

**First-tier Tribunal Care Standards**

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

Heard on 19/01/24 via video link

NCN: [2024] UKFTT 00074 (HESC)

Case No: [2023] 5015.EA

**BEFORE**

**Tribunal Judge - Timothy Thorne  
Specialist Member - Ms. Kerena Marchant  
Specialist Member - Dr David Cochran**

**BETWEEN**

**Homecare Comforts Limited**

**Appellant**

**-v-**

**Care Quality Commission (CQC)**

**Respondent**

**DECISION**

**The Appeal & Legislative Background**

1. This is an appeal by the Appellant pursuant to section 32(1) of the Health and Social Care Act 2008 (“HSCA 2008”) against the decision of the CQC dated 8 June 2023, to cancel the Appellant’s registration in respect of the Regulated Activity Personal Care (the “Regulated Activity”) so that the Appellant is no longer authorised to carry on the Regulated Activity at or from Homecare Comforts Limited, 65 Seymour Avenue, Morden, SM4 4RF (“the Location”).
2. The Notice of Decision was issued on the basis that the Appellant’s Location had been dormant, meaning it had not been carrying on the Regulated Activity, for a continuous period of twelve months or more.

3. Section 3 of the HSCA 2008 sets out the Respondent's main objective which is "to protect and promote the health, safety and welfare of people who use health and social care services".
4. 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".
5. 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.
6. 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.
7. 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**

8. On 11 June 2020, the Appellant registered with the Respondent in respect of Regulated Activity Personal Care. On 29 January 2021, the Respondent emailed the Appellant to seek confirmation of the status of the Regulated

Activity. The Appellant responded on the same day to confirm they were not delivering the Regulated Activity.

9. On 28 May 2021, the Respondent emailed the Appellant seeking confirmation of the status of the Regulated Activity. The Appellant responded on the same day with a copy of a statutory notification and advised that the Appellant was no longer dormant. On 09 June 2021, the Respondent requested copies of a care plan and risk assessment to assess whether the Appellant had started to deliver the Regulated Activity. Having considered the document provided by the Appellant, the Respondent subsequently removed the dormancy indicator from the Appellant's records.
10. On 22 February 2022, the Appellant advised the Respondent they had returned to dormancy. On 10 May 2022, the Respondent recorded the service as dormant, on the basis the Appellant confirmed it had not been delivering personal care since 24 February 2022.
11. On 16 August 2022, in response to the Respondent's request for confirmation, the Appellant advised that they remained dormant and had not been carrying out regulated activity since 24 February 2022. The Appellant confirmed that they remained dormant via email on 7 December 2022.
12. On 31 March 2023, the Respondent sent an email requesting confirmation on the status of the regulated activity Personal care from the Location. On 5 April 2023, the Respondent received an email confirming the regulated activity Personal care had not been delivered from the Location since 24 February 2022.
13. On 16 May 2023, the Respondent issued a Notice of Proposal ("NoP") to cancel the Appellant's registration as a service provider in respect of the Regulated Activity at the Location based on dormancy. On 18 May 2023, the Appellant telephoned the Respondent to advise they had received the Notice of Proposal and said they had a potential service user due to start receiving the

Regulated Activity. The Appellant submitted written representations and evidence in response to NoP.

14. On 8 June 2023, the Respondent served a Notice of Decision (“NoD”) adopting the NoP to cancel the Appellant’s registration based on dormancy. On 18 June 2023, the Appellant filed their appeal application which included a care plan for service to a person known as “BH”. The documentation confirms that a different registered provider was responsible for the delivery of the Regulated Activity to BH and the Appellant had been commissioned to provide an additional companionship service. The Respondent considered the care plan and concluded that it did not demonstrate the Appellant had delivered the Regulated Activity.
15. On 12 July 2023, the Appellant confirmed they were no longer carrying on regulated activity and were dormant because the sole service user BH had passed away on 8 July 2023.

#### **The Burden and Standard of Proof**

16. 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**

17. Prior to the hearing, the panel considered all the papers submitted by the parties and read a bundle of 201 pages, the Respondent’s skeleton argument

of 9 pages and a copy of the representations submitted to the CQC by the Appellant.

18. Before the Tribunal, the Appellant was represented by Ms. Patricia Fernando who is the director of and nominated individual for Homecare Comforts Ltd. The CQC was represented by Ms. Frampton-Anderson, Senior Lawyer, CQC & Advocate.
19. 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.
20. The Tribunal first heard oral evidence from **Ms Julia Spencer Ellis**, a CQC senior specialist. She adopted her witness statement and repeated the chronology set out above. She said that she was the Quality Improvement lead and subject matter expert for dormancy cases. In response to questions from Ms. Fernando the witness explained that although there was a brief period, between June 2021 and January 2022 when it was possible for CQC to have conducted an inspection of the Appellant's location, due to the ongoing COVID-19 pandemic it was not possible as CQC's highest priority was to inspect in response to risk.
21. She also explained that although there was a care plan for service user BH, the documentation was difficult to read and confirmed that a different registered provider was responsible for the delivery of the Regulated Activity to BH and the Appellant had been commissioned to provide an additional companionship service. Therefore the care plan did not demonstrate the Appellant had delivered the Regulated Activity.
22. She also stated that the evidence established that the Appellant had not delivered the Regulated Activity for significantly longer than the 12-month period described in the 2009 Regulations after which CQC is able to cancel a Service Provider's registration. Because of the significant length of time since they were registered and the standard of documents submitted CQC was therefore not assured that the Appellant would meet the fundamental standards

of quality and safety and it remains necessary and proportionate to cancel their registration.

23. The Tribunal then heard oral evidence from **Ms. Patricia Fernando** (the director of and nominated individual for Homecare Comforts Ltd). She adopted her witness statement and explained that she accepted that Homecare Comforts Ltd had not carried out Regulated Activity from the Location since 24 February 2022. The reason she was appealing was because she was not happy with the way the CQC had dealt with the matter. She complained that the CQC had not carried out an inspection during the window of opportunity and she said that her staff and her were well trained and qualified. She wanted the CQC to change its policies towards small business like herself otherwise they might go out of business.

### **Closing Submissions**

24. The panel heard oral submissions and read written submissions as well. The CQC representative made it clear 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. Ms. Fernando said, "Its clear cut, we were dormant for more than 12 months".

### **Conclusion & Reasons**

25. 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 from the Location since 24 February 2022. In fact the Appellant does not dispute this.
26. In the judgement of the panel the CQC were 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.

27. 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)).

28. 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 refuse to cancel registration is confirmed.**

**Tribunal Judge Timothy Thorne  
Specialist Member - Ms. Kerena Marchant  
Specialist Member - Dr David Cochran**

**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 24 January 2024**