

FOR THE GREATER GOOD?

Retirement Views, Conference Edition 2008

Recently a resident of a retirement village was convicted of sexual offences and sentenced to home detention. The challenge for the operator of the village was whether this resident should be entitled to remain in a retirement village.

Retirement villages are a community where residents enjoy companionship, security and access to facilities and services, in a pleasant and generally, stress-free environment. In such a community it is to be expected that residents will be diverse in their interests and personalities and compromises will need to be made. To achieve this, as with any successful community, all residents must be treated with respect and courtesy by other residents, staff and visitors to the village.

This standard of behaviour is affirmed in the Code of Residents' Rights contained in the Fourth Schedule to the Retirement Villages Act 2003. The Code not only sets out requirements for the operator and their staff to treat residents with courtesy and to respect the rights of residents, but also requires that each resident respects the rights of others in the village and treats them with courtesy.

The Code specifically recognises the community nature of the village and sets out the following requirement in this context:

"[A resident's] rights exist alongside the rights of other residents and the rights of the operator, the people who work at the village, and the people who provide services at the village. In the same way that these people are expected to respect your rights, it is expected that you in return will respect their rights and treat them with courtesy."

The behaviour or misbehaviour of residents can be very testing for an operator. The operator must balance an individual's rights against those of the community of residents who make up a village. Often health issues such as early stage dementia or alcoholism can have an impact on the other residents or the staff of a village to an extent that makes it impractical for the resident concerned to remain in the village. This is always a challenge for an operator to manage in a way that leaves intact the dignity of the resident who must leave the village.

The case of the resident convicted of sexual offences raises a question as to whether a resident convicted in this manner or indeed convicted for any serious criminal offence, should be entitled to remain in a village, particularly where the offence is one that is likely to cause distress to other residents or cause them to fear for their safety or for the safety of their guests. The rights of an individual in this case come sharply into contrast with the residents as a whole.

On the one hand, it can be argued that residents of a village, if they were still living in the community at large, would have to cope with such persons living near by them. Generally speaking you can't control who your neighbours are and why should this be different in a retirement village?

On the other hand, a retirement village is a close community where residents have chosen to live, in part because of the wish to feel more secure as they age, and where there is the ability to control the way residents interact with each other.

A resident will not expect to feel threatened and may not be prepared to put up with this.

Also, in a village, residents have a much more limited choice of association compared with the community at large. Residents cannot ignore individuals as easily where they mix and mingle with their neighbours on a daily basis, particularly where there are shared community facilities.

Operators must of course, draw their own conclusions as to the appropriate steps to take, on a case by case basis. But what can they do about a situation that they consider has become untenable?

The first step is for operators to review their admission procedures carefully. Many villages already have a review process in place when a resident makes an application to purchase a dwelling in a village. It is common for a village to require a medical certificate regarding a prospective resident's health, to ensure that the facilities and services available will be suitable for that resident.

Operators may wish to consider whether they wish to ask the question as to whether a resident has ever had a criminal conviction (other than, say, traffic).

Many occupation right agreements contain a provision that if any information given by a resident in the assessment process is incorrect, then this will be a breach of the occupation right agreement.

Disclosures on entry will not of course, guarantee that the resident remains in that state of health forever or will never commit a criminal offence after entry into a village. Operators must therefore ensure that the occupation right agreement contains provisions that enable them to deal with the difficult situations as they arise with flexibility, but ultimately to allow them to terminate an occupation right agreement.

At the present time, as there is no legislative code of practice in existence, there are no required legislative provisions in place that govern termination of an occupation right agreement. However, the provisions set out in the former Code of Practice are a reasonable guideline and similar provisions were already an industry standard.

Two provisions which will be of use to an operator to consider termination of an occupation right agreement in the circumstance where there may be a criminal conviction are as follows:

Where a resident has:

"... intentionally or recklessly caused or permitted, or is likely to cause or permit ... serious injury, harm or distress to the operator or to another resident or any of the employees of the operator or visitors to the village."

The draft code of practice that the RVA has recently circulated to members develops this provision with the inclusion of the concept of "distress".

Where a resident has:

"...committed a breach of the occupation right agreement in a significant way or which becomes significant because the breach continues."

This provision will go hand in hand with obligations on the part of a resident not to do anything:

- (a) which might be a nuisance or annoyance to, or cause distress to other residents or to the operator; or
- (b) which is in breach of the resident's obligations under the Code of Residents Rights.

A high level of misbehaviour will be required in both these instances. This is appropriate given the investment that the resident has made in the

expectation that they will remain in the dwelling for life. In summary, an operator should:

- make sure the initial admission procedures are adequate;
- make sure that the documentation gives the operator a right to terminate an occupation right agreement that is sufficiently broad to meet the operator's requirements;
- and
- ensure that managers are supported and continue to develop the skills required to manage a diverse group of people.

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