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Care Home Briefing 83

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Home Closures and Residents' Rights: European Law Guidance

There was much media comment when Wolverhampton City Council decided to close Underhill House Care Home and transfer the residents to other units.

It was argued that the European Convention on Human Rights was being breached and the European Court has now ruled on this.

Background

In 2008 Wolverhampton City Council proposed to close Underhill House as it needed £2m worth of refurbishment to bring it up to modern standards. An attempt to obtain a Judicial Review of the Council's decision was unsuccessful and despite external offers to fund the Home (and even comments about this from Gordon Brown in the House of Commons) the Home was closed.

Solicitors acting for one of the residents, Louisa Watts, who had been moved to another home, claimed that the City Council had breached her right to life by closing down the facility where she had lived for 5 years. It was argued that Mrs Watts's life expectancy would be reduced by about 25% if she were moved from the Home^[1].

Court Decision

The European Court of Human Rights unanimously rejected the claim. Their decision^[2] states that they did not agree that the evidence demonstrated a particular and quantified risk to her life as a result of the transfer and thus the Court did not accept the prognosis for Mrs Watts's life expectancy.

The Court stated that the duty of authorities to respect Article 2 of the Human Rights Convention, the right to life, does not mean that those authorities must ignore financial matters. If the transfer of an elderly resident is managed carefully and there is no proof that that individual's life would be shortened by any move then the Council would be meeting the Human Rights requirements.

It was also argued that the stress of the move would breach Article 3, the prohibition of inhuman treatment, and Article 8, the right to a private and family life. However, both arguments were rejected as were suggestions that she had no right to access the Court (Article 6) and that the closure discriminated against disabled residents (Article 14).

Comment

This case reflects a further chapter in the history of litigation regarding Care Home closures. Where Human Rights issues apply, clearly these must be handled carefully and methodically. However, proper management of such issues should mean that in most cases closure can still be effected.

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Footnotes

^[1] The Daily Telegraph, 1 June 2010

^[2] Watts v UK 53586/09[2010]ECHR 793