

First-tier Tribunal Care Standards

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

NCN: [2025] UKFTT 00160 (HESC)

2024-01162.EA

Heard on 4 February 2025 by Videolink.

**Before
Mr H Khan (Judge)
Ms K Marchant (Specialist Member)
Dr E Yeates (Specialist Member)**

Between:

Eden Quality Care Limited

Appellant

-v-

Care Quality Commission

Respondent

AMENDED DECISION

The Appeal

1. Eden Quality Care Limited (“the Appellant”) appeals against the Care Quality Commission’s (“the Respondent”) Notice of Decision, dated 29 May 2024, to cancel the Appellant’s registration as service provider in respect of the regulated activity of ‘Personal care’ (‘the regulated activity’) at or from Eden Quality Care Ltd, Eden Quality Care (Headquarters), 3 Potash House, 1 Canning Square, Enfield, EN1 4BP (‘the Location’).
2. The Respondent’s Notice of Decision was issued to cancel the Appellant’s registration as a service provider pursuant to Section 17(1)(e) of HSCA 2008 and Regulation 6(1)(c) of the Care Quality Commission (Registration) Regulations 2009 (the “2009 Regulations”).

Video Hearing

3. This was a remote hearing. The form of remote hearing was by video. The documents that we were referred to are in the electronic hearing bundle (167 pages).

4. Mr Norfolk dialled in by video but due to difficulties various audio, he followed proceedings and give his evidence by phone. For the avoidance of any doubt, Mr Norfolk could see and hear the proceedings.

Attendance

5. The Appellant did not dial in.
6. The Respondent was represented by Mrs Frampton-Anderson, Counsel. Its sole witness was Mr Andrew Norfolk (Operations Manager).
7. There were a number of observers from the Respondent. They did not play any part in the proceedings.

Preliminary Issue

8. We heard submissions from Ms Frampton-Anderson and considered whether we should proceed in the Appellant's absence.
9. The hearing was listed to start at 10am but started at 10:20am to allow the Appellant or his legal representatives time to dial into the hearing. There had been no explanation for the Appellant's non-attendance nor had there been any application for a postponement/adjournment. The Tribunal administration attempted to contact Mr Edward Tafadzwa Chamanga, Nominated Individual and Registered Manager via the mobile number provided on the application form but were unable to do so.
10. Ms Frampton-Anderson submitted that the Tribunal should proceed in the Appellant's absence. The Respondent's case was that the Appellant had been notified of the hearing by both the Tribunal and the Respondent.
11. We considered Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended) ("the 2008 Rules"). We concluded that we would proceed in the ~~Respondent's~~ Appellant's absence. Our reasons for doing so are set out below.
12. We were satisfied that the ~~Respondent~~ Appellant was aware of the hearing (notifications sent on 19 September 2024, 23 January and 31 January 2025) and that it was in the interests of justice to proceed with the hearing.
13. We noted the history of the case. This included the fact that Appellant had been subject of an unless order dated 7 January 2025 in order to compel the Appellant to serve its evidence and to complete the

Scott Schedule. We wish to emphasise that the Appellant did comply with that order but nevertheless such an order was necessary in order to ensure that the Appellant's evidence was served.

14. Furthermore, if we had been minded to adjourn to a later date, there was no reason to suggest that the appellant would attend.
15. We concluded that having considered all the circumstances of the case, it was appropriate to proceed.

Restricted reporting order

16. 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 the any service users in this case so as to protect their private lives.

Events Leading up to the Notice of Decision

17. On 19 February 2016, the Appellant was registered to provide the regulated activity. The Appellant moved to its current address, the Location, in October 2018.
18. On 23 September 2022, the Respondent sent the Appellant an email requesting confirmation of the status of the regulated activity from the Appellant's Location since 11 October 2018.
19. On 04 October 2022, the Appellant responded confirming that they have not been carrying on any regulated activity from the Location i.e. their service has been dormant.
20. On 18 January 2023, the Respondent sent the Appellant an email requesting confirmation of the status of the regulated activity from the Appellant's Location since 11 October 2018.
21. On 16 February 2023, the Appellant responded confirming that they remained dormant.
22. On 12 February 2024, the Respondent sent an email to the Appellant requesting confirmation of the status of the Regulated activity from the Appellant's Location since 11 October 2018.
23. On 18 February 2024, the Appellant responded confirming that they remained dormant.
24. On 18 April 2024, the Respondent served a Notice of Proposal ('NoP') to cancel the Appellant's registration on the basis they had not been

carrying on the Regulated activity for a continuous period of 12 months or more.

25. On 22 April 2024, the Appellant submitted written representations in response to the Respondent's NoP. The Appellant did not contest the evidence in the Respondent's NoP nor did the Appellant provide evidence demonstrating their carrying out regulated activity.
26. On 29 May 2024, the Respondent issued its Notice of Decision ("NoD") adopting the NoP, noting that the Appellant has been dormant since 11 October 2018, and remained dormant at the time the NoD was issued.
27. On 27 June 2024 the Appellant lodged the Appeal application to the Tribunal.

The Appellant

28. On 19 February 2016, the Appellant registered with Respondent in respect of Regulated activity Personal Care from the Location.

The Respondent

29. The Respondent is a statutory organisation set up under the Health and Social Care Act 2008 (Act). By virtue of s.3 of the Act, the Respondent is invested with registration functions under Chapter 2 of the Act

Legal Framework

30. We have adopted the legal framework as set out in the Respondent's submissions.
31. The Respondent was established on 1 April 2009 by the HSCA 2008. The Respondent is the independent regulator of health and social care services in England. The Respondent, in its role as the independent regulator, also protects the interests of vulnerable people, including those whose rights are restricted under the Mental Health Act 1983 (as amended by the 2007 Act).
32. The HSCA 2008 requires all providers of regulated activities in England to register with the Respondent, and to comply with the requirements and fundamental standards set out in regulations made under the HSCA 2008.
33. Section 3 of the HSCA 2008 sets out the Respondent's main objective which is "to protect and promote the health, safety and welfare of people who use health and social care services".

34. Regulation 6(1)(c) of the 2009 Regulations permits the Respondent to cancel a service provider's registration if the service provider has not carried on the regulated activity it is registered to provide for a continuous period of 12 months.
35. Section 17(1)(e) of the HSCA 2008, allows the Respondent to cancel a provider's registration as a service provider "on any ground specified by regulations".
36. The Appellant is registered for the regulated activity of Personal care. The definition of this activity is to be found in Paragraph 1 of Schedule 2 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the 2014 Regulations"):

1. Personal Care

(1) Subject to sub-paragraphs (2) and (3), the provision of personal care

for persons who, by reason of old age, illness or disability are unable to provide it for themselves, and which is provided in a place where those persons are living at the time the care is provided.

The term 'personal care' for the purposes of the 2014 Regulations is defined in Regulation 2:

Interpretation

2. (1) In these Regulations—

[...]

"personal care" means—

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

(i) eating or drinking [...], (ii) toileting [...],

(iii) washing or bathing,

(iv) dressing

(v) oral care

(vi) the care of skin, hair and nails [...], or

(b) the prompting, together with supervision, of a person, in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision.

37. Section 28(6) of the HSCA 2008 provides that a decision of the Respondent to adopt a proposal under section 26(2) or 26(4) takes

effect (a) at the end of the period of 28 days referred to in section 32(2), or (b) if an appeal is brought, on the determination or abandonment of the appeal.

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

a. vary any discretionary condition for the time being in force in respect

of the Regulated activity to which the appeal relates,

b. direct that such discretionary condition shall cease to take effect,

c. direct that any such discretionary condition as the First-tier Tribunal thinks fit shall have effect in respect of the Regulated Activity, or

d. vary the period of any suspension.

39. The Tribunal may confirm the decision(s) taken by the Respondent or direct that the decision(s) not have effect, or it may impose any condition(s) on the registration that it sees fit.

40. The Respondent bears the burden of persuading the Tribunal that the decision(s) to cancel the service and/or impose of a condition is/are proportionate as at the time of the appeal hearing.

41. The Respondent must establish the facts upon which it relies to support satisfaction of the proportionality of the decision on the balance of probabilities.

Evidence

42. We took into account all the evidence that was presented in the bundle and at the hearing. We heard evidence from a number of witnesses at the hearing. The following is a summary of the evidence that was presented at the hearing (or in a witness statement) and in no way is it meant to reflect everything that said or written.

43. Mr Norfolk confirmed the contents of his witness statement. His views had not changed in that cancellation remained appropriate in this case.

44. Mr Norfolk set out that dormant locations such as that of the Appellant cannot be fully assessed as the service is not delivering regulated

activity. The Respondent cannot assess if the Appellant was meeting the Fundamental Standards of quality and safety or provider rating.

45. The Respondent and the Appellant had had an exchange of emails between 6 March 2019 until recently. The Appellant confirmed dormancy on a number of occasions in response to these monitoring emails.
46. Mr Norfolk understood that the Appellant was seeking clients and had been unsuccessful. Whilst Mr Norfolk was sympathetic to the Appellant's position, the issue was that he had had no assurance that they had secured any contracts to provide regulated activity or would be able to do so in future. Furthermore, there was no assurance that they are a safe service to be able to provide Regulated Activity.
47. The position was that the Appellant had not delivered Regulated Activity since 11 October 2018. It had been over 6 years since regulated activity had been delivered. There was no evidence that any regulated activity would be delivered "imminently."
48. The Respondent had made improvements to its registration service. The Appellant could apply to register again in the future when it was in a position to deliver regulated activities. Any future applications will be considered on its merits.
49. The Appellant's position was that it had reviewed the Respondent's statement (of Mr Norfolk) and agreed with "*most of the statements contained therein apart from one which says we are unlikely going to be providing the regulated activity in the foreseeable future*" (sic).
50. The Appellant accepted that the Respondent was unable to assess the quality of their service due to them not providing regulated activity. They requested leniency, and for their registration to remain in place until the tenders are decided on.
51. They were seeking private clients and would notify the Respondent as soon as they had any. The Appellant had bid for some tenders. Those organisations has asked them to keep their registration with the care quality commission.
52. The Appellant referred to his over 13 years of experience working as a healthcare professional at the fact that he was an Accounts Manager for a care agency.

The Tribunal's conclusion with reasons

53. We took into account all the evidence that was included in the hearing bundle and presented at the hearing. This includes the Appellant's and Respondent's evidence.
54. We wish to place on record our thanks to ~~Mr~~ Mrs Frampton-Anderson and Mr A Norfolk for their assistance at the hearing.
55. We reminded ourselves that the Tribunal considers the circumstances as at the date of its decision and the onus is on the Respondent to satisfy the Tribunal that the relevant standard, namely the balance of probabilities was met.
56. We found the evidence of Mr Norfolk to be credible, measured and fair. Mr Norfolk accepted that the Appellant was actively seeking clients but had been unsuccessful in doing so. He also expressed some sympathy for the Appellant's position.
57. We acknowledge that although the Appellant did not attend the hearing, Mr Chamanga had provided a witness statement. We took into account all the evidence that the Appellant had provided including any documentary evidence. In particular, we noted that Mr Chamanga's statement dated 13 January 2025 had set that "*...we do not have any new form of evidence we wish to submit to be relied other, than what we have already presented.*"
58. There was no dispute that the Appellant has not carried out Regulated Activity for a period of over 6 years at or from its Location. In fairness to the Appellant (and as recorded in the order dated 3 September 2024), the Appellant accepted that the last time regulated activity had been provided was in 2018. Mr Chamanga also states in his witness statement dated 13 January 2025 that he had gone through the witness statement of the Mr Norfolk and agreed with most of the contents save for the statement that says that the Appellant was unlikely to be providing regulated activity in the foreseeable future. The written statement of Mr Norfolk clearly sets out that the Appellant had not delivered regulated activity since 11 October 2018.
59. We considered the evidence before us. We found that the Appellant as a service provider was not and had not been for a continuous period of 12 months ending with the date of the decision to cancel registration (29 May 2024) and at the date of our decision, carrying on regulated activity. We found that the Appellant had not carried on regulated activity since 11 October 2018.

60. We found that the grounds for cancellation were made out. The issue then follows was whether or not the Appellant's registration should be cancelled. We concluded that it was reasonable, necessary and proportionate for the Appellant's registration to be cancelled. Our reasons for doing so are set out below.
61. We acknowledge the Appellant's position. We had no reason to doubt his assertion that he was bidding for tenders. The order dated 3 September 2024, recorded that at that stage, the Appellant had informed the Tribunal that he was "*currently bidding for tenders.*" Further, for example, there was an email from Mr Chamanga in the hearing bundle dated 4 October 2022 stating that there were going to express an interest in a tender with Enfield and sought to keep their registration for these tenders to be considered. There was no update from the Appellant as to the outcome of those tenders. Mr Norfolk submitted it would be unusual for any tendering process to take almost 6 months without a resolution. In Mr Norfolk's experience, Local Authorities would complete the process quicker in order to ensure that service users needs were met.
62. In addition, the Appellant's evidence consisted of some invoice payments without any explanation, and email from eprocurement at Care Pulse dated 7 June 2024 and an email from Hertfordshire dated 5 June 2024. However, there was no evidence presented regarding the outcome of those earlier tenders (if that is what they were). In any event, being successful in a tender process on its own is not the same as carrying out regulated activity. It is an "*indication*" according to Mr Norfolk that regulated activity is likely to be undertaken.
63. We considered also the position with regards to any private clients. As Mr Norfolk pointed out that the Appellant could have secured private clients by advertising in trade magazines and online. There was no evidence before the Tribunal of what action had been taken in this regard and in any event no regulated activity was being delivered to private clients either.
64. Furthermore, the Appellant has not provided any evidence (other than a bare assertion of a potential future prospect) to demonstrate that it was "*imminently*" about to start carrying out the regulated activity of personal care such that they are or will in the immediate future no longer be considered dormant at or from the Location. As Mr Chamanga accepts there is no new form of evidence that the Appellant wishes to rely on. We acknowledge that the Respondent had written to the Appellant on 19 July 2024 requesting evidence and had not received any.
65. The Appellant's case also rested on keeping its registration in order to succeed in any tender process. We noted that it had been over 6 years whilst the Appellant had retained its registration and there had been no successful tender outcome.

66. Furthermore, at the time of the hearing before the Tribunal, the Appellant has not carried out Regulated Activity for a period of over 6 years at or from its Location. This is, as the Respondent, submits more than six times the 12-month period outlined in 2009 Regulations which permits the Respondent to cancel a service provider's registration if the service provider has not carried on the regulated activity it is registered to provide for a continuous period of 12 months.
67. We accept that in a situation such as this where regulated activity is not being carried out, the Respondent is unable to satisfy itself whether it will be carried out in accordance with the relevant regulations and/or to the appropriate standards. This is because there is no activity sufficiently analogous to the regulated activity of personal care that the service provider can carry out that will demonstrate its compliance with the relevant Regulations.
68. We acknowledge Mr Norfolk's evidence in this regard that regulations can change since registration and the Respondent needs to carry out such assessment. In this case, it had been 6 years since regulated activity had been carried out and therefore the Respondent's case for checking compliance was much more compelling. We agreed with Mr Norfolk's assessment that remaining on the register and not providing regulated activity (and as a consequence not being able to be assessed) was providing a false assurance to the public.
69. Both Ms Frampton-Anderson and Mr Norfolk were keen to emphasise that cancelling the Appellant's registration does not prevent the Appellant from re-applying in the future. The Appellant is at liberty to re-apply when it is in a position to carry out regulated activity. We had no reason to doubt Mr Norfolk's evidence that the process of reapplication is not onerous and would in fact save the Appellant money in ongoing fees that are due whilst they are registered. Mr Norfolk also emphasised that there have been improvements to Respondent's registration directorate making it simpler and easier for providers to apply to register with Respondent so it is not an arduous Any future application to register with Respondent is considered on its own merits.
70. We acknowledge that the Appellant would have to declare that it had a previous registration history, but, according to Mr Norfolk, this would not of itself be a *barrier* to their registration application being assessed. Any future registration application takes into account all relevant information regarding past compliance and current evidence that the regulatory framework can be complied with. In addition, any future decision would carry with it a separate right of appeal to the first-tier Tribunal.

71. For the avoidance of any doubt, the Respondent made it clear that there were no concerns regarding any care provided by the Appellant.

72. We also took into account the personal circumstances of Mr Chamanga insofar as they were set out in the bundle. We acknowledge this includes his stated 13 years of working as a healthcare professional in various care sectors from the residential homes, hospitals and working as part of a multidisciplinary team.

73. We concluded that, having considered all the circumstances of the case and the evidence before us, it was reasonable, necessary and proportionate for the Appellant's registration to be cancelled.

The Decision

1. The appeal is dismissed.
2. The decision of the Respondent dated 29 May 2024 to cancel the Appellant's registration as a service provider in respect of the regulated activity of 'Personal care' at or from Eden Quality Care Ltd, Eden Quality Care 3 Potash House, 1 Canning Square, Enfield, EN1 4BP is confirmed.

Judge H Khan
Lead Judge
First-tier Tribunal (Health Education and Social Care)

Date Issued: 12 February 2025
Amended under Rule 44 Date Issued: 24 February 2025