

De-Registration of Care Homes (*ref 25*)

1. In June 2003 the Care Standards Tribunal heard an appeal from Alternative Futures Limited against a decision by the Commission for Social Care Inspection (NCSC) to refuse Alternative Futures' application for voluntary cancellation of the registration of eleven care homes under *Section 15(1)(b) of the Care Standards Act 2000*. Alternative Futures felt that the homes were no longer functioning as registered care homes but were supported housing with domiciliary care. Tenancies were issued by Alternative Housing part of the Alternative Group with Alternative Futures.

2. The Care Standards Tribunal decided that on the facts of the case, the homes were establishments providing accommodation together with nursing or personal care because there was no substantial change in the way the homes were run.

3. This was at the heart of the decision but many other points were considered on the way. The NCSC applied a series of tests on the supported housing model to ascertain whether or not the living arrangements were really care homes:

- the capacity of the residents to consent to a tenancy,
- the level of personal care being provided,
- that the service users should be able to exercise choice,
- the consultation process with service users,
- the views of the local authority,
- and their full assessment of the service users care needs.

In subsequent Court judgements many of these considerations were thought unnecessary for deciding the application of *Section 3 of the Care Standards Act*.

4. A key point for Housing Options has always been that a tenancy conveys exclusive possession, which is at odds with the way in which a care home operates. But the Tribunal went as far as to say that the existence of a tenancy agreement would not itself be enough to prove an establishment was not a care home. This argument is also included in recent guidance from the Commission for Social Care Inspection for assessing whether a care service has to be registered (www.csci.org.uk - QPM document 014/08).

5. There was no appeal against the decision after the Tribunal decision but the residents were allowed to bring a claim for judicial review in October 2004. The detail of a tenancy was examined. It was an assured weekly tenancy from Alternative Housing and the rent was £ 794 of which £ 442 was for 'Supporting People' costs. No consents were sought for signing on behalf of the tenants through the Court of Protection. The tenancy was said to be unusual in the level of the rent and service charge. The provision for counselling and support looked unlike a usual housing tenancy. Both letting and SP services were from Alternative Housing.

6. The High Court stuck to key facts. The issue of capacity was set aside. An establishment was defined as 'a place including a building in which organised activities are conducted'. The tenancy said that Alternative Housing were providing both housing and support therefore - an establishment providing accommodation together with care. The Judge said that he thought the lengthy considerations of the Tribunal on choice neither necessary nor decisive.

7. Most recently an Appeal of the High Court judgment was rejected in May 05. Again it was accepted that tenancies existed although the Commission were concerned about the issues of capacity, that the tenancies may have been a sham, and that the level of rent and support services in the tenancy were unusual.

8. The Judge said that an establishment could include a home and a partnership such as Alternative Housing and Futures. A tenancy may indicate that an establishment does not provide both accommodation and care but is not determinative.

9. The current policy and guidance from CSCI (mentioned in paragraph 4) says that where properties are wanting to de-register, the onus is on the care provider to provide evidence that care home registration is no longer required. Such evidence should include: proof that service users have been presented with real choice of service provision; options have been presented in an understandable way, and advocates have been involved where appropriate.

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

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