

When Does a Care Home Have to be Registered? (ref 24)

- 1.** Under the *Care Standards Act 2000*, both care homes and providers of domiciliary care are liable to registration by the Commission for Social Care Inspection.
- 2.** To be registrable as a care home, an establishment must provide accommodation and personal care which is assistance with bodily functions such as feeding, bathing, toileting when required. It is only homes which provide this kind of physical and intimate care from time to time that are registrable (*Section 3 (1) of the Act.*) The personal care does not have to be available at all times, but if it is available but not currently provided, it will still fall within the scope of a care home.
- 3.** The Court of Appeal 'Alternative Futures' case (Moore v Care Standards Tribunal & CSCI) confirmed that the provision of accommodation together with nursing or personal care is a key factor in determining whether an establishment is a care home.
- 4.** The Court of Appeal also said that:
 - although the accommodation and care have to be provided together, this does not have to be by the same company or individual.
 - Separation of the accommodation provider from the care provider will not necessarily mean that a care home does not exist. The degree of separation (or lack of it) between the two parties is important.
 - The existence of a tenancy is not conclusive in determining whether a care home exists, as tenancy agreements can be in place without the establishment ceasing to be a care home.
- 5.** The Commission for Social Care Inspection has published policy and guidance on assessing whether a care service needs to be registered (www.csci.org.uk). This is QPM document number 014/08.
- 6.** This guidance gives indicators which show that care and accommodation are not being provided together:
 - the separate providers of accommodation and care do not need to co-ordinate their work and are not accountable to each other,
 - people who use the service have real choice, eg they can change their care provider without jeopardising their accommodation rights,
 - people using the service have exclusive occupation and can deny entry to others, even carers,
 - the tenancy can be assigned to someone else,
 - occupants can remain even if they no longer need a care service,
 - there are separate contracts for the care and the accommodation.
- 7.** There are, however, aspects to this guidance which are not based on the Court of Appeal's decision and which do not reflect the practicalities of supported housing:
 - although the providers of the care and the accommodation should not share contractual responsibilities, it is inadvisable for them to operate without sensible co-operation. In the 'Alternative Futures' case the terms of the tenancy showed that the accommodation and services were provided by one company.
 - The Court of Appeal said that in this case, the leases were not standard leases, and included provision for care,
 - A right to assignment is now very rare in residential leases. The vast majority of leases will forbid assignment. The right to succeed to a tenancy is a statutory right in some circumstances and is separate from lease provisions on assignment,
 - If Social Services are contracting for the care and support, then it will not be in the tenant's power to change the provider without Social services' agreement.

8. If a provider wishes to cancel care home registration, for example if they want to change the premises to supported housing, the onus is on the care provider to provide evidence that care home registration is no longer required. There has to be evidence that service users have been offered a real and understandable choice from a range of options and that appropriate advocacy involvement has taken place.

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

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