

Mr D S Coutts-Wood  
HM Coroner  
The Town Hall  
Town Hall Square  
Leicester  
LE1 9BG

4 February 2014

**Re: Marjorie Evelyne Keogh**

Dear Mr Coutts-Wood

Thank you for your letter of 4 December in which you wrote to us under the provisions of Regulation 28 of the Coroners (Investigations) Regulations 2013 in relation to the inquest into the death of Mrs Marjorie Evelyne Keogh.

We were extremely saddened by the news of the death of Mrs Keogh and the circumstances surrounding it. We are also grateful for your report and for requiring us to review what actions have and should be taken to prevent any reoccurrence of such circumstances.

Please treat this letter as the formal response of the Care Quality Commission ('the Commission') to your report.

In your report and pursuant to the requirements of Regulation 29 you require the Commission to provide details of any action that we have taken or which we propose to be taken in response to the concerns highlighted in your report, or an explanation as to why no action is proposed if appropriate.

We deduce from your report that your primary concerns arising from the Inquest into the death of Mrs Keogh relate to the following issues:

1. The verification of compliance with building regulations, other relevant quality standards and architects' plans on the transfer of regulatory authority and registration of providers between the National Care Standards Commission ('NCSC'), then the Commission for Social Care Inspection ('CSCI'), and finally then to the Care Quality Commission ('the Commission'); and
2. The Commission's current and future intended practice in relation to these issues with respect to new and pre-existing registrations with us.

In relation to both questions we feel that it would be useful to outline first how the relevant regulatory frameworks have changed and developed since 1997.

### **Historic Regulatory Framework: 1997 to 2009**

When Scraptoft Court was originally registered in 1997 the prevailing legislation was the Registered Homes Act 1984 ('RHA') and the registration authority was Leicester City Council. The RHA provided for a fundamentally different regulatory framework from that currently in existence under the Health and Social Care Act 2008 ('HSCA 2009'). In particular, 'residential care homes' were required to be registered as distinct establishments, whereas under the HSCA 2008 residential care homes as distinct establishments are not registered. Instead, persons are registered to provide a regulated care activity at specified locations.

We assess that the RHA system was more directly concerned with the physical environment and indeed the accompanying Residential Care Homes Regulations 1984 were more specific about what was required in respect of the physical environment. The current HSCA 2008 is more focussed on the outcomes experienced by the people using services, while the regulations that underpin those outcomes are far less prescriptive about particular physical and/or environmental requirements providing that those outcomes are met. The relevant regulations under the HSCA 2009 are the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009.

It is our understanding that under the RHA regime there was no statutory duty on registration authorities to check that care homes were compliant with building regulations, architects' plans or relevant British Standards. We understand that this was then considered primarily a matter for planning departments of relevant local councils. However we also understand that many registration authorities may upon RHA registration have routinely checked for compliance with those regulations, standards and plans. As well as being RHA registration authorities most Councils were also planning authorities with responsibilities for planning and building control. Accordingly, it appears that planning and building control checks were done 'internally' between council departments.

In having set out our understanding of the role undertaken by Local Councils in respect of checking, at the point of registration compliance, with relevant buildings regulations we are mindful that the Local Authorities themselves would have a greater and more comprehensive insight into those practices.

We interpret that the Care Standards Act 2000 ('CSA 2000') enacted a similar regulatory to that under the RHA. In particular, CSA 2000 provided for the regulation of establishments. However, responsibility for regulating care homes was moved away from local authority control to the NCSC, then and subsequently in 2004 to the CSCI.

We understand that the NCSC initially carried out building control and/or planning checks upon registration. However, by the time that CSCI came into existence physical and/or environmental checks were being phased out in favour of a focus on outcomes for people.

By the end of its existence CSCI had ceased to check routinely compliance with planning and/or building control requirements on registration. We understand that those were regarded as being responsibilities of local authorities and providers rather than the care regulator.

In conclusion, it is our assessment that it is unlikely that either the NCSC or the CSCI checked that the original registration in 1997 included checks that Scraftoft Court met Building Regulations or complied with the original architect's plans or other relevant quality standards.

### **Current Regulatory Framework**

The Commission was established on 1 April 2009 by the Health and Social Care Act 2008 ('the Act'). The Act introduced a single registration system which applies to both healthcare and adult social services.

Once registered with the Commission, providers such as Scraftoft Court are required to comply with conditions placed on their registration, as well as under the Health and Social Care Act 2008 (Registered Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009 ('the Regulations'). The regulations set out the essential standards of quality and safety that service users have a right to expect.

The Act also requires the Commission to publish guidance about compliance with the requirements of the Regulations. The Commission has published "Guidance about compliance, Essential standards of Quality and Safety" ('the Guidance') which provides advice to providers about how and what they need to do to comply with the Regulations in the form of outcomes and prompts. The Regulations implemented under section 20 of the Act make particular provision with a view to securing a service that is of an appropriate quality and secures the health, safety and welfare of persons for whom any such service is provided.

Regulation 15 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, which is assessed as Outcome 10 under the Guidance, has particular relevance to your concerns relating to staircase furniture and is set out below:

#### ***“Regulation 15: Safety and suitability of premises***

*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;*
- (b) appropriate measures in relation to the security of the premises; and*
- (c) adequate maintenance and, where applicable, the proper—
  - (i) operation of the premises*which are owned or occupied by the service provider in connection with the carrying on of the regulated activity.*

#### ***Prompts for all providers to consider***

*The following prompts relate to all registered providers except where care, treatment and support is delivered in a person's own home.*

### ***Ensure the premises are adequate***

*People who use services and others who work in or visit the premises can be confident that in relation to design and layout, the provider:*

- *Ensures the premises are suitable for the regulated activity.*
- *Takes account of identified risks.*
- *Meets the requirements of the Health and Safety at Work Act 1974 and associated regulations and the Regulatory Reform (Fire Safety) Order 2005 and other relevant legislation.*
- *Takes account of the safety needs of people who enter or use the premises,*
- *including the safety of children and other vulnerable people where they are*
- *permitted to enter.*
- *Ensures that all safety precautions are in place and tested with regard to all*
- *specialist equipment and engineering systems that are physically fixed to*
- *the premises.*
- *Ensures the premises reflect Department of Health published guidance.*

### ***Lead effectively to manage risk about the premises***

*People who work, visit or use services can be confident that, in relation to design and layout:*

- *Where premises are altered or their use is changed, the continued safety and suitability of the premises is assessed.*

*In relation to maintenance of premises and grounds, renewal and service continuity:*

- *There are clear procedures, followed in practice, monitored and reviewed, which cover:*
  - *how the premises are maintained*
  - *the identification, assessment, management and review of risks*
- *Plans are developed and implemented for the adaptation of the premises in response to changes in:*
  - *the needs of people who use services*
  - *design, technical and operational guidance issued by appropriate expert bodies*
  - *how the service intends to provide regulated activities*
  - *relevant legislation.*

When the Health and Social Care Act 2008 came into force the move away from prescriptive environmental requirements was further enshrined in the legislation. Establishments were no longer required to be specifically registered and there is no specific requirement in the Regulations concerning planning permission or building regulations. Nor indeed are fire, food safety or environmental health standards specifically and prescriptively incorporated into the Regulations.

Under the current regulatory framework it remains the responsibility of providers to ensure that the premises in which they carry on a regulated activity is fully compliant with any relevant Buildings Regulations or British Standards. It is our interpretation

that the responsibility for enforcement with these regulations lies with Building Control and/or Planning Departments in local authorities.

The Commission would and does check such compliance when it has information that might indicate that people using or visiting a service may not be protected in the way the regulation specifies.

At the point of registration with the Commission in November 2010 the Commission did not specifically check whether Scraptoft Court was compliant with relevant Building Regulations. The provider declared that they were compliant with the Regulations and the provider indicated that no consideration was being given to changes either in relation to the activities that they were to provide, or to the location they were to be provided at, which would have resulted in a more detailed assessment of their registration. The registration for Scraptoft Court was in effect a 'like for like' transition from the previous regime to the new one. Scraptoft Court was adjudged compliant with the existing regulatory framework at the time of transition. Additionally, there no information from either the provider or other sources to indicate a risk to the people using the service or other relevant concerns about the service or the provider, which would otherwise have prompted a more detailed analysis of Scraptoft Court's registration application at that point.

The Commission has inspected Scraptoft Court on five occasions since it was registered under the Act in November 2010. We conducted three inspections in 2011, one in 2012 and one in November 2013. We attach a copy of each of those reports to this response. During the course of three of those inspections we found that the service was non-compliant with one or more regulations.

Non-compliance with Regulation 15 was assessed on one occasion, following the inspection on 18 December 2012, and as set out at pages 10 and 13 of the Report published on 6 February 2013. The Commission's concerns related to the carpeting in the entrance hall, some communal areas and both the downstairs and upstairs corridors of Scraptoft Court. Despite regular cleaning we assessed that this carpeting retained an odour of urine. This carpeting was also heavily patterned and as such was not suitable for people using the service who had dementia.

The provider replaced this carpeting and we found the service to be compliant with the regulations at our last inspection in November 2013.

In terms of the Commission's registration policies and procedures, we are currently reviewing our approach to registration. The contents of your Regulation 28 report helps to inform that review. During the course of considering our response to your Report we have consulted with the Head of Registration within the Commission. She has confirmed that particular and detailed consideration is being given to the extent to which the Commission should go beyond solely seeking a declaration at the point of registration from a provider that they are compliant with relevant Buildings Regulations and/or Planning regulations. That process of review is on-going. However, at this stage the Commission's plan is to undertake checks and seek evidence to confirm a provider's compliance with building regulations as part of a registration application where the provider seeks to accommodate people and where the location is newly built or where building works have been undertaken

Thank you for raising this issue with us. We intend to share it with inspectors and with other managers within the Commission as well the report informing our intelligence and policy processes.

If you have any questions about this letter, please do not hesitate to contact [REDACTED] or via email at [REDACTED]. You can also make contact through our National Contact Centre using the details below:

Telephone: 03000 616161  
Email: Enquiries@CQC.org.uk  
Write to: Care Quality Commission  
Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA

**Yours faithfully**

[REDACTED]

Care Quality Commission  
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