

Care Standards

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

Pocock Street Southwark, London
On Monday 2nd December 2013

Before:

Deputy Chamber President Judge John Aitken
Specialist Member Ms C Joffe
Specialist Member Mr J Cohen

Lyndhurst Residential Care Home

Appellant

v.

Care Quality Commission

Respondent

[2013] 2078.EA

Decision

1. The Appellant in this matter Lyndhurst Care Home is registered with the Care Quality Commission in respect of the regulated activity of providing “*accommodation for persons who require nursing or personal care*” with a condition that nursing care must not be provided under **Section 12(3) of the Health and Social Care Act 2008**. It is this condition that forms the basis of this appeal.
2. On 13th December 2012 the Appellant applied for the removal of that condition, this was refused. The initial refusal was set out in a Notice of Proposal. Following written representations made by the Appellant on 25th March 2013 the Respondent upheld the original decision and issued a formal Notice of Decision. The appeal is made pursuant to **Section 32(1)(a)** of the Act against that decision. The Tribunal may by virtue of **Section 32(3)** of the Act confirm the decision of the Respondent or direct that it is not to have effect and has the power by virtue of **Section 32(6)** of the Act to vary, cease or make directions on any discretionary condition.
3. It is for the Appellant to demonstrate that they are able to provide appropriate care.

4. Following preliminary discussions at the hearing and notwithstanding previous legal submissions regarding service of documents and the like the parties agreed that the decision for the Tribunal was whether such a condition restricting the Home from providing nursing care was an appropriate one and in particular whether the Appellant's application dated 13th December 2012 to remove the non-nursing condition should be denied.
5. The Respondents essentially allege that the Home is not in a position to properly care for those who need nursing care. They rely principally upon a visit to assess the home undertaken in January 2013 specifically to look at readiness to undertake nursing care. We heard from two members of Care Quality Commission staff who attended on that visit, Mr Simon Smith and Ms Temi Akintujoye. They reported that they and the others inspecting had found a number of deficiencies in particular;
 - a. The arrangements relating to who would provide nursing care.
 - b. Equipment shortages such as macerators and sluices to deal with service users who had nursing needs.
 - c. Inadequate drug storage
 - d. Poor and confusing procedures for staff to follow
 - e. Inadequate training records, in particular training record booklets were blank and other records could not be located.
 - f. No infection control lead.
 - g. Lack of a properly trained chef or arrangements to have the chef briefed on dietary needs
 - h. Lack of a sink near the drug storage.
 - i. Rooms which were in general too small to provide nursing care which may require lifting equipment and access from both sides of the bed at once.
6. We also heard from Mr Seeparsand. He and his wife Mrs Zehra Seeparsand own the Care home and both work in it. Mr Seeparsand is the registered manager. He told us that he was also a registered "mental handicap" nurse. He had been assisted lately by his daughter-in-law, Mrs S Seeparsand, on a voluntary basis.
7. Mr Seeparsand has been running care homes for almost 20 years. He is proud of the work he does and considers himself competent, and undoubtedly has great experience. He was running care homes before the advent of the 2008 Act and appeared to have been a little confused by the terminology introduced by that Act which categorised homes as Nursing and Care homes, but those providing only care being Nursing and Care homes with a condition not to provide nursing. One must have some sympathy with him on that point. It appeared that he has applied in 2010 for registration under the 2008 to provide care only and the "No Nursing" condition was duly applied.

8. At some point later however it appears that he thought he was able to provide nursing care. He recognised that his facilities to do so were limited but he told us that he would undertake all his assessments personally and would not take a resident whose needs exceeded his ability to support them. It is clear that there is an area where it is difficult to separate those who need care from those who need nursing. It is however a great concern that despite having clearly made application only to provide care without nursing in 2010, he was to tell us that in 2012 *"I was astounded when I was told it did not cover nursing care"* Even making allowances for confusing documentation this is a fundamental mistake to make for someone who is engaged in the business of providing care.
9. Mrs Seeparsand was an impressive witness who had obviously had a very good effect on the home in tightening up procedures making sure paperwork was in order, remedying some of the deficiencies with regard to medicine cabinets and the like and making the necessary calls to suppliers to arrange other equipment on a conditional basis. She was obviously very efficient and has taken to the task of sorting these matters out.
10. We have looked at the situation overall in coming to our decision, but there are four distinct areas that of nursing provision, equipment, facilities including the layout of the home itself and procedures including documentation.
11. In respect of nursing Mr Seeparsand points out that he is a long qualified mental handicap nurse, the Care Quality Commission by way of contrast say in general they look to see that there is continuity of nursing care offered by general nurses who are most likely to have the skills required for a nursing home. We consider that the Care Quality Commission position is sensible and proportionate. They do not stipulate how many nurses of what particular type but explain they look to see what provision is proposed, at the time of the application, and indeed, at the hearing the proposals for nursing care amounted to a hope to recruit a nursing qualified manager and the use of agency nurses. Those agency proposals have been firmed up a little by evidence after the hearing, but in the end amount to a plan, lacking clarity and that is heavily reliant upon agency nurses without indicating how there will be any continuity of care, or indeed how the one nurse which is mentioned might be able to always provide the care. We also observe that although Mr Seeparsand's nursing background gives him great experience in that area, it was a very long time ago, and many of the nursing problems he might face are not necessarily ones he is equipped, qualified or experienced in dealing with. Continuity is not an absolute requirement, but it helps provide a stable environment in which the needs of service users can be properly addressed. Lack of continuity provides an obstacle to good care which needs to be overcome.

12. The lack of equipment has in the main now been remedied, by the provision of evidence that it could be put in place at short notice. We accept that it is not realistic to have every piece of equipment theoretically necessary in place before a successful application, and the Care Quality Commission do not suggest that it is. The size of the bedrooms is a different matter. They are small and is one more obstacle to be overcome in providing nursing care. With an otherwise highly efficient system it may be possible to provide adequate nursing care. However, it is a limiting factor taking into account that some of the bedrooms make it necessary to move beds from walls, which can only be done by first rearranging or removing furniture from rooms.

13. The paperwork is now largely corrected. That does not assist in dealing with the blank personal training record booklets which were seen by the Care Quality Commission on their visit and we accept that they did see them. It also does not extend to the Statement of Purpose which was supplied to us and indicates that:

“There are 5 qualified nurses, one of whom is always on duty at any one time”

14. That does not accord with the evidence which was given to us, no one has suggested that the home has 5 qualified nurses, or had them in August 2012 which is the revision date on the document. The document also refers to the very outdated phrase Mental Handicap in referring to Mr Seeparsand's qualifications. We were also given to understand that Mrs Seeparsand was no longer a registered Nurse, contrary to what is suggested in the statement of purpose. Perhaps more to the point of this appeal directly the Statement of Purpose indicates that care is provided;

“inclusive of dementia and nursing category”

15. We were shown a training chart which for example indicated that all members of staff had training in end of life care on 20th February 2012, that is of course in contrast to Mr Seeparsand's comments at the time of the visit when he thought only two members of staff had the training but was unable to produce the paperwork in support of that. He explained to us that he was taken aback by the visit and had a number of inspectors all over the home and it was very distracting. That may be so, but he was also plainly not very well organised, a situation being addressed by his daughter in law. It is difficult to have confidence that he would cope given the further complications of dealing with nursing care residents, nor does it indicate that a new manager would have only to continue the previous regime to ensure compliance. Whilst as we have seen from a recent inspection that the home is largely compliant in providing care, nursing care places further demands upon providers.

16. Thus, as the Care Quality Commission witnesses pointed out, many matters are not fatal taken in isolation but when the evidence is considered as a whole combined with relatively poor organisation and environmental difficulties it is clear that it would not be appropriate to extend the responsibilities of the home to include nursing care. Taken in the round, we consider that the decision to refuse to remove a condition not to provide nursing care was proportionate and appropriate both at the time it was made and now even taking into account the additional evidence served since the hearing. For those reasons we dismiss the appeal.

Decision

The appeal is dismissed.

**Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Date Issued: 9th December 2013**