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Debbie Chantler
Principal Solicitor
Surrey County Council

By email: deborah.chantler@surreycc.gov.uk

Dear Ms Chantler

Re: Closure of six care homes in Surrey

1. We act for Margaret Bennett who is a resident at Cobgates, and others.
2. On 10 March 2015 the cabinet of the Surrey County Council ("SCC") decided to close six care homes that included Cobgates in Farnham. There had been a form of process followed by the SCC, which we say in part was not lawful, that led to a decision being made to close six of the SCC care homes. Although there was opposition to the closures the SCC's cabinet proceeded with the decision to close the six care homes.
3. An important aspect of the decision was the complete lack of consideration by the SCC of the fundamental rights of the residents, and at Cobgates one resident has already given up her will to live and has passed away. This complete lack of consideration to the resident's rights, which are covered under the UK Human Rights Act 1998 has resulted in the SCC, in our opinion, breaching the rights of all of the residents.
4. There is sufficient evidence to show that elderly residents who are moved from their home (and this relates to care homes) have a significantly increased risk of death. The potential closure also sees residents lose the company of friends amongst the staff and other residents, and the familiarity of a way of life and an environment that has become their home, which seriously affects their quality of life and wellbeing.
5. Some of the elderly residents suffer from dementia. The risks details supra apply to these residents as well however they are at a greater risk of death as they require stability and an environment that they are familiar with, and the removal of these residents to another home may result in death, but if not, then these residents will be unsettled in any new

environment where they are distressed and disorientated. In simpler terms if these residents are moved from their present home, the removal would constitute cruel and/ or degrading treatment.

6. All the residents that are affected by the closure may be deprived of their life, contrary to Article 6(1) of the United Nations International Covenant on Civil and Political Rights due to their home being closed.
7. Initially we considered two avenues, a Judicial Review and a claim in the Court for breaches of the Human Rights of the residents and Civil and Political Rights that could lead to the European Court of Human Rights and/ or the United Nations.
8. After considering the 2001 Court of Appeal decision of *Regina (Cowl and others) v Plymouth City Council* we agree with the sentiment expressed by Lord Woolf and seek that the SCC agree to mediation and whilst that is being undertaken place on hold the process of closing the six care homes.

Lord Woolf CJ commented in *Cowl*:

Without the need for the vast cost which must have been incurred in this case ... the parties should have been able to come to a sensible conclusion as to how to dispose of the issues which divided them. If they could not do this without help, then an independent mediator should have been recruited to assist. That would have been a far cheaper course to adopt. Today, sufficient should be known about ADR to make the failure to adopt it, in particular where public money is involved, indefensible.

9. To get to the point where SCC would agree to mediation we are setting out the grounds for the action that we believe that we have against the SCC. As mentioned in paragraph 7 supra, there are two limbs, one being a challenge in respect of the Human Rights and Civil and Political Rights issues whilst the other is a Judicial Review.

Judicial Review

10. We will deal with the Judicial Review first.
11. Consultation was aimed at closure of the six care homes, as this was the preferred option by the SCC. The SCC provided evidence that the care homes were not meeting their full potential in that the number of residents was dropping however it is our understanding that the SCC was deceptive in the approach that it took and the SCC needed to provide a

candid explanation, or a true explanation of what the SCC wished to do with the six properties.¹

12. The power granted to the SCC is not an absolute power, but is a power that can be validly used only in the right and proper way as provided by Parliament.
13. In saying this the SCC cabinet has acted on irrelevant considerations and by failing to take into account relevant considerations, such as the Human Rights Act issues, which makes the SCC decision ultra vires and void.
14. It is our view that a Judicial Review would find that the SCC acted unreasonably and abused its power.
15. We have a concern surrounding the truthfulness of some of the documents that the SCC provided that were relied upon by the SCC Cabinet, in which it would appear that the motive for the closure may not be what it appears or has stated it to be. As Cooke J (a New Zealand Justice) explained in a New Zealand case that “the more general and more obviously important the consideration, the readier the court must be to hold that Parliament must have meant it to be taken into account”². The comment of Cooke J was taken into account by the Court when it quashed a decision to close a hospital for failure to take into account doctors’ interests.³
16. The failure to take into account the residents needs under the Human Rights Act 1998 and the European Convention on Human Rights was unreasonable given that Parliament had directed the qualifications required for a local body (or SCC in particular) and provided the framework for any local body or the SCC to not comply with section 6 (1) of the Human Rights Act 1998. As the SCC did not meet the requirements of section 6(2) of the Human Rights Act 1998 it was obliged to follow the Act.
17. The Human Rights Act 1998 imposes a duty upon the SCC to act in a way to ensure that the residents of the care homes are protected from inhumane treatment and shall not be deprived of their life without legal justification.

¹ *R (Lloyd) v Dagenham London Borough Council and R(Madden) v Bury MBC*

² *CREEDNZ v Governor-General* [1981] 1 NZLR 172

³ *R v Hillingdon Health Authority ex p Goodwin* [1984] ICR 800

18. A breach of duty depends on the true intent of the statute. In this case the statute is not aimed at a particular class but the population in general. The residents of the SCC care homes make up an elderly and frail (albeit small) subset. They have already suffered and will suffer more so if the SCC is permitted to proceed with its plan to close the six care homes.
19. The SCC and the cabinet had an important duty to perform and it and the cabinet are bound to perform that duty. If they neglect their duty, and an individual or group of residents of the care homes get injured then that lays the foundations for an action to recover damages by way of compensation for the injury that the resident or residents have suffered.
20. We believe that the SCC and the cabinet have failed to consider the importance of the residents' Human Rights that are laid down by statute and the European Covenant for Human Rights.
21. Given what we see as a fundamental breach, in that the SCC and its cabinet did not turn its mind to the Human Rights issue and therefore becomes a Wednesbury issue.
22. Although a Judicial Review would be narrow in scope it focuses on the failure of the SCC to look at the Human Rights issue.
23. We believe that the Court would grant a review based on the above issue.

Human Rights / Civil Rights

24. The more pointed point of the action is under the head of Human Rights and Civil Rights. Although we are placing them as distinct causes of actions we believe that you will be able to determine the manner in which the causes of action will be framed.
25. The decision of the cabinet was critically flawed in that it did not consider section 6 of the Human Rights Act 1998. Section 6(1) reads:

It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

26. The Convention rights that we say the SCC breached are:
 - i. No one shall be deprived of his life intentionally, (Article 1);
 - ii. No one shall be subjected to inhumane or degrading treatment, (Article 3);

- iii. Everyone has the right to respect for his private and family life, his home and his correspondence, (Article 8(1));
 - iv. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary ... (Article 8(2))
27. It is our view that SCC did not consider sufficiently the Human Rights of the residents as it is required to do so by law.
28. The SCC cabinet has not considered whether the closure of the care homes would endanger any life. It is our understanding that at least one resident has passed away. This resident said she did not want to leave her home and did not want to go anywhere else. She effectively gave up the will to live. It is our view that the RSS cabinet caused the possible death of a resident by failing to access the real threat to life, this being Article 1.
29. The removal of the residents to other homes is inhumane and degrading treatment. The eldest resident is 103 as far as we can ascertain with a group in their 90's and 80's and with other younger elderly residents. For any resident to be uprooted when they are elderly is traumatic especially when it is from their home and people that they know and love. The residents who retain their mental abilities suffer differently to those who suffer from mental impairment or dementia.
30. The residents who still have their mental faculties suffer as they are being torn away from a routine that they know and enjoy, with friends and staff who they love and adore. The fact that the SCC cabinet did not take into account there
31. Those residents who are suffering from dementia need to be in a familiar home with people that they have been with for some time. To remove a dementia patient causes that person unwarranted distress and such distress even for a day is inhumane and degrading upon their dignity.
32. The residents of the six care homes are growing old in a safe and loving environment, and their age is not an illness and that and their age should not be used as justification to restrict any of their rights in any way.

33. As a side juncture, the SCC and its cabinet had an opportunity to show the wider community how to treat elderly with dignity and respect.
34. It is our view that the SCC and its cabinet breached Article 8(2) and that there is no justification for such a breach.
35. The SCC should have been aware of the above points especially given that the residents are vulnerable and powerless to stand up against the SCC as they do not have the resources, determination or will power.

Mediation

36. We would prefer to meet with the SCC in an effort to resolve this matter rather than commence litigation, however if the SCC is not inclined to meet we are prepared commence legal action.
37. If the SCC is prepared to attend mediation then please email us to advise of SCC intentions and if need be we can enter into a dialogue prior to attending mediation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Gregory Bennett', with a stylized, somewhat jagged flourish at the end.

Gregory Bennett