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CARE STANDARDS

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

[2012] 1984.EA

INTERNATIONAL MEDICAL ASSISTANCE

T/A IMA LIFELINE

Appellant

v

CARE QUALITY COMMISSION

Respondent

Before:

**MISS GILLIAN IRVING QC
PATRICIA MCLOUGHLIN
CHRISTOPHER WAKEFIELD**

Heard on the 4th, 5th, 6th, 7th and 11th February at Birmingham Magistrates Court

Representation:

The Appellant Company was represented by Mr and Mrs Morales the directors of the Company who both gave evidence.

The Respondent was represented by Ms Brunner of Counsel.

The Appeal

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1. This is an Appeal brought on behalf of IMA Lifeline, an independent ambulance provider, against the decision of the Registration Authority, namely the Care Quality Commission, who on the 1st August 2012, confirmed its intention to adopt the Notice of Proposal issued 1st May 2012, to cancel its registration in relation to 3 regulated activities namely:
 - (a) transport services, triage and medical advice provided remotely;
 - (b) treatment of disease, disorder or injury and;
 - (c) diagnostic and screening procedures.

2. A Notice of Appeal was lodged against that decision on 29th August 2012. We commenced hearing evidence in respect of it on Monday 4th February 2013.

On the 11th February we received an e-mail from Mr Morales, co-director and employee of the Company, by which the Company sought to withdraw its Appeal.

On Saturday, 09th February Mr Morales had been served with a Notice from the Disclosure and Barring Service informing him that he had been placed on both barring lists ie the Childrens Barred List and the Adults Barred List. As a consequence he cannot carry out any regulated work with either children and or vulnerable adults. Such were the level of our concerns in this Appeal that we did not accede to the application to

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withdraw. Nor did we accede to the application made by Mr Morales for the chair to recuse herself there being no evidence adduced in support of his assertion of bias other than decisions made contrary to his submissions.

3. Despite the fact that a previously contested interlocutory hearing had been conducted in private, upon consideration of the papers and the issues arising, the Panel was unanimous in its decision that this hearing should be conducted in public as serious questions arise surrounding (a) the initial registration of this Company the Appellant, and the conduct of the Respondent, and (b) the lacuna(e) that exist within the current legislation which undoubtedly continue to expose the public to a risk of harm and exploitation. Although the directors on behalf of the Appellant objected to this course we concluded that there was no substance to its objections and it was rejected. The forensic history of Mr Morales is a matter of public record as evidenced by his convictions.

4. **THE LAW:** The burden of proof is on the Respondent who must satisfy us on a balance of probability that the allegations they assert are established. We must look at the current position today when determining whether the Appeal should be allowed.

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DECISION

5. We are unanimous in our decision that this Appeal should be refused for the reasons set out below.

6. **Backcloth**

Surprisingly, prior to the Health and Social Care Act 2008 and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2009 and 2010, a company or individuals providing a private ambulance service did not need to be registered or regulated by any regulatory body. Anyone, whatever their antecedents could provide such a service.

The Act introduced a single registration system and providers of health and social care who carried out a regulated activity as prescribed by Regulation 3, had to register with the Respondent by a certain date. For independent ambulance services that was by the 1st April 2011.

As the written and oral evidence of Suzette Farrelly made clear, there were in place two separate mechanisms for acquiring registration. There was the standard mechanism which applied to those who wished to carry out regulated activity but were not yet doing so and there were transitional provisions which applied to those providers already engaged in the provisions of such services. In reality the difference between the

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two was that a more flexible approach was adopted in relation to the latter who were given time to adjust and comply with the Regulations. The transitional arrangements enabled the Respondent to allow applications for registration to be granted to existing providers subject to conditions in cases in which it was not satisfied that relevant regulations were being met. These transitional provisions were designed to achieve compliance over a period of time and enabled existing providers to continue to operate legally while taking steps to become compliant. The conditions put in place very much depended upon the information available and the existing level of compliance. The system enabled a Notice of Decision to register to be issued with compliance conditions. It allowed companies such as the Appellant to be registered with immediate effect but also allowed providers to make representations as to the conditions imposed within 28 days of the Notice being issued.

In the case of the Appellant it applied for registration on 3 separate occasions lastly on the 25th July 2011. It's application was treated as a transitional application. It was formally registered with conditions on the 4th October 2011. At the time of the application in July 2011 it described itself as fully compliant with the regulations. The evidence from Ms Farrelly was that the Respondent faced a deluge of applications. Unfortunately, however, as can be seen from the events which unfolded

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in this case, albeit the purpose of the transitional provisions was well intentioned, as far as the Appellant was concerned there was inadequate investigation and assessment of its compliance and its suitability to be registered. In fairness to Ms Farrelly she recognised and accepted this when it was explored by the panel.

The circumstances surrounding this Appeal clearly demonstrate that it does not matter what systems are put in place for inspection nor how many inspections are contemplated, a system is only as good as the people who operate it. This Appeal also demonstrates the need for greater communication and exchange of information between the registration and compliance teams.

7. One of the most extraordinary features that this Appeal has highlighted is the absence of any requirement upon the Respondent to carry out Criminal Record Bureau (CRB) checks on Company Directors or for Company Directors to be obliged to demonstrate their fitness to hold office in a company providing prescribed and regulated services. The legislation namely Regulation 5 of the 2010 Regulations requires:

Requirement where the service provider is a body other than a partnership:-

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- (1) This regulation applies where the service provider is a body other than a partnership.
- (2) The body must give notice to the Commission of the name, address and position in the body of an individual (in these Regulations referred to as “the nominated Individual”) who is employed as a director, manager or secretary of the body and who is responsible for supervising the management of the carrying on of the regulated activity by the body.
- (3) The registered person must take all reasonable steps to ensure that the nominated individual is –
 - (a) of good character;
 - (b) physically and mentally fit to supervise the management of the carrying on of the regulated activity and has the necessary qualifications, skills and experience to do so; and
 - (c) able to supply to the registered person, or arrange for the availability of, the information specified in Schedule 3.

8. In this case Mrs Luz Morales was the company’s nominated individual. She also became the registered manager.

A Nominated Individual must be either a director, secretary or manager of the company and must be of good character and must have the

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appropriate competence, skill and experience to manage the carrying on of the regulated activities. It is the role of the Nominated Individual to monitor the Company's compliance with all the relevant regulations and to take appropriate action where there is evidence of non-compliance. However, it is the Registered Manager and registered Provider who are legally responsible for compliance with the regulations. It was her job (a) to ensure that Mr Morales, who was employed by the Company had a full CRB check and (b) to provide a copy of it to the Respondent. It was also her job to carry out a risk assessment of him given his antecedents and his employment in the Company.

9. We found it astonishing as the facts of this case materialised that a man with the forensic history of Mr Morales, who in 2005 was convicted of making and distributing child pornography and whose name remains on the Sex Offenders Register and is banned from working with children for 20 years was able to hold the position of Director in a Company such as the Appellant. He has convictions stretching back over 40 years and has served time in prison for offences of dishonesty, kidnap and perjury. It was difficult to imagine anyone less suitable or appropriate than he to hold such office or to work in a company providing such services.

PROTECT10. **The Company**

Documents from Companies House show that the Appellant Company was incorporated on the 10/09/2009. The Directors are Jon David Morales and Luz Maria Morales. At the time of the hearing in February 2013 there was a proposal to strike the Company from the Register as it had failed to comply with the requirement to file accounts. According to the information contained in the papers before us the Appellant had been operative as a private ambulance service for some years. Given that we find Mr Morales to be a wholly unreliable historian, prone to grandiosity, it was difficult to piece together for precisely how long it had operated but it does appear to have been used by a number of Health Trusts and Social Services Departments in the local area. It was certainly used to transport patients to and from abroad with Mr Morales “*at the wheel*”.

**Recorded concerns about the Company and Mr Morales
Prior to Registration**

11. Prior to the application for registration concerns about the Appellant, specifically Mr Morales, has been brought to the attention of the Respondent both by Staffordshire County Council (Adult Care and Safeguarding) Staffordshire Police and the West Midland Ambulance Service. We were provided with an unredacted document which reflected

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minutes of a meeting which took place on 11/2/2011 and involved Officers from the Respondent and Staffordshire Adult Protection. However, within the assessment report of Patrick Wright dated 26/9/11 details of further concerns are logged.

In summary form they were these:

- In November 2010 the Respondent was advised by Staffordshire Social Services that a Vulnerable Adult investigation had been initiated after West Midlands Ambulance Service reported that Mr Morales had been aggressive towards a doctor responding to a 999 call.
- In January 2011 the Respondent received an e-mail from a Senior Social Worker from Birmingham Social Services expressing concerns that a Social Worker had found an employee, Mr Morales, 'caring' for a service user.
- In February 2011 the meeting catalogued a range of concerns, rehearsed the facts of the referrals in November 2010 and January 2011 and very clearly flagged up ongoing concerns about Mr Morales. There was to our surprise, no referral to the Independent Safeguarding Authority at that time. It does not appear that the unproven allegation of rape and indecent assault made by a service

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user and for which Mr Morales was found Not Guilty in 2006 were discussed.

By a letter dated 12/7/2012 addressed to the Tribunal, Staffordshire Police disclosed that Mr Morales was arrested and charged in 2005 in connection with an alleged rape and indecent assault between 2002 and 2003. At the time he worked as a private ambulance driver, and the complainant was a vulnerable female who was wheelchair bound.

He was found Not Guilty of rape and indecent assault.

The information held by police is that whilst working as a private ambulance driver he conveyed a vulnerable female patient who suffered from cerebral palsy and was wheelchair bound, to various locations, where on 2 separate occasions he allegedly pulled into a secluded lay-by where it is alleged that he indecently assaulted her by digitally penetrating her, and on another occasion inserting his penis, attempting to have full sex with her. As he was unable to complete this act he then coaxed the vulnerable female to perform oral sex on him.

He was arrested and charged with the offences which he denied.

There was also evidence of a Harassment Warning Notice being issued against him in 2009. The information held by Police was

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that he had been sending text messages and making phone calls to a female who used to work for him when she was 16 years old. He was advised not to contact the female again; however he approached the female on a later date and started shouting and swearing at her in front of her young children. It was then he was issued with a Harassment Warning Notice.

12. It is clear that at the time of the assessment for registration, Staffordshire Police had disclosed that Mr Morales had been convicted of offences relating to child pornography, that his name was on the Sex Offenders Register and that he had been recalled in 2007 following his release from prison it being felt that he had breached the terms of his licence.

Mr Morales sought at times to persuade us that by the time of the first visit the Respondent knew about all of his convictions. We do not accept that evidence which in any event changed as the hearing progressed. He did not seem to be able to remember what he said from one day to the next, for example, one minute he asserted they knew about all his convictions, then they didn't, then he sought to argue there was no obligation upon him to disclose them as he was a director of the Company.

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Throughout this Appeal he was a most unreliable and inconsistent witness.

Given that the Appellant had been allowed to register in October 2011, the system by which evidence which may be material to that decision is either not sought by the Respondent or denied to it is of great concern.

13. **History of Registration and Inspections**
The Inspection conducted 6th September 2011

On the 6th September 2011 a pre-arranged pre-registration inspection was conducted by Suzette Farrelly and Patrick Wright. By this time a CRB check had been received in respect of Mrs Morales and the intention was in part to conduct a fit person interview with her to enable her to be considered as the registered manager. The legal advice provided to the Inspectors was to the effect that as Mr Morales had not applied to be registered it would not be appropriate to seek to obtain his criminal record. The advice was to concentrate on the ability of the Company to assess and control any risk Mr Morales might pose, with special attention being given to its recruitment procedures and the requirements of Regulation 21 of the 2010 Regulations and Schedule 3.

The latter sets out the information required in respect of persons seeking to carry on, manage, or work for the purposes of carrying on, a regulated activity. In summary, there was an obligation on Mrs Morales to ensure

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that anyone the Company employed for the purpose of carrying on a regulated activity was of good character and had the necessary qualifications and experience to do the job.

Schedule 3, paragraphs 5 and 6 require her to ensure that there was documentary evidence of any recent qualifications together with a full employment history including a satisfactory written explanation for any gaps in the employment history.

14. Despite the fact that a number of breaches of the Regulations were identified and the overall risk rating for the service was recorded as “*major concern*”; registration with conditions was recommended. These Conditions were as follows:

- The registered provider must ensure that there are policies and procedures in place for safeguarding people at risk, all staff must receive safeguarding training from a competent person, including details of the whistle-blowing process, and records are held in respect of training and all safeguarding referrals made.
- The registered provider must ensure all equipment in use for the purpose of delivering the regulated activities is serviced and tested and that

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evidence and certification is available to demonstrate that systems are in place.

- The registered provider must ensure that there is a staff induction process in place and that each person employed has a training and development plan in place that is relevant to the regulated activities being delivered.

The conditions had to be complied with by 1st December 2011

In addition, an improvement letter was issued in respect of a number of concerns relating to Regulations 10, 12, 15, 18 and 20.

These relate to :

- : Assessing and maintaining the quality of service provision (Regulation 10).
- : Cleanliness and Infection Control (Regulation 12)
- : Safety and suitability of premises (Regulation 15) and
- : A system for obtaining and acting in accordance with the consent of Service Users (Regulation 18)

15. By a letter dated 31 October 2011 Mrs Morales on behalf of the Company asserted it had addressed the concerns.

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16. As far as this inspection was concerned we found the evidence of Ms Farrelly persuasive and where it differed from that of Mr and Mrs Morales we prefer it. Having regard to the evidence given by Mrs Morales to the Panel, namely that at the time the application for registration was completed she had not considered the Regulations fully and had not obtained the Guidance from the internet, we find it difficult to understand how she managed to pass the test for suitability to be a registered manager. It was quite apparent from her evidence that some of the concepts she had to address were beyond her. Given that she clearly believed that her husband was innocent of the offences for which he was convicted in 2005 and did not regard him as a risk to anyone, it is not clear to us upon what basis it was felt she could properly discharge her duties under the Regulations.

It is inconceivable that she did not know of his arrest for rape and indecent assault and the harassment notice issued in 2009.

17. **Inspection carried out by Peter Dawson and Wendy Jones on 3rd February 2012**

A pre-arranged inspection took place on 3rd February 2012 to check compliance with the conditions that had been imposed on registration and the matters that had been raised in the improvement letter. The evidence,

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which we accept, was to the effect that none of the conditions had been met and there had been only partial compliance with the letter of improvement. Further concerns were evident.

We accept that Mr Morales very much took the lead in discussions and was unable to provide all the certificates he claimed to have nor a copy of the certificate of public liability insurance. Despite a further Order of this Panel made on Thursday 7th February 2013, the certificate of public liability insurance, if there was one, remains undisclosed as do a number of the training certificates Mr Morales purports to possess.

18. Following the inspection the documents the company was asked to provide were not forthcoming and so a formal request under Section 64 of the Health and Social Care Act was made on the 27th February 2012. The documents sought included relevant risk assessments, details of motoring convictions acquired by Mr Morales, documentation relating to all employees as specified in Schedule 3 which included a CRB check for Mr Morales.

Extensions of time were sought by the Directors, no documents materialised and so on the 21st March at the behest of the Respondent a meeting took place between the Directors of the Company, Mr Andrew Davey and Mr Peter Dawson.

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19. **The meeting of 21st March 2012** The statement dated 7/11/2012 prepared by Mr Dawson was largely unchallenged by the Appellant and we are satisfied on the evidence we heard that there was a deliberate attempt by Mr Morales to obfuscate and conceal the truth of his convictions and lack of training. We accept the evidence of the Respondent that

"During this meeting they presented some on-line training certificates all of which post dated the inspection undertaken on 3 February 2012. They did not provide a copy of the statement of purpose, evidence of Mr Morales oxygen therapy training, in-flight paramedic training, advanced driving certificate, current certificate of business insurance including public liability certificate, a clear and concise summary of the convictions leading to the driving ban, information about risk assessments in relation to driving and steps taken to protect services users, schedule 3 information which included CRB's and copies of any relevant risk assessments as had been requested in the section 64 letter sent on 27 February 2012. Mr and Mrs Morales were not prepared to provide us with copies of contracts."

He did produce a certificate in bundle 3(D) page 36 showing he attended a course run by the West Midland Ambulance Service on Medical Gases

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(Oxygen & Entonox), dated 13/04/12. We realise we don't know what this covered but we suppose it could be regarded as oxygen therapy training.

We reject the assertion advanced by Mr Morales that he was full and frank with Mr Dawson about his convictions. We prefer the evidence of Mr Dawson when he asserts that there was a lack of transparency on the part of Mr Morales in relation to his criminal history and he was selective in the information he disclosed.

Although at times submitting that the Appellant was compliant with the Regulations, Mr Morales also sought to persuade us that there was an utter absence of information and guidance to facilitate compliance. We do not accept this assertion as is apparent from Volume 4, Guidance was available, namely a document published in March 2010 by the Respondent entitled "Essential Standards of Quality and Safety". The impression created throughout this hearing by Mr Morales was that he thought he knew better than the Respondent and was arrogant in his approach to the demands and expectations required of providers.

20. Following the meeting on 21st March 2012 there were several exchanges of communication between the Appellant and Respondent. Documentation was not produced. At a Management Review Meeting

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on the 30th March 2012 a decision was made to propose to cancel the providers registration in respect of all 3 Regulated activities .

21. A further Management Review Meeting took place on 18th April 2012. By this time, 6 months after registering, the Respondent had at last obtained a copy of the memorandum of conviction relating to the offences relating to child pornography of which Mr Morales was convicted in 2005.
22. It was not until 29th May 2012 that the nature and extent of his criminal history became fully known to the Respondent but urgent conditions had been imposed upon the registration of the Appellant on 23rd April and were amended on 31st May. They prevent Mr Morales from having direct contact with Service Users, from having contact with children and from driving Service Users in the course of carrying on any of the regulated activities.
23. An attempt by the Appellant to appeal the conditions imposed were dealt with by the Care Standards Tribunal on 27th June and 17th July 2012. The decision can be found at [2012] UKFTT 465 (HESC). The Appeal was dismissed. No attempt was made by the Respondent to seek an

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immediate cancellation of registration pursuant to Section 30 of the 2008 Act and we regard this as a missed opportunity.

24. **Andrew Davey**

We had the benefit of hearing from Mr Andrew Davey, a Compliance Manager who became formally seized of the task of monitoring the Appellant Company in December 2011. He was an impressive witness. We accept without demur his accounts of dealing with the Appellant on 21st March and in particular Mr Morales on several occasions following notification by the Respondent of the proposed cancellation.

In a statement dated 23rd January 2013 and in his oral evidence, Mr Morales sought to suggest that Mr Davey had been untruthful and unfair in his dealing with the Appellant. Such allegations are, on the evidence before us, without foundation. There can be no doubt that as soon as Mr Davey became aware of the nature and extent of the convictions of Mr Morales he quite properly and expeditiously sought to address the risk that common sense dictates that Mr Morales posed. He expressed surprise that the Appellant had ever been registered. He also made a referral to the Independent Safeguarding Authority who then took over 6 months to deal with it.

At this stage it is helpful to set out a summary of Mr Morales convictions:

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His offences date back to 1965. His convictions in the last 30 years in this Country, excluding motoring convictions are set out below:

- 2005 : 5 Counts of Distributing Indecent Photographs of children.
15 Counts of making Indecent Photographs of children
1 Count of Possession an indecent photograph of a child.
- 1988 : 8 Counts of obtaining property by deception
4 Counts of Deception with intent to defraud permanently on liability
Breach of Suspended Sentence.
- 1987 : 4 Counts of Perjury
1 Count of attempting to pervert the course of Justice
- 1986 : 1 Count of Forgery
- 1984 : 2 Counts of obtaining property by deception
- 1981 : 2 Counts of Kidnapping
3 Counts of criminal damage
Breach of conditional discharge.
- 1980 : 3 Counts of making a false representation to obtain benefit from National Insurance Fund

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- 1979 : 4 Counts of Theft whilst an employee
4 Counts of Obtaining by Deception
3 Counts of Theft
1 Count of Forgery.
- 1977 : 2 Counts of Theft
1 Count of Taking a Conveyance without authority
1 Count of obtaining Property by Deception
- 1975 : 2 Counts of Theft, as an employee
1 Count of obtaining property by deception.
- 1974 : 1 Count of Theft
- 1973 : 1 Count of Theft
1 Count of Obtaining Property by Deception
1 Count of Attempting to obtain Property by Deception
Breach of Probation Order
No Insurance.

25. In cross-examination Mr Davey rejected the assertion made by Mr Morales that there was inadequate provision for advice and assistance for those who wished to register, he rejected the assertion that what the

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Appellant had put in place was adequate if not wholly compliant with the Regulations, e.g. the Cleaning Schedules for the Vehicles and Equipment.

We accept entirely the analysis by Mr Davey in relation to the ability of Mrs Morales to protect service users from the risk of harm from her husband. She presented as loyal and unquestioning. He was very much the dominant figure throughout the discussions with the Respondent and indeed at this hearing.

26. Mr Davey referred the Notice of Proposal to Cancel Registration to Sarah Seaholme who is Head of Regional Compliance (London). Her statement dated 8th November 2012 described her role. Essentially she provides an internal overview of the decision and a mechanism by which the Appellant could appeal. She performed a paper exercise. With respect to

27. Ms Seaholme we were troubled that her evidence both oral and written did not appear to grasp the nature of the potential risk posed by Mr Morales to service users.

Clearly his risk extended beyond working with children and his motoring transgressions.

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28. Following confirmation by Ms Seaholme on 1st August 2012 that she intended to adopt and uphold the Notice of Proposal to cancel the registration of all regulated activities, we heard oral evidence of a conversation which took place between herself and Mr Morales. We accept that the transcript provided is an accurate record of that discussion. In his cross-examination of Ms Seaholme Mr Morales sought to argue that what was required of the Appellant by the Respondent was not fit for the purpose for which the service was provided. His assertion that Policies were now in place was rejected as they clearly showed that they had been cut and pasted from those provided by other agencies and had been prepared in haste.

29. **The Inspections Conducted on 25th October and 1st November 2012**

Following the lodging of the Appeal Notice on 29th August 2012 further inspections took place on the above dates. That on the 25th October was conducted by Jane Capron and Wendy Jones. On the 1st November both Ms Capron and Mr Davey attended together with an ambulance Specialist Mr David Griffiths. Both inspections were on notice.

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The Inspection on 25th October was prompted by information received from Staffordshire Police which suggested that the Appellant was in breach of the conditions that had been imposed. A vehicle belonging to the Appellant had been photographed by a speed camera on 15th October 2012. On behalf of the Company Mr Morales explained that the vehicle was being used not as an ambulance but as a rapid response vehicle for the Lifeline Service (a non-regulated service) operated by the Company. He did not deny he had been driving it. He was unable to provide any paperwork to corroborate his assertion and arrangements were made to revisit.

30. The visit on 1st November was made on notice. Having read the statement of Mr Davey and heard his evidence we accept it in its entirety and where it differs from that given by Mr and Mrs Morales we prefer it.

We find that as at 1st November, 2012 there was:

- (a) No risk assessment of Mr Morales;
- (b) No records to demonstrate/explain how the mileage on the ambulances had increased from the date of imposition of the conditions;

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- (c) No adequate cleaning or service records for the ambulances and equipment thereon, nor any list of equipment;
- (d) No adequate infection control ;
- (e) No adequate quality assurance policy or assurance systems.

There were other concerns.

A copy of the draft inspection report was sent to the Appellant who sought to challenge the accuracy of it by asserting that appropriate policies were in existence and which the Respondent had failed to properly consider. Subsequently Mr Morales on behalf of the Appellant contacted the Respondent to say that systems had been put in place to supervise him and that any deficiencies in policy had now been addressed.

As at the time of the tribunal hearing policies were still absent and the Appellant through Mr and Mrs Morales sought to persuade us that a Company had now been approached to assist them with their preparation.

31. **The evidence called on behalf of the Appellant**

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We heard evidence from Mr and Mrs Morales. We had to exclude Mr Morales for part of the period his wife gave evidence as he was aggressive and confrontational and had no respect for Court procedures.

On the other hand Mrs Morales was polite and did her very best to be cooperative. She is from Mexico which is where she met Mr Morales. She has no family in this Country. He has taken her name after changing his by deed poll from Jan David Philip George White. He told us that was in 1986 but may well be 1988 when he was convicted of 12 counts of dishonesty and received a sentence of 2 years imprisonment.

At the time they met in Mexico he was apparently working for the Mexican Red Cross. Quite how that came about we never got to the bottom of but given the descriptions of the work he asserts he performed and the trips he made to the United States we are surprised he was granted entry given his convictions.

It became clear that Mrs Morales was very loyal to her husband and did not and could not think ill of him. Given the nature of the convictions in 2005 no doubt she found it difficult to confront. She did not question the information he gave her in relation to his experience or training nor in relation to the problems with the accounts and how money was spent.

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When cross-examined by Counsel for the Respondent it was clear that she knew something about Mr Morales' convictions, if not all. When pressed she said that she did not regard him as a risk. He was not working with children and she didn't think she needed to do a CRB check because he was a director. She produced at the hearing undated hand written notes which purported to be a risk assessment of him.

In evidence Mrs Morales accepted that there had been a prolonged breach of the regulations but sought to persuade us she was now compliant and/or in the process of being compliant. She sought to explain her poverty of understanding of what was required by a lack of appropriate guidance and guidance that she could understand.

32. The Panel felt sympathetic towards Mrs Morales who undoubtedly relied upon her husband. She, however, also sought to assist him in relation to his explanation for the absence of documents which we do not accept. She was and is very dependent upon the information he seeks to provide to her.

We do not accept that she had seen the training certificates which they both say cannot be found but are in boxes in the attic and we do not accept that she was unaware of the need for a CRB check.

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The Panel felt sorry for Mrs Morales who is in urgent need of independent legal advice.

33. The evidence of Mr Morales was altogether of a different quality. He was grandiose, arrogant and a completely unreliable historian. There seemed to us to be clear evidence of personality dysfunction. He tried to provide excuses for all the failings and sought to persuade us that he was being Victimised. He alleged that the Regulations were in breach of his Human Rights and that the Respondent was acting in breach of Article 3 of the Convention.

Conspiracy theories emerged. He said in clear terms that the Appellant... *“did not have the infrastructure to do everything they expect to comply with the Regulations...”*.

Mr Morales sought to persuade us that he knew more about running a company such as IMA than the Respondent. He referred to them as a Government Quango who did not know the difference between an *“earhole and a toenail”*. He sought to assert that the Appellant had complied with the Regulations in its own way. Nevertheless he said he would now step down from the Company and was planning to employ a Ms Brennan to ensure that it was now compliant with the regulations.

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His explanations for his failure to provide his driving license and other documents were bordering on the fanciful.

It was clear that despite his convictions Mr Morales continued to express his innocence in respect of many of them.

He prayed in aid unsigned and many undated character references.

His lack of insight was overwhelmingly apparent. His evidence, written and oral was inconsistent. His explanation for the multiple points on his driving license and his description of his repeated appearances before the Criminal Courts, the Complaints he had made against a variety of professionals and professional bodies suggested a man who cannot work with in normal social boundaries.

34. During the hearing the panel become increasingly concerned about this private company that also provides 24 hour on call lifeline services to those who live in their own homes. The Respondent (Care Quality Commission) confirmed that this is not a registerable or regulated activity as long as no personal care is undertaken. Staff are able to prompt people to take medication or provide them with their own medication without the need to register. There is no requirement for directors or staff to be CRB checked.

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People using this service are in most cases frail and elderly and therefore some of the most vulnerable in our society. Often these people provide confidential information about their health and circumstances. Keys or key safe codes are held by the company to allow them access to properties should anyone need help. In this case a person who has convictions for fraud, theft, deception perjury and kidnap has access to all this information. Relatives will be unaware of the risks for their relatives. Taken together there are a number of risk factors that the Tribunal believes indicate vulnerable service users of the IMA Lifeline service could be at risk of significant harm.

There are compelling reasons for a change in the laws so that this activity is properly regulated.

35. In conclusion, we dismiss the Appeal and encourage an urgent review by the Respondent of its registration procedures. This Company should never have been registered.

Secondly, there needs to be greater and more expeditious information sharing between statutory bodies who hold information relevant to the issue of registration.

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36. We expect this decision to be brought to the attention of the new Chief Executive employed by the Respondent as well as the Secretary of State for Health.

Tribunal Judge Gillian Irving QC

Judge Care Standards

Date Issued: 21 March 2013