background

It is safe to say that nobody needs an introduction to the current COVID-19 pandemic. It may be arguable that the UK Government could not have expected the impact of COVID-19 pandemic in February 2020.

However the UK Government has systematically ignored logic and good practice from other jurisdictions, such as, Germany and South Korea, when dealing with this Pandemic. The adult social care sector has been particularly severely affected.

It is safe to say that any assistance that was received from Department of Health & Social Care was too little too late at every stage in this pandemic. Furthermore the relevant Governmental departments were very reluctant to provide the necessary assistance that they did provide.

In previous epidemics, Ebola, SARS, MERS, no one had questioned the need to track down and eliminate the virus by testing everyone with symptoms, tracking their contacts, and isolating and testing them one by one. But not this time.

> *"You can't fight a fire blindfold," said Dr. Tedros Adhanom Ghebreyesus, the director general of the World Health Organization. "You can't stop this pandemic if you don't know who is infected. We have a simple message for all countries: test, test, test. Test every suspected case. If they test positive, isolate them and find out who you've been in close contact with for up to two days before you develop symptoms, and test those people as well. "*

The message and advice was clear and some 90 days later no new learnings has meant those words of advice do not still hold true.

Current Situation

As far back as 23 April 2020 The World Health Organisation produced a report co-authored by Imperial College London, in collaboration with the Vaccine Centre at the London School of Hygiene and Tropical Medicine stating that weekly screening of healthcare workers (HCWs) and other at-risk groups irrespective of symptoms, using PCR or point-of-care tests for infection, would reduce their contribution to transmission by 25-33 per cent, on top of reductions achieved by self-isolation following symptoms.

The supply of PPE and **Polymerase chain reaction** (PCR) testing has been woefully managed by PHE, DHSC, CQC and NHSE and consequently many lives have been unnecessarily lost. To put the loss of life into perspective, ONS statistics on "excess mortality" showed that at the peak of the pandemic (week ending 17th April) there was 113% more deaths than usual, and even latest data (week ending 22nd May) there were 24% more deaths than expected. The implementation and rollout of PCR testing was slow and flawed. The current process for booking, receiving and obtaining results for a PCR test are still not as efficient as it should be.

On the 22 May 2020 the Government announced it will commence antibody testing to NHS and care staff in England. It was reported that 10 million tests have been ordered for the devolved administrations and each devolved nation (England, Scotland, Wales and N Ireland) will decide how they will use their allocation.

If we estimate that England receive 5 million of the antibody tests, how many will actually filter through to the care home sector?

On the 8 June 2020 the Department of Health & Social Care announced that a new taskforce will be set up to help oversee the implementation of the government's social care action plan and care home support package to help end transmission in the community and advise on a plan to support the sector through the next year.

They also announced for the first time every care home in England will now be offered a coronavirus test for all residents and staff, even if they have no symptoms.

Naturally this announcement is welcomed, however sporadic PCR testing is not a viable solution. It is assumed that COVID-19 is widespread in the care home sector. It is also believed, but not known, that a large percentage of the residents and staff may have already had contracted COVID-19 and recovered.

The testing strategy process required is one where regular PCR testing is accompanied by antibody testing. The idea of doing a PCR test once a month will have no benefit in identifying staff members or residents that are asymptomatic and /or have contracted COVID-19 during your 4 week testing cycle. Furthermore conducting just PCR test will not confirm how many staff and residents have developed IgG antibodies, hence have previously contracted COVID-19 and recovered.

The testing strategy must be accompanied by data collection. This data will be instrumental in determining how widespread COVID-19 is amongst the staff and residents.

What can we test?

There two main tests that are presently being used to detect either antigens or antibodies:

- **Polymerase chain reaction (PCR)** test, detects current active COVID-19 infection,
- Antibody tests either **Serological test**[1] **(Antibody test)** or a **Point of Contact**[2] **(POC),** detect having Covid-19 in the past

[1] As of 22nd May 2020 Abbott and Roche are the only approved serological test for COVID-19 in the UK. Approved by MHRA and PHE.

[2] There are many providers that have obtains MHRA approval but none for PHE approval yet. We expect Surescreen will be one of the first to obtain PHE approval.

What is the benefit of testing?

Testing is the only proactive weapon against COVID-19. All other measures, PPE and social distancing, although beneficial are only 'holding patterns'. It is essential to be able to determine who has COVID-19 and who has developed IgG antibodies, resulting from having contracted COVID-19 and subsequently recovered. A robust testing strategy will provide the decision makers crucial information:

- Isolating staff and/or residents that have contracted COVID-19
- Staffing rotas- once it has been determined staff member(s) and/or resident(s) that have developed IgG antibodies. It is possible to ensure that staff with IgG antibodies are on rotas attending to residents, that also have IgG antibodies or, importantly, those that currently have COVID-19.
- Staff members that may have shown symptoms can be tested and return to work sooner if they do not have COVID-19.
- Staff members that did have COVID-19 can be tested and once they show IgG antibodies they can return to work.

What are antibodies?

Antibodies are the body's response to a virus, which persist in the blood, acting like sentinels and mount an immediate response should the virus try to invade again. The antibodies are unique signature proteins made by the body after encountering different viruses. Therefore, finding them as a marker of past contact with a particular virus, allows for developing strategies for managing any virus. The presence of IgG antibodies show the body has previously contracted COVID-19 and has likely to have developed immunity. Antibody or Plasma treatments can be developed from recovered patients to be used in the acutely unwell.

As COVID-19 is new, researchers cannot say for certain that an initial infection guarantees lasting protection. But based on the experience with viruses, including other members of the coronavirus family, SARS and MERS, they expect that people who recover will be shielded for perhaps at least two years, and from there the immunity might start to wane, but not disappear.[3] This is the same strategy, to develop protective antibodies that a Covid-19 vaccine would provide in those not previously infected, although this probably will not be available until 2021.

The cost of each test

Yes it is correct that in theory care homes staff and residents are entitled to free PCR and antibody tests. However, if you are of the opinion that you need to take control of the issue and not leave the success of your testing strategy in the hands of the Governmental bodies. Then you take control of your own testing strategy.

On 22 May 2020 an Adult Social Care Infection Control Fund (ICF) was introduced by the Department of Health & Social Care. This funding will be paid as a Section 31 grant ring fenced exclusively for actions which support care homes and domiciliary care providers mainly to tackle the risk of COVID19 infections.

Annex C sets out the conditions upon which the ICF can be utilised. As you are aware 75% of the £600 million has to be allocated in the prescribed manner. The remaining 25% of the Grant may be used on COVID 19 infection control measures. Hence the ICF funding could be utilised to fund the testing strategy.

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[3] Lack of Peripheral Memory B Cell Responses in Recovered Patients with Severe Acute Respiratory Syndrome: A Six-Year Follow-Up Study

Fang Tang, Yan Quan, Zhong-Tao Xin, Jens Wrammert, Mai-Juan Ma, Hui Lv, Tian-Bao Wang, Hong Yang, Jan H. Richardus, Wei Liu and Wu-Chun Cao

J Immunol 2011; 186:7264-7268;

Description	Purpose	How is the test done?	Time for results	Cost per test
PCR test[4]	Does the patient currently have COVID-19	This can be done in the patient's home. A swab is taken from throat and nose. MHRA and PHE approved	The results are returned in 2 days from receiving the sample back in lab.	£100.00.
Serological antibody testing 99.6% to 99.8% Specificity and 100% sensitivity Abbott or Roche	Checks if the patient has antibodies. So has previously had COVID-19 and has developed IgG antibodies.	A blood sample is take by a phlebotomist or nurse. MHRA and PHE approved	2 days after the sample is taken	£55.00 If phlebotomist is required to take the sample then that will be an additional cost. Nursing homes with a registered nurse would probably not require a phlebotomist. Cost of phlebotomist will depend on location.
Point of Contact Antibody test (98% accurate)	Checks if the patient has antibodies. So has previously had COVID-19 and has developed IgG antibodies.	Finger prick blood sample into the kit. Accuracy level is in dispute. This can be sold in the UK. MHRA approval but not PHE(yet). Should be used as part of a multiple testing solution. To evidence continued IgG antibodies.	Results in 15-20 of giving sample. But written results within 24 hours	£17.00

Who should I contact if I want to start a testing regime or just book a single test?

If you have any queries relating to testing or any issues relating to ensuring your care home is COVID-19 secure please contact ASTON BROOKE on 0203 475 4321.

[4] All tests conducted by an independent CQC registered laboratory. You will not be utilising NHS resources.
[5] All test results interpreted by medical consultants or clinical immunologist.
[6] All test results interpreted by medical consultants or clinical immunologist.

DISCLAIMER: Please note that the above information is not advice from Aston Brooke Solicitors, but rather an update on current legislation and Government guidelines as of 11.05.2020. The legislation and guidelines are constantly changing. Please visit our website for up to date information OR contact us directly for legal advice.