

Number 4

## Closing Care Homes – A Breach of the Human Rights Act?

CARE HOMES BRIEFING

Care homes may be closed for many reasons be they purely financial, organisational or simply to refurbish outdated accommodation. The consequent need for residents to move is obviously unsettling for them. This has already been subject to challenge in the Courts on previous occasions.

In *ex parte Coughlan*<sup>1</sup> residents successfully challenged the local authority's decision to close a care home. In that case, it was particularly pertinent that the residents had received a promise that the home would be their "home for life".

Other challenges have been less successful.

In *ex parte Core*<sup>2</sup> the residents of a community unit challenged the decision of the NHS Trust to close the unit, transfer them to other facilities and refurbish it for use for a different client group. In that case, the alleged promise of a "home for life" was found by the Court on the facts not to be substantiated. The residents challenged the decision additionally on the grounds that closure was a breach of their rights under Article 8 of the Human Rights Act<sup>3</sup> on the basis that they were being forced to leave their "home" against their will. This argument was rejected by the Court given the need for the NHS Trust to consider the needs of all its patients.

A recent case in Merseyside has also failed to prevent the closure of a home. In that case, the home was threatened with closure after the Local Authority refused to increase funding to the level needed to make up for the home's financial losses. The residents, who suffered from senile dementia, sought a Judicial Review of the Local Authority's decision. They argued that closure of the home would be unlawful and that funds should be provided to keep the home open until proper risk assessments had taken place. In this case, lawyers argued that the closure decision breached their right to life under Article 2 of the Human Rights Act. It was alleged that a move for these vulnerable elderly residents could bring forward their death.

However, the Judge said that there was totally inadequate evidence to suggest that the residents' human rights had been infringed. Furthermore, the Local Authority had agreed to liaise with suitable consultants in old age psychiatry on the best way to move the residents.

Although the challenge to closure was unsuccessful in the latter two cases, it is clear that this is a fertile ground for challenge and litigation so closures need to be considered carefully. It is particularly important to ensure that an appropriate risk assessment is undertaken in respect of the residents who are being moved to identify their needs going forward.

<sup>1</sup> R –v- North & East Devon HA *ex parte Coughlan*

<sup>2</sup> R –v- Brent Kensington and Chelsea & Westminster Mental Health NHS Trust *ex parte Core & Others*

<sup>3</sup> The right to a private and family life

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## Long Term Care – Increase in Means Test Capital Limits

The capital limits for means testing to obtain local authority funding in care homes was increased with effect from 7th April 2003. The previous lower limit of £11,750 has been increased to £12,000 and the higher capital limit has been increased from £19,000 to £19,500. Individuals who have capital in excess of £19,500 have to meet the full cost of care themselves. However those with capital below £12,000 only need to contribute their income towards care home fees less £17.50 which may be retained for personal expenses.

Those with capital between £12,000 and £19,500 will have to contribute an additional £1.00 per week for each £250.00 of capital over £12,000 up to £19,500.

Where an individual's need for care is primarily a health need, it is possible that the cost of care home provision can be fully funded by the NHS. A needs assessment has to be completed and the results compared with local health authority eligibility criteria.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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