

**IN THE FIRST-TIER TRIBUNAL
CARE STANDARDS**

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

Heard on 2 October 2014 at Pocock Street, London

BEFORE

**JUDGE MELANIE PLIMMER
SPECIALIST MEMBER MR GRAHAM HARPER
SPECIALIST MEMBER MS DENISE RABBETTS**

[2014] 2267.EA-SUS

BETWEEN

ALPHA PARAMEDIC AND AMBULANCE SERVICE LIMITED

Appellant

-v-

CARE QUALITY COMMISSION

Respondent

DECISION

Representation

The Appellant was represented by Mr Richards, the Managing Director and Registered Manager of the Appellant

The Respondent was represented by Mr Macdonald (Counsel).

1. The Appellant is an independent private ambulance service providing non-emergency, emergency and high dependency transport services. The service provides medical and first aid cover for a wide variety of events. It is a limited company registered with the CQC to provide regulated activities in three areas: (i) diagnostic and screening procedures; (ii) transport services, triage and medical advice provided remotely; (iii) treatment of disease, disorder or injury. The Appellant appeals against a decision taken by the Respondent Care Quality

Commission ('CQC') dated 29 August 2014 to impose a suspension on its registration.

Procedural history

2. The same panel considered the Appellant's appeal on the papers on 22 September 2014. The panel did not consider that it was able to decide the matter on the evidence available and directed the parties to provide additional evidence to be considered at an oral hearing on 2 October 2014.
3. At a telephone case management hearing on 29 September 2014 the parties agreed that in line with the notice of decision the focus of attention should be on staffing issues and whether there is reasonable cause to believe that unless the Appellant is suspended, any person will or may be exposed to a risk of harm. The parties also agreed that the appeal should proceed by way of submissions only, although that position would be kept under review should it be considered necessary to hear oral evidence.

Hearing

4. The Tribunal was provided with a carefully prepared and well organised bundle for the oral hearing. This contained updated information not previously available when the matter was earlier considered by the Tribunal. The Tribunal was also provided with very helpful outline submissions from both parties.
5. At the beginning of the hearing Mr Macdonald outlined a summary of pre-hearing discussions that had taken place between the parties. He indicated that Mr Richards had been told that the CQC had considered the further evidence from the Appellant and would be prepared for it to provide transportation only subject to a satisfactory inspection that could take place within a matter of days. The proposed condition was discussed in detail before the Tribunal and Mr Richards was provided with time to reflect upon it. He was of the clear view that to restrict the Appellant's activities in that manner would not be practicable and he would find it professionally difficult to follow.
6. Mr Macdonald also suggested that the CQC was amenable to adjourning the proceedings pending a further inspection. The Tribunal indicated to Mr Richards that this might be a proportionate way of proceeding in all the particular circumstances. This is because Mr Richards acknowledged in the course of discussions that he would welcome the opportunity to instruct an independent consultant to assist him in ensuring that the Appellant was fully compliant. In addition the Appellant had recently taken steps to improve staffing systems and Mr Richards acknowledged that there were still some matters to attend to. He also accepted that there were certain issues that required "*double-checking*" prior to an inspection, and that he would like to instruct an

independent consultant to assist him with compliance issues. The Tribunal gave Mr Richards every opportunity to agree to an adjournment of the hearing. Mr Richards however clearly indicated that he wished the hearing to proceed and for a decision to be reached by the Tribunal without the need for an adjournment or further time to enable the Appellant to take advice from a consultant.

7. The Tribunal reconsidered whether it was appropriate for the appeal to proceed by way of submissions only, with which both representatives had agreed. We decided that we had now received sufficient evidence such that we could make a decision after hearing submissions from both parties and seeking clarification of salient matters.
8. Mr Macdonald went through his outline submissions and asked us to conclude that the staffing concerns are sufficiently significant and immediate to justify a suspension and as such the appeal should be dismissed.
9. Mr Richards relied on his outline submissions and asked us to find that the Appellant should not be suspended as it was broadly compliant with the Regulations and there was no evidence whatsoever that anyone had ever been harmed by the Appellant. Mr Richards reminded us about his own skills and experience and emphasised that there was no risk of harm that could be attributable to the Appellant.
10. At the end of the submissions we reserved our decision, which we now provide with reasons.

Legal framework

11. The appeal is brought under section 31 of the Health and Social Care Act 2008 ('the 2008 Act') against the CQC's suspension decision.
12. Section 31 provides:

"Urgent procedure for suspension, variation etc.

(1) If the Commission has reasonable cause to believe that unless it acts under this section any person will or may be exposed to the risk of harm, the Commission may, by giving notice in writing under this section to a person registered as a service provider or manager in respect of a regulated activity, provide for any decision of the Commission that is mentioned in subsection (2) to take effect from the time when the notice is given.

(2) Those decisions are—

(a) a decision under section 12(5) or 15(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;

(b) a decision under section 18 to suspend the registration or extend a period of suspension.

(3) *The notice must—*

(a) *state that it is given under this section,*

(b) *state the Commission's reasons for believing that the circumstances fall within subsection (1),*

(c) *specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and*

(d) *explain the right of appeal conferred by section 32.”*

13. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (SI 2010/781) set out a number of important requirements that a registered provider must comply with. The most relevant regulations to this case are summarised below.

14. Regulation 8 imposes a requirement on the service provider that it *“must, in so far as they are applicable, comply with the requirements specified in regulations 9 to 24 in relation to any activity in respect of which they are registered”*.

15. Regulation 10 requires appropriate systems in place to assess and monitor service quality and to *“identify, assess, and manage”* risks relating to the *“health, welfare and safety of service users and others who may be at risk from the carrying on of the regulated activity”*.

16. Regulation 20 requires the maintenance of records in relation to persons employed. Regulation 21 requires the operation of effective recruitment and other procedures regarding workers. Regulation 22 requires sufficient numbers of suitably qualified, skilled and experienced staff. Regulation 23 requires the service provider to support staff appropriately and to enable those staff to deliver care and treatment to service users safely and to an appropriate standard including by receiving appropriate training, supervision, professional development and appraisal.

17. The powers of the Tribunal can be found in section 32 of the 2008 Act. Essentially the Tribunal may either confirm the CQC's decision or direct that it shall not have effect (s 32(5)). The Tribunal also has the power to direct that any such discretionary condition as the Tribunal thinks fit shall have effect (s 32(6)). The burden of proof is upon the CQC to establish that the relevant test in section 31 of the 2008 Act is met. The Tribunal must decide for itself whether that test has been met and what conditions if any should be directed on the basis of all the evidence available at the date of hearing.

Background

18. The Appellant was informed that compliance action was required in relation to safety, availability and suitability of equipment in January 2014. We bear in mind that during this inspection a number of positive

observations were made regarding staffing issues. In June 2014 the Appellant's registration was suspended as a result of further issues with equipment.

19. We accept that at an internal management meeting on 18 August 2014 the CQC discussed the ongoing suspension of Appellant and new information received from the Health and Care Professions Council ('HCPC') following their decision taken after a hearing on 8 August 2014 to suspend Mr Richards' registration as a paramedic and Operating Department Practitioner. The HSPC decision states:

"The Panel was not satisfied, from their questioning that Mr Richards has a sufficient understanding of the importance of robust procedures for ensuring safe systems of work within a regulatory regime."

20. Following this, the CQC took a decision to inspect the Appellant in relation to issues covered by regulations 10 and 21-23 of the 2010 Regulations. Mr Richards was told of this decision by telephone on 18 August. The deficiencies identified by the inspectors on 22 August are set out in the inspection report and the decision notice. The deficiencies include the following:

- (1) The Appellant did not have sufficient staff to carry out the regulated activities.
- (2) There was an absence of appropriate records for staff: to indicate they were appropriately trained and competent to carry out the regulated activities; relating to professional development and appraisal of staff; regarding CRB/DBS checking and adequate references.
- (3) There was an absence of any process of auditing and quality assurance and inadequate knowledge of the Regulations and essential standards.

Evidence

21. Mr Richards has sought to address the issues set out above in numerous documents, which are lengthy and detailed. We emphasise that we have read all of the documents submitted to us. We may not refer to each document in turn but we have considered them all. We have paid particular attention to the very lengthy notice of appeal, Mr Richards' two witness statements, the witness statement of his daughter, the document setting out the detailed reasons for disagreeing with the notice of decision and the more recent evidence outlining the steps that have been taken to address staffing issues identified by the CQC, together with the outline submissions.

22. The CQC has also provided numerous witness statements and detailed documentation. We have considered evidence from Ms Wilson, Mr Heath, Ms Wright, Ms Handel, Ms Armistead, Ms Allinson and Ms Jenkinson.
23. It is clear that Mr Richards has vociferously disputed a number of factual allegations made in the documents produced by the CQC and set out in their witness statements. We accept that his stance regarding the CQC and many individual inspectors can at times be described as "*highly combative*". We do not consider that it is necessary for the purposes of this hearing to resolve the many disputed factual issues. We have however had an opportunity to consider the detailed material carefully. Having done so (but not having heard from the witnesses) we are of the strong view that allegations that the CQC or any of the inspectors who have provided witness statements have acted in bad faith or not in accordance with their professional responsibilities are unfounded. We do not accept that the inspectors have colluded or conspired against the Appellant and its staff. On the contrary, the CQC was willing to acknowledge that the Appellant fully met the requirements regarding equipment and lifted the suspension on this basis. Further, the CQC have indicated a continuing willingness to further inspect on an urgent basis in order to ascertain if deficiencies have been corrected. Recent decisions have been reviewed and reconsidered by senior CQC employees. We note that it has been said on behalf of the Appellant that some of the CQC witness statements contain overlapping language and phrases calling into question the reliability of that evidence. We do not accept this to be justified. Whilst the witness statements repeat what others have said we consider this reflective of the collaborative decision-making process in place at the CQC.

Our findings on the current position

24. We accept the CQC's submission that on the evidence available to us there continues to be material non-compliance with the relevant Regulations.
25. We accept that the Appellant still keeps inadequate records relating to safe recruitment of staff, staff training and competencies. That this is so is apparent not just from the 22 August inspection but from the evidence recently submitted by the Appellant. In a recent letter to his staff Mr Richards was seeking assurance that personnel files and CRB/DRB were up to date. This letter also acknowledged gaps regarding statutory training and stated that all staff must provide certificates for relevant training courses prior to the end of October 2014. The Tribunal asked Mr Richards to clarify with precision which records he had in relation to CRB/DRB and training. He indicated that he had most of the information and could bring that information to the Tribunal if necessary. This seems inconsistent with the information staff were being asked to provide in his letter to them.

26. We entirely accept that Mr Richards has initiated important steps in bringing staff records and training requirements up to date (as set out in his witness statements and other detailed documents) but we consider that he is still in the process of doing this. We simply do not have basic information that this process has been satisfactorily or even nearly completed. Significantly, we are not satisfied that the process will be satisfactorily completed as on the evidence available to us, Mr Richards does not seem to appreciate the importance of the task and views it as “bureaucratic”. We have insufficient evidence as to what training courses have been completed by which staff member when, and which remain outstanding and for whom. Whilst we have been provided with CRB/DBS numbers (in a document summarising the Appellant’s personnel as on 28 September 2014) we have not been provided with other basic information such as when this was checked, and by whom, in relation to each worker. Whilst we have been given a list of potential staff and their present circumstances we have not been told with any precision which workers are readily available for work in order for the service to be effective.
27. We accept that Mr Richards has very recently obtained important confirmation from his occupational health consultancy that all of the Appellant’s employees have attended the relevant assessments. We have not been told precisely which employees this letter is referring to. Mr Richards did not seem to recognise that the personnel file for each member of staff and potential worker should include confirmation of the occupational health assessment with a date.
28. Mr Richards has sought to justify the lack of proper staff records by drawing attention to his own personal approach in vetting staff and by stating that in any event the staff are all employed by other agencies which are regulated and/or would otherwise be subject to equivalent or more stringent regulatory requirements. We accept Mr Macdonald’s submission that records and systems remain important and that unless the correct procedures are followed the Appellant has no means of knowing whether those staff do in fact meet the relevant requirements or whether the other employer has made the correct checks etc.
29. We also find that Mr Richards has failed to show a sufficient understanding of the Regulations and the need for the standards and requirements imposed in order to provide the relevant services in accordance with the regulatory regime. Although the appeal proceeded by way of submissions only we had the advantage of hearing from Mr Richards and his approach to the regulatory regime for a number of hours. We also considered the very detailed written evidence that he had drafted for the purposes of the appeal. We agree with the observations of the HCPC that Mr Richards does not have sufficient understanding of the robust procedures for ensuring safe systems within the current regulatory regime.

30. We note that Mr Richards was not aware of the existence of the CQC's Guidance about Compliance when inspected. We are however currently more concerned that after being given a period to reflect on the inspection together with the Guidance about Compliance, at the hearing Mr Richards continued to underplay the importance of the Regulations. We wish to emphasise that we entirely accept that this is not because Mr Richards does not care about the quality of the Appellant's services. In fact we found Mr Richards to be genuinely passionate and committed to the services provided by the Appellant and its service users. He is very experienced in his professional field. However, he has sought to persuade us that through him the Appellant can be trusted to provide excellent services without necessarily having the relevant systems in place. In our view he has understated and continues to demonstrate a lack of insight into the importance of records and systems in order for the Appellant to be compliant and in order to obviate a risk of harm to service-users in the future.
31. We have taken into account that the Appellant has not been found to be non-compliant prior to January 2014 and at this time was found to be compliant regarding many staffing issues. We bear in mind that after the issues identified at the HCPC hearing it is likely that the CQC undertook a more thorough inspection of the systems in place regarding staff than had hitherto been undertaken. In any event we are obliged to consider the evidence as at the date of hearing and for the reasons we have already outlined we regard there to be continuing non-compliance in significant areas.
32. Mr Richards may well have the potential to appreciate the importance of the Regulations and implement appropriate systems and records with independent assistance. We note that the Appellant was able to address and rectify significant deficiencies in equipment in the recent past. To his credit Mr Richards has recognised in his evidence and before us, the need for external assistance in compliance matters. He however confirmed that he has not as yet instructed a consultant as funding needs to be clarified.
33. In our view, substantial issues regarding staffing systems and overall knowledge and awareness of the Regulations need to be addressed. Given that these remain unresolved or only partially resolved, we find that there are substantial grounds to believe that if the suspension is lifted, service users may be placed at risk of harm. Absent appropriate systems in place and a better understanding of the Regulations, service users are at risk of harm notwithstanding the best intentions of Mr Richards and others working for the Appellant.

Proportionality

34. In considering whether suspension is proportionate we have had regard to all the evidence available to us. We are satisfied that matters remain unsatisfactory and require further remedial action.

The nature and extent of the concerns identified by the CQC are serious. We do not consider that any discretionary conditions are appropriate at this stage as an alternative to suspension. Mr Richards was clear that he did not think it was practicable to provide alternative services such as transportation only. Indeed he confirmed to us that at this stage he was seeking “*all or nothing*” i.e. the Appellant should be entitled to carry out all the regulated activities and nothing short of this.

Conclusion

35. The CQC has displaced the relevant burden upon it. Significant concerns remain as at the date of hearing. We are satisfied that there are reasonable grounds to believe that unless the Appellant is suspended, persons may be exposed to the risk of harm.

Decision

36. We dismiss the appeal and there shall be no order as to costs.

Judge Melanie Plimmer
First-tier Tribunal Judge (Health, Education and Social Care)
Lead Judge, Care Standards and Primary Health Care Lists

Date Issued: 3 October 2014