



Care Standards

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

2024-01208.EA
[2025] UKFTT 00336 (HESC)

Heard on 11 March 2025 by Video Link.

Before

Mr H Khan (Judge)
Mr J Marchant (Specialist Member)
Dr E Stuart-Cole (Specialist Member)

Ayada Care Services Limited

Appellant

-v-

Care Quality Commission

Respondent

DECISION

The Appeal

1. Ayada Care Services Limited (“the Appellant”) appeals against the Care Quality Commission’s (“the Respondent”) Notice of Decision, dated 29 July 2024, to cancel its registration as a service provider in respect of the regulated activity of Personal care (“the Regulated Activity”), as carried on from Ayada Care Services Ltd, 60A Plumstead High Street, Plumstead, London, SE18 1SL.

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 the Health and Social Care Act 2008 and Regulation ("the 2008 Act) 6(1)(c) of the Care Quality Commission (Registration) Regulations 2009 ("the 2009 Regulations"). This was served on the basis that the Appellant is not currently carrying on and has not been carrying on the regulated activity for a period of over 12 months.

Video Hearing

3. This was a remote hearing. The form of remote hearing was by video. The documents that the Tribunal were referred to were contained in the electronic hearing bundle (91 pages).
4. The Appellant confirmed that the hearing that she had received a copy of the hearing bundle of February 2025 and had read it. However, the Respondent sent the Appellant a further copy of the hearing bundle during the hearing.

Attendance

5. The Appellant represented by Mrs Yemisi Adeniyi (Director).
6. The Respondent was represented by Mr T Buxton. Its sole witness was Ms Helen Wells (Operations Manager).
7. There were a number of observers from the Respondent. They did not play any part in the proceedings.

The Appellant

8. The Appellant was registered with the Respondent on 6 April 2021.
9. The Appellant is registered for the regulated activity Personal care to be carried on from Ayada Care Services Ltd, 60A Plumstead High Street, Plumstead, London, SE18 1SL.

The Respondent

10. The Respondent is a statutory organisation set up under the Health and Social Care Act 2008 (Act).

Events Leading up to the Notice of Decision

11. The chronology of events was largely agreed.

12. On 6 April 2021, the Appellant registered with the Respondent to provide the regulated activity “Personal care”.
13. On 11 December 2022, the Appellant confirmed in correspondence with the Respondent that it had not carried on the regulated activity.
14. On 01 May 2023, the Appellant confirmed in correspondence with the Respondent that it had not carried on the regulated activity.
15. On 07 April 2024, the Appellant confirmed in correspondence with the Respondent that it had not carried on the regulated activity.
16. On 4 June 2024, the Respondent issued a Notice of Proposal to cancel the Appellant’s registration as a service provider. A 28-day period for representations against the notice was included giving the Appellant until 3 July 2024 to submit any representations.
17. On 21 July 2024, Representations were received from the Appellant by the Respondent.
18. On 29 July 2024, A Notice of Decision was issued by the Respondent to the Appellant, adopting the proposal to cancel its registration as a service provider.
19. On 12 August 2024, the Appellant appealed the Notice of Decision to the First-tier Tribunal.

Legal Framework

20. We have adopted the legal framework as set out in the Respondent’s submissions.
21. 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).
22. 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.
23. 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”.

24. 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.
25. 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".
26. 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.

27. 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.

28. 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.*
29. 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.
30. 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.
31. 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

32. 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.
33. Ms Wells confirmed the contents of her witness statement. She made it clear that no regulated activity had been carried out since April 2021. That was since registration.

34. Ms Wells did not accept that being part of a tender was evidence of regulated activity. Furthermore, even if some packages were allocated through a tendering process this does not constitute regulated activity.
35. Ms Wells stated that there was no evidence of “imminent” regulated activity. This would have included assessments and care plans.
36. Ms Wells set out that Local Authorities were not the only source of care packages. The Appellant could have considered private clients. However, this had not happened.
37. Ms Wells made it clear that if cancellation was confirmed, the Appellant have the option of applying again in the future. If they did so, the cancellation on the grounds of dormancy would not be held against them. Ms Wells made it clear that the Respondent was not alleging, at this stage, that the Appellant had provided care in an unsafe way.
38. The Respondent had written to the Appellant on a regular basis to ask for updates as to whether or not there were providing regulated activity. The Appellant had regularly confirmed that it had not provided regulated activity.
39. The Appellant’s position was that it did not dispute that it had not provided regulated activity since 6 April 2021.
40. Ms Adeniyi confirmed that various bids have been made with different Local Authorities around the London area, where the Appellant was based. These had largely been unsuccessful. There had been one successful bid with the London Borough of Barking and Dagenham but they had withdrawn the tender.
41. There had been some development with Ashton recently. They had asked for details of the business insurance and training schedule. However, there had been no notification of any successful tender.
42. The Appellant would now consider private clients in order to meet the requirement of the Respondent.
43. Ms Adeniyi confirmed that she was a Director who worked full-time as a performance manager in the rail sector and that the Registered Manager worked within the NHS as a nurse. She confirmed that both would be willing to give up those jobs if there could secure a financially

viable tender. The plan was to start part-time and then work up to full-time.

44. The Appellant did not think its registration should be cancelled. It sought for its registration to continue for another 3-4 years in order to enable it to start providing regulated activity.

The Tribunal's conclusion with reasons

45. 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.
46. We wish to place on record our thanks to Mr Buxton, Ms Adeniyi and Ms Wells for their assistance at the hearing.
47. 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.
48. We acknowledge that the Appellant had submitted representations with regards to the Notice of Proposal. We acknowledge that according to the Respondent, this period expired after 3 July 2024 and as no representations were made before that date, a Notice of Decision was automatically issued on 29 July 2024. However, we wish to assure the Appellant that we have taken into account all of their submissions made up to and including at the final hearing.
49. We found the evidence of Ms Wells to be credible, factual and balanced. Ms Wells was very careful in her evidence, for example, she emphasised that she was not able to predict the likelihood of delivering regulated activity based on the period of dormancy.
50. We also found the evidence of Ms Adeniyi to be sincere. Ms Adeniyi made it clear that she was passionate about wanting to keep her registration and about delivering regulated activity at some point in the future.
51. The starting point was that the Appellant accepted right at the outset that it had not carried out any regulated activity since 6 April 2021. This was at the point of its registration.
52. 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 (24 July 2024) and as at the date of our decision, carrying on regulated activity. We found that the Appellant

had not carried on regulated activity since April 2021 since it was registered.

53. 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.
54. 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.
55. We acknowledge the Appellant's position as set out in a witness statement. She has made reference to bidding for tenders with various Local Authorities.
56. The Appellant set out that it had made unsuccessful bids with Kent County Council and Bexley Council in April 2021. These bids were unsuccessful "*against well-established providers*". We also acknowledge Appellant's evidence that she was excluded from submitting a tender to Greenwich Council as "*they were new and did not meet the criteria for preferred suppliers.*"
57. We acknowledge that the Appellant had some success with a tender bid in March 22 with Barking and Dagenham but that according to the Appellant's evidence, the Local Authority withdrew the tender altogether. The Appellant's tender relating to Tower Hamlets wasn't successful in 2023. Furthermore, during the hearing, the Appellant informed us that she had not been successful with the bid with Enfield.
58. By the time of the hearing, the Appellant was waiting for the outcome of tenders submitted to Ashton and Medway Council. We acknowledge that her oral evidence (unsupported by any documentary evidence) was that Ashton had asked for information including regarding her business insurance and training schedule.
59. However, whilst we acknowledge the Appellant's efforts, nevertheless, it is clear that bidding for tenders is not the same as providing regulated activity. We accepted the evidence of Ms Wells when she set out that the fact that a service provider is part of any tender process does not guarantee that care packages will be allocated to them at any point. Furthermore, Ms Wells also made it clear that in any event some packages allocated through a tender process may not constitute personal care.
60. In our judgement, the Appellant may well be optimistic about the possibility of a successful tender with Ashton based on their follow-up questions, we did not view a request for further information as evidence of the provision of regulated activity.

61. We may have taken a different view had the Appellant provided evidence of “imminent” regulated activity. For example, we would have expected to see documents such as potential assessments and care plans.
62. We took into account that it has been almost 4 years since registration and regulated activity has *never* been provided. We took into account that the Appellant at the hearing suggested that she would consider private clients which had not been previously considered due to financial reasons. However, whilst we acknowledge the Appellant’s submissions that she had not considered private clients due to financial reasons, there was nothing stopping the Appellant from doing so within the last 4 years.
63. We also took into account the personal circumstances of the Appellant insofar as they were set out in the bundle. Ms Adeniyi works as a performance manager in the rail sector and the Registered Manager works as a nurse within the health service. We acknowledge the Appellant’s evidence that they are both passionate about the care work.
64. We concluded that the decision to cancel the registration was both proportionate and necessary. It had been almost 4 years since registration and the Appellant has never provided any regulated activity. Although there were a couple of outstanding tender bids, the reality was that the Appellant was not in a position to provide regulated activity at the hearing. Ms Adeniyi accepted that the Appellant had received the emails from the Respondent dated 1 December 2022, 19 April 2023 and 26 March 2024. These emails made it clear that if the Appellant did not deliver regulated activity for a continuous period of 12 months, the Respondent could take action to cancel its registration. Therefore, the Appellant was made aware potential consequences of a number of years.
65. We acknowledge that the Appellant will be disappointed with our decision. However, we noted Ms Wells evidence that cancellation on the grounds of dormancy would not be held against the Appellant in any future applications for registration. Any future decision would carry with it a separate right of appeal. We also noted that the Respondent made it clear that its case is not that the Appellant has breached the relevant regulations or provided care in an unsafe way.
66. 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 July 2024, to cancel its registration as a service provider in respect of the regulated activity of Personal care (“the Regulated Activity”), as carried on from Ayada Care Services Ltd, 60A Plumstead High Street, Plumstead, London, SE18 1SL is confirmed.

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

Date Issued: 18 March 2025

