



## Fire safety trumps consent in care home smoking scenario

*Fire is such a potent hazard that the rights of a care home resident to smoke are surpassed by the fire safety obligations of the care home, said a barrister who was involved in the prosecution of a BUPA care home after the death of a resident in a fire caused by smoking.*

Saba Naqshbandi KC told an audience at the [Anticipate London](#) event that the case involved the death in 2016 of

a wheelchair-bound care home resident at a Bupa care home. The resident died after a cigarette he was smoking in an exterior smoking shelter ignited his clothing, which was likely to have been permeated with the residue of dried-in emollient creams. The evidence suggested that cream had not been applied on the day of his death or even in the days before, but the court could not rule out that the cream did not play a role in the fire.



Bupa pleaded guilty to failing to put in place appropriate arrangements for the effective planning, organisation, control, monitoring and review of preventive and protective measures under Article 11 of the [Regulatory Reform \(Fire Safety\) Order 2005](#). Although the care home provider had a national fire policy document, it contained no reference to emollient creams. However, a managers' fire safety briefing document referred to a previous case in a non-Bupa care home, and contained a reminder that residents be kept away from fire and flames.

### **Bupa failure**

Bupa accepted that it failed to ensure that its staff knew about the risks posed by the emollient creams. But it challenged the case that its failures caused or contributed to the resident's death, and said it could not impose measures on residents without their consent. The court held that the requirement for a resident's consent could not trump the requirement for fire safety.

Bupa also claimed that the fire risk assessor could not be expected to have the clinical experience to assess each resident, but the court rejected that argument. It said that the identification of precautions did not require knowledge of individual clinical situations, only the general characteristics of residents. Linked to that, the fire risk assessor must have information on the types and characteristics of the occupants, and the responsible person must provide relevant information to the fire risk assessor. [Bupa was fined £937,500 in January 2022, and ordered to pay costs of £104,000.](#)

### **Smoking-related**

Some 13% of fires in care homes are smoking-related, usually caused by the careless disposal of smoking materials or smoking not being properly controlled or supervised. This includes plans that are not up-to-date or personalised.

“How can the tension between the rights of a resident to freedom in their home and fire safety of the premises be resolved?” asked Ms Naqshbandi. “The simple answer would have been a total smoking prohibition on residents, and some homes have a complete prohibition on smoking. But in my view, if there is a way for care homes to cater for individual needs, it should be considered, provided it is safe.”