

# First-tier Tribunal Care Standards

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

[2023] 4939.EA

Neutral Citation Number: [2023] UKFTT 1050 (HESC)

Hearing at Oxford Magistrates Court  
On 21, 22, 23 and 24 November 2023  
Panel deliberations on 29 November 2023

## BEFORE:

Tribunal Judge Siobhan Goodrich  
Specialist Member Libhin Bromley  
Specialist Member Lorna Jacobs

## BETWEEN:

K N & S RAMDANY  
(HOLLY GRANGE RESIDENTIAL HOME)

Appellant

- v -

CARE QUALITY COMMISSION

Respondent

## DECISION AND REASONS

### The Appeal

1. This is an appeal against the decision made by the Respondent on 8 March 2023. The decision, made under s. 12 (5) (c) of the Health and Social Care Act 2008 (“the Act”), was to vary condition 2 on the Appellant’s certificate of registration so as to remove the authorization in respect of the regulated activity of the provision of nursing or personal care at Holly Grange Residential Home, Cold Ash Hill, Cold Ash, Thatcham, Berkshire.

### Restricted Reporting Order

2. 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 service users in this case, so as to protect confidentiality and privacy. We therefore also anonymise the names of family members.

### The Background

3. In summary:
  - a) Mr and Mrs Ramdany are married. They are both nurses by training. They have owned and managed residential homes since 1997.
  - b) In 2010 a certificate of registration (CoR) was granted to them jointly by the Respondent for the provision of residential care at Holly Grange Residential Home (hereafter “Holly Grange” or “the home”), and also at a residential home known as Moorlands. Each of them are the registered providers for both locations under the CoR so when we refer to the Appellant we refer to both of them.
  - c) Until he resigned this role on 27 January 2023 Mr Ramdany was the registered manager (RM) for Holly Grange and Mrs Ramdany was, and remains, the RM for Moorlands.
  - d) The Appellant’s position in the appeal is that Mr Ramdany was always primarily responsible for HG.
4. As discussed at the beginning of the hearing the decision made will result in the enforced closure of Holly Grange. The reason that the decision was made by way of a decision to vary conditions regarding location is because cancellation of registration would affect Moorlands, about which there is no issue.

### **The Chronology of Inspections and Regulatory action**

5. The main dates appear to be as follows:

14 March 2016: Comprehensive Inspection with overall ‘inadequate’ rating. The service was placed in special measures.

11 August 2016: Focused Inspection with overall ‘inadequate’ rating.

8 December 2016: Comprehensive Inspection with overall ‘requires improvement’ rating. The service ceased to be in special measures.

14 March 2018: Comprehensive Inspection with overall ‘good’ rating.

3 March 2021: Focused Inspection conducted by Mr Gaimster with another Inspector and an Expert by Experience: overall rating of ‘requires improvement’ .

31 May 2022: Focused Inspection conducted by Mr Gaimster with another Inspector and an Expert by Experience: with overall ‘requires improvement’ rating.

4 July 2022: The Respondent served a warning notice on the Appellant in relation to breaches of regulation 17 of the 2014 Regulations.

8 and 9 November 2022: Focused Inspection conducted by Mr Gaimster with overall ‘inadequate’ rating, including a breach of the warning notice. The service was placed in special measures.

5 December 2022: Inspection report sent to the Appellant. No factual accuracy representations were made by the Appellant.

19 December 2022; Mr Ramdany sent an email to Mr Gaimster stating that he was “happy with the draft report and did not intend to make any submissions.”

22 December 2022: Provider Meeting conducted via Teams by Mr Boyce the Inspections Manager, attended by Mr and Mrs Ramdany and Mr Gaimster. The Appellant was required to send details of actions to return the home to compliance by 2 January 2023.

27 January 2023: Notice of Proposal issued to the Appellant. Mr Ramdany lodged formal notice that he had ceased to be the RM. Ms McCormack became the acting RM.

8 March 2023: Notice of Decision issued to the Appellant.

2 April 2023: Ms McCormack left Holly Grange.

5 April 2023: Appeal Application lodged which includes the letter of complaint regarding Mr Gaimster dated 4 April 2023. Mr Sivah Kundasamy was appointed as acting RM.

26 July 2023: Inspection conducted by Mrs Steele assisted by Mr Pitt and Ms Windley, an Expert by Experience.

September 2023: Mr Sivah Kundasamy left Holly Grange.

### **The Notice of Proposal (NOP)**

6. The NOP dated 27 January 2023 sets out in great detail the basis for the Respondent’s proposal to impose the condition under appeal. It included notification of the Appellant’s right under Section 27 of the Health and Social Care Act 2008, to make written representations if the Appellants did not agree with any or all of the reasons given within 28 days. No written representations were received.

### **The Decision under Appeal**

7. The Decision was made by the Respondent on 8 March 2023 to adopt the NOP because of breaches of standards of care under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (2014 Regulations) in respect of:

- Regulation 11: Need for consent
- Regulation 12: Safe care and treatment
- Regulation 17: Good governance
- Regulation 18: Staffing

and also

- under Regulation 18 of the Care Quality Commission (Registration) Regulations 2009 (2009 Regulations) which concerns the Notification of other incidents.

8. The core reasoning in the Notice of Decision (NOD) was that:

*“1. CQC’s inspection of Holly Grange Residential Home on 08 and 09 November 2022 found the regulated activity stated above is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements.*

*2. ...*

*3. ... you have not demonstrated CQC’s concerns have been addressed and that you are carrying on the regulated activity in accordance with the relevant requirements at this time.”*

## **The Appeal**

9. The reasons for the appeal dated 5 April 2023 included that:

- 1) The CQC decision is heavily biased because Mr Gaimster is an authoritarian and vindictive. Hence his findings must be reviewed in full.
- 2) It is alleged that Mr Gaimster insisted on Mr Ramdany resigning to make way for Ms McCormack to be RM, and that Mr Gaimster mandated that Mr Ramdany must not enter the premises.
- 3) The Appellant’s case is that there have been numerous challenges in recruiting and retaining permanent staff because the home is situated in a relatively remote location which is not served by a convenient public bus service. Mr Gaimster had ignored this and even asked them not to mention the staffing issue. With the recruitment of new staff the home was beginning to show improvement but Mr Gaimster opted to use the remaining “moderate to minor concerns” as his reasons to propose to close the home.
- 4) The Appellant had hired a consultant, Mr Honour, and had hired a new manager, Mr Sivah Kundaswamy. It has an action plan which shows that improvements are being made.
- 5) A new and unbiased Inspector will come to a very different conclusion and will provide necessary support to get the home back to good ratings.

## **The Respondent’s Reply**

10. The formal Response relied on the NoD and contended that the decision was, and remains, necessary, justified and proportionate to address the ongoing concerns that the Respondent has about the risks to residents at the location. These concerns encompass extensive breaches of the regulations. The decision to oppose the appeal takes into account the Appellant’s long history of non-compliance at the home as outlined in the Notice of Proposal (NOP) dated 27 January 2023. The Respondent does not agree that staffing difficulties are the root cause of the issues arising, although issues around inadequate staffing and staff training remain. Whilst the recruitment of further staff is a positive step, staff turnover is an ongoing issue. Mr Honour and Ms McCormack have resigned. The Respondent had previously used alternative enforcement measures but the concerns continued resulting in the NOD. It has balanced the risk to residents in moving to a new home.

## **Attendance**

11. Mr and Mrs Ramdany were represented by Dr Ghosh-Roy and the Respondent by Mr James Harrison of counsel. We ultimately heard evidence from the following witnesses and in the following order.

For the Respondent:

- Mr Gaimster, Inspector
- Mr Boyce, Inspection Manager
- Mrs Jupp, Senior Officer and the decision maker
- Mrs Emma Steele, CQC Inspector

For the Appellant:

- Mr L, as representative for families
- Mr F, as above
- Mrs Ramdany

### **The Bundle and Late Evidence**

12. We had received and read a large e-bundle consisting of 1292 pages before the hearing. We also received the Scott Schedule (SS).

13. Further documents were also produced during the hearing with the agreement of the parties and were formally lodged with the Tribunal in accordance with our direction. It was common ground that the late evidence received was relevant and that it was fair that we should receive it.

### **Reasonable Adjustments**

14. On the first day of the hearing the panel received a late application supported by medical evidence from Mr Ramdany's GP regarding his health condition which referred, amongst other matters, to consideration of reasonable adjustments. It had appeared from the application lodged that Mr Ramdany would not attend, but when the hearing formally began we were informed by Mr Ghosh-Roy that Mr Ramdany had decided that he would now attend and his arrival was imminent. We therefore rose to accommodate his arrival.

15. When the hearing resumed the judge explained to Mr Ramdany that there was a live video connection throughout so that if, at any stage, he did not feel able to physically attend he still had the option to attend remotely.

16. The judge also made clear that if, at any stage during his attendance, Mr Ramdany needed a break he need only ask.

17. In the event Mr Ramdany attended the hearing throughout in person and did not ask for any breaks at any time. The panel was mindful of Mr Ramdany's situation and his health condition. It made sure that regular breaks were taken, and also ensured that breaks were also taken when it was evident that instructions may be required. It also acceded to all requests for a break made by Mr Ghosh-Roy.

18. When the Respondent's case closed it was proposed that Mrs Ramdany would give evidence with Mr Ramdany alongside her. It was apparently envisaged that Mr Ramdany would sit near to Mrs Ramdany so to correct and/or supplement her evidence. We decided that, as a matter of basic principle, this was wholly inappropriate. The course proposed was irregular and presented the obvious capacity for confusion. There was no medical evidence to support that Mr Ramdany was unfit to evidence, or to give instructions. It was a matter for Mr Ramdany to decide if he wanted to give evidence and, if he did so, his evidence would be heard in the usual way.
19. After Mrs Ramdany gave evidence Mr Ghosh-Roy said that Mr Ramdany would not give evidence.
20. The judge took time to explain to Mr Ramdany that the choice as to whether or not to give evidence was entirely a matter for him. He might receive advice from others but the choice was his alone. The legal consequence of his deciding not to give evidence was that little or no weight might be attached to his written evidence because this would not have been tested. The panel was willing to adjourn to accommodate the reception of his evidence if necessary. It was also willing to receive written submissions in due course if, as was likely, Mr Ramdany's evidence would take the rest of the available hearing time.
21. The panel rose so that Mr Ramdany could consider his position. When we resumed Mr Ramdany confirmed that he did not wish to give evidence. The Appellant's case then closed and we heard oral submissions.

### **The Preliminary Application**

22. Mr Ghosh-Roy had submitted by email a document which raised a large number of points which were principally directed to the exclusion of evidence. The judge, on behalf of the panel, and in the exercise of case management, outlined the relevant legal principles regarding the function of the panel in an appeal which includes that the panel considers evidence as at today's date. She invited the parties to jointly consider the issues raised in the context of the points taken. The panel rose to that end. At our request Mr Harrison provided a link to the published guidance regarding the CQC complaint process to Mr Ghosh-Roy and the panel.
23. When the hearing resumed Mr Harrison summarised his understanding from inter partes discussion. This was confirmed by Dr Ghosh-Roy. The only matter on which the Appellant now required a ruling was his application which was to the effect that panel should direct that the Respondent's evidence should be struck out.
24. In his further submissions Dr Ghosh-Roy acknowledged that, having read the published CQC Complaints guidance, this did not support his original understanding or the written submissions made.
25. When asked by the judge what application he was actually making Dr Ghosh-Roy explained that his objective was that all the CQC evidence be ruled out. He sought that the Respondent's decision was declared to be of no effect without the need for a hearing. This was on the basis that a complaint had been made which, had

it been investigated, would have revealed that the decision was infected by bias on the part of Mr Gaimster.

26. The panel retired and considered the matter. We refused the application for reasons that were briefly expressed in the interests of time economy and we reserved our reasons on the preliminary application which we now provide.
27. In our view the application was wholly misconceived. We are concerned with the hearing of the appeal made by the Appellant. The only power under the Rules to preclude any party from the full adjudication of the issues raised in the appeal is that contained in Rule 8. The Appellant had not satisfied us that there is any proper basis on which it could be said that the Respondent's case has no reasonable prospect of success.
28. We nonetheless considered whether the application amounted to the argument that the Respondent's resistance of the appeal was an abuse of process applying common law principles. In our view the Complaints guidance/policy does not dictate that a complaint against an Inspector must or should be determined prior to any appeal. Indeed, the reverse is the case. In our view there are many obvious reasons why, in the interests of justice, the Tribunal should proceed to hear and determine an appeal against a decision. The panel can consider any material relevant to the substance of the complaint made and its relevance to the issues it has to decide.
29. The basis of the argument advanced was that had the complaint been considered by the CQC the decision would not have been made. We did not consider that the evidence of the CQC complaints manager, even were it to be compelled, would illuminate the issues we have to decide. The point and purpose of the appeal to the Tribunal is for the panel to hear and evaluate the challenge to the evidence that underpins the decision made. This includes not only the evidence of Mr Gaimster but that of other witnesses on both sides, and is to be viewed as at today's date, i.e. including any relevant post decision evidence. The Appellant did not satisfy us that a fair decision could not be made or that it would be unfair to determine the issues in the appeal.

### **The General Legislative Framework**

30. Amongst other matters s. 2 of the Health and Social Care Act 2008 (the Act) invests in the CQC "*review and investigation functions....*" – see section 2 (b).
31. Section 3 provides that:
  - “(1) The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.*
  - (2) The Commission is to perform its functions for the general purpose of encouraging–*
    - (a) the improvement of health and social care services,*
    - (b) the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and*

*(c) the efficient and effective use of resources in the provision of health and social care services...*"

23. Section 4 provides:

***Matters to which the Commission must have regard***

*"(1) In performing its functions the Commission must have regard to—*

*(a) views expressed by or on behalf of members of the public about health and social care services,*

*(b) experiences of people who use health and social care services and their families and friends,*

*(c) views expressed by Local Healthwatch organisations or Local Healthwatch contractors about the provision of health and social care services,*

*(d) the need to protect and promote the rights of people who use health and social care services (including, in particular, the rights of children, of persons detained under the Mental Health Act 1983, of persons who are deprived of their liberty in accordance with the Mental Capacity Act 2005 (c. 9), and of other vulnerable adults),*

*(e) the need to ensure that action by the Commission in relation to health and social care services is proportionate to the risks against which it would afford safeguards and is targeted only where it is needed.*

*(f) any developments in approaches to regulatory action, and*

*(g) best practice among persons performing functions comparable to those of the Commission (including the principles under which regulatory action should be transparent, accountable and consistent)."*

**The Regulated Activity Regulations**

24. The regulations made under s. 20 of the Act are the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, SI 2014/2936 (the Regulations). Part 3 contains various provisions under the heading "Fundamental Standards". The NOD also relied on Regulation 18 of the 2009 Regulations.

**Self-Direction**

25. The right of appeal lies under section 32 (1) of the Act. The panel takes into account evidence as at the date of the hearing and considers the current position.

26. The burden of proving the breaches of the standards on which reliance is placed rests on the Respondent. The standard is the balance of probabilities.

27. The burden of satisfying us that the decision is today justified, necessary and proportionate, lies on the Respondent from first to last.

28. If a party makes an allegation, such as bias or bad faith, it bears the evidential burden of adducing evidence to prove that allegation on the balance of probabilities.

29. The panel can receive hearsay evidence. This includes records made by staff or others. It also includes statements/letters and/or duly attested statements (i.e. backed by a statement of truth) made by persons not called to give evidence. The weight to be attached to such evidence calls for evaluation in the context of all the evidence. Generally, the weight to be afforded to disputed hearsay evidence is less than it might carry had the evidence been tested in cross examination.
30. The panel can also receive opinion evidence. The weight to be attached to such evidence is a matter for evaluation in the context of all the evidence. In very general terms the panel consider issues such as the extent and/or basis of the knowledge of the person giving his/ her opinion.
31. On consideration of the appeal the Tribunal may confirm the decision or direct that it is to cease to have effect – see s. 32 (5). Under s. 32 (6) of the Act the Tribunal has power to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates. A “discretionary condition” means any condition other than a registered manager condition required by s. 13.

### **The Respondent’s Policy/Guidance on enforcement**

32. There is no real issue regarding the published policy guidance on enforcement. Dr Ghosh-Roy said in terms that the issue was not how the guidance was applied but what had been fed into the decision-making process. The Appellant’s position is that the whole process was unfair because Mr Gaimster’s bias had infected or polluted the decision-making process and this had also infected the later inspection in July 2023. In the appeal documents it was alleged that Mrs Steele had made findings and/or judgments so as to support Mr Gaimster.
33. In this appeal we consider it appropriate to summarise the main elements of the Respondent’s guidance on enforcement. We recognise that the Decision Tree (DT) must be read in the context of the Enforcement Policy (EP). Both policies provide guidance but emphasise the need for judgement in the individual circumstances of each case.

### **The Enforcement Policy**

34. The Introduction to the EP recognises that:

*“there will be occasions, when, depending on the facts of an individual case it will not be appropriate to follow the precise steps described in this policy. It should be read as a general guide to good practice when carrying out or considering enforcement action. It cannot substitute for judgement in individual cases.”*

35. The purpose and principles of enforcement are described at pages 7 and 8 of the policy. The main features of the EP are that:

a) The two primary purposes of the CQC are:

1. To protect people who use regulated service from harm and the risk of harm to ensure they receive health and social care services of an appropriate standard.
2. To hold providers to account for failures in how the service is provided.

b) The principles that guide the use of enforcement powers make clear that the starting point for considering the use of all enforcement powers is to assess the harm or risk of harm to people using the service.

c) As to Proportionality section 3 (at page 9) of the EP states:

“We will only take action that we judge to be proportionate. This means that our response, including the use of enforcement powers must be assessed by us to be proportionate to the circumstances of an individual case. Where appropriate, if the provider is able to improve the service on their own and the risks to people who use the service are not immediate we will generally work with them to improve standards rather than taking enforcement action. We will generally intervene if people are at an unacceptable risk of harm or providers are repeatedly or seriously failing to comply with their legal obligations.”

### **The Decision Tree**

36. Stage 3 of the Decision Tree (DT) concerns the selection of appropriate enforcement action. Amongst other matters this states:

“...the decision-making process seeks to ensure that we take consistent and proportionate actions without being too prescriptive. It should not result in mechanistic recommendations but should guide decision makers to reach appropriate decisions.”

This stage uses two criteria which are:

- “Seriousness of the breach
- Evidence of multiple and/or persistent breaches”.

37. The DT then addresses Stage 3A (1) “Potential impact of the breach” which concerns the assessment of the level of the potential impact that would result if the breach of the legal requirements was repeated. “The focus is on reoccurrence to assess if we should act to protect people using regulated services from harm in the future.” It provides three categories regarding the risk of harm: Major, Moderate and Minor

38. “Major” is defined as:

“The breach, if repeated, would result in a serious risk to any person’s life, health or wellbeing including:

- permanent disability
- irreversible adverse condition
- significant infringement of any person's rights or welfare (of more than one month's duration) and/or
- major reduction in quality of life"

39. "Moderate" is defined as

"The breach, if repeated, would result in a risk of harm including:

- temporary disability (of more than one week's but less than one month's duration
- reversible adverse health condition
- significant infringement of any person's rights or welfare (of more than one week's but less than one month's duration); and/or
- moderate reduction in quality of life."

40. "Minor" is defined as:

"The breach, if repeated, would result in a risk of:

- Significant infringement of any person's rights or welfare (of less than one week's duration; and/or
- minor reduction in quality of life
- minor reversible health condition."

41. The next stage 3A (2) refers to the assessment of "Likelihood that the facts that led to the breach will happen again". The likelihood should be based on the control measures and processes in place to manage the risks identified, including changes in practice.

42. Stage 3A (3) deals with the "Seriousness of the breach". It provides a chart which, by reference to the assessment of the potential impact of the breach (3A (1) above), and the likelihood that the fact giving rise to the breach will happen again (3A (2)) above, produces a description of the potential impact in grid form ranging from low, medium, high and through to "extreme".

43. Stage 3A (4) is then used to reach an initial recommendation about which enforcement powers should be used to protect people using the service from harm or the risk of harm. The initial recommendation where the seriousness of the breach has been identified as "Extreme" is:

"Urgent cancellation

Urgent suspension

Urgent imposition... of conditions."

44. Where the risk is judged to be “high” the initial recommendation is for the same actions as above but on a non-urgent basis (i.e, by reference to the ordinary enforcement measures. which require service of an NOP as a first step). This affords time (28 days) for any appellant to provide representations and to show how it will address issues going forward.
45. Stage 3B involves “Identifying multiple and/or persistent breaches.” This can result in a change to the initial recommendation for enforcement action by increasing or decreasing the severity. This stage involves consideration of the 3B factors:
- 3B (1) Has there been a failure to assess or act on past risks?
  - 3B (2) Is there evidence of multiple breaches?
  - 3B (3) Does the provider’s track record show repeated breaches?
  - 3B (4) Is there adequate leadership and governance?
46. The DT guidance is that, depending on the answers to each of the above, inspectors should make an overall assessment about the most appropriate action to take. The answers to the 3(B) questions above may increase or decrease the severity of any recommended enforcement action.

### **Our Consideration and Reasoning**

47. We have considered all the witness statements, documentary and oral evidence before us, as well as the skeleton arguments and closing submissions, in the round. The oral evidence and submissions were recorded. If we do not refer to any particular part of the evidence or submissions, it should not be assumed that we have not taken all matters before us into account.
48. In closing Dr Ghosh-Roy submitted that bearing in mind the clear family support, the Appellant should be given the further opportunity to address concerns and to again reach “good”. The Appellant should be allowed to continue to operate with a six month “reset” so that they can demonstrate an excellent service. Mr and Mrs Ramdany are happy to have conditions placed on the service. Mr Ghosh-Roy submitted that there could be a jointly agreed quantification of improvements to be made either weekly or at other intervals. The Respondent would then have opportunity to “shut the service” if it does not see a trend of improvements weekly, fortnightly or monthly. The Appellant will, however, need to be allowed to admit new residents. He referred to the recent engagement of a Management consultant from Ascot Management, and the new manager. The Appellant will submit an updated action plan.
49. We consider that the Appellant’s case involves three overarching issues:
- Bias
  - Positive historic performance
  - Post-inspection improvements

50. Mr Gaimster's was cross examined at length. He maintained his composure throughout his evidence. He firmly denied that he had instructed Mr Ramdany to resign as RM and/or had said that Ms McCormack should be the RM and/or had said/instructed that Mr Ramdany should not enter Holly Grange.
51. The only live evidence before us to support the serious allegations made about Mr Gaimster's conduct was that of Mrs Ramdany. She said that Mr Gaimster had given the first two of these instructions at the provider meeting on 22 January 2022 which had been conducted via Teams by Mr Boyce.
52. Mrs Ramdany also said that Mr Gaimster had said/threatened that he would turn Moorlands "upside down". It was apparent that her account was based on her understanding of what Mr Honour had said Mr Gaimster had said. We were told that Mr Honour had ceased his role as consultant in April 2023 following the NOD. No witness statement has been provided from him.
53. Mrs Ramdany remained very firm in her evidence that at the provider meeting, in the presence of Mr Boyce, Mr Gaimster had given instructions to the Appellant to the effect that he should resign and that Ms McCormack should become the RM. In our view there are a number of matters that need to be weighed when resolving the stark conflict of evidence:
- a. The complaint alleging such conduct was not made until 4 April 2023 which post-dated the NOP and NOD and coincided with the lodging of the appeal.
  - b. Mr and Mrs Ramdany had the opportunity after the NOP was served on 27 January 2023 to make representations regarding Mr Gaimster's conduct or professionalism but did not do so. Other opportunities included: correction of the minutes of the provider meeting and /or a complaint at any stage prior to 4 April 2023.
  - c. Mrs Ramdany's explanation was to the effect that she and Mr Ramdany had not wanted to raise the issue pending the Respondent's decision. Holding that point in consideration we considered the evidence in the round.
  - d. We noted that the contemporaneous emails from Mr Ramdany to the CQC show a very different story to the narrative maintained by the Appellant. These show that:
    1. 12 January 2013: Mr Ramdany emailed Mr Boyce and Gaimster stating:

*"I have taken advice from my business consultant (Mr Honour), in conjunction with legal advice.*

*Based on this advice I have now decided to resign from my position as Home Care Manager. I have discussed this with Miss Katherine*

*(i.e Ms McCormack) and she would be applying to CQC to register as the new manager of this care home.*

*In parallel I will train with Mr Honour to retrain myself and hopefully regain my Manager's registration. Please let me know if this is acceptable and if the care home can be managed by Ms Katherine, supported by Mr Honour..."*

2. On 20 January 2023 Mr Ramdany sent a letter to Mr Boyce and Mr Gaimster with reference to the meeting on 22 December 2022 and further correspondence. This set out the action plan to complete compliance with regulations 11, 12, 17 and 18. The letter referred at points 1) to 4) to: Mr Ramdany's resignation; that Ms McCormack will apply to be RM; and that Mr Honour will act as consultant.

It also said at point 4:

*"Mr Ramdany will have no part in the running of the home until he has undergone full training, upskilled and reapplied to CQC for his registration."*

It might be said that this letter shows insight on the part of Mr Ramdany. It might also be said that it reflects his acceptance of the advice given by Mr Honour. What it does not show is any suggestion that these changes were imposed by Mr Gaimster as alleged.

- e. We have considered the written evidence of Mrs Thompson which is to the effect that Mr Gaimster had been searching for negative evidence at Moorlands and that he had been highly critical of the end of life care arrangements for her relative. She was not called so her account has not been tested.
- f. The stark fact is that Mr Gaimster in his inspection of Moorlands made a judgement that the service provided there was good. Indeed he was very positive regarding the quality of end of life care at Moorlands. This is at completely at odds with the alleged threat, the allegation of bias and the written evidence of Mrs Thompson.
- g. In our view it is highly improbable that a CQC Inspector would behave in the manner alleged. It is completely contrary to the central ethos that the CQC, by its inspectors, does not instruct or advise providers what to do.

54. In our view Mr Gaimster was an impressive witness. His evidence was measured. He said that his approach in inspection is to look always "to look for good". In our view this is borne out by his judgement regarding Moorlands. His response to the challenges regarding his inspections at Holly Grange made was clear, considered and reasonable.

55. Mr Boyce gave evidence regarding the provider meeting on 22 December 2022. He was a quietly spoken witness who answered the questions asked of him in a considered and balanced way. The overall impact of his evidence was that

he had made it very clear to Mr and Mrs Ramdany at the provider meeting that the overall history was that of a failing service and consideration of potential enforcement action would continue. His clear evidence was that the actions recorded as agreed at the end of the meeting provided Mr and Mrs Ramdany as co-providers with the further opportunity to seek to address non-compliance. Part of the discussion had included whether the provider would be using a consultancy service but there was no instruction given as alleged.

56. We have considered the very detailed minutes of the meeting on 22 December 2022. Amongst other matters this recorded that Mrs Ramdany's position was that the root cause of all historical failures was recruitment and staffing. She said that she was confident that improvements would be made as five new staff had been recruited. According to the minutes Mr Gaimster explained in the meeting that the issue was not the number of staff or the high level of agency staff previously used, but how staff were deployed. He highlighted the continuing failure of Mr Ramdany to complete a staffing needs analysis or to complete a recognised dependency tool. Mr Boyce empathised with Mrs Ramdany in relation to staffing difficulties experienced by all providers and redirected Mrs Ramdany to focus on explaining roles and responsibilities. Mr Ramdany said that he accepted responsibility for the failings at Holly Grange. Mr Boyce explored why Mrs Ramdany had not intervened and provided more support when it was apparent that the service had been failing for a long time. Mr Boyce expressed his concern that Mr and Mrs Ramdany were not working as a partnership but as two separate entities which effectively meant that there was no oversight at provider level. Mr Ramdany confirmed that there was no oversight of his performance as RM.
57. According to the record of the meeting, Mrs Ramdany accepted that she had been totally focused on Moorlands and had failed to quality assess Holly Grange. At the end of the meeting Mrs Ramdany implored the CQC to give the provider six months to improve and to provide support. Mr Boyce reiterated the serious concerns regarding the providers' approach to a repeatedly failing service which over the past seven years had not sustained any improvement.
58. We find that the minutes of the provider meeting on 22 December 2022 are an accurate record of what was discussed.
59. One challenge to Mr Boyce's evidence was that, given the holiday period, it had been unreasonable of him to require the co-providers to write to the Respondent by 2 January 2023 detailing the actions to be taken to return the service to compliance. There is nothing in that point. We find that this was not an unreasonable request. We consider that the agreed actions made clear that this was separate to the action plan required to meet the breaches identified in the last inspection. As Mr Boyce made clear Mr and Mrs Ramdany could have, but did not, request further time before it sent the email on 2 January 2023, if they considered that more time was needed.
60. Having seen and heard the live evidence tested before us, we prefer the evidence of Mr Boyce and Mr Gaimster to that of Mrs Ramdany and/or the untested accounts of Mr Ramdany, Mrs Thompson, Ms Berry, and others. We

reject the allegation that Mr Gaimster's findings and his judgement regarding the standard of care at the Home was the product of bias, bad faith or any impropriety.

61. We have considered all the points made by the Appellant in the SS regarding the findings made by Mr Gaimster. We find that the Respondent has proved the allegations at points 26 to 53.
62. The key issue in an appeal regarding the effective closure of a home invariably relates to the capacity to sustain improvement, which is to be judged taking into account up to date evidence. The Respondent arranged a further inspection which was conducted by Ms Steele on 26 July 2023. Mr Pitt was the second inspector and Ms Windley acted as an Expert by Experience. At that time there were 9 residents at Holly Grange.
63. Mrs Steele was a highly impressive witness. She was on top of the detail and was able to explain the reasons for her views in a cogent and measured way. She conceded the allegation at point 23 of the SS as she could see that the view she had reached had been due to a misunderstanding. There was little or no substantive challenge to her evidence in cross examination. It is a testament to the reasonableness of her approach that in his closing submissions Mr Ghosh-Roy requested that Mrs Steele should be appointed as the CQC inspector for the home moving forward.
64. Mr Pitt attended the hearing and was available to be cross-examined but Mr Ghosh-Roy said that he did not wish to cross-examine him. The judge explained to Mr and Mrs Ramdany that if the opportunity to cross examine Mr Pitt was not taken his statement would be regarded as one that had not been challenged which was material to the weight to be afforded to it. The Appellant maintained the decision to not cross examine Mr Pitt.
65. Mr Pitt's unchallenged evidence included that a member of staff (MoS) told him on 26 July 2023 that there were 3 staff on duty but this was not enough. The MoS said this "put residents at risk". This MoS said that SU B had fallen the previous Sunday as there was only one member of staff with her while she was on the commode. Amongst other matters, Mr Pitt observed prescribed creams which were not secured which presented a risk of ingestion by service users, many of whom had dementia. During the day he observed that staff were very busy and often rushed. Six service users were left alone in the lounge for more than five minutes on more than one occasion. We noted that his experience was similar to that of Mrs Steele. Mr Kundasamy told Mr Pitt that service levels were tight but he had not been given a large enough budget for recruitment. The budget was held and managed by Mr Ramdany.
66. Mr Pitt contacted five MoS by telephone to ask questions and obtain their views. Three MoS said the service was short of staff and one MoS told him that staffing was "OK". The fifth MoS was a night worker who said that "things are much safer now there is two of us." Only two MoS demonstrated a sound

understanding of the Mental Capacity Act (MCA). Three MoS could not demonstrate any understanding despite prompting. One MoS said that the MCA meant that “they had to exercise patience and pamper them” (i.e. service users). All said that they had received training.

67. Having considered all of the evidence before us we find that the Respondent has proved the allegations in the SS at points 1-25 which relied on the evidence of Mrs Steele and Mr Pitt (and with the exception only of point 23 of the SS).
68. One challenge to Mr Boyce’s evidence and that of Mrs Jupp, as decision maker, was that neither had visited the Home. In our view there is nothing in this point. As Mrs Jupp explained the Respondent relies on many processes to quality assure the work of Inspectors. We accept that Mrs Jupp’s role as the decision maker involved rigorous consideration of all of the evidence including the detailed analysis undertaken by Mrs Steele regarding her recommendation using the Decision Tree.
69. Having found the breaches of the standards contained in the SS proved as set out above, we turn to our consideration of the potential impact of such breaches and the issue of risk. It has been suggested that some of the breaches relied on by the Respondent are just matters of “paperwork” and, further, that the breaches are minor or moderate.
70. We considered the nature and extent of the breaches proved and the issue of risk. We accept Ms Steele’s evidence which includes:

#### **Regulation 11- Consent**

Service users were put at risk of not always receiving care and support lawfully, and in line with their best interests, due to mental capacity assessments not clearly setting out if a service user had been assessed to lack capacity or not and consent being given on behalf of service users by others who did not have the legal authorisation to consent on behalf of the service user.

#### **Regulation 12 – Safe care and treatment**

Service users were put at risk:

- of harm and injury due to improper use of mobility aids.
- of harm and medicine overdose due to lack of PRN protocols and information and inaccuracies in stock records.
- of harm and overuse of medicines as a result of staff not having the information required to support them with any distress or anxiety.
- of ingesting harmful substances due to being able to access the COSHH cupboard and prescribed creams.
- at potential risk of harm and inappropriate restraint due to lack of information and training on managing service users’ anxieties and distress.

- at increased risk of constipation due to the lack of records and the recording of Macrogol.

### **Regulation 17 – Good Governance**

Audits for medicines had not picked up the issues with recording or identified the need to investigate why PRN (paracetamol) had been given 6 times in 24 hours. There had not been any audits on care plans or risk assessment. Therefore, issues with the information within the care plans and risk assessments had not been identified or rectified.

There had not been audits completed on daily notes, handovers or fluid charts, potential issues with recording had not been identified.

The provider did not have an oversight of the service and the documents needed to keep people safe.

### **Regulation 18 – staffing**

Service users were put at increased risk of falling and not having their needs met due to low staff deployment.

Service users were put at increased risk of harm due to staff deployment.

71. Generally, an important feature in assessing risk is the degree/extent of dependence of the service users upon provider. Mr and Mrs Ramdany are the co-providers of longitudinal care to service users who are dependent on a 24/7 basis. Such service users are vulnerable by reason of their age and stage in life. Some are more vulnerable than others. Some may become more vulnerable if their health deteriorates. Many of the current six residents suffer from dementia.
72. We accept that in any care setting mistakes will be made. Breaches can and do occur. In her oral evidence Mrs Jupp explained in detail that the issue is not whether a setting is perfect, but whether the provider acknowledges any breaches, and is able to address or mitigate risk in a satisfactory way. Often the issue is whether the provider can demonstrate sustained improvement over time. In our view Mrs Jupp was a thoughtful, balanced and measured witness.
73. Overall we consider that the overall nature and extent of the proved breaches amounts to a serious departure from fundamental standards, and on a recurring basis.
74. Section 4 (b) of the Act requires the Respondent (and so the panel) to have regard to the views of service users. In addition to all of the evidence of family members before us we reminded ourselves of what service users had said to Ms Winkley.
75. When considering the discharge of our functions, standing in the shoes of the Commission, we are also required to have regard to the views of contractors - see s. 4 (c). The main contractors are West Berkshire County Council (WBCC) The evidence before us is that WBCC decided not to (continue to) purchase services at Holly Grange because of its concerns regarding management. This

was subsequently changed to “purchase with caution” which requires individual assessment of each proposed placement.

76. We have made our own decision on the basis of the up to date evidence. We have considered the overall context of the service provided and have considered the Enforcement Policy and the Decision Tree. It appears to us today on the basis of all of the material before us that:

- the impact of potential harm to which any service users will or may be exposed if enforcement measures are not taken is a mixture of minor and moderate.
- the analysis of each and everyone of the 3B (1) to (4) factors is not in the Appellant’s favour.

In summary we find that:

- 1) There has been a repeated failure to assess or act on past risks.
- 2) There is clear evidence of multiple breaches.
- 3) The provider’s track record shows repeated breaches.
- 4) Leadership and governance is inadequate.

- Although the outcome of the inspection in 2018 had been a judgement of good, the overall pattern before and since has been that of repeated breach of fundamental standards.

77. The core issue is the adequacy of governance. In our view the Ramdany’s overall response to the range and seriousness of the matters raised by the Respondent has been to seek to deflect their joint responsibility as provider in a number of ways. This includes: seeking to allege bias and/or bad faith on the part of Mr Gaimster; blaming Ms McCormack; blaming its non-compliance with fundamental standards on the difficulties in recruiting and/or retaining staff. In our view the bulk of the breaches proved are serious and repeated breaches which go beyond paperwork. We consider that repeated breaches have arisen because the Appellant has been unwilling or unable to address the core issue which is the adequacy of governance.

78. It appears that Mr Ramdany considered, based on Mr Honour’s advice, that he needed to retrain and upskill. Mrs Ramdany told us that her husband is studying a Level 5 qualification in management. We have not seen any evidence regarding this, or any evidence directed to the impact of any further study upon Mr Ramdany’s ability to lead and manage services.

79. A conundrum in this appeal is that the inspection by Mr Gaimster at Moorlands in 2022 shows Mrs Ramdany knows what “good looks like”, and yet she, as joint service provider at Holly Grange, has not been able to address adequately how and by what means the overarching governance issues at Holly Grange will be addressed. It emerged in evidence that the Appellant proposes to rely

on a new manager and a new consultant. Both appear to have been engaged in the last 2 weeks prior to the hearing and neither provided any evidence.

80. This appeal against the decision dated 8 March 2023 has been ongoing since April 2023 but the concerns were not new. The November Inspection report was served on 5 December 2022 and the NOP was served on 27 January 2023. Mr and Mrs Ramdany as co providers have had a long time to seek to address the compliance issues at the Home and to address governance.
81. We are mindful of the fact that Mrs Ramdany runs Moorlands which is judged to be “good”. We considered whether, given that Mrs Ramdany is a joint provider for Holly Grange, there must be some capacity for improvement at provider level? However, the overall impact of Mrs Ramdany’s evidence was that she and her husband maintain their own boundaries. She has always run Moorlands and Mr Ramdany has always run Holly Grange. To use Mrs Ramdany’s own words, Holly Grange is her husband’s” baby” and Moorlands is hers. It was not suggested to us that this pattern will ever change. The overall pattern of non-compliance at Holly Grange over several years is clear. Further, we consider that in the 11 months since the service of the inspection report, the 10 months since the NOP, and the 8 months since the NOD was made, there has been no real recognition of the issues at the Home. The inspection by Mrs Steele, which was some six months after the NOP, has shown that the Home was non-compliant regarding regulations 11, 12, 17 and 18 of the 2014 Regulations. Mrs Steele said in her inspection report that the requirements of the warning notice regarding the notification of other incidents under regulation 18 of the 2009 Regulations had been met. In our view the evidence overall suggests that this was very largely due to the input of Ms McCormack and Mr Honour.
82. We also recognise that Mr Sivah Kundasamy, as acting RM, had made inroads regarding an action plan by July 2023. We were informed that he left his employment at the home in September 2023. It follows that the role of RM has been vacant since then. On any basis Mr Ramdany, having resigned that role after he obtained independent advice, had recognised that he was not able to be manager until he took steps to upskill and to thereafter seek re-registration as an RM. However, it seems clear that Mr Ramdany has been acting as manager. We were not provided with any evidence regarding any efforts to recruit a new manager when Mr Kundasamy left.
83. We are satisfied that the Appellant, over a very long period indeed, and not least since the NOD in March 2023, has had very ample opportunity to address the issues but the evidence of Mrs Steele shows that, despite some welcome improvement, significant breaches of the fundamental standards of care have recurred. We consider that Mr Ramdany’s main focus has been to attack or blame Mr Gaimster and/or others and/or to rely on the difficulties in recruitment of care staff. We noted that at the provider meeting in December 2022 Mrs Ramdany had implored the CQC to allow six more months to demonstrate compliance. Mrs Ramdany had said then she was confident that improvements

would be made as five new staff had been recruited. Despite an increase in the number of staff on role as evidenced by the table before us, Mrs Steele found significant breaches in July 2023 which placed service users at risk of harm. In our view it is not the number of staff on role that is the issue, but rather the decisions made regarding the deployment of staff. This is a governance issue.

84. Our overall view is that Mr and Mrs Ramdany have not acknowledged the potential impact of the breaches of fundamental standards in terms of the risks posed to the safety, health and well-being of service users. We also consider that, in so far as there has been any recognition of the governance issues, the overall response can fairly be categorised as reactive and as “too little and too late”. It is suggested that a yet further opportunity to improve should be provided - as had been suggested by Mrs Ramdany at the provider meeting in December 2022 - and that conditions would be an appropriate and proportionate method by which future compliance might be monitored. We reject this. We find that the Respondent has used all appropriate measures to seek to improve standards at the Home. We consider that the response since the NOP and the NOD and the overall regulatory history shows that the providers do not have the capacity to effect sustained improvement to the provision of services at the Home so as to achieve compliance.
85. We have taken full account of the representations eloquently made by Mr L and Mr F on behalf of the family of current service users. We were impressed by the commitment shown by each witness as representatives of the overall family interest. They had both attended the hearing for three days before their evidence was reached. They each showed in their evidence that they had listened to the evidence attentively.
86. We fully recognise that the family members of the current residents at Holly Grange want the service to continue. We can understand why this is so. Their perspective is that their loved ones live in a home where compassionate care is provided. The Respondent has never questioned that this is so. The overwhelming view is that the families of residents do not want the home to close because they each value the service provided and are, understandably, very concerned about the very significant disruption and the risks involved in their much-loved relatives moving, and adjusting, to a new home given their ages and circumstances.
87. We are very mindful of the impact of the decision upon the service users and all the risks involved. We have looked at the evidence objectively. We must have regard to the issue of risk in a number of respects and must seek to protect the needs and interests of both current and future service users.
88. We have considered all of the evidence. The Respondent has satisfied us that in all the circumstances its decision is justified, necessary and proportionate to the risks against which safeguards should be provided. No other outcome would reasonably address the risks engaged. In our view, the need to protect the health and safety of vulnerable service users outweighs the impact of the

decision on the Appellant and all those affected, and not least, the impact upon current residents and their family members.

**Decision**

**The appeal is dismissed. The Respondent's decision is confirmed.**

**Judge Siobhan Goodrich**

**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 19 December 2023**