

First-tier Tribunal Care Standards

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

Neutral Citation Number: [2024] UKFTT 00500 (HESC)

[2023] 5085.EA

Hearing held remotely by video link
on 29 May 2024

BEFORE
Tribunal Judge Brandon
Specialist Member Roger Graham
Specialist Member Dorothy Horsford

BETWEEN:

Tipson Healthcare Limited

Appellant

-v-

Care Quality Commission

Respondent

AMENDED DECISION

The Application

1. Tipson Healthcare Limited (the Appellant) appeals against the Respondent's Notice of Decision (NoD) dated 27 July 2023, to cancel the Appellant's registration as a service provider in respect of the Regulated Activity of Personal Care (the Regulated Activity) at Tipson Healthcare Limited, 3 The Quadrant, Coventry, West Midlands CV1 2DY.
2. The NoD was issued pursuant to Section 17(1)(e) of the Health and Social Care Act 2008 ("the Act") and Regulation 6(1)(c) of the Care Quality Commission (Registration) Regulations 2009 (the 2009 Regulations) and served under section 28(3) of the Act. The Notice of Decision was issued on the basis that the Appellant had been dormant, meaning it had not been carrying on the Regulated Activity, for a continuous period of twelve months or more.

Attendance

3. Mrs Rachael Oluwatoyosi Onojah, Director of Tipson Healthcare Ltd, attended the hearing. Mrs Christiana Awe, social care consultant, represented the Appellant.

4. Mr Oliver Connor of counsel represented the CQC. The CQC called one witness, Miss Julia Spencer-Ellis, Senior Specialist in Adult Social Care.
5. Also in attendance from CQC were; Ms Antonia Rookley, CQC Senior Specialist, and Miss Winifred Mbieli, Lawyer (CQC). They took no part in the hearing but attended as note-takers and observers.

Restricted reporting order

6. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any service users so as to protect their private lives.

Late Evidence

7. The Appellant's late evidence was admitted at the adjourned hearing on 22 April 2024. It was contained in a bundle of 97 pages. We considered it alongside the main hearing bundle of 445 pages. In addition, the Respondent served a skeleton argument and a copy of Regulation 17 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936.

Background

8. The Appellant was registered as a service provider in respect of the Regulated Activity of Personal Care (the Regulated Activity) on 15 December 2021.
9. It was common ground between the parties that the Appellant was initially dormant, not carrying on the Regulated Activity. This was confirmed in an email from the Appellant to CQC on 23 May 2023.
10. On 20 June 2023, the Respondent served a notice of proposal to cancel the Appellant's registration on the basis they had not been carrying out the Regulated Activity for 12 months. The Appellant responded to this on 14 July 2023, arguing they were providing the Regulated Activity to a single client and submitted documentation relating to this client for a period in July 2023. These documents included an initial needs assessment, a care plan, an invoice and a timesheet.
11. The Respondent was not satisfied that this provided evidence of the Regulated Activity being delivered and on 27 July 2023 communicated by letter its decision to cancel the Appellant's registration.
12. The appeal was lodged on 21 August 2023.
13. Correspondence continued between the parties whilst the appeal was ongoing, and the Appellant submitted further evidence to show the Regulated Activity was being carried on. This included care plans dated between August and November 2023, logs of care between August and October 2023, timesheets and invoices.

Legal Framework

14. Section 3 of the Health and Social Care Act 2008 Act (the 2008 Act) sets out the CQC's main objectives as:

... to protect and promote the health, safety and welfare of people who use health and social care services and that the CQC is to perform its functions by 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.

15. Section 17 of the Health and Social Care Act 2008 states:

(1) The Commission may at any time cancel the registration of a person ("R") under this Chapter as a service provider or manager in respect of a Regulated Activity—

- (a) on the ground that R has been convicted of, or admitted, a relevant offence;*
- (b) on the ground that any other person has been convicted of any relevant offence in relation to the 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;*
- (d) on the ground that R has failed to comply with a requirement imposed by or under Chapter 6;*
- (e) on any ground specified by regulations.*

16. In this matter section 17(1)(e) was relied upon by the CQC.

17. The relevant regulation was Care Quality Commission (Registration) Regulations 2009/3112 reg. 6 Cancellation of registration:

(1) The grounds specified for the purposes of section 17(1)(e) of the Act as grounds on which the Commission may cancel the registration of a registered person in respect of a Regulated Activity are that the registered person—

- (a) has made a statement which is false or misleading in a material respect, or provided false information, in relation to any application for—*
 - (i) registration, or*
 - (ii) the variation or removal of a condition in relation to their registration;*
- (b) has failed to pay any fees payable under provision under section 85 of the Act; or*
- (c) if the registered person is a service provider, is not, and has not been for a continuous period of 12 months ending with the date of the decision to cancel registration, carrying on that Regulated Activity.*

18. The CQC relied upon regulation 6(1)(c).

19. Personal Care is defined in Regulation 2 (Interpretation) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (“the 2014 Regulations”) as follows:

“Personal Care” means—

(a) physical assistance given to a person in connection with—

(i) eating or drinking (including the maintenance of established parenteral nutrition),

(ii) toileting (including in relation to the process of menstruation),

(iii) washing or bathing,

(iv) dressing,

(v) oral care, or

(vi) the care of skin, hair and nails (with the exception of nail care provided by a person registered with the Health and Care Professions Council as a chiropodist or podiatrist pursuant to article 5 of the 2001 Order), 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.

20. Section 32(3) of the 2008 Act sets out the powers of the Tribunal when deciding 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) 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.

21. The CQC requested that we uphold the decision, the Appellant requested we direct it is not to have effect and neither party requested any condition.

The burden and standard of proof

22. 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~~ **cancel** 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.

Appellant’s position

23. The Appellant accepted that it had previously been dormant for a period of 12

months or more, but that it was now providing the Regulated Activity of Personal Care.

24. Mrs Awe argued that Tipson Healthcare had been providing Personal Care from 11 July 2023 and had sent evidence to the CQC of this. Whilst there were differences in terminology between the parties, she argued that the Appellant's evidence described the Regulated Activity being carried on.
25. Mrs Awe accepted that there were some mistakes in record keeping and this was in part due to the pressure of the activity of the regulator.
26. Mrs Awe observed that CQC had requested documents, and Tipson had sent them, that CQC's interpretation of them did not reflect the care which had in fact been provided. She argued that there may be other care providers which use word documents to make a record of care as the Appellant did, that there may have been some errors in documents, but the appeal was not to discuss them, or the competence of Tipson in respect of record keeping.
27. Mrs Awe argued that where care plans recorded other non-regulated activities such as vacuuming, and had also referred to Personal Care, this was evidence that both had been provided.
28. Mrs Awe asked the panel to take account of the fact that the staff employed by the Appellant were from different places in the world and had different levels of literacy, perhaps leading to some use of different terminology when they recorded care.

Respondent's position

29. Mr Connor argued that the panel could not be satisfied the Appellant had carried out the Regulated Activity. It was agreed that between its registration on 15 December 2021 until 11 July 2023 the Appellant was dormant. If the Appellant could evidence even one incidence of the Regulated Activity being carried on in the last 12 months the Respondent would not have opposed the appeal, but this evidence had not been provided, he argued.
30. Mr Connor argued that the evidence of Miss Spencer-Ellis was that it should be easy for a provider to establish through documents that it was carrying out the Regulated Activity. The CQC looked for documents to demonstrate the intent to provide care; the care plan for instance, evidence of the care being delivered in care records and a third category of corroborative documents such as invoices and pay slips. Normally these documents would be considered in combination.
31. The Respondent felt that the corroborative documents did not demonstrate on their own the Regulated Activity being carried out. The Respondent submitted that the documents taken together and at their highest did not demonstrate this either. References to Personal Care in September 2023 referred only in vague terms to "Personal Care", which the Appellant stated she felt meant assistance with bathing and shaving as per the care plan.

32. The Respondent argued that the care plan was confusing and was insufficiently specific, contradicting itself by saying the service user could bathe and wash herself with minimal support, the nature of which was not made clear, and conflicted with a later assessment of need which assessed K as being independent in all areas.
33. Regarding the accuracy of the records, Mr Connor argued it was unclear why records were made in two formats, first handwritten and then later in word documents. For the entry relating to 21 September 2023 the two forms overlapped and there was a difference in that the written version said "Personal Care" which did not appear in the typed version, and there was also no reference to the activities of bathing and shaving referred to in the care plan. The Respondent relied on the evidence of Miss Spencer-Ellis that the Word document format of these records was "highly unusual" and would not be compliant with the recording requirement of Regulation 17 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as they do not contain enough detail.
34. The Respondent's position was that irrespective of the form of the records, they all lacked detail of the assistance given in the form of Personal Care.
35. Whilst the late entries on care records are fuller, Mr Connor argued that they lack detail when describing the Personal Care, for instance the entry on 20 December 2024 2023 which referred to a full body wash with a flannel, feet check and oral hygiene, there was a lack of specificity, and it was not clear that this involved physical assistance required by the regulations.

Evidence

36. Mrs Onojah provided a statement dated 29 November 2023 in which she stated that Tipson acquired its first client in July 2023 and confirmed that Tipson had responded to the CQC's initial requests for information to confirm on 23 May 2023 that they were not carrying on the Regulated Activity.
37. At the hearing Mrs Onojah stated that Tipson started providing Personal Care in August 2023. CQC had requested evidence of this in October 2023 and she had sent the care plan for the relevant person. She stated that in April 2024 she sent further documents including the care plans and a review plan, for a client whom she named, but whom we anonymise with the initial K, meaning no disrespect to her.
38. She stated that in September and October 2023 the care documents mentioned "Personal Care" briefly because the carer was trying to reduce the writing workload and was new to the care industry. At that time the carers were physically assisting the client K with bathing, in particular washing her back, and assisting her with oral hygiene.
39. The earlier records of care submitted in evidence by the Appellant were handwritten. Mrs Onojah stated that she started converting handwritten documents to word documents to reduce the amount of paper in the office, and at one point the Appellant moved to an electronic system of recording. Mrs Onojah stated that the handwritten notes are written at the home with the care

user, the word document versions were typed up from those notes later.

40. Presently, Tipson was on the Coventry Framework, meaning it was approved to undertake care work offered by the council, but could not pick up any work from them, though it was being offered, due to the ongoing appeal because the Appellant could not be sure that it would be able to perform the contract in full if the NoD was upheld by the Tribunal. K was a private client. Tipson had no other private clients at present. Tipson provided carers as an agency to other services and presently had 7 workers for whom it found work in this way.
41. Mrs Onojah was asked about the letter from her client at page 48 of the bundle and accepted that this did not refer to any activities of Personal Care, though it was complimentary of the service.
42. The panel asked Mrs Onojah about some of the entries recorded in word document care logs, as an example the entry on 29 November 2023, at page A49 of the supplementary bundle of late evidence. She stated she felt this met the definition of Personal Care as a Regulated Activity.
43. The panel asked about the entry on 02 December 2023 which was similar in its description. She confirmed she felt this also related to Personal Care.
44. Mr Connor asked Mrs Onojah about the care review form, at page A38 of the supplementary bundle, dated 29 February 2024. This indicated that the client's personal hygiene ability presented a low risk and "I take a bath or have a wash and have a change of clothes, but I manage well by myself once prompted, with minimal support." Mr Onojah stated the client still needed support with washing her back, though the support was minimal.
45. Mr Connor asked about the moving and handling risk assessment at pages A41 and 42, which indicated that the service user K was independent in washing. Mrs Onojah replied that the support was minimal but was still provided and was needed because of her arthritis.
46. Mr Connor referred to the document at A02, a personalised care plan for K. At A03 it stated that "I need to be assisted with showering and shaving." Mrs Onojah accepted that this appeared to be at odds with the care review document which stated K was independent in this regard, and repeated that minimal support was required.
47. Mr Connor referred to the record of care at page A49 which recorded that K had not consented to support with bathing and showering and the carer had instead assisted with oral hygiene and hair care. She withheld consent again on 30 November 2023 according to the log. On 21 December 2023 the log again showed a flannel wash and not a bath or shower. Mr Connor argued that the logs never recorded a shower or bath being provided to K. Mrs Onojah pointed to the personalised care plan at A03 where it stated this was required. She also referred to page A08 – a record of care on 15 August 2023 which stated "assisted with Personal Care" and a similar entry on 24 September 2023. Mrs Onojah accepted these did not specify what the Personal Care was, stating that the carer simply recorded "Personal Care" and everybody knew what it

meant because it was recorded in the care plan. She did not accept that this was ambiguous because regulations defined a number of different activities which each constituted Personal Care.

48. Mr Connor referred to page D14 of the main hearing bundle, which was a typed version of a written record of care which was in the supplementary bundle. This contained no use of the words “Personal Care” and did not refer to bathing or shaving. Mrs Onojah was asked why this was, and stated that the care user was newly assessed at this point (21 September 2023). She stated that records were typed up the following week, by the carer themselves. She then stated that they were typed by an administrator. They were signed off by Mrs Onojah herself, and she would check against the handwritten records. There must have been a mistake in this record, she stated. She accepted that the appeal was ongoing at the time the records were created and that care was required to ensure that the records were correct.
49. The panel asked Mrs Onojah about the risk management mitigation plan which referred to another person by name as well as K, and to risks relating to alcohol consumption which were not repeated elsewhere in K’s care documents. Mrs Onojah said there was confusion between the assessment of another care user who did not end up using Tipson, that she was busy on the day she had to send it, and did not have much time to check it. She stated that the risk management plan on Tipson’s systems for K was different to the one she had submitted in late evidence.
50. Miss Spencer-Ellis had provided two witness statements at C01 dated 29 November 2023 and at page C183 dated 14 December 2023. In these statements she set out the role of the ~~CJC~~ CQC and outlined the regulatory framework, then went on to review the documents submitted by the Appellant as evidence of the Regulated Activity. She stated that timesheets and invoices which had been provided were insufficient evidence of the regulated activities because they contained no detail of the care which was provided. She accepted the Appellant’s argument that the notice of decision had been incorrect to focus on a lack of signature to the timesheets. She stated that evidence of work carried out by Tipson’s staff working as agents did not provide evidence of the Regulated Activity because the provision of agency staff to other registered providers was not in itself a Regulated Activity. Miss Spencer-Ellis stated that approval from Coventry and Warwickshire Integrated Care Board and Warwickshire County Council did not indicate that Personal Care had been delivered, or would be delivered.
51. In her second statement, Miss Spencer-Ellis reviewed the further evidence submitted by the Appellant in the appeal which included care plans and daily logs of care. She stated that these were insufficient to satisfy her the Regulated Activity was carried on as they referred only to “Personal Care” and not the detail of what was done. Tasks which were described did not meet the definition of Personal Care, such as support with meal preparation, housekeeping and medicines.
52. Miss Spencer-Ellis stated that before issuing the NoD the CQC’s practice was to request information about whether the provider is delivering the Regulated

Activity and continues to do so throughout the appeal process, as they had done in this case. To satisfy itself that the Regulated Activity is being carried on, CQC requires care plans and risk assessments, contemporaneous records of care to see what was actually delivered and to be compared against the assessment of needs, and corroborative evidence such as invoices and proof of payments. If the records of care were sufficiently detailed, the CQC may accept those alone, but will normally request the other types of documents to ensure the authenticity of the record.

53. Payslips, timesheets and invoices had been provided early on in the appeal, but Miss Spencer-Ellis was of the opinion these could not on their own demonstrate that the Regulated Activity had been provided.
54. Miss Spencer-Ellis addressed the care plan for K in the supplementary bundle. She stated that “assistance with showering and shaving” was not clear enough to be defined as Personal Care as it did not specify what the assistance was, and whether it included the physical assistance defined in the 2014 Regulations. This was insufficient to satisfy CQC the Regulated Activity was being carried on, and was deficient in explaining to the carers what exactly they had to do for a client.
55. Miss Spencer-Ellis addressed the care records at page A18 of the supplementary bundle for the week commencing 18 September 2023. She stated that the reference to “Personal Care” was insufficient to describe the preferences and requests of and made by the client, and what was done, including the nature of the support given by the care worker. She stated that visit-specific notes were expected, i.e. one for the morning visit and one for the evening. This record was combined, referring to “AM and PM meal prep”.
56. Miss Spencer-Ellis addressed the description of medical needs in the care review form which described anaemia as a lack of oxygen to the brain, stating that this was not her understanding of the condition.
57. Miss Spencer-Ellis stated that from the care review form it would not be possible to provide care without asking a number of other questions of the care user, it omitted for example the products K used when bathing, preferred temperature of water and level of support required. Minimal support might mean setting up, rather than physical assistance, she said.
58. In Miss Spencer-Ellis’ view the records of care in the supplementary bundle were not detailed enough and did not appear to relate to the person described in the care plan, for instance referring to flannel washes when baths and showers were in the plan, and when the client was described as independent in toileting. This should have been reviewed and the two reconciled, she stated, but this did not appear to have been done.
59. Miss Spencer-Ellis stated that if a carer physically washed a client with a flannel, this would be Personal Care, but from the description “assisted with her Personal Care, including a full body wash with her flannel, toileting support, a foot check, and oral hygiene” it was not clear what level of involvement or support the carer gave.

60. Miss Spencer-Ellis stated that a dormant service could not be assessed by CQC as there was no Personal Care being delivered which could be inspected to check the provider's understanding of best practice. She also described a risk where unregulated services were delivered such as supplying agency staff or delivering services in the community, that commissioners of care may have a false assurance that these areas would be regulated by the CQC.
61. There was no sufficient evidence of physical assistance with washing and dressing, in Miss Spencer-Ellis' view, and there were inconsistencies between the care plan and the record of care. It was, in her experience, very easy for providers to demonstrate when they are providing Personal Care. She was unwilling to accept the entry at A49 for 29 November 2023 "I assisted her with her Personal Care and foot care (a basic foot check, washing her feet in warm water and applying lotions), she then had an entire body wash with her flannels and I attended to her oral hygiene", as she would want to see the contemporaneous note of that entry. She had not seen word documents used as contemporaneous records of care in her time at CQC.
62. Miss Spencer-Ellis was asked if there are some providers which have been dormant for more than 12 months which had not been served a notice of decision. She conceded that there were and CQC had a programme of work to address this.
63. Mrs Awe asked if the pandemic had had an effect on the industry. She agreed it had, but since the advent of the omicron variant, and before the Appellant registered, there was a rise in demand.
64. Miss Spencer-Ellis agreed that mistakes could occur in care documents. Regarding the keeping of electronic and written notes, she accepted there was nothing wrong in this, and CQC just wanted to see accurate contemporaneous records. There was no recommended electronic platform which CQC promoted the use of. The Department of Health and Social Care (DHSC) kept a list of digital services that met service standards.
65. Mrs Awe asked if it was possible to run an employment agency as well as being a regulated provider. Miss Spencer-Ellis agreed this was a model of business in place.
66. Mrs Awe asked if there was a set timescale for internal audits to take place. Miss Spencer-Ellis stated that regulation 17 covered good governance, there was no set timeframe, but the audit programme needed to meet the needs of the service.
67. Mrs Awe asked if CQC had a process to assure itself a Regulated Activity was being carried out, such as interviewing clients. Miss Spencer-Ellis stated that this would be invasive, and CQC relied on the documentary evidence. A good care plan should indicate the needs and preferences of the service user, including how they wish their carer to present.
68. Miss Spencer-Ellis accepted that a care worker physically washing a client

amounted to Personal Care. So did nail care as long as it was not done by a podiatrist. Miss Spencer-Ellis stated CQC did not mandate the format of care plans, but that the summary of care to be provided in the record of care should be possible to cross-reference with the care plan as the documents suggested it would.

69. Miss Spencer-Ellis stated she felt Tipson Healthcare had been given the same opportunity as other providers which were dormant, and that it was sufficient if the service had a single client to whom the Regulated Activity was being delivered.

The Tribunal's conclusions with reasons

70. The sole issue we had to determine was whether the Appellant had, in the previous 12 months, carried on the Regulated Activity of Personal Care. The Respondent conceded that even one instance of Personal Care delivered to one client within that period would be sufficient for it to have conceded the appeal, had it been satisfied of the evidence to support that claim.

71. We therefore approached the evidence with this in mind. We agreed with the Respondent that the evidence provided by the Appellant of the Regulated Activity was insufficient, as it stood in the main hearing bundle. The reason for this was that it provided no direct evidence of what Personal Care was in fact delivered, and comprised timesheets, invoices and other material such as ICB and Local Authority approval to receive work which were merely corroborative in nature, and not a direct record of Personal Care being delivered to a client. Where the records of care existed in the main bundle, they referred to various domestic tasks being carried out. This was not surprising, because such tasks were certainly part of the package of care Tipson was contracted to deliver to their client, K. Where Personal Care was referred to, it was just stated as "Personal Care" or "assisted with Personal Care" and this was not sufficiently detailed to show exactly what the carer had done, so it was not possible to assess whether it amounted to Personal Care.

72. The earlier care plans, for example, at page D03 of the core bundle, dated 19 August 2023, did not refer to Personal Care as being one of K's care needs, or one of the "agreed tasks" to be carried out on visits by the carer. This meant that where "Personal Care" appeared in a record of care delivered, there was no care plan to refer back to and show what this term meant, and what would have been done by the carer for the client. It was just such a process that Mrs Onojah encouraged us to adopt but it was not possible in respect of those earlier records.

73. The supplementary bundle contained further evidence submitted shortly before the adjourned hearing of this appeal on 22 April 2024. This included a care plan which at page A03 listed under the heading Personal Care "I need to be assisted with showering and shaving". Further handwritten records of care were provided which were similar to those contained in the main bundle and analysed above.

74. The supplementary bundle also contained typed records of care delivered,

starting from 27 November 2023. Mrs Onojah stated that her company had moved to a paperless system. Miss Spencer-Ellis observed that she had not seen Word documents used as care records and it was more common to see handwritten records, or the digital output of records made contemporaneously using an electronic device. Despite this, neither she nor Mr Connor argued that these records were not truthful. Where they described Personal Care, Miss Spencer-Ellis stated that she would want to see the contemporaneous notes they were based upon, and further detail of the physical activity carried out by the care worker.

75. We found Mrs Onojah to be a credible witness and accepted her evidence that the records of care represented true accounts of what had been delivered by the carer to Tipson's client. We also accepted her evidence that carers were providing K with physical assistance in bathing and shaving.

76. We reminded ourselves that physical assistance or prompting given with bathing, oral care, and dressing meet the definition of Personal Care. In his questioning, Mr Connor sought to demonstrate that there was no record of a shower or bath being provided for the client in these records. We did not consider that physical assistance with a bath or shower was required to meet the definition of Personal Care and indeed Miss Spencer-Ellis accepted that the provision of a flannel wash, if done with physical assistance from the carer, would meet the definition of Personal Care in the 2014 Regulations.

77. The care records show on pages A49, A50, A56 and A57 descriptions of washing and dressing. Terms such as "assisted with" are used to describe this. We concluded on the balance of probabilities that in these entries, the records refer to physical assistance by the carer. In reaching this conclusion we relied upon the evidence at the hearing of Mrs Onojah that this was the case, and that carers provided physical assistance to K in washing and bathing, in particular in washing her back. We also relied on the records of care which clearly described the carer washing K's feet for her. This activity in caring for K was recorded in the summary of care needs at the top of each week's record of care.

78. We found that the other records provided, including invoices, and a letter of commendation from K, were supportive of the conclusion that the above care had in fact been delivered, though these documents on their own would not have been sufficient to demonstrate the Regulated Activity. The Regulated Activity was carried on, in our conclusion, from 27 November 2023, this being the date of the records which provided, in our conclusion, sufficient detail to demonstrate that the activity carried out by the Appellant met the definition of Personal Care.

79. Because there were several obvious errors in the records, we have concerns about the quality of the Appellant's record keeping and note the reference in Miss Spencer-Ellis' second statement to the requirements of Regulation 17 (2)(c) that providers must,

"maintain securely an accurate, complete and contemporaneous record in respect of each service user, including a record of the care and treatment provided to the service user and of decisions taken in relation to the care and

treatment provided;”

80. We reminded ourselves that we are not deciding an appeal on the quality of records, but considering whether we are satisfied of what those records contain. The quality and completeness of the records of care delivered improved significantly around October 2023 when the Appellant moved to recording them on Word documents. For a time, Mrs Onojah stated, these documents were being typed up from handwritten notes. There had been an error in the transcription of a September entry. We accept this was a mistake, as it removed reference to Personal Care and therefore did not help the Appellant’s case. We also accepted Mrs Onojah’s evidence that she had made mistakes in respect of the risk assessment for K, and included part of the assessment for a different, prospective, client. We accepted that these were mistakes and remained persuaded that the records of care from 27 November 2023 demonstrated that the Regulated Activity of Personal Care had been carried out.
81. As the Appellant will continue to be registered it will be subject to inspection and must be prepared to demonstrate to CQC its compliance with its obligations in respect of record keeping.

Decision:

1. The appeal is upheld.
2. The Notice of Decision dated 27 July 2023 shall cease to have effect.

Judge Gareth Brandon

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

Date Issued: 12 June 2024

Amended Under Rule 44 Date Issued: 25 June 2024