

HOSSACKS

Solicitors & Commissioners for Oaths
Regulated by the Solicitor's Regulation Authority

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Principal: Yvonne Hossack, Solicitor-Advocate (HCCivilP)

Our Ref: YH/DMG/Notts/Green

Your Ref:

Date: 6th June 2008

Mr Grenville Green
45 Cedarland Crescent
Nuthall
Nottingham
NG16 1AG

Dear Grenville ,

Re: NOTTINGHAM COUNTY COUNCIL'S CARE HOME CLOSURES

We enclose for your attention and information a copy of our Letter Before Claim sent to the County Council dated the 11th April 2008 and also a copy of the County Council's response dated the 2nd May 2008.

From our letter you will note that we informed the Council that we act for a number of the residents in the affected care homes of Kirklands, Daleside, Ashcroft and Beauvale Court and that all of our clients were affected by the decision of the 10th April 2008, taken by the Authority, to close.

You will note that, in respect of Kirklands, Daleside and Ashcroft, a decision had been taken to build a sixty bed Local Authority unit and to transfer the residents and staff as whole units to the new facility. We considered that this decision was very much to be welcomed, because where homes merge there is no statistical increase in mortality and I have seen such merges achieved very successfully. We only had a few concerns regarding this decision and these were details.

The first of which was that we wanted a 'cast iron guarantee' that nothing will close until a new 'like for like' facility is built. You will note from the County Council's response that the Leader of the Council gave assurances early on in the review process and reiterated in the report to the Council that "no homes would be closed until suitable alternatives were available in a similar location". We are also advised that "the likelihood is that it will be at least 2 years before the new 60 bedded local authority home is built, therefore none of these homes will close before then". This was reiterated to us at a meeting with Mr David Hamilton of the Adult Social Care and Health Department on the 28th May 2008.

The second of the concerns that we raised was that we wanted to know if everyone will be moved together with the care staff to the new facility. The County Council, in their letter, inform us that "once the new home is built, it will be possible to move up to 60 people into that home" and also that "it is likely that

there will be a greater care staff to resident ratio at the new home". The County Council also informs us that in the event of there being more than sixty residents who wish to move into the new home then vacant places at other Local Authority homes within the district could be utilized.

If we get to the stage of the merge and there are more than sixty people wanting to go to the new facility, we can revisit this point and suggest a staged transfer so that everyone can go. I would personally doubt that in two years time there would be more than sixty "original" residents. Those that are coming into the homes now have been told the facts regarding closure. To my mind the original people could, and should, be given priority and I would expect that to happen. If there are any difficulties for original individuals being refused entry to the new home because it is full I can revisit those difficulties and litigate to resolve them if necessary when any problem occurs. But I am optimistic that any difficulties will be resolved by consent.

Thirdly, we asked that no one, either residents or staff, be encouraged to move elsewhere. In response to this the Council states that "residents and staff will be given a choice where it is practical and possible to do so as to where they wish to reside and work". At our meeting with the Council on the 28th May 2008 we went into detail over the safety of merges and explained to the Council that moving people piecemeal has been proven to have a statistical increase on mortality whereas moving the groups as a whole and merging homes does not. We also know that where the Local Authority takes the lead on any planned merge the residents are more relaxed and follow because they trust the Authority. We have sent a copy of the medical research compiled by the charity EPIC, Elderly People in Crisis, their overview of which is enclosed as too is our letter to Mr David Hamilton dated the 2nd June 2008.

Fourthly, we asked that there will be a planned and managed move under the oversight of a Consultant in the Psychiatry of Old Age. The Council assures us that "there will be a planned and managed move of residents under the guidance and leadership of highly experienced staff who have been involved in many successful home closures over a number of years" and that "the Council will give consideration to the use of a consultant in the psychiatry of old age to oversee the process".

We also raised the concern that there should be a management of moves for each individual so that the old facility will not close if it is unsafe to move any of the residents. The reiterates to us that "no homes will be closed until suitable alternatives are available in a similar location" and that "no resident will be moved until their needs have been identified and an appropriate placement found".

Following consideration of the responses we find that our concerns have been addressed and that the building of a new home and the transferring of whole groups is a good result, and the safest result. Therefore your matter has now concluded and we will now close your file.

We will keep your file for a period of six years and, after which time, we shall destroy it. We would be grateful if you could kindly complete the attached client questionnaire and return in the stamped addressed envelope enclosed as we constantly strive to improve our service and your opinions could help us achieve this.

We have very much enjoyed acting for you and should you need the services of a Solicitor again then please do not hesitate to contact us.

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Principal: Yvonne Hossack, Solicitor-Advocate (HCCivilP)

Our Ref: YH/DMG/NOTTS/Beauvale
Your Ref:
Date: 2nd June 2008

BY POST AND BY FAX TO 0115 977 2420

Mr David Hamilton
Adult Social Care and Health
Nottinghamshire County Council
County Hall
West Bridgford
Nottingham NG2 7QP

Dear David,

Re: BEAUVALE COURT

I was very pleased to meet you and your colleagues again on the 28th May 2008. As we agreed, I understand the research documents I studied.

This was paperwork that I prepared in 1998. Since then my own experience of closures I have followed has been as follows:-

1. **Closures where people were moved on block of residents and care staff:-**
 - 1.1 Northamptonshire County Council 2000 merged two of its care homes. With a third which was not near enough to another to successfully merge it came to an agreement with a new build provider that the residents would be offered en bloc provided that staff had first interviews for jobs at the new facility. This was agreed by all and I did not hear of any adverse outcomes.
 - 1.2 Bury Metropolitan Borough Council post R (Madden) v Bury MBC merged two care homes carefully and sensitively over a long period of time. There were no known mortalities.
 - 1.3 Lancashire County Council. This case was litigated under R (Jackson) v LOC 2003 but settled on the basis that the care homes would be merged (3 into 1) under the oversight and supervision of a Consultant in Psychiatry of Old Age. There was one fatality of a very old and demented lady but this was not statistically significant. Her husband, who was not in care, died within three months of her death as often happens to men after the death of their wives.

1.4 Havering, In 2007, merged two of its care homes safely. Unfortunately they are now proceeding to close the two remaining care homes and dispose and disperse the residents so that looks as though it will be litigated again.

2. Homes where the residents were moved piecemeal although often in friendship groups:-

2.1 Northamptonshire 1998. 15 out of 41 residents died in the year post closure. This was a death rate of about 37% and contrasted unfavourably with the average death rate across 24 Local Authority homes over a four year period where the average death rate was just over 18%.

2.2 St. Helens in 2003. This was a facility for severely demented adults. The residents were transferred mainly in small groups but 7 of them died in the 12 weeks following closure. The report of Professor Alistair Burns who was commissioned for the Coroner for Cheshire is attached and from which you will see that he considers the deaths to be connected with the move.

2.3 East Sussex County Council, RC (Dudley) v East Sussex CC, saw the death of the Claimant, Clara Dudley, although following the failure of the Judicial Review the move was handled carefully and consensually. In that matter it was agreed that we would present a united front to Clara to reassure unreasonable fears and acknowledge and deal with reasonable fears. It was agreed that Clara's key worker would have her contract amended so that as part of her usual work she would see Clara regularly, that her key worker would take Clara to see the new home and would spend the day also taking Clara around the places that she had visited with her husband in their youth so as to make the experience memorable. Unfortunately on her return from the first visit to the care home, Clara suffered a catastrophic stroke just before which she said "Don't move me, please don't move me, I don't want to go". Clara lost her power of speech, her sight and her ability to swallow. She suffered a long and lingering death which took 15 months and during which she was PEG fed to the stomach.

2.4 Sue Ryder Care 2006. In this matter we Judicially Reviewed the closure of a private care facility relying on a case we were litigating contemporaneously which was R (Johnson) v LB Havering where we were trying, with the States ostensible consent, to overturn R (Heather) v Leonard Cheshire Care Homes. The case failed and at least 6 but probably 8 people died in the 12 weeks following the closure.

So our experience is very consistent with all known research. We are very grateful to you for agreeing to look at the evidence so as to inform your own practice which, thus far, we unreservedly applaud save for Beauvalé.

It is interesting that the research has been piecemeal up until now and there has been no central record kept of outcomes so as to inform good practice. I joined with a number of other interested parties and signed a letter drafted by two eminent psychiatrists to the Secretary of State for Health in 2003, then Jackie Smith, saying that although the main thrust of Government policy i.e. to promote independence was to be commended, the working out of that policy in practice was resulting in unnecessary suffering.

I urged the Secretary of State to meet with me and others to discuss a way forward and asked that records be kept from that moment for the outcomes of care home closures. The Secretary of State responded to say, in simple terms, that these requests were refused and spoke much about charge agents and independence. Pity it was that the nettle was not grasped then given that opportunity and that so much death has occurred since that time.

Where I have been able to work with open minded professionals as I hope will be the case here, the results have often been outstanding in terms of the saving of human life.

I look forward to hearing from you and would be glad to meet with you again should you think that this would be helpful.

Yours faithfully,

A handwritten signature in black ink, reading "Yvonne Hossack". The signature is written in a cursive style with a large initial 'Y'.

Yvonne Hossack
Solicitor-Advocate HCCivilP
HOSSACKS SOLICITORS

Enc. Professor Alistair Burns Report
Research paperwork 1998