

## Care Standards

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

Heard on 10 and 11 November 2014 at Skegness Magistrates Court, Skegness

BEFORE  
JUDGE LIZ GOLDTHORPE  
SPECIALIST MEMBER MS DENISE RABBETTS  
SPECIALIST MEMBER MS WENDY STAFFORD

[2014] 2232.EA

Charlotte Rose House (t/a Lonrush Ltd)

Appellant

v

Care Quality Commission

Respondent

### DECISION

#### Representation

The Appellant was represented by Mrs Coulson (the applicant), assisted by her daughter Ms Tracey Coulson, the Appellant's Acting Manager. The Respondent was represented by Mr Craig Hassall (Counsel)

#### The appeal

1. Charlotte Rose House (the appellant) appealed under section 32 of the Health and Social Care Act 2008 ('the 2008 Act') against the respondent's decision dated 24 June 2014 to cancel its registration under section 17 of that Act in respect of the following regulated activity – accommodation for persons who require personal care. The appellant sought a finding that, having regard to all the circumstances, including those arising since June 2014, the respondent's decision to cancel its registration was to have no effect.
2. Section 17 gives the respondent the power "at any time" to cancel a service provider's registration: "... (c) on the ground that the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements."

3. These requirements include those set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (SI 2010/781). Regulation 5 states that there must be a “nominated individual” who must be employed as a director, manager or secretary of the body. Further, the service provider must take “all reasonable steps” to ensure that the nominated individual is “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”.
4. Regulation 8 imposes a requirement on both the service provider and the registered manager that they “must, in so far as they are applicable, comply with the requirements specified in regulations 9 to 24 in relation to any activity in respect of which they are registered”.
5. Various other Regulations set out the requirements on the service in relation to the care and welfare of service users and the general running of the home.
6. Until 24 June 2014 Mrs Coulson (the applicant) was the service provider and sole director of the Appellant. She did not appeal against the cancellation of her registration as the nominated individual and appointed her daughter, Ms Coulson, to run the home as an Acting Manager from that date.

## Hearing

7. The hearing had been preceded by a number of telephone case management hearings, which had resulted in directions to the Appellant to file evidence in support of its case. At the final telephone case management hearing on 7 November, attended by Mrs Coulson and Mr Hassall, the Respondent made an application to strike out the appeal on the basis that the appellant had failed to respond to directions and had therefore failed to cooperate with the Tribunal.
8. In response to directions given by the nominated judge at that hearing, Mrs Coulson submitted late evidence, which was made available on the morning of 10 November. The Respondent also submitted a copy of the report made as a result of the Respondent's further inspection on 27 October 2014. Mr Hassall then renewed the Respondent's strike out application.
9. We adjourned the commencement time to later on that day in order to give full consideration to this application and to allow the parties to consider the late evidence. Mrs Coulson did not object to the findings in any of the previous inspection reports and this adjournment gave her an opportunity to consider the contents of the latest inspection report and to address the adequacy of the Appellant's latest action plan in particular in the light of that inspection.

10. We expressed our concern about Mrs Coulson's response to the proceedings. However, noting that she had not had the benefit of legal advice and the Appellant was said to be unable to afford to engage a solicitor, we were prepared to allow the hearing to continue, subject to further reconsideration of the Respondent's application at a later stage if there was further cause for concern.
11. At the Tribunal's request, the parties submitted further late evidence, which included information about the home's management structure and its relationship with the local authority and correspondence between the parties. The action plan submitted by Mrs Coulson did not contain any detailed proposals for bringing the home into compliance, nor did it identify any nominated individual to replace her. She confirmed the Appellant had failed to appoint any such person in June 2014 and there were no realistic proposals for such an appointment. Her daughter, Ms Coulson, was not registered as the nominated individual and there was no imminent prospect of any such registration.
12. The Respondent had also provided a 'Scott Schedule' ('the Schedule') setting out in summary form the respondent's concerns. The Appellant did not provide a response to that document until the second day of the hearing.
13. We heard an opening statement from Mr Hassall setting out the chronology of events since 2009 up to the most recent inspection on 27 October 2014, which supplemented the late evidence. It was accepted by Mrs Coulson that the Appellant had been in breach of the relevant requirements over a lengthy period of time for the reasons set out in the respective inspection reports. The appellant continued to be in breach of similar requirements for the reasons set out in the inspection report of 27 October 2014.
14. Mr Hassall also set out the Respondent's current concerns about the viability of the Appellant's action plan in response to the history of repeated non-compliance with the relevant regulations. The Respondent was not satisfied that the proposed action plan was sufficiently robust to remove the likelihood that the appellant would continue to be in breach of the relevant requirements and, in all the circumstances, it was proportionate for the appellant's registration to be cancelled. In particular, it had grave concerns about the ongoing breach in relation to the management of the home and in the absence of any proposal to remedy this, the Respondent was entitled to regard the package of proposals as wholly unworkable in practice.
15. On day 2 of the hearing, having had an opportunity to consider her position, Mrs Coulson confirmed that she wished to withdraw the appeal. She accepted that she had relinquished her role in the management of the home in June 2014 and was no longer registered from the date of the Respondent's decision. Therefore, she was not in a position to appoint an appropriately registered and qualified interim

manager and, in the absence of such a person, the identified action plan was not viable.

16. At the last minute, Mrs Coulson put forward a proposal to sell the business but Mr Hassall confirmed that the Respondent did not consider this to be a viable proposition. This suggestion had never been put forward previously and no arrangements had been made to pursue it as an alternative solution until now.
17. The Tribunal made it clear that, given these facts, an application for an adjournment was unlikely to succeed. An adjournment was unlikely to produce an effective and reliable outcome for vulnerable residents and the resulting delay would place elderly residents at an unacceptable and continuing risk to their care and welfare. There was no guarantee that a willing and able purchaser could be found within a reasonable timescale or that, even if Mrs Coulson had identified an imminent sale, considerable delay could be avoided given the steps necessary to bring the home into compliance, including the refurbishments required.
18. Mrs Coulson accepted that in these circumstances the home could no longer continue to operate. We noted that appropriate steps had already been taken by the local authority under its safeguarding duties regarding all the current residents and assurances were given that they could be re-homed appropriately in the event of cancellation. We accepted that they would prefer to remain where they are, particularly in view of their age and, in some cases, their length of time at the home. However, in view of the evidence accepted by the Appellant, we had no doubt that it would be consistent with their health, safety and welfare for them to be placed with an alternative service provider. Mrs Coulson indicated that discussions had already taken place with the local authority and she was prepared to cooperate fully with any arrangements they intended to make for the residents future placements.
19. Having regard to the written evidence, the level of concerns expressed by the Respondent, the contents of the latest inspection report and the lack of an interim manager and an effective action plan, we were satisfied that the withdrawal was in accordance with Rule 17 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699).
20. We were also satisfied that this was an appropriate and proportionate response in all the circumstances. This would allow the contingency plans already in place for the closure of the home to be put into action without delay and in compliance with the local authority's safeguarding duties.
21. Mr Hassall confirmed that in these circumstances, the Respondent would not seek an order for costs.

22. The Tribunal consents to the withdrawal in accordance with Rule 17(2), subject to there being no order for costs.

**ACCORDINGLY:**

**The Appeal is dismissed in accordance with Rule 30 and there shall be no order as to costs**

**Judge Liz Goldthorpe  
First-tier Tribunal Judge (Health, Education and Social Care)  
Date Issued: 19 November 2014**