

Registration of Care Homes and Domiciliary Care (*ref 13*)

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Introduction

This *factsheet* looks at the arrangements for registration and inspection of care homes and domiciliary care agencies under the *Care Standards Act 2000* and the impact on residents and providers. It considers the conditions in which services need to register as a care home and when they may de-register.

The residential system derives from *Part III* of the *1948 National Assistance Act* which imposes a statutory duty on Local Authorities to provide residential accommodation for those 'in need of care and attention for reasons of age, infirmity or any other reason'. The aim of taking people into care and then ensuring their safety and protection was developed primarily for older people with regulation and standards to suit under the *Registered Homes Act 1984*.

There are a number of important reasons why organisations need to be clear about whether care is provided in a care home or as a domiciliary service. If an establishment is registered as a care home:

- Standards for care, welfare and supervision of residents are enforceable
- The resident has less control over their accommodation
- Residents' personal income is limited and housing benefit is not payable
- The service is not eligible for Supporting People Grant

Care Standards Act 2000

Under legislation, establishments providing residential accommodation and personal care have to register with the Commission for Social Care Inspection (CSCI). Agencies providing domiciliary care to people in their own homes also have to be registered and are also regulated by the CSCI.

'An establishment is a care home if it provides accommodation together with nursing or personal care.' (*Section 3*) 'An establishment is not a care home unless the care which it provides includes assistance with bodily functions where such assistance is required'. (*Section 121 (9)*)

Anyone or any organisation wishing to apply for registration will have to supply the CSCI with information on their aims, the accommodation, financial details, the manager and staff, training and qualifications.

If the registered provider is an organisation it must appoint an officer to be registered as a 'responsible person' and if that person is not involved in the day to day running of the care home it must appoint an individual who will be registered in her own right as the registered manager of the care home.

There are two sets of new Regulations relating to care homes and domiciliary care (*Care Homes Regulations 2001 and Domiciliary Care Regulations*). They set out in detail a registered provider's responsibilities for the health and welfare of service users, the assessment of service users and their needs including the preparation of a written service users plan, the type of facilities and services, service users can expect to receive, responsibilities for maintaining records, suitability of staff and the establishment of an appropriate complaints procedure.

There are national minimum standards for care for older people, for younger adults and adult placements and for domiciliary care. The national minimum standards set the benchmarks of good practice. The CSCI will take into account the national minimum standards when deciding whether or not to take any regulatory action.

Regulation 26 Visits

If a care home is being run by an organisation the Regulations say that the care home must be visited in accordance with Regulation 26 by the responsible individual or another director or manager not directly concerned with the day to day conduct of the care home. The home must be visited at least once a month and the visits must be unannounced. The person carrying out the visit will be required to interview service users in private, their representatives and other people working in the home so that the visitor can assess the standard of care, which is being provided.

The visitor must inspect the care home, its record of events and records of any complaints. Following the inspection the individual must prepare a written report on the conduct of the care home. After every visit the registered provider must make sure these reports are available to CSCI.

When Does a Home Have to Register

Beginning with the words of the *Act* a registrable care home is an:

- establishment providing
- personal care
- together with accommodation

Establishment. If an establishment is to be registered as a care home it must provide accommodation together with personal care. This suggests that the two come as part of a package of provision - looking at the way residents are placed in the accommodation and the way it is run and funded will indicate whether a care home exists. For example: do social services place residents? Is there a single source of funding or a single provider organisation? Do staff need to have a right of access to carry out the management or provide care in the home?

This arrangement can be distinguished from a situation where housing and care are contracted for separately: through a tenancy or lease from a landlord and the care through a contract with a care provider. In this situation the resident has much more control over his/her accommodation. The tenant will have tenancy rights, the arrangements are likely to be less institutional and the resident will have far more independence.

Own home. When the *Care Standards Act 2000* was being introduced the Minister said that care home registration was not intended to apply to someone's own home. 'Where care is provided to people in their own home - whether as owner occupier or tenant - that home will not be registerable as a care home' and 'it is immaterial whether the person is living alone or with others'. In such cases if personal care is provided by a domiciliary care agency, the agency should be registered. It suggests tenure is important and this is discussed in the next section, below, on Tenancy.

Separate housing and care providers does not in itself mean that an establishment will not be registrable as a care home where there is a close working relationship between the two providers so that they appear to offer a single package.

Personal care. If an organisation is considering whether or not it needs to register a care home or a domiciliary service it will only have to do so where personal care is being provided or, in the case of a care home is available if required. Personal care is described in guidance provided by the Department

of Health in *Supported Housing and Care Homes* as the more intensive kind of personal care being available, assistance with bodily functions such as feeding, bathing, and toileting.

Tenancy or License to Occupy

The *Act* does not define what is meant by a person's 'own home' and any organisation will need to look at the facts of any particular case giving this phrase its ordinary meaning to establish whether or not this is the case. If residents can control their accommodation and who can come into it, it is likely that they are receiving a domiciliary care service, in their own home.

Where the degree of supervision and personal care provided is such that the manager of a home requires unrestricted access it is likely that such a home will be required to register as a residential care home.

A tenancy, particularly an assured tenancy, grants more rights and security to a resident than the lesser right to occupy conveyed by a licence. A landlord cannot bring the tenancy of an assured tenant to an end without getting a court order based on one of the statutory grounds.

The Sweet and Maxwell Guide to the law was of the opinion that a tenancy with care does not fall under the *Act* as an arrangement that constitutes a care home.

Exclusive possession. In deciding that a proper tenancy exists, it is the reality of the arrangement that counts, not just what it is called. The House of Lords case of *Street and Mountford* describes things very well. It found that one of the essential characteristics of a tenancy is the exclusive possession of the room or flat.

The provider will need to be clear whether they are only a landlord or whether they will be taking greater responsibility for a resident's welfare and care.

In deciding whether to grant a tenancy or a licence the landlord/care provider will need to consider -

- whether the resident should have exclusive possession of all or part of the accommodation
- whether the landlord needs to reserve the right to require the resident to move rooms
- the level of attendance or services are such as to require that the landlord has unrestricted access through the house
- the degree of supervision and personal care provided such as the manager of a home requires unrestricted access

In a High Court judgment on deregistration in 2005 where residents had assured tenancies it was said that an establishment could include the provision of accommodation through a tenancy and that in this case the leases *may be a sham* and *not standards leases*. For example *the rent exceeds £700 a week and the tenant receives care*.

Capacity. If a person without capacity to understand the essence of a tenancy signs one, it is presumptively valid, but may be undone later, if it can be shown that the landlord must have known of the person's incapacity. Tenancies could be arranged without signature so long as the landlord was happy to take on tenants who could not understand the conditions in the tenancy and would not be able to be held responsible for complying with 'good behaviour' covenants or made *contractually* liable for breakages or other damage. If a person without capacity has been able to give Lasting Power of Attorney to someone else, or has had a Deputy appointed to act on their behalf, that person can sign the tenancy on behalf of the person without capacity.

The prospective tenant does not have to understand the minute detail of the terms of the tenancy agreement, but they must have a general understanding of what the agreement means. Evidence of understanding the essentials of the deal, i.e. the basic concept of money, owning it, exchanging it in return for something, and the basic concept of promises and rules which need to be kept (even though they may require help to manage to keep to what they have promised), is likely to satisfy a court that the individual has the required capacity to be held to the contract terms. It would be advisable to get the individual's signature witnessed by a close member of the person's family, a solicitor or other suitable advocate, who can provide a letter confirming that the tenant was advised of the terms of the tenancy and understood them.

Deregistration

Under the *Care Standards Act 2000* anyone who is a registered provider or the registered manager in respect of a care home can apply for cancellation of the registration. However there are various steps that must be taken before the registration can be cancelled and these are set out in *Regulation 15* of the *Commission for Social Care Inspection (Registration) Regulations 2001*

- Application has to be made in writing on a prescribed form which has been approved by the CSCI.
- Application has to be made at least three months before the provider wants the registration cease.
- The applicant must supply the following information with the application for cancellation:
 - A note of the date when the cancellation is to take effect
 - A statement of the arrangements that have been made by the registered person to ensure that after the date the cancellation becomes effective service users residing in the care home will still have similar accommodation and services to those being provided in the care home or by the domiciliary agency on the date the application for cancellation is made.
 - A statement of the reasons why the registered person wants to make the application for cancellation.
 - Details of any notice of the application to de-register which has been made to any of the following people:
 - a) service users
 - b) representatives of service users
 - c) the local authority in whose area the care home or the domiciliary agency is situated

The registered person must let the CSCI have any other information or documents that it reasonably requires in order to assist the application.

The amount of information that has to accompany the application shows how important it is for any organisation considering de-registration to allow sufficient time for it to consult with all the interested parties. So that when it comes to making the application it can show that it has thought through the consequences of de-registration and it has made sure that the service users' will be adequately protected.

In many cases, the residents in the registered care home will have been placed there by social services, or possibly the local health authority. In order to persuade the CSCI that it is appropriate for the resident to have a different model of housing with domiciliary care it is essential that the applicant can show that the resident's care needs are such that he or she does not need to live in a care home.

Bearing in mind, that the local authority will have carried out a care assessment on a service user prior to placing him/her in a residential care home, as a first step the applicant should approach the relevant local authority's social services department to carry out an assessment of the care needs of the resident to establish whether or not the resident could cope with living in an arrangement with domiciliary care support.

If the service users are going to continue to live in the same accommodation after the registration has been cancelled it is even more important, that the registered provider should be able to show that there has been a significant change in the housing with care model to satisfy the CSCI that it is different and no longer a care home.

If the registered provider is planning to provide care to service users in their own home rather than a care home setting on cancellation of the registration the provider will need to consider granting each service user a tenancy agreement (or lease). Organisations intending to issue tenancy agreements, should make sure that the tenants are aware of the consequences of entering into a tenancy agreement.

This is where the question of the capacity of the tenant to enter into a tenancy agreement may be relevant.

In the case of *Alternative Futures* the court took the view that where a registered provider is cancelling the registration of a registered facility and the plan is to continue providing the residents with a domiciliary service, it is extremely important that the registered provider should be able to show that

the service users have exercised a real choice in deciding whether or not to live in the unregistered model of living accommodation, rather than a registered care home setting.

In the case of housing with domiciliary care, the service user has their own accommodation. The provider needs to be able to show the CSCI that the service user is aware of this change and that they have made a choice to accept it.

Funding. The organisation seeking de-registration may need to consider the effect of de-registration on the funding of the service user's placement. If social services have been paying for a service user's accommodation and care under *Section 26* of the *National Assistance Act 1948*, they will not be able to use the same statutory powers to fund the cost of providing domiciliary care in a situation where housing benefit will pay the service users accommodation costs.

If the Local Authority decides that the service user's needs will be adequately met outside a care home setting it has a duty under *Section 2* of the *Chronically Sick and Disabled Persons Act 1970* to provide welfare services and can discharge that duty by purchasing domiciliary care services.

Domiciliary Care

Domiciliary Care agencies are regulated under the Care Standards Act 2000, and have to meet national minimum standards before they will be registered.

The Domiciliary Agency must have a statement of service aims and a user's guide to the services. There will be a test of the fitness of the agency management and staff. The registered person must ensure that the service -

- ensures the safety of service users;
- safeguards service users against abuse or neglect;
- promotes the independence of service users;
- ensures the safety and security of the service users' property and home;
- respects the privacy, dignity and wishes of service users, and the confidentiality of information relating to them;
- has due regard to the sex, religious persuasion, racial origin, and cultural and linguistic background and any disability of service users

A care plan must be prepared for the service user's needs in respect of which personal care is to be provided, how those needs are to be met and be kept under review and revised as necessary. It should take into account their wishes and feelings, provide them with information and choices about their personal care and encourage and enable them to make decisions about their personal care.

There is no treatment of the fitness of the home itself, its standard and amenities. It remains to be seen how this is dealt with either under housing law, supervision of Supporting People Grant services or other supervision of housing providers. It doesn't appear that social care and housing regulators have given much thought to a 'joined up' system for supervision.

Additional Safeguards

Registration under the CSCI should not be the only safeguards or arrangements for monitoring service. Alternatives lie in:

- contract compliance against standards specified by Social Services purchasers
- approved lists of providers or accreditation schemes
- internal quality assurance methods, care practice standards, formal procedures
- complaints procedures, telephone 'whistle blowing' systems
- independent audits
- linking with the wider community, involving families and friends
- regular care plan or care programme monitoring
- risk appraisal and management
- tenant satisfaction surveys

There are now examples of such alternatives being used as a supplement to the registered care system for supervision. These sit well with the government's Best Value agenda and ought to offer a better framework for supervision and regulation.

CSCI Policy and Guidance

CSCI has published guidance for assessing whether a care service needs to be registered, which takes into account CSCI's view on the 'Alternative Futures' case. This guidance gives indicators when deciding whether care and accommodation are provided in such a way as to meet the definition of a care home. It also includes details of how CSCI will approach requests for 'de-registration' of existing care homes.

Conclusion

In the introduction it has been pointed out how residential registered care has been the predominant service option. The system was developed to provide residential accommodation for people who by reason of age illness, disability or any other circumstances were in need of care and attention which was not otherwise available to them. A Local Authority has the power to use a housing option for this purpose, but the usual route has been a placement in residential care.

Accommodation, care and support coming as a package in a residential care home is very different from the arrangement for separate housing care and support services in supported housing. There are pros and cons of each. In a registered care home someone is placed following an assessment and thereafter the Local Authority assumes full (including financial) responsibility, for the residential placement. On the plus side too there is the security provided through the regulation of the home by the Commission for Social Care Inspection (CSCI), but registration can affect security of residence, service culture, homeliness, freedom, control of the home, lifestyle, and costs.

In supported housing, whether shared or self contained, it is regarded as the resident's own home. Care and support may be provided separately. Financially the resident has more of their own income, because they are eligible for a full range of income support and allowances for disability or incapacity. But this may have to be used to pay for household expenses. Personal care may be regulated as domiciliary care by the CSCI and housing related support will be monitored under new Supporting People arrangements.

In deciding whether a service has to register as a care home or not it will be important to show whether or not it is the person's own home. The social services care assessment should also indicate the appropriate form of service. To accept de-registration the CSCI will need to be satisfied that the residents are aware of the change and that they have made a choice to accept it new arrangements which are again supported by the care assessments.

References

Arden A and Hunter C (1997) - *Manual of Housing Law*

Housing Corporation (1999) - *Code of Practice on Tenure*

Care Standards Act 2000

Dept of Health (2002) - *Supported Housing and Care Homes Guidance on Regulation*

National Minimum Standards - *Care Homes for Older People*

National Minimum Standards (August 2003) - *Adult Placements*

National Minimum Standards (1 June 2003) - *Care Homes for Adults 18-65*

National Minimum Standards - *Domiciliary Care*

Care Homes Regulations 2001

Domiciliary Care Regulations

Commission for Social Care Inspection (Registration) Regulations 2001

Commission for Social Care Inspection (Registration) (Amendment) Regulations 2003

Policy and Guidance: The Care Homes (Adult Placement) (Amendment) Regulations 2003 (1 August)

Assessing whether a care service needs to be registered. CSCI QPM document number 014/08

Housing Learning & Improvement Network Factsheet no. 20 - Housing Provision and the Mental Capacity Act 2005

If you require further information or have other queries contact Housing Options.

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