Care Standards

The Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and Social Care) Rules 2008

Considered on the papers
On Monday 15th July 2013

Before:

Deputy Chamber President Judge John Aitken
Specialist Member Dr Nizar Merali
Specialist Member Mrs Carol Caporn

Farrington Care Homes Ltd

Appellant

V

Care Quality Commission

Respondent

[2012] 2019.EA

Decision

1. This matter, an appeal under **Section 32** of the **Health and Social Care Act 2008** was listed for consideration on the papers. That is permissible under rule 23 of the Procedure Rules. However, not only must both parties consent, which they have but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have a good picture of the situation, from the papers. There appears to be no substantial factual dispute which might affect our decision although we do note that there may be an advisory telephone call or calls the content of which is not agreed. We have conducted a site visit because this case concerns the size of rooms, and we consider that we can properly make a decision on the papers without a hearing.

2. The Tribunal makes a restricted reporting order under Rule 14 (1) (a) and (b) of the ***Tribunal Procedure (First tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008***, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any service users in this case so as to protect their private lives.

3. The Appellant, Farrington Care Homes Ltd, is registered to carry out regulated activities, accommodation for persons requiring nursing or personal care. One place at which regulated activities is conducted is "The Mayfield" 6 Alicia Avenue, Kenton Harrow, Middlesex, it appears to be accepted by both parties that this premises has been used as a care home since before 2010.

4. Sometime before 19th June 2012 the management made telephone enquiries about converting a large bedroom into two smaller single rooms. They sought assistance from the Care Quality Commission helpline, although no mention of this was made during the compliance inspectors visits in April 2012. From the helpline they understood the advice that they were given to be that the minimum size for bedrooms of 12 square metres applied only to brand new rooms and not to their existing property.

5. The Residential home was visited in July 2012 by an Inspector a Ms Pearl Storrod, she was concerned about the size of the rooms, but impressed with the quality of the conversion and concerned that a potential breach in registration condition had already occurred with the number of residents present (D13) She indicated a risk assessment related to staff carrying out duties in such a confined area would be necessary, more suitable flooring was required for one service user (subsequently changed) and interviewed the residents and their family members to ensure that they were content with the arrangements. Thereafter according to the appellant's she indicated that she would recommend approval. That is denied by Ms Storrod. Nothing however turns on this since the work had already been completed, indeed there were service users occupying both rooms by this time so no substantive action was taken by the appellant whatever was said by Ms Storrod and we do not consider it necessary to resolve that issue.

6. The rooms were not approved, the Care Quality Commission refused to increase the number of residents which the home could accommodate from 23 to 24. By a notice of decision dated 26th November 2012 the request to vary the number of people who may be accommodated from 23 to 24 was refused.

7. The number of residents was not increased because the rooms which had been made from the larger room were now just under 10 square metres in size. The Care Quality Commission did not consider that permissible because whilst regulation 15(1) of the ***Health and Social Care Act 2008 (Regulated Activities) Regulations 2010*** gives guidance in general terms that
"The registered person must ensure that service users and others having access to premises where a regulated activity is carried on are protected against the risks associated with unsafe or unsuitable premises, by means of-
(a) Suitable design and layout"
They considered that the essential guidance produced under ***Section***

23(1) Health and Social Care Act 2008 made it clear that rooms of the size in question were simply not permitted and did not represent compliance with regulation 15(1) above.

The Site Visit

8. We attended "The Mayfield" at 11.30am on Monday 15th July 2013. We did not speak to the staff about the case, and no one attempted to speak to us about it, we were led straight to the rooms in question. We looked at them for a few minutes then left. All of the staff were very pleasant and the home was welcoming. We spoke to one of the rooms occupants who was in his room, happy to be there and apparently happy with his situation. He plainly appreciated the view from his large window.

9. We consider that the essential guidance is clear and that the Care Quality Commission have done a reasonable job in publicising it.

10. The guidance can be found on the website and other publications and there is clear evidence that whoever completed the application form for the appellant had also read the Essential Standards guidance. The application (at B20) read in part:
"All rooms support the lifestyle, care, treatment and support needs and enables access for care, treatment and support and equipment for our service users."

11. Plainly the author had well in mind the Essential Standards guidance which reads at 10L:
"Are of a size and shape that supports their lifestyle, care, treatment and support needs and enables access for care, treatment and support and equipment."
There is nothing sinister in this, it merely demonstrates that the appellant company has had reference to the Essential Standards, as one would expect, when considering room alterations.

12. The Essential Standards for rooms go on to say this:
"*For new build care Homes and other care homes seeking to register for the first time, are no smaller than 12 square metres.*
For existing care homes, are no smaller than they were as at 31 March 2010."
Since these are the lines following those reproduced within the application it is clear that the appellants must have seen and understood themselves to be bound by those sentences as well. There does not seem to be any question that by reducing the size of the original room and splitting it in half the appellant's have a room which infringes on the last essential Standard, equally plainly there was some confusion about how big a room could be hence the telephone calls. We find however, irrespective of what advice was understood to have been given on a helpline, one would expect a reasonable appellant to understand that a substantial reduction of size in rooms was not generally permissible.

13. We say generally permissible, it may be that a proposal to half a room which is presently 24 square metres and which would lead to two new rooms which are at least 12 square metres would be approved since all things being equal there would be no reason to discriminate against an existing provider if the rooms were to be of the same size. We find however that the guidance is clear, a reduction in room size once established since 2010 is generally not permissible and would need to be negotiated with the Care Quality Commission.

14. Seen in that light the answer to the present dispute becomes clear, irrespective of guidance regarding room sizes in new establishments, a provider in a pre 2010 establishment should not reduce the size of rooms without ensuring that the Care Quality Commission are in agreement. We do not consider that calling a helpline and making enquiries irrespective of what was understood to be the advice is sufficient to displace the duty to have regard to that final Essential Standard without some form of express permission or agreement.

15. We note then that the appellant behaved precipitously in not only converting the rooms, but in allowing service users to become resident without permission to increase the numbers at the home, presenting a "Done Deal" to the Care Quality Commission by way of application.

16. We further note that the Care Quality Commission have had regard to the views of the residents and any possible confusion over room sizes, they consider that the rooms may be adequate at present but that situation may quickly change if further care is need, or further equipment or the residents need for any reason to spend more time in their rooms. Their solution, and it is one which we consider sensible, was to temporarily allow the numbers in the home to rise to 24, to enable the present occupants of the rooms in question to remain as they are whilst their situation is stable and to require permission for new residents to be admitted if that would cause numbers to rise again to 24. It means in short that whilst nothing must be done immediately to unsettle the residents of the rooms in question, at some point the rooms will have to be altered to comply with the Essential Guidance.

Decision

For those reasons we dismiss the appeal.

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Thursday 18 July 2013