

Care Homes Briefing

Number 70

Human Rights Act 1998:

The Government have announced that the extension of the Human Rights Act to private sector care homes will come into force from 1 December 2008. This is effected by the Health & Social Care Act 2008 (Commencement No. 4) Order 2008 (Statutory Instrument No. 2994 of 2008). It brings into force Section 145 of the 2008 Act so that from 1 December private or voluntary sector care homes must act in accordance with the European Convention on Human Rights where care home services are provided under contract to a local authority.

It will mean that if there is an alleged breach of human rights, residents may take action against the provider under the Human Rights Act.

Clearly issues of poor care, untoward incidents or deaths are likely to have attracted significant investigation previously as part of existing regulatory or legal procedures. However there are now 2 key areas in particular where care home operators will need to take greater care in the future:

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1. Termination of a resident's placement

Placements may be terminated because the resident is no longer appropriately placed, because of non-payment, breach of contract, or because of difficulties with the resident or their relatives. Previously this would simply have been a matter of contract however the Human Rights Act will mean it will be necessary to ensure that full consultation and assessment procedures have been undertaken. Where closure or reorganisation of services arises the same issues will arise.

2. Restrictions on visits

On occasion, difficult relatives may mean that there is a need to restrict visiting because of the impact this is having on the resident, staff or other residents at the home. Such restrictions should only be put in place once the Human Rights Act has been carefully considered.

We have been following the progress of this area of law in our *Care Home Briefings* nos. 49, 53, 66 and 69, which may be accessed in the publication section of our website www.rlb-law.com.

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Out of office emergency advice available 24hrs on 07802 506 306.
Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.
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