

First-tier Tribunal Care Standards

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

Heard on 12/06/24 via video link

Case No: [2023] 5124.EA
Neutral Citation Number: [2024] UKFTT 00519 (HESC)

BEFORE

Tribunal Judge - Timothy Thorne
Specialist Member – Suzanna Jacoby
Specialist Member- Roger Graham

BETWEEN

Legacy Healthcare Services Limited

Appellant

-v-

Care Quality Commission (CQC)

Respondent

DECISION

The Appeal & Legislative Background

1. The Appellant appeals against the Respondent's Notice of Decision, dated 24 August 2023, to cancel its registration as a service provider in respect of the regulated activity pursuant to Section 17(1)(e) of the Health and Social Care Act 2008 and Regulation 6(1)(c) of the Care Quality Commission (Registration) Regulations 2009. The Notice of Decision was served on the basis that the Appellant is not currently carrying on the regulated activity and has not been carrying on the regulated activity for a period of over 12 months. The Appellant's appeal details the efforts that have been made to obtain service users, including tendering processes with local authorities and efforts towards obtaining a sponsorship licence. The Appellant's position is that it will soon begin to carry on the regulated activity and that therefore its registration should not be cancelled. At a telephone case management hearing on 17 May 2024, the Appellant explained that it had supported a service user between dates in March and April 2024.
2. Under section 17(1)(e) of the HSCA 2008, the Respondent is entitled to cancel a provider's registration as a service provider "on any ground specified by

regulations". Regulation 6(1)(c) of the Care Quality Commission (Registration) Regulations 2009 ("2009 Regulations") permits the Respondent to cancel a service provider's registration if the service provider has not carried on the regulated activity it is registered to provide for a continuous period of 12 months.

3. The Appellant is registered for the regulated activity Personal Care. The definition of this activity is to be found in Paragraph 1 of Schedule 2 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the 2014 Regulations"):

1. Personal Care (1) Subject to sub-paragraphs (2) and (3), the provision of personal care for persons who, by reason of old age, illness or disability are unable to provide it for themselves, and which is provided in a place where those persons are living at the time the care is provided. The term 'personal care' for the purposes of the 2014 Regulations is defined in Regulation 2: Interpretation 2. (1) In these Regulations— [...] "personal care" means— (a) physical assistance given to a person in connection with— (i) eating or drinking [...], (ii) toileting [...], (iii) washing or bathing, (iv) dressing (v) oral care (vi) the care of skin, hair and nails [...], or (b) the prompting, together with supervision, of a person, in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision.

4. Section 32(3) of the HSCA 2008 provides that on an appeal against a decision, the First-tier Tribunal may confirm the decision or direct that it is not to have effect. Section 32(6) HSCA 2008 provides that the First-tier Tribunal also has power to:

- a. vary any discretionary condition for the time being in force in respect of the Regulated Activity to which the appeal relates,
- b. direct that such discretionary condition shall cease to take effect,
- c. direct that any such discretionary condition as the First-tier Tribunal thinks fit shall have effect in respect of the Regulated Activity, or
- d. vary the period of any suspension.

5. Section 4 HSCA 2008 sets out the matters the CQC must have regard to in performing its functions, including the need to protect and promote the rights of people who use health and social care services (section 4(1)(d)) and the need to ensure that action taken by it is proportionate and targeted (section 4(1)(e)).

Factual Background

6. The Appellant was registered with the Respondent on 4 May 2021 and began carrying on the Regulated Activity following registration. On 27 February 2023 the Respondent emailed the Appellant to query whether the regulated activity was being carried on. The Appellant confirmed that the regulated activity had been carried on but had ceased in June 2022. On 3 July 2023 the Appellant emailed the Respondent confirming that regulated activity had ceased on 22 April 2022.
7. On 8 August 2023, the Notice of Proposal to cancel the Appellant's registration was issued because the carrying on of regulated activity ceased over 12 months prior to this date. The reasons for the Respondent's decision are set out in the Notice of Decision dated 24 August 2023.

The Burden and Standard of Proof

8. Applying the rationale identified in **Care Management Group Ltd v CQC [2017] 316.EA**, the panel is required to determine the matter de novo and make its own decision on the merits. The test to be adopted is whether as at the date of the hearing the decision to refuse to vary the registration should be confirmed or directed to be of no effect. The panel can take into account all the evidence submitted including new information or material that was not available (or presented) when the CQC made its original decision. The panel “stands in the shoes of the CQC” in carrying out this function and must therefore apply the same statutory framework, policy and guidance as the CQC as set out above.

The Hearing

9. Prior to the hearing, the panel considered all the papers submitted by the parties and read a bundle of 173 pages, and the Respondent’s skeleton argument. Before the Tribunal, the Appellant was represented by Mr. Munyaradzi Gregory Mtunzi, who is the director of and nominated individual for the Appellant. The CQC was represented by Toby Buxton, CQC Solicitor. There were also a number of observers. The hearing was conducted by video link. The panel and the parties agreed that a video hearing was suitable and the video connection was working appropriately.

New Evidence

10. The following new evidence was submitted by Mr. Mtunzi, the CQC having no objection:
 - a. Document entitled Evidence 1 - Vascular clinic
 - b. Document entitled Evidence 2 - discharge summary
 - c. Document entitled Evidence 3 - follow up appointments
 - d. Document entitled Evidence 4 - My Support Plan
11. The Tribunal first heard oral evidence from **Ms Antonia Rookley**, a CQC Senior Specialist. She was asked about the new evidence submitted that morning and said that the documents suggested that a person had some sort of support in a hospital but that none of it established that Regulated Activity had been carried out by the Appellant between March and April 2024 or indeed at any time. She explained that the “Document entitled Evidence 4 - My Support Plan”, was not complete and could possibly be read as showing an intention to carry out some care activity but it was not evidence that any such activity had actually been carried out. There was also no record of the details of any such care activity.
12. She reiterated that after considering all of the evidence in the round she concluded that the Appellant had been dormant since June 2022. She acknowledged there was evidence that the Appellant had engaged in tendering processes but that was not the same as evidence of Regulated Activity.
13. She also explained that due to the length of time since the Appellant was registered, the Appellant’s understanding of Health and Social Care and the relevant regulations had not been assessed for a number of years, and therefore the CQC can no longer be assured that the Appellant would meet the

fundamental standards of quality and safety. She was asked no questions by Mr. Mtunzi.

14. The Tribunal then heard oral evidence from **Mr. Greg Mtunzi**. He adopted his witness statement and explained that he believed that the Appellant had been carrying out the Regulated Activity between March and April 2024. He accepted that the Appellant had been otherwise dormant since June 2022.
15. In relation to the claimed activity between March and April 2024, he accepted that there was no or no adequate documentary evidence to record the nature of such activities. He said that Legacy Healthcare Services Limited was a family run business and he therefore relied upon what he was told by his family members about what care had been provided. That was why there were no adequate records of such care. He stated that he had no direct personal knowledge of what care had been provided and merely relied upon the word of his family members who told him about the nature of the care. Moreover there were no financial records as the service user was known to him and his family and therefore the services had been provided free of charge.

Closing Submissions

16. The panel heard oral submissions and read written submissions as well. The CQC representative made it clear earlier in the hearing that the Appellant would be able to make a further application to be registered and the period of dormancy would not prohibit it from doing so. There would also be no adverse inference drawn from the cancellation of registration because of dormancy. Mr. Mtunzi said that he would be very disappointed to lose his registration because of all the hard work he and his family had put into the business and he just hoped that the CQC could make an exception in his case.

Conclusion & Reasons

17. For reasons given below the panel concludes that the appeal should be dismissed because the evidence establishes that the Regulated Activity has not been carried out by the Appellant since June 2022.
18. The panel does not accept that the any Regulated Activity was undertaken as claimed by the Appellant between March and April 2024. There is simply inadequate documentary evidence to support the claim. In fact Mr. Mtunzi agreed that the documentary evidence was inadequate. Moreover he had no direct knowledge of any Regulated Activity having taken place between March and April 2024 but was wholly reliant on the hearsay accounts given by family members who were not called to give oral testimony before the panel.
19. In the judgement of the panel the CQC were therefore entitled under section 17(1)(e) of the HSCA 2008 to cancel the Appellant's registration as a service provider on the grounds specified in Regulation 6(1)(c) of the Care Quality Commission (Registration) Regulations 2009 because the Appellant has not carried on the regulated activity it is registered to provide for a continuous period of 12 months.

20. Moreover the panel concludes that such cancellation was necessary and proportionate by reference to Section 4 HSCA 2008. This is because the significant length of time since the Appellant was registered means that the CQC cannot be assured that the Appellant would continue to meet the fundamental standards of quality and safety needed to protect and promote the rights of people who use health and social care services (section 4(1)(d)).
21. Moreover, bearing in mind all the evidence, including the fact that the Appellant would be able to make a further application to be registered and there would also be no adverse inference drawn from the cancellation of registration because of dormancy, the panel concludes that the cancellation was proportionate and targeted (section 4(1)(e)).

Decision

The appeal is dismissed.

The decision to cancel registration is confirmed.

**Tribunal Judge Timothy Thorne
Specialist Member – Suzanna Jacoby
Specialist Member- Roger Graham**

First-tier Tribunal (Health Education and Social Care)

Date Issued: 19 June 2024