Care Standards

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

Neutral Citation Number: [2024] UKFTT 00447 (HESC)

(1) [2023] 5083.EA

(2) [2023] 5084.EA

Hearing held at the Courts of Justice
Deansleigh Road
Bournemouth
BH7 7DS
on 20th, 21st & 22nd May 2024

Before

Tribunal Judge [Francis Chamberlain]
Specialist Member [Mr Mike Cann]
Specialist Member [Ms Rachael Smith]

Mrs Sibongile Nemariyam Kiflom (1)

&

Tender-Hearted Ltd (2)

Appellants

-v-

Care Quality Commission

Respondent

DECISION

The Appeals

1. Mrs Kiflom is the 1st Appellant and registered manager of the provider. The 2nd

Appellant is the provider itself, Tender-Hearted Limited. On 22nd June 2023 the Respondent served a notice of proposal to cancel registration of both Appellants, who did not respond within the allowed time. On 24th July 2023 the Respondent served on both Appellants a notice of decision to cancel both Appellants. On 20th August 2023 both Appellants separately appealed against the decision to cancel.

2. At a telephone case management hearing on 12th October 2023 Judge Khan directed that the appeals recorded under reference [2023] 5083.EA & [2023] 5084.EA should be consolidated and heard together under matter [2023] 5083.EA. The hearing had been given a 3-day time estimate.

The Hearing

3. The hearing took place on 20th, 21st and 22nd May 2024, concluding on 22nd May 2024.

Late Evidence

4. On the first day of the hearing and with the consent of the Respondent the Tribunal was handed on behalf of the Appellants a small bundle of documents which included: an Action Plan following the inspection of 1st June 2023; a complaints log; a Safeguarding Master Tracker 2024; a Medication Concerns log. It seems that those documents may recently have been sent to the Tribunal administration.

Reporting Restrictions

5. This was a public, face-to-face hearing which was audio-recorded. With the consent of all parties, and on each day of the hearing, the Tribunal directed pursuant to rule 14(1)(b) of the Tribunal Rules 2008 that there should be no publication of any matter likely to lead members of the public to identify any service users mentioned in the proceedings.

Attendance, Representation, Evidence Relied Upon & Procedure Followed at Hearing

6. Neither the 1st nor the 2nd Appellant was legally represented. Mrs Kiflom attended, cross-examined, and made submissions on behalf of both Appellants. She was supported by Ms Mariama Phatey and Nathan Kiflom who, however, took no active role in the hearing. We gave appropriate advice to Mrs Kiflom as to how to cross-examine and make submissions to the Tribunal, and occasionally assisted her to do so.

7. The Respondent was represented by Counsel Claire Stevenson and by the Care Quality Commission [CQC] Solicitor Karen Antwi.

8. In preparation for the hearing, we read the substantial electronic bundle. We also read the additional material referred to in paragraph 4 above. After Claire Stevenson had opened the Respondent's case she called two witnesses from

the CQC, the inspector Kathryn Kishere and her operations manager Stephanie Duncalf. These were questioned in turn by Mrs Kiflom and ourselves. Mrs Kiflom then gave evidence on behalf of the Appellants and was questioned by Claire Stevenson and ourselves. At the conclusion of the hearing, Claire Stevens and Mrs Kiflom made their respective submissions.

Summary of Parties' Positions

9. The Respondents sought cancellation of the registration of both Appellants and, at the conclusion of the hearing, asked us not to impose Conditions. In short the Respondent submitted that: a) there was a long history of poor compliance with regulations and four unsatisfactory CQC inspections, the most recent of which occurred on 1st June 2023; b) there was evidence at the date of the hearing of continuing poor practice and insight; c) although there had been no inspection since 1st June 2023, that was because the Appellants had submitted inadequate evidence to show any significant change in their practices and, in any event, the Appellants now had only one service user in relation to whom an inspection could be carried out; d) Conditions were wholly inappropriate because Conditions were already in force and not being complied with.

10. Mrs Kiflom on behalf of the Appellants contended that: a) some of the allegations of poor and risky practice raised by the Respondent were not made out; b) in any event, the evidence of poor practice relied upon derived from the inspection on 1st June 2023 and was therefore stale, there having been no inspection since then; c) any concerns which the Tribunal had could be allayed by the imposition of further Conditions. There has never been any suggestion by Mrs Kiflom that anyone other than herself could step in as registered manager of the 2nd Appellant and it is evident therefore that realistically the cases of the 1st and 2nd Appellants stand or fall together.

Legal Framework

11. There was no disagreement as to the principles set out in the Respondent's and Appellants' skeleton arguments.

12. The Respondent was established on 1 April 2009 by the Health and Social Care Act 2008 ("the 2008 Act"), as amended by the Care Act 2014 as the independent regulator of healthcare, adult social care, and primary care services in England. The Respondent, in its role as the independent regulator, also protects the interests of vulnerable people.

13. Section 3 of the 2008 Act sets out the Respondent's objectives as follows:

    (1) The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.
    (2) The Commission is to perform its functions for the general purpose of encouraging —

(a) the improvement of health and social care services,
(b) the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and
(c) the efficient and effective use of resources in the provision of health and social care services.

14. Section 17 of the 2008 Act provides for the cancellation of the registration of a person as a service provider or manager in certain circumstances. Section 17(1) states that the Respondent may, at any time, cancel the registration of a person as a service provider or manager in respect of a regulated activity:

> *(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.*

15. Section 26 of the 2008 Act provides that, if it is proposed to cancel registration, the CQC is required to give notice of the same and set out the reasons for the decision.

16. Pursuant to section 27 of the 2008 Act, a notice of proposal under section 26 of the 2008 Act, must set out the rights of the registered person to make written representations to the Respondent, in writing, within 28 days of service of the notice of proposal. Where a notice of proposal has been served the Respondent must not determine any matter to which the notice relates until any person on whom the notice of proposal was served has been given the opportunity to make written representations.

17. Section 28 of the 2008 Act provides that, if the Respondent's final decision is to cancel registration, the Respondent is required to give notice of the same. The notice of decision to cancel must explain the right of appeal conferred by section 32 the 2008 Act.

18. Section 32 of the 2008 Act provides a right of appeal to the Tribunal. Pursuant to section 28 of the 2008 Act, the decision to cancel does not take effect until either the time limit for lodging an appeal expires, or if an appeal is so lodged, until the conclusion of the proceedings.

19. The Tribunal hears the appeal de novo, effectively stepping into the shoes of the Respondent to decide, on the basis of all the evidence available to it at the date of the hearing, whether registration should be cancelled. The Tribunal is not restricted to consideration of the matters available to the Respondent when the cancellation decision was taken, and therefore can, and should, consider the impact of information that may have come to light since.

20. The powers of the Tribunal can be found in section 32(3) of the 2008 Act. Essentially the Tribunal may either confirm the Respondent's decision to cancel or direct that it shall not have effect.

21. Section 32(6) of the 2008 Act 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.

22. The legal burden of proof at appeal lies with the Respondent, who must establish that the criteria for cancellation has been met. The standard of proof to be applied is a civil standard, namely on a balance of probabilities.

23. The Respondent's case at the hearing was that it had taken steps to cancel both Appellants' registration on the ground that the regulated activity is being or has been carried on otherwise than in accordance with the relevant requirements.

Chronology

24. In October of 2019, the 1st Appellant Mrs Kiflom was registered as the manager of the regulated activity at Unit B8, Arena Business Centre, 9 Nimrod Way, East Dorset Trade Park, Wimborne Dorset. Also, in October of 2019 the 2nd Appellant was registered to provide the regulated activity. The regulated activity consisted of providing care to service users in their own homes.

25. Between March 2021 and June 2023, the CQC carried out a number of formal inspections of the regulated activity. All inspections were on notice. Most of the evidence at the hearing concerned findings made at the fourth and final inspection of 1st June 2021. But we will briefly detail findings which, the first statement of Kathryn Kishere tells us, were made following the earlier inspections. There was no substantial challenge at the Tribunal hearing to the individual findings made following the first three inspections. The practice of the CQC is apply the 2009 and 2014 regulations to enable it to decide whether the following key criteria are satisfied: Safe; Effective; Caring; Responsive; Well-Led.

1st Inspection: 8th March 2021

26. The CQC inspector took the view that the following 2014 regulations were not met:

- Regulation 9: person-centred care: there had been a failure to maintain up-to-date and accurate information about service users' needs, wishes, wants, likes and dislikes: for example, only 9 people out of 21 had care plans in place.
- Regulation 11: need for consent: there had been a failure to obtain consent to provide care and treatment to service users and there was a failure to assess under the Mental Capacity Act the service user's capacity to consent in that respect.
- Regulation 12: safe care and treatment: there was a failure to assess risks to service users and a lack of a robust system to ensure

medications were administered as required.

- Regulation 17: good governance: there was a failure to establish systems and processes to ensure that fundamental standards of care were met, and people not placed at risk of harm.
- Regulation 18: staffing: there was a failure to provide induction and training for all staff and to support staff with supervision and appraisals.
- Regulation 19: fit and proper persons employed: [as per regulation 18 above].

27. As a consequence, the service was rated as *'inadequate'*. It was put into special measures and, on 26th April 2021, a Notice of Proposal of Conditions was put in place. There was no response to that notice and on 7th June 2021, Conditions were imposed. They remain. The 7 Conditions are very comprehensive. They include: establishing effective systems within 28 days; filing a report within 28 days of the Conditions taking effect; filing reports on the first day of each month thereafter. Stephanie Duncalf told us that reports were filed for 5 months but not thereafter.

28. Between April 2021 and October of 2021, the CQC stayed in touch with the First Appellant Mrs Kiflom. It did subsequently appear that the service was improving, with the additional support of the Local Authority's Quality Improvement Team. The CQC decided to reinspect the service in November of 2021.

2nd Inspection: 17th November 2021

29. This was a comprehensive inspection which examined all five key questions referred to at paragraph 25 above. The inspection team noted that an office manager had been recruited and that there were indeed some significant improvements. The inspection concluded that although there were no longer breaches of regulations 9, 11, 12, 17 & 18, the service was still in breach of regulation 19: in particular there was a failure robustly to check employment history and obtain references prior to employing staff, and the service did not state how it would investigate the reasons for any leaving of previous employment. Although the service was moved out of special measures it was still rated as *'requiring improvement'*. The Appellants were served with a requirement notice for an action plan to be responded to by 20th January 2022; that was not received and had to be chased before it arrived.

3rd Inspection: 5th January 2023

30. On 22nd November 2022 Mrs Kiflom had told the CQC that she felt that there was no longer any breach of regulation 19. Initially the inspection looked at just two of the key criteria, Safe and Well-Led. But concerns were such that the criteria were effectively re-opened. The view of the CQC was that the following regulatory breaches were evident:

    - 12: new breach: safe care and treatment: medicine administration records had not been fully completed so as to demonstrate that medications had been administered as prescribed; it was felt that

systems and processes were not in place to ensure safe medicine management; Mrs Kiflom failed to produce records to evidence that staff competencies to administer medicines safely had been checked.

- 17: new breach: good governance: the Appellants' governance systems had failed to identify areas of improvement as found during the inspection.
- 18: new breach: staffing: in November of 2022 Kathryn Kishere asked Mrs Kiflom to send the CQC a statutory notification because it appeared that a member of staff had taken into a service user's property a friend who had not been DBS-checked as to potential convictions and cautions. As at 12th January 2023 Mrs Kiflom had still not sent in that statutory notification.
- 19: continuing breach: fit and proper persons employed: there was a failure to ensure all staff had provided a full and proper employment history, references, and reasons for leaving any previous employment in the health and social care sector.

31. On 17th January 2023, the CQC sent out a warning notice to be complied with by 11th April 2023. On 14th April of 2023, in a telephone call, Mrs Kiflom asked when a further inspection would take place; she did not feel that the service would be compliant. At an internal CQC meeting on 26th April 2023, it was decided to give the Appellants more time and that there would be a further inspection some 12 weeks after the date by which the service had been asked to comply with the warning notice; at that internal CQC meeting it was felt that this approach was fair and proportionate, allowing the service more time to put things right; it also allowed time for a further support/monitoring visit from the local authority's Quality Improvement Team.

32. On 17th May 2023, the local authority's Quality Improvement Team asked Kathryn Kishere to attend a meeting. There she was told that a recent monitoring visit by the Team had found the service to be disorganised, with systems not robust and audits not effective. The view of the local authority was that it was effectively coaching the First Appellant on governance and systems which should already have been in place, and that the local authority was repeating information previously given by the Team and the CQC since the first inspection in 2021. The Team told the CQC that the First Appellant had informed them that they were not able to afford a deputy manager or registered manager. Kathryn Kishere's first statement records that the Team also told her that despite monitoring visits from them and ongoing guidance, support and signposting, the First Appellant was in their view failing to improve the service and that the Team had concerns about the ongoing suitability of the provider.

4th & Final Inspection: 1st June 2023

33. We will not deal with this in detail at this point because at the hearing Mrs Kiflom did contest some of the findings relied upon. We will make our own findings below. But suffice it at this stage, to say that this was a targeted inspection. Such inspections are intended to address particular areas of concern; they do

not look at all the criteria and so do not result in a new rating. On 1st June 2023 some improvements were noted; in particular the recruitment process had been improved and the service was no longer felt to be in breach of regulation 19; moreover, improvements had also been made for the gathering of feedback from service users. However, the CQC took the view that not enough improvements had been made and that indeed that the service was in both new and continuing breaches of other regulations. In the view of the CQC this also meant that the Appellants had failed to comply with the warning notice. At some stage prior to the 4th inspection, the Appellants had also moved address without notifying the CQC.

34. The CQC held an internal management meeting on 7th June 2023. It was agreed by all members of the team that there should be cancellation of the 1st Appellant's and 2nd Appellant's registrations. In her statement Kathryn Kishere says that the rationale for that decision was that the Appellants had failed to improve the service despite being afforded multiple opportunities to do so. As Stephanie Duncalf was to put it in her witness statement: the CQC had *no confidence in the manager's ability to be at the helm of a service protecting the safety and wellbeing of service users. The Appellant had also demonstrated a lack of skills, competence and understanding of their responsibilities as a registered manager in adhering to the 2014 Regulations, placing service users at significant risk of harm*. Initially consideration was given at that meeting as to whether it would suffice to place Conditions on the registrations. But that was deemed inadequate given that there had been non-compliance with the Conditions already in place. A further question which arose was whether the CQC should take criminal enforcement action in respect of regulation 15 (failure to notify change of address) and regulation 18 (failure to notify to the CQC any incident which is reported to or investigated by the police). But the CQC decided that criminal enforcement would not be proportionate. It was also decided that, given the involvement of the local authority's Quality Improvement Team and the undesirability of leaving service users stranded, it would not be proportionate to issue an urgent Notice of Proposal to Cancel Registration. Nonetheless the CQC had regarded some of the breaches evident on 1st June 2023 as extreme.

35. On 22nd June 2023, the CQC issued to the Appellants non-urgent Notices of Proposal to Cancel Registration. Those Notices set out the alleged breaches of regulation in some detail. The Appellants were notified that they had a right to make written representations within 28 days of service of the Notices. The CQC also had a discussion with the 1st Appellant about her right to make representations. But the CQC did not receive any such representations from either Appellant and, on 24th July 2023, the CQC issued to each of the Appellants section 28 Notices of Decision to Cancel Registration.

36. In July of 2023, the local authority decided to cancel its contract with the 2nd Appellant and began an incremental withdrawal of service users from their care. The evidence given at the hearing was a little uncertain on the point, but it appears that by October/November of 2023 the 1st and 2nd Appellants had no service users at all and that that remained the position until 6th May 2024.

37. On 20th August 2023 the 1st and 2nd Appellants appealed.

38. On 6th May 2024 the Appellants took on the one service user they still have today.

Summary of Appellants' Response to Allegations of Breaches

39. The 1st Appellant's Reasons accompanying her Appeal of 20th August 2023 read as follows:

I wish to fully acknowledge the gravity of the concerns highlighted by the CQC. In my role of overseeing our services, I accept the entirety of the responsibility and express profound regret for any lapses in our unwavering commitment to deliver outstanding and safe care. The well-being of our service users remains a paramount concern, and I deeply apologise for any shortcomings that have given rise to this situation.
To address these concerns, I have undertaken several proactive measures. I am advancing my professional development by re-enrolling for the NVQ Level 5, which aligns with my initiative to fill any skills gap and to be better poised to ensure the excellence of our service delivery. I have updated my training in key areas, including Safeguarding in Mental Capacity, Line Manager Training, and Medication Management, and am devoted to continuous learning. Moreover, I have recently undergone comprehensive training in auditing and governance, which has further refined our protocols. My ongoing mentorship with an esteemed domiciliary care provider is also invaluable, broadening my horizons and sharpening my managerial acumen. Recognising areas for growth, I am relentless in my pursuit of excellence in leadership within the regulated service environment. Additionally, we are fortifying our team structure: we have pinpointed a prospective registered manager with the necessary experience and expertise, and we are enhancing our office roster to include a deputy manager, coordinator, and administrator, along with an ensemble of field care supervisors.
I would also like to draw your attention to the commendations and positive feedback we have received from our clientele, their families, and other professionals. Our local council has acknowledged our genuine care and prompt responsiveness to our clients, sentiments that are also echoed in our CQC ratings.
Knowledge and training, while indispensable, are effective only when seamlessly integrated into our care operations. I am fiercely dedicated to rectifying past oversights and ensuring our services uphold the highest standards. In doing so, I aim to rebuild the trust of our service users, their families, and the CQC.
I earnestly appeal to the First-tier Tribunal to consider my concerted efforts, seeking an opportunity to redress and improve our services. This ordeal has only bolstered my commitment to our community's care needs. I remain hopeful that the Tribunal will regard my initiatives favourably and allow me to further our community engagement.

40. The 1st Appellant's Appeal Application Form of 20th August 2023 acknowledged that there were several failings within the company but stated that they had now

been addressed. Training Certificates and Action Plans were attached. The Action Plans contained the following concluding comment: *This is my revised action plan. The reason I have completed this is because I recognise what is failing. There are lots of things that must be implemented to ensure that we improve our delivery of service and ensure that everyone is safe. I am prepared to ensure that things are improved, and all notices are corrected, safeguarding's are completed, investigated, evidenced, and learnt from*. *I have been communicating with another provider who is willing to guide and assist me. I realise my responsibilities, I recognise my weaknesses and will endeavour to train, learn, and improve my skills and knowledge required to manage a regulated activity. When an action has been completed, flag rating will change, a record will be kept of the change and forwarded to the relevant authorities*.

41. The 2nd Appellant's reasons accompanying their Appeal of 20th August 2023 read as follows:

I am writing on behalf of Tender-Hearted Limited to formally appeal the decision made regarding The Notice of Decision to cancel our Registration as a service provider in respect of regulated activity. We understand and acknowledge the concerns that have been raised regarding our practices, and we wish to assure the Tribunal of our unwavering commitment to rectifying these matters with utmost diligence and sincerity.
Admission and Rectification:
At the outset, we acknowledge and sincerely apologize for our past failings. It is of paramount importance to us to learn from these setbacks and ensure they never reoccur. Since the issues were raised, we have undertaken significant steps to address each concern comprehensively.
Training:
We have introduced a rigorous training program for our staff that focuses on the identified areas of concern. This training ensures that every individual in our organization understands their responsibilities, the best practices in respective roles, and the importance of adhering to the highest standards.
Robust Auditing:
Recognizing the importance of continuous oversight, we have implemented a robust auditing system.
The aim of this audit is not merely to tick boxes but to foster a culture of continuous improvement and vigilance. This covers all critical areas including governance issues, medication management, mental capacity assessment, safeguarding, incidents/accidents/falls, infection control, person-centred care, capability assessment, consent, and ensuring the rights to choose for those under our care.
Safeguarding and Mental Capacity:
We've made it our utmost priority to ensure the safety and welfare of those under our care. We have instated clear protocols that strictly adhere to safeguarding standards. Additionally, we have emphasized the importance of understanding and respecting the mental capacity of every individual, ensuring that their autonomy, dignity, and rights are upheld consistently.
Quality Assurance
Tender Hearted Ltd would promptly acknowledge any concerns raised by the CQC, assuring all stakeholders of their dedication to rectify the highlighted

issues. They'd initiate a thorough analysis of the CQC report, cross-referencing it with internal data. A Quality Improvement Task Force would then be formed to develop an action plan, with particular emphasis on addressing training needs, revising policies, and enhancing monitoring systems. Engaging with stakeholders, especially service users and families, would be pivotal in the improvement process. The company would prioritize fostering a culture of continuous improvement, regularly gathering feedback from all relevant parties to measure the effectiveness of implemented changes. Constant communication with the CQC would be maintained, and external expertise sought if necessary. Through these proactive measures and a commitment to transparent communication, Tender Hearted Ltd aims to uphold and elevate their quality standards.

Value of the CQC Registered Manager to Tender Hearted Ltd:

The addition of a CQC Registered Manager further bolsters Tender Hearted Ltd's commitment to service quality:

Assurance: By ensuring that all operations are compliant with CQC standards, the manager provides a reassurance to stakeholders and clients about the calibre and safety of the services Tender Hearted Ltd offers.

Operational Excellence: Utilizing their industry-specific expertise, the manager optimizes operational processes, ensuring the services are efficient, productive, and of the highest quality.

Stakeholder Trust: Acting as the primary liaison with the CQC, the manager fosters a transparent communication channel, thus strengthening the bond of trust with service users, their families, and other regulators.

Through these measures and unwavering commitment to transparent communication, Tender Hearted Ltd aims not just to meet but elevate quality standards.

<u>Commitment to Continuous Improvement</u>:

While we have put in place these measures, we are not complacent. We are devoted to continual review and enhancement of our processes, embracing feedback, and consistently evolving to serve better. Above all we have short listed registered manager with experience The CQC Registered Manager brings significant value to Tender Hearted Ltd by who will working alongside a deputy manager, a coordinator, and an administrator.

Assurance: Ensuring compliance with CQC standards, the manager instils confidence among stakeholders and clients about the quality and safety of services offered.

Operational Excellence: Drawing from their specialized knowledge, they streamline operations, leading to enhanced efficiency, productivity, and overall service quality.

Stakeholder Trust: As a point of contact for the CQC, the manager facilitates transparent communication, building trust among service users, families, and regulators.

In conclusion, while we deeply regret our previous shortcomings, we believe they have served as an essential catalyst for our organization's transformation. We are not just reactive; we are proactive in ensuring the highest standards are met henceforth. We respectfully request the Tribunal to reconsider the decision, bearing in mind the sincere and concrete steps we have taken to rectify past mistakes and ensure they remain firmly in our past. We understand the gravity of our previous missteps and commit to upholding and surpassing the

standards expected of us in the future. We humbly await your decision, and we are more than willing to provide further evidence of clarifications on any of the mentioned initiatives.

42. The 2nd Appellant's reasons accompanying their Appeal go on to deal in turn with the breaches alleged by the CQC. It is a lengthy document and we do not need to go through in detail. Suffice it to say that it addresses in turn some 27 breaches of regulation alleged by the CQC. It does not substantially argue with the findings of the CQC but seeks humbly to apologise for them, to explain them and to assure the CQC that they will not be repeated.

43. It is in our view striking that the Appeals and accompanying documentation filed by the 1st and 2nd Appellants on 20th August 2023 do not seek in any significant way to challenge the breaches alleged in the Notices of Proposal to Cancel.

44. On 22nd November 2023 and 6th December 2023, the 1st Appellant Mrs Kiflom filed witness statements in these proceedings. Again, we will not go through those statements in detail. Much in those statements consists of assurances about the future. Some concessions about past practice are made. But in paragraph 11 of her first statement Mrs Kiflom states that whilst she cannot claim to have an unblemished record in respect of regulatory compliance, perfection is not the metric against which she and the service should be held. In paragraph 12 of her 1st statement, she says that she finds it wholly unreasonable for the Respondent to seek to use the evidence gathered from the inspection on 1st June 2023 to justify the issue of the Notices of Decision. In paragraph 17 of her 1st statement Mrs Kiflom challenges the Respondent's stance on medication administration and suggests that they have made an assumption which constitutes an over-simplification of the position. In her 2nd statement Mrs Kiflom again does accept some issues with past practices. But at paragraph 9 she says that the CQC's concern about Mental Capacity Act assessments on 1st June 2023 was not accurate. In paragraph 13, in respect of a service user who had apparently locked herself into her home, Mrs Kiflom states that the Respondent did not need to be notified of this because the situation was being managed appropriately and the risk of the service user suffering harm from the incident was negligible at the time.

45. The Appellants' skeleton argument is dated 13th May 2024. Much of that argument concentrates upon improvements said to have been put in place since 1st June 2023, about the lack of any inspection since and about what the 1st Appellant therefore regards as the staleness of the evidence. But that skeleton argument also challenges the CQC's findings. In paragraph 12 the 1st Appellant states: *It is the Respondent's position on the basis of the inspection and earlier enforcement action that people had been placed at risk of significant harm. The Appellant disputes this position the content of which is included in the Scott Schedule. Further the Appellant states that it is an incorrect interpretation of the law for the Respondent to assert that breaches of regulation have been proven in the absence of allowing the person against whom allegations of breaching regulations is made to make representations against such allegations. The baseline cannot reasonably be that those alleged historic breaches are allowed to remain indefinitely without closer scrutiny. The*

Appellant asserts that it has provided sufficient information to render the allegations of breaches historically unsafe. Paragraph 16 states: *The Respondent has adopted an entrenched position against which it is reluctant to depart even when faced with evidence which clearly challenges the Respondent's version of events as they relate to the historical position nor presently*.

46. In respect of the 4th inspection of 1st June 2023 the Scott Schedule contains some 27 breach allegations. On that Schedule a column is provided for the Appellants' response to each of those 27 allegations. It is striking that, with the sole exception of allegation 17 in respect of the 2nd Appellant, the words *'This is disputed'* or *'This matter is disputed'* appear next to each CQC allegation.

47. In summary therefore, it is evident that the wholly apologetic flavour of the Appeal documents of 20th August 2023 has since been replaced by a far more combative tone. But, as will become apparent below, some of the allegations explicitly disputed on the Scott Schedule were accepted by Mrs Kiflom during her cross-examination at the hearing.

Findings of Tribunal

A: Tribunal's Findings as to Alleged Breaches Set out on Scott Schedule & Arising from 4th & Final CQC Inspection of 1st June 2023

48. Allegations against 1st Appellant. At the hearing Mrs Kiflom was taken through each of the allegations on the Scott Schedule at page A140 in the hearing bundle. That Schedule contains 7 allegations against Mrs Kiflom, the 1st Appellant. In cross-examination Claire Stevenson took Mrs Kiflom through the relevant Notice of Proposal to Cancel appearing at page B7 in the hearing bundle. We will summarise below the evidence and the 1st Appellant's position on each of those allegations:

Regulation 7: Requirements Relating to Registered Managers

(i) Allegation that 1st Appellant failed to gain necessary qualifications, skills and experience to manage the carrying on of regulated activity and so placed people at risk of harm: failure to complete additional training and in particular NVQ level 5 qualification in management of health and social care. Mrs Kiflom stated at the hearing that: she had not done the NVQ level 5 at the time but had completed it since, and now understands her responsibilities much better. [The Appellants' entry on the Scott Schedule stated that the 1st Appellant had completed the necessary training and had done additional since.] **Finding: breach not made out.**

(ii) Allegation that 1st Appellant failed to demonstrate she had the appropriate knowledge of applicable legislation and so placed people at risk of unlawful restriction: at time of inspection she told the CQC inspectors that she had not completed any Mental Capacity Act training since the last inspection: she said that she had been reading a lot, was now reading a lot more and that she was researching online and was using a compliance management company; she told the inspectors that

everyone using the service had their capacity assessed, something not in line with MCA principles, the MCA creating a presumption of capacity. Mrs Kiflom stated at the hearing that her colleague had done the assessments but any mistakes in the field were her responsibility; her colleague had not gone through MCA training; her own training was now improved. [The Appellants' entry on the Scott Schedule states that the 1st Appellant had appropriate knowledge, and that the Respondent's evidence represented a misunderstanding of the position at the inspection and currently.] **Finding: breach made out**: 1st Appellant failed to ensure that only patients coming within ambit of MCA were assessed and that such assessments were done only by those qualified to do them.

(iii) Allegation that 1st Appellant failed to demonstrate that she had the skills and competence to understand the requirement to safeguard service users from potential abuse and service users had been placed at risk of harm: at inspection of 1.6.23 a CQC inspector had reviewed staff minutes of 27.4.23 which stated that Mrs Kiflom had told staff that if medications are missed more than three times, it should be reported as a safeguarding issue. Mrs Kiflom stated at the hearing that that referred to skin creams; but she accepted that that skin creams still fell under the category of medications; they had an alert system in place as to this; she mainly used the telephone; that was not robust enough as things were not written down; she agreed that she should not have told staff that they should only report if medication was missed three times; she knew better now; she accepted that even prompting a service user to take medication would be regarded as involvement in administering medication; in respect of the suggestion that it was not feasible to take on only service users who did not require medication, having re-thought, she accepted that most clients would need prompting or at least application of cream. [The Appellants' entry on the Scott Schedule states that the 1st Appellant had no intention of providing support with medication; a number of improvements have since taken place.] **Finding: breach made out**: advice given by 1st Appellant to staff was wrong; missed medications were inadequately noted; 1st Appellant displayed misunderstanding before and at hearing as to what constituted medication and involvement in medication, and as to likelihood of most service users requiring some form of medication.

(iv) Allegation that 1st Appellant failed to provide evidence to demonstrate management of medicines and failed to acknowledge a risk to Service User A: 1st Appellant failed to respond to a deadline of 8th June 2023 for assurances regarding safe management to medication; as 1st Appellant acknowledged in an email of 12th June 2023, Service User A was not given prescribed Sertraline for 14 days because it had run out. Mrs Kiflom stated at hearing that she was in difficult personal circumstances at the time; her daughter was ill and she was under tremendous stress; Mrs Kiflom agreed that she should have been more responsible and have reported it, but Service User A's daughter was responsible for ordering it from the GP; Mrs Kiflom was in touch with the surgery receptionist but could not be sure that she passed on information to the GP; she did not think of sending out an email asking people to look out

for consequences of missing medication; she assumed that the GP would tell her; but the GP was not aware that the service user was on that medication; Mrs Kiflom made a record in her diary; she accepted that the risk to Service User A was serious if medication was missed. [The Appellants' entry on Scott Schedule states that they had no intention of providing support with medication.] **Finding: breach made out**: failure by 1st Appellant adequately to respond to and report a potentially extremely serious and sustained failure to give a service user antidepressant medication.

Regulation 13: Safeguarding Service Users from Abuse and Improper Treatment

(v) Allegation that 1st Respondent failed to establish and implement robust procedures and processes to make sure service users were protected: according to an accident and incident form of 28.2.23 Service User A had been locked inside her home for over 4 hours: incident was reported to police and an ambulance took service user to hospital for observation: on 1st June 2023 Mrs Kiflom told inspector that she did not raise a safeguarding as no harm had come to service user; she was now thinking; she should have raised a safeguarding at there was potential harm as service user could have fallen; when asked if incident had been reported to CQC, Mrs Kiflom said that she didn't think it had to be reported to them. Mrs Kiflom stated at the hearing that in hindsight this should not have happened; going forward she knew she had to keep records; someone else called the ambulance; although a record was made of the incident in the office there was no record in the daily notes; the carers in question were using a paper rather than an electronic system; carers were monitoring the service user all the time through the letterbox; the service user did not seem bothered by the situation; on reflection the systems were not robust enough but she had now taken action; she did phone safeguarding but forgot to tell the inspectors about it on 1st June 2023; a lot happens during an inspection and one's mind is not the same. [The Appellants' entry on the Scott Schedule state that there was no need to report the incident to safeguarding; she was under constant monitoring and there was no risk of harm; carers could see her moving freely around; no signs of distress were evident; a safeguarding report was initiated but the conversation was not documented.] **Finding: breach made out**: 1st Appellant failed to have robust procedures in place to safeguard service users; failed to have adequate system of making records, to extent that she apparently forgot to tell the CQC on 1st June that she had initiated a safeguarding report; service user clearly at risk, fact that she was taken by an ambulance crew to hospital for observations speaking for itself.

Regulation 17: Good Governance

(vi) Allegation that 1st Appellant failed to improve service and demonstrate skills and competence required to manage the regulated activity: on 1st June 2023 Mrs Kiflom told the inspectors that the service was now compliant; she was assured of this because she was now doing audits;

it wasn't as effective when she was doing them verbally; the audits were not effective at identifying concerns; they did not contain action plans and were not signed, dated or verified. Mrs Kiflom stated at the hearing that she agreed that the audits were unsatisfactory but that the issue had now been addressed. [The Appellants' entry on the Scott Schedule states that it is not agreed that the concerns identified prove that the service was in continued breaches of the 2014 regulations.] **Finding: breach made out**: the audits were for the reasons given above wholly inadequate for the purposes of safeguarding patients.

(vii) [Not addressed in cross-examination as covered by earlier allegations.]

49. Allegations against 2nd Appellant. The Scott Schedule at page A140 in the hearing bundle. That Schedule contains 20 allegations against the 2nd Appellant. In cross-examination Claire Stevenson took Mrs Kiflom through the relevant Notice of Proposal to Cancel appearing at page B215 in the hearing bundle. We will summarise below the evidence and the 2nd Appellant's position on each of those allegations:

Regulation 12: Safe Care & Treatment

(i) Allegation that 2nd Appellant failed to regard nationally recognised guidance and do all that was reasonably practicable to mitigate risk, thereby placing Service User D at risk of harm: the inspection of 1st June 2023 revealed that the service user had missed 7 daily doses of Risperidone, an antipsychotic, because the medication was unavailable: emails showed that the service had requested medication but did not show that that the GP had been informed that Risperidone had not been taken for 7 days: review by the CQC of the service user's care plan showed that it did not advise staff as to risks of not taking medication and what actions should be taken to mitigate risk of harm: NHS guidance state that Risperidone should not be stopped suddenly because of the risk of withdrawal symptoms. Mrs Kiflom stated at the hearing that: she accepted that service user had not had Risperidone for 7 days, that GP was not informed of this and that instructions were not given to staff as to what action they should take; she agreed that she had failed to recognise the NHS guidance. [Appellants entry on Scott Schedule states that the Respondent has failed to properly contextualise the nature of the risks to service user D.] **Finding: breach made out**: clear failure adequately to respond to a potentially extremely serious and sustained omission to give a service user antipsychotic medication.

(ii) Allegation that 2nd Appellant failed to regard nationally recognised guidance and do all that was reasonably practicable to mitigate risk of harm to service user B: Service User B was without antidepressant Sertraline for 14 days; although medication was ordered, emails did not show GP was told about lack of medication; NHS Guidance states that Sertraline should not be stopped suddenly due to risk of withdrawal symptoms. [The Appellants state on the Scott Schedule that the Respondent has failed to properly contextualise the nature of the risks to service user B.] At the hearing Mrs Kiflom stated that she agreed the allegations. **Finding: breach made out**: gross failure to mitigate risk.

(iii) Allegation in respect of Service User A that 2nd Appellant failed to do all that was a reasonably practicable to ensure proper and safe management of medicines and service user was therefore place at risk of harm: daily medicine audit showed that in March of 2023 and for 22 days staff did not sign to confirm administration of medication; on 8th June 2023 and 11th June 2023 care records which were provided did not reflect names of medicines or times given for 3 days. At the hearing, Mrs Kiflom agreed that signatures were missing for 22 days; she agreed that the records of 8th and 11th June 2023 were deficient, although she said that she had since found evidence that an antibiotic was administered; she accepted that she had not done all that was reasonably practicable to ensure safe management and mitigate risk. [The Appellants state on the Scott Schedule that the Respondent has failed to properly contextualise the nature of the risks to service user A.] **Finding: breach made out**: inadequate record keeping which caused significant risk to service users.

(iv) Allegation in respect of Service User A that 2nd Appellant failed to do all that was practicable to mitigate risk of harm: daily medicine audit revealed that between March and May of 2023 staff recorded *'not observed'* or *'no visit'* for the giving of 8.00 pm Mirtazapine and Memantine on 56 occasions: the daily medicine audit stated that *'Service User A had said that she would take them later when she went to bed'* or 'Prepared and left out for Service User A to take them later when she goes to bed'; that was not in line with service's Administration of Medicines Policy and Procedure which states, *'Do not leave out medication for the service user to take at a later time.*' At the hearing Mrs Kiflom told us that: she agreed that the entries had been made; although it was not in tune with the policy, this was a choice open to the service user under the Mental Capacity Act; but she accepted that the Care Plan did not contain instructions on this issue; when asked if there had been a failure to do all possible to mitigate risk, she replied '*yes and no'*, stating that carers were aware of the situation through notes. [The Appellants state on the Scott Schedule that the practice of letting Service User A take their medication later was mitigated against by checks that medication had indeed been taken and having in place strategies to prevent consumption not in line with prescriber's instructions; *'It is the Appellant's position that it does not support service users with the administration of medication.'*] **Finding: breach made out**: clear contravention of service policy resulting in high risk to service users of overdoses or inadequate medication.

(v) [Similar allegation to (iii) above but concerning Service User B. Mrs Kiflom was not specifically questioned about this.]

(vi) Similar allegation to (iii) above but concerning Service User C. Mrs Kiflom was not specifically questioned about this.]

(vii) Similar allegation to (iii) above but concerning Service User D. Mrs Kiflom was not specifically questioned about this.]

<u>Regulation 17: Good Governance</u>

(viii) Allegation that 2nd Appellant failed to operate effective systems and

process to assess, monitor and improve the quality and safety of the service and failed to maintain adequate records, thereby placing service users at risk of harm: inspection disclosed that between March and May of 2023 in respect of Service Users A, B, C & D that staff had not always signed to confirm administration of medicines and had instead recorded *'no visit'; 'not taken'; 'no reason provided'* or '*not observed*'; Mrs Kiflom had told inspectors that she could not provide evidence to show staff had been contacted after each admission or what action had been taken to show the medication had been given; actions were not recorded on the audits or care records. At the hearing Mrs Kiflom accepted the deficiencies in the audits. [On the Scott Schedule the Appellants did '*not agree that the medicine audits placed service users at risk of harm'*; they stated that it was not the Appellants' intention to provide medication to service users.] **Finding: breach made out**: inadequate record-keeping creating significant risk of harm to service users.

(ix) Allegation that 2nd Appellant was unable to demonstrate assurance given in email on 8th June 2023 that Service Users A, B, C & D were being given their medication. At the hearing Mrs Kiflom agreed that the audits were deficient. [The Appellants' comments on the Scott Schedule are the same as in respect of (viii) above]. **Finding: breach made out**: inadequate record-keeping creating significant risk of harm to service users

(x) Allegation that 2nd Appellant failed to operate effective systems and process to assess, monitor and improve the quality and safety of the service. At hearing Mrs Kiflom said that at that time they were not running an effective system. [The Appellants' comment on the Scott Schedule *that 'It is the Appellant's position that the systems and processes that were in place were sufficient.*'] **Finding: breach made out**: ineffective systems were being operated which put service users at risk.

(xi) Allegation that 2nd Appellant was unable on date of inspection to show completed audits of the service: Mrs Kiflom told the inspectors, *'I do the medication audits, they should be done monthly, the last one I did was maybe February or March, but I can't find it'*. At the hearing Mrs Kiflom agreed that the audits did not contain the information they should have. [On the Scott Schedule the Appellants stated that each service user was not at risk of harm.] **Finding: breach made out**: ineffective system operated which put service users at risk.

(xii) Allegation that safeguarding, dignity and medicine audits supplied by 2nd Appellant provided both inadequate and duplicated information and some were unsigned. At the hearing Mrs Kiflom stated that she agreed that the audits were inadequate. [On the Scott Schedule the Appellants state that there is no legal requirement to audit safeguarding records.] **Finding: breach made out**: ineffective systems operated which put service users at risk.

(xiii) Allegation that 2nd Appellant failed to provide robust and effective systems and processes to regularly audit the service, improve its quality and safety and placed service users at risk: on 1st June 2023 Mrs Kiflom showed a cupboard where she said completed paper audits

were stored; the files there were found to contain only blank templates; Mrs Kiflom said, *'I'm still trying to put things together, I should not have started, I will probably get a consultant to do it, it's clear that I am not'*; separately, the inspector was unable to find daily care records before, during and after the incident during which Service User B had been locked in her home for over 4 hours; Mrs Kiflom told the inspector that an ambulance had been called but she did not know by whom. At the hearing Mrs Kiflom agreed the allegation. [In the Scott Schedule the Appellants stated that they did not consider Service User B to be at risk of harm; neither did the local authority safeguarding team as it was confirmed there was no need to raise a safeguarding with them.] **Finding: breach made out**: ineffective systems operated which put service users at risk.

(xiv) [This had already been covered earlier and Mrs Kiflom was not specifically questioned about this.]

(xv) Allegation that the 2nd Appellant failed to know and understand local safeguarding policy and procedure: on 7th June 2023 contacted the service about medicine administration concerns; Mrs Kiflom confirmed to the inspector that these safeguarding concerns had not be raised to the local safeguarding team as per local safeguarding policy and procedures. At the hearing Mrs Kiflom did not challenge that allegation. [On the Scott Schedule the Appellants stated that the matter was disputed and that the Appellant aligned its safeguarding policy with local safeguarding requirements.] **Finding: breach made out**: failure to understand safeguarding policy and procedure.

(xvi) Allegation that 2nd Appellant failed to establish and effectively operate systems and processes to ensure that staff understood and worked within the requirements of the MCA 2005, thereby placing service users at harm: there was an assessment of Service User B that due to cognitive impairment he lacked capacity in relation to *'daily living'*; that finding was not decision-specific and therefore put them at risk of not being empowered to make daily decisions and of being unnecessarily restricted. At the hearing Mrs Kiflom agreed with that allegation. [On the Scott Schedule the Appellants state that the system established and operated by the Appellant worked in line with the requirements of the MCA 2005.] **Finding: breach made out**: there was a fundamental misunderstanding of the MCA which put this service user at high risk of unwarrantable restrictions.

(xvii) Allegation against 2nd Appellant that a breach similar to that in (xvi) had occurred but in respect also of Service User C, who had been assessed as having both dementia and a brain injury: however the assessment had been only partially completed; it stated, *'I believe they have capacity at this time'*; but it gave no further detail. At the hearing Mrs Kiflom said that she agreed the content of that allegation. [On the Scott Schedule the Appellants state that at all times it managed Service User C in line with the requirements of the MCA 2005.] **Finding: breach made out**: a fundamental misunderstanding of duties under the MCA, which resulted in significant risk to a patient who may well not have had capacity.

Regulation 11: Need for Consent

(xviii) Allegation that 2nd Appellant put service users at risk though inadequate understanding of requirements of MCA 2005: on 1st June 2023 the inspection team found partially-completed mental capacity assessments for 13 service users regardless of their diagnosis: that was not in line with the requirements of the MCA 2005. [On the Scott Schedule the Appellants state that the Appellant was not acting in a non-Mental Capacity Act manner.] **Finding: breach made out**: a fundamental misunderstanding of the MCA.

(xix) Allegation that 2nd Appellant put Service User E at risk though inadequate understanding of requirements of MCA 2005; a staff member had completed a general assessment for *'daily living'*; the form stated that a best interests decision was not required; the form also confirmed that Service User E was not present during the assessment; none of that was in line with the requirements of the MCA 2005. At the hearing Mrs Kiflom agreed that this task had been attempted by someone not trained to do so and that she took all responsibility for it. [On the Scott Schedule it is stated that *'It is the Appellants' position that staff were acting in accordance with the requirements of the Mental Capacity Act 2005 and the associated code of practice. The records reviewed by the Respondent was not reflective of the manner in which consent was obtained.'*] **Finding: breach made out**: the person filling out the assessment can only be regarded as someone totally unfamiliar with the requirements of the MCA 2005.

(xx) Allegation that 2nd Appellant put Service User F at risk though inadequate understanding of requirements of MCA 2005: the assessment did not show that show that the staff member had been with Service User F at the time of the assessment and no best interests decision had been completed. [On the Scott Schedule the Appellants made the same comments as they had done in respect of item (xix).] **Finding: breach made out**: a wholly inadequate attempt to address the requirements of the MCA 2005.

50. We find therefore that on the balance of probabilities the Respondent has comprehensively established that at the time of the fourth and last inspection on 1st June 2023 the regulated activity was being carried on otherwise than in accordance with the relevant requirements. But that is not the end of our task because we must then go on to decide whether that remains the case today. We remind ourselves that the Tribunal must hear the appeal de novo, effectively stepping into the shoes of the Respondent to decide, on the basis of all the evidence available to it at the date of the hearing, whether registration should be cancelled. In looking at this crucial aspect of the case we bear very much in mind the undisputed fact that the Respondent has not inspected the service since 1st June 2023.

B: Should the Registration of the 1st and 2nd Appellants be Cancelled as of Today?

51. Having considered with great care this additional point, we find that the

Responsible authority has on the balance of probabilities established that the registration should indeed be cancelled as of today. Our reasons for making this finding are as follows:

52. The 2nd Appellant is demonstrably incapable of carrying on the regulated activity in accordance with the relevant requirements. The service has been inspected on no fewer than four separate occasions between March of 2021 and June of 2023. On each occasion it has fallen short of the required standards. As is apparent from our Chronology above, both the local authority and the CQC have spent inordinate amounts of time attempting to assist the Appellants to put things right. The service was put into special measures. Warnings have been issued and Conditions put in place. There have been exchanges of emails. There have been occasional improvements in a given area. But overall, there has been none at all and the situation could even be said to have worsened. Time and time again the 1st Appellant has given the Respondent assurances which have come to nothing. The Appellants have failed to supply antipsychotic and antidepressant medication and failed to take any advice regarding the dangers of not taking it. The 1st Appellant has displayed a quite extraordinarily negligent and cavalier approach to the Mental Capacity Act. Both at and prior to the hearing she has shown a fundamental misunderstanding of the nature of medication and the implications of prompting a service user to take medication. We regard all this as extremely serious. There was no suggestion during the hearing that Mrs Kiflom had been untruthful in her evidence. But we find that the history of repeated failures to meet acceptable standards shows that the 1st Appellant – whatever her other skills may be – is probably constitutionally incapable of ever meeting them. We note her evidence to us that during the six months before the inspection of 1st June 2023 she was working full time in the 2nd Appellant's office. But the inspection which followed still disclosed numerous systemic faults. That being the case, we find even were it possible to conduct a meaningful 5th inspection today, that inspection would probably again throw up a whole variety of serious concerns and have no outcome significantly different from the 4 inspections so far.

53. Since the inspection of 1st June 2023, the 1st Appellant has shown very little understanding of or insight into the regulated activity and her role within it. As we have said the initially apologetic tone of the Appeal documents was replaced in later documentation by a much more confrontational attitude. Initial acceptances of breaches were later retracted. A number of the Appellants' contentions on the Scott Schedule are frankly absurd; for example, that there was no intention to provide support with medication, that failures to keep proper records as to medication administration did not pose a risk to patients, that the Appellants established and operated systems that worked in line with the requirements of the MCA 2005 and that in relying upon on 7 missed doses of Risperidone, the Respondent had *'failed to properly contextualise the nature of the risks to service user D'*. But in any event, as is clear from our findings in relation to the 1st June 2023 inspection, Mrs Kiflom in evidence frequently accepted allegations which were denied on the Scott Schedule. She appeared to understand for the first time during the hearing that a skin cream might be a medication. It is evident to us that she has wholly misunderstood the primary role of the CQC, which is to regulate rather than provide support. She has

regarded the period between March of 2021 and June of 2023 as a progressive journey upon which the CQC and local authority have been accompanying and supporting her. But the CQC is not there to assist Mrs Kiflom by tutoring her and affording her the opportunity later to produce notes which should have been present in the form of proper records on the date of the inspection. The role of the CQC is to prevent risk to service users. It is evident to us that the service's difficulties between March of 2021 and June of 2023 are attributable not only to Mrs Kiflom's lack of ability to manage but also to her lack of insight and understanding. It is clear to us that that lack of understanding and insight persists today. It is therefore an additional reason for our conclusion that any further inspection would throw up continuing and additional problems and that the registrations should therefore be cancelled today.

54. A further inspection is not feasible. There can of course be cases in which following a failed inspection an established service has made changes which require inspection before a Tribunal can establish whether the registration should be cancelled as at the date of the hearing. But this is not one of those cases. The Respondent's submission is that although the 1st Appellant has sent material to the CQC since 1st June 2023, that material consists essentially of aspirations and plans rather than evidence. We agree, because between about November of 2023 and 6th May 2024 the 2nd Appellant had no service users at all; even now there is only one; at the time of the June 2023 inspection there were 16. The CQC cannot realistically inspect mere plans and aspirations; it needs to know whether those plans and aspirations are being carried into effect and, without significant numbers of service users, any inspection would in our view be theoretical and therefore pointless. Even were we today to allow time for a 5th inspection, that would necessitate the addition of many more service users and, with the absence of local authority service users and the spectre of cancellation hanging over the Appellants, this is very unlikely to happen. Stephanie Duncalf noted that, in respect of the comprehensive Action Plan given to us on the first day of the hearing, the target implementation dates were all in August of 2023; she felt such an early date to be wholly unrealistic and, on the evidence before us, we agree. We take into account here too Mrs Kiflom's evidence, that a new electronic system has recently been installed and that the people working for her are largely 'bank' workers.

55. For these Reasons we find that the evidence before us is not *'stable'* and that the Respondents have indeed established on the balance of probabilities that, even though there has been no inspection for almost a year, the registration should be cancelled as of today.

C. Should Conditions or Further Conditions be Added?

56. The 1st Appellant did ask us to consider Conditions. But the Respondent adamantly opposed this, pointing out that Conditions are already in force and have not resulted in any significant improvement; indeed they are not even being complied with. We agree with the Respondent and find on the balance of probabilities that there is no prospect of further Conditions resulting in an

improvement which the Conditions currently in force have failed to achieve.

D. Proportionality

57. We have already noted the history of failed inspections and the failed attempts through advice, warnings and Conditions to effect any significant improvement. It is clear to us that cancellation is now realistically the only step to take. The Respondents have satisfied us on the balance of probabilities that cancellation of registration is indeed proportionate.

DECISION OF TRIBUNAL

58. The appeals of the 1st and 2nd Appellants are dismissed.

59. The Tribunal confirms the Respondent's Notices of Decision of 24th July 2023 to cancel the registrations of both the 1st Appellant and the 2nd Appellant.

Judge Francis Chamberlain

Date issued: 30 May 2024