

First-tier Tribunal Care Standards

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

Heard by video link on 15 October 2024

2024-01182.EA-MOU
[2024] UKFTT 00930 (HESC)

BEFORE

Mr H Khan (Judge)

Ms D Rabbetts (Specialist Member)

Ms K Marchant ((Specialist Member)

BETWEEN:

The Care Centric Group Limited

Appellant

-v-

Care Quality Commission

Respondent

DECISION

Appeal

1. The Centric Group (“the Appellant”) appeals against the Care Quality Commission’s (“the Respondent”) urgent Notice of Decision dated 27 June 2024 (“the Decision”). This was a decision to impose conditions on the registration of the Appellant as a service provider in respect of a regulated activity of ‘Personal Care’ and was issued pursuant to Section 31 of the Health and Social Care Act 2008 (“2008 Act”).

Attendance

2. The Appellant was represented by Ms Hawa Crickmore (Registered Manager). Ms Crickmore was the sole witness on behalf of the Appellant.
3. Ms Amy Taylor (Counsel) represented the Respondent. The Respondent’s witnesses were Ms Natalie Read (Deputy Director of Operations), Ms Dawn Young (Inspector), Ms Aline Contla-Robinson

(Inspection Manager). None of the witnesses gave evidence at the hearing.

The Hearing

4. The hearing was conducted as a video hearing. The Tribunal were provided with a hearing bundle comprising of 649 pages. The Appellant dialled into the hearing by video but used her phone to hear the audio. The Appellant confirmed at the hearing that she was happy to proceed on that basis.

Restricted reporting order

5. 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.

The Appellant

6. The Appellant was registered on 8 December 2010 in respect of the regulated activity. The Appellant is also known as the 'HLC Care Agency Ltd'.
7. The Appellant is registered as a service provider in respect of the regulated activity of '*Personal care*' ("the regulated activity"). The location address is registered as HLC Care Agency Ltd, 14 The Hive, Northfleet, Gravesend, DA11 9DE ("the Location").
8. The Appellant is a domiciliary care home service that was registered to support autistic people and people with a learning disability.

The Respondent

9. The Respondent was established on 1 April 2009 by the 2008 Act. The Respondent is the independent regulator of healthcare, adult social care and primary care services in England. The Respondent also protects the interests of vulnerable people, including those whose rights are restricted under the Mental Health Act 1983 (as amended).

The Strikeout Application

10. The Respondent made a strikeout application on 3 October 2024.
11. The Respondent sought an order under Rule 8(4)(c) of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 as amended ("2008 Rules) to strike out the matter. This was on the basis that there was no reasonable prospect of the Appellant's case succeeding, as the Appellant's registration as a service provider had been cancelled and there was no registration for any such conditions to attach to.

12. The grounds for the strike application included the following.
13. The Respondent has since the urgent Notice of Decision was issued on 27 June 2024, issued a further two Notices of Decision on 23 August 2024, cancelling the registration of both the service provider and the registered manager.
14. The Appellant has appealed the urgent Notice of Decision in respect of the conditions but has not appealed the Notice of Decision to cancel the registration of the Service Provider or the Registered Manager.
15. It was submitted that the Appellant (which she accepted at the hearing) had been made aware by the Respondent and the Tribunal that if she wished to appeal the decision to cancel the registrations, she must submit a separate appeal. The Appellant had not done so. As of 24 September 2024, the Appellant was no longer a registered service provider.
16. The Appellant had contacted the Tribunal on 24 July 2024 requesting advice. The Tribunal's response included the following:

*"Many thanks for your attached email dated 24/07/2024.
Due to the NOD and NOP provided being a separate decision from the live appeal registered on 24/07/2024, the Tribunal would require a new appeal application form.
I have attached the guidance below and an appeal application form."*
17. The Appellant also emailed the Respondent's legal representative on 25 July 2024 and was advised to seek independent legal advice as the Notice of Proposals were not linked to the ongoing appeal.
18. The Appellant did not provide any representations to the Respondent and, on 23 August 2024, the Respondent issued two Notice of Decisions adopting the Notice of Proposals. Within the letter sent to the Appellant she was advised that if she did not make an appeal, the decision would become final at the end of the 28-day period (or earlier if she confirmed she did not intend to appeal the decision).
19. Despite the Appellant being informed by the Respondent and the Tribunal that if she wished to appeal the decisions regarding cancelling the registration she would have to make a separate appeal, she has not done so.
20. The deadline for appealing has passed and the cancellation of the registrations came into effect on 24 September 2024. The Respondent had not updated the public register to show the registration has been cancelled because of these (separate) proceedings.
21. On 26 September 2024, the Appellant confirmed that she did not appeal the Notice of Decisions as it was her understanding that the appeal was part and parcel of the original appeal (i.e. this appeal).

22. The Respondent submitted that as Notice of Decisions have taken effect there are no longer conditions to appeal as the service provider is no longer registered, and the Respondent invited the Tribunal to strike out the Appellant's appeal.
23. As an alternative, in the written application, the Respondent submitted that if the Tribunal was not minded to strike out the Appellant's appeal, the Tribunal may wish to consider whether to allow the Appellant to appeal the decision to cancel the registration of the service provider and/or registered manager out of time. However, at the hearing, Ms Taylor submitted that there was a risk in allowing the registration to continue, for example, by staying these proceedings to allow a late appeal to be lodged. The Respondent was concerned about any delay and asked the Tribunal to deal with the strike application at the hearing.

The Appellant's position

24. In accordance with Rule 8(5) of the 2008 Rules, the Tribunal may not strike out the whole or part of the proceedings under 8(4) (c) without first giving the Appellant an opportunity to make representation in relation to the proposed striking out.
25. The Appellant was given an opportunity to respond pursuant to the Order dated 9 October 2024 and made further representations at the hearing.
26. The Appellant's case included that she did not agree with the Respondent's decision, she thought by lodging the appeal in respect of the decision dated 27 June 2024, the Respondent would not take any further action, someone had whistle blown on the Appellant in spite and she thought Respondent's decision dated 27 June 2024 was unfair.
27. The Appellant acknowledged that she had received the subsequent notices of decision and did not dispute that she was asked to submit a separate appeal in relation to the later notices.

Legal framework.

28. The Respondent is a statutory organisation set up under the Act. By virtue of section 3 of the Act, the Respondent is invested with registration functions under Chapter 2 of the Act.
29. The main objective of the Respondent, by virtue of section 3(1) of the Act, is to protect and promote the health, safety and welfare of the people who use health and social care services. Pursuant to section 4 of the Act, the Respondent must have regard to various matters, and it must ensure that any action taken is proportionate and necessary.
30. By section 12(5)(a) of the Act, the Respondent has the power to at any time vary or remove any condition for the time being in force in relation

to a person's registration as a service provider or impose any additional condition.

31. The Regulations were made by the Secretary of State pursuant to section 20(1) of the Act.
32. The Appellant is provided a right of appeal to the Tribunal by section 32 of the Act: the Appellant may appeal against a decision to vary the conditions of the registration of a service providing a regulated activity.
33. The Tribunal may confirm the decision(s) taken by the Respondent or direct that the decision(s) not have effect. In effect, the Tribunal can vary, cancel or impose any condition(s) on the registration that it sees fit.
34. The Respondent bears the burden of persuading the Tribunal that the decisions to vary a condition is proportionate as at the time of the appeal hearing. The Respondent must establish the facts upon which it relies on the balance of probabilities and that its decision was proportionate.
35. Under Rule 8 (4) (c) of the 2008 Rules, the Tribunal may strike out the whole or part of the proceedings if the Tribunal considers there is no reasonable prospect of the Applicant's case, or part of it, succeeding. The test is very similar to the test in the Civil Procedure Rules for striking out and summary judgement ("no reasonable grounds" and "no real prospect"). It is a high hurdle.
36. As it was explained in the *Three Rivers District Council and Others v Governor and the Company of the Bank of England (3)* [2001] UKHL 16, [2001] All ER (D) 269 and in particular by Lord Hope at [87] to [95], the power to dispose of a case summarily is a discretionary power which requires the exercise of judgement in weighing up the prospects of success. The test is essentially whether the prospect of success is fanciful. If serious consideration of the issues is required, such that a mini trial might be necessary that indicates that the power should not be exercised.
37. The power is designed to deal with cases that are not fit for trial at all; *Swain v Hillman* [2001] 1 All ER 91. The power must be exercised with care and in accordance with the overriding objective of the 2008 Rules to deal with a case fairly and justly. This must include assessing whether there is any realistic possibility that evidence could be adduced at trial to support the case being put, such that it would not be a waste of time and resources to proceed to a hearing.
38. The burden of proof in respect of the strike out application rests with the Respondent.

The Tribunal's conclusions with reasons

39. We have carefully considered all the evidence including that in the hearing bundle.

40. We reminded ourselves that the decision to strike out proceedings involves a balancing of competing considerations. Striking out may be appropriate for a case that cannot succeed and is appropriate if the outcome for the case is realistically and for practical purposes, clear and incontestable. Striking out is a draconian step and should be used for the clearest of cases. It is a high hurdle. In dealing with this application, we took into account the overriding objective of the 2008 Rules to deal with cases fairly and justly.
41. We concluded that there is no reasonable prospect of the Appellant's case, or part of it, succeeding and that it was appropriate for the appeal to be struck out. Our reasons for doing so are set out below.
42. It is clear that the facts relevant to the outcome of the case are not disputed. There is no dispute between the parties that two further Notices of Decision were served on 23 August 2024 cancelling the registration of both the Service Provider and Registered Manager. The Appellant accepted that she had received both of those decisions. The Appellant accepted that the decisions set out the time limit for appealing those decisions and no appeal was lodged. Furthermore, there was agreement that by the time of the hearing no appeal had still been lodged.
43. We acknowledge that the Appellant is a litigant in person and may not be familiar with the process. We also acknowledge her submissions that she did not consider that she had to submit any further appeals and that by submitting one appeal (on this matter), would avoid any further escalation by the Respondent. However, the Appellant accepted that she had been told by the Tribunal and the Respondent to lodge a separate appeal but had not done so. The later decisions were served almost two months later. Furthermore, it also wasn't disputed by the Appellant that within the letter sent to the Appellant she was advised that if she did not make an appeal, the decisions would become final at the end of the 28-day period (or earlier if she confirmed she did not intend to appeal the decision).
44. The outcome was therefore that by the time of the final hearing on this appeal, the deadline for appealing had passed and the cancellation of the registrations had already come into effect on 24 September 2024. In our judgement as the Notice of Decision affecting the Appellant as a Service Provider has taken effect there were no longer conditions to appeal as the service provider is no longer registered. In those circumstances there was no prospect of the appeal succeeding.
45. We also considered whether it would be appropriate to stay these proceedings to allow the Appellant to lodge any further appeal. However, we concluded that it would not be appropriate to do so. This is because the Appellant by her own admission was aware that she needed to submit an appeal but had elected not to do so, it was now

just under 2 months since the notice of decision in respect of the cancellation of the service provider's registration had been served and no appeal had been lodged. The position was that at the hearing, there was no registration to which the conditions could attach to.

46. We acknowledge the impact of our decision on the Appellant. However, the Appellant is able to reapply again for registration at some point in the future. Any future decision on any new application carries with it a separate right of appeal.

47. In conclusion, having taken into account all the circumstances of this case, we find that there is no reasonable prospect of the Appellant's case, or part of it, succeeding and in our judgment, it is appropriate for the appeal to be struck out.

IT IS ORDERED THAT:

48. The appeal shall be struck out pursuant to rule 8 (4)(c) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended).

Judge H Khan

Lead Judge

First-tier Tribunal (Health Education and Social Care)

Date Issued: 21 October 2024

