

Care Standards

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

[2018] 3311.EA-MoU

Heard on 4 May 2018 on the Papers without parties' attendance

BEFORE
JUDGE Christopher Limb
SPECIALIST MEMBER – Ms M Harris
SPECIALIST MEMBER – Ms W Stafford

**IN THE MATTER OF AN APPEAL
BETWEEN:**

THE LIME TREES RESIDENTIAL CARE HOME LIMITED

Appellant

-v-

CARE QUALITY COMMISSION

Respondent

DECISION

Evidence – written evidence in bundle together with the statement of Diane Onyerindu of 1st May 2018

The Appeal

This is an appeal against the decision of the Care Quality Commission (CQC) on 23rd March 2018 imposing a condition that accommodation must not be provided to any new service user without the prior written agreement of the CQC (page 212).

Introduction and Background

- 1 The Appellant was registered as a provider of accommodation for persons who require nursing or personal care on 5 March 2018. Mrs Helen Onyerindu is the sole director of the registered provider and Diane Onyerindu (her daughter) (“DO”) is the nominated individual. The Appellant previously operated under a different registration with Mr Aloysius Onyerindu as the registered provider: he was the husband of Mrs Helen Onyerindu until his death in October 2016.
- 2 Prior to the current registration the Appellant had been rated as Good in 2016. The issues relevant to this appeal arise from the inspections in March 2018, on 13th 15th and 19th. We have considered all the evidence before us and our decision must be read in that context. The core of the evidence relied upon by the CQC is within the statement of its Inspector Orla McHugh (“OM”). We note that OM’s statement is followed by a list of exhibits, but that those exhibits are not within the bundle. It is therefore the written description within the statement itself to which this decision refers.
- 3 The concerns of OM and the CQC are wide-ranging and they contend that there is ample evidence to justify the reasonable belief that without action on their part persons, and in particular service users at the home, will or may be exposed to harm.
- 4 In its Appeal application and in particular at section H (page 206 on) the Appellant refers to specific issues as to medication and risk assessments and care plans and more generally in relation to other aspects, and contends that some items are incorrect or a misunderstanding and that others have been the subject of improvement such that there is no proper basis to justify a reasonable belief that without action by the CQC service users at the home will or may be exposed to harm.
- 5 Both parties were content that this appeal should be heard upon the papers.

Legal framework

- 6 Section 31 of the Health and Social Care Act 2008 (“the Act”) provides that the CQC may vary or remove or add a condition in relation to the registration if it has reasonable cause to believe that unless it acts any person will or may be exposed to risk of harm.
- 7 There are requirements relevant to these proceedings within the Health and Social Care Act (Regulated Activities) Regulations 2014 (“the Regulations”). Various of the regulations are referred to in the statement of OM which sets out evidence under headings referring to individual regulations. Regulation 8 provides that a regulated person must comply with regulations 9 to 20A.

- 8 An appeal to this tribunal is under section 32(1)(b) of the Act and under section 32(5) the tribunal may confirm the decision or direct that it is not to have effect and under section 32(6) there is power to vary a discretionary condition (namely any condition other than a registered manager condition under section 13(1)).
- 9 We approach our findings of fact on the basis of whether we are or are not satisfied that there is “reasonable cause to believe” any person will or may be exposed to risk of harm unless conditions are imposed.

Evidence - general

- 10 We make some initial observations of a more general nature.
- 11 The statement of OM is in notable detail but there is nevertheless a reasonable summary of its concerns and conclusions within the decision letter sent to the Appellant and to which the statement of DO responds.
- 12 In general terms the statement of OM is clear and specific. The statement of DO is in some detail in relation to the first 2 categories/headings of concern in the decision letter and OM statement but is relatively general in response to the latter 4 headings. It accepts some failings, referring to “some” factual inaccuracies and to improvements being made, but is not specific as to areas of dispute under the latter 4 headings.

Evidence and findings of fact

- 13 In relation to medicine administration records (“MAR”), it must be recognised that such records are not “mere” record-keeping but an important aspect of safe practice. Only in relation to service user K is there a dispute of fact raised by DO in her statement. She does not explain or consider how the problems arose without earlier action being taken and relies upon an intention to improve.
- 14 There is in our opinion an apparent failure on the part of DO and the Appellant to understand the importance of safe practice in relation to medicines and the central role played by MARs and their reliable use in achieving safe practice. Such failures give rise at the least to a real risk of harm to users.
- 15 Four service users are referred to by the CQC in their decision letter in relation to risk assessments and care plans, albeit further users are referred to in the evidence of OM. One service user (“M”) entered the home on 9 February 2018, over a month before the inspection visits. The general explanation in the statement of DO (paragraph 10 onwards) is that the CQC were informed “care plans

and risk assessments are not yet available for staff for the new service users” but “interim” plans were available, and in essence that verbal information was given to staff and no actual inappropriate treatment had occurred.

- 16** There are concerning aspects of which further detail is given in the statement of OM. Even by reference only to the details given in the decision letter, there is no explanation given by DO as to why there was a delay of over a month after M entered the home, and there are only generalities and not detail as to how proper care could be given by all staff without proper plans and assessments.
- 17** Proper documentation is an integral part of ensuring safe care by all the staff having care of residents on all days and at all times. There is no identified factor to satisfy us that there is understanding by DO or senior staff at the home of that importance. Such failures give rise at the least to a real risk of harm to users.
- 18** In paragraph 133 of her statement OM says “I was appalled and horrified by the conditions service users were living in at the service and the treatment users were receiving”. That conclusion is particularly related to the related issues of infection control/hygiene and safeguarding/dignity/respect of service users. The decision letter refers to widespread instances of soiled bedding and of absent dignity such as being visible to others when showering or otherwise naked. Her statement gives greater detail of a large number of similar matters.
- 19** The statement of DO (paragraphs 15-22) deals very generally with such issues and refers only to action taken in response to the visits and expressed CQC concern. There is no defined dispute on a factual level and no explanation of how such widespread problems had arisen without the management and senior staff being aware of them. There is no explanation of why action was taken only after the visits of the CQC. There is a very general suggestion that individual staff were at fault but no explanation as to whether and if so how supervision of the staff did not highlight the issues earlier.
- 20** We consider that the quoted statement in paragraph 133 of OM’s statement is justified. The subjects of these aspects of the case in particular are in no sense specialised matters or requiring refined expertise to appreciate: they are fundamental to a humane as well as a safe environment for users, many of whom are vulnerable. A failure by the home to appreciate such issues as important, or even to appreciate that they were occurring if that is their suggestion, indicates a mindset and an ethos which inevitably gives rise to serious risks of harm to users in our opinion.
- 21** The remaining aspects raised by the CQC relate to staff recruitment and staffing levels. By way of example, issues include absent or out

of date DBS checks. DBS checks are not even mentioned in DO's statement, and it therefore appears that it is not understood that proper checks upon staff employed in such homes is fundamental to users' safety. It is a further basis for our concluding that there will or may be exposure to risk of harm.

- 22** We have no hesitation in concluding in the foregoing context that unless steps are taken by the CQC service users will be, as well as may be, exposed to risk of harm. The issues raised are widespread, are serious, and demonstrate a lack of insight and a lack of understanding of and/or lack of concern as to matters fundamental to users' safety. We therefore conclude that the threshold for imposition of conditions under section 31 is satisfied.

Proportionality

- 23** We now consider whether the findings we have made do or do not justify the condition imposed.
- 24** We have a discretion as to whether a condition should be imposed and that must be exercised in accordance with the principle of proportionality.
- 25** The rationale given by the CQC (see in particular paragraph 30 of the statement of Alison Murray), includes the reduction of capacity to address these issues if further users were admitted and the ability of the CQC to take steps to ensure that appropriate steps have been taken before new users are admitted. The Appellant argues that it is disproportionate and has the practical effect of preventing new admissions.
- 26** The lack of insight and understanding to which we have referred makes it reasonable and appropriate in our opinion not to rely upon the Appellant to ensure that past mistakes are not repeated. In particular we consider that the ability of the CQC to take steps to ensure that appropriate steps have been taken before new users are admitted is reasonable and proportionate. No lesser steps (other than no condition) have been suggested and we do not consider that there are lesser steps or lesser conditions which would be sufficient to safeguard the users from harm.

Conclusion

- 27** In all the circumstances we consider that it is proportionate and appropriate to confirm the cancellation of registration in this case.

Decision

28 We confirm the decision of the CQC to impose a condition on the registration of the Appellant and the appeal is dismissed.

**Tribunal Judge Christopher Limb
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 10 May 2018