

**Care Standards**

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

**Considered on the papers on 22 January 2016**

**BEFORE**  
**Tribunal Judge Meleri Tudur**  
**Specialist Member Denise Rabbetts**  
**Specialist Member Michele Tynan**

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

**Prime Healthcare UK Limited**

**Appellant**

**-v-**

**Care Quality Commission**

**Respondent**

**[2016] 2583.EA-MoU**

**DECISION**

1. This matter was listed for consideration on the papers. That is permissible under rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('2008 Rules') however not only must both parties consent, which they have in this case, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have sufficient evidence regarding the allegations made and the conclusions reached after investigations, and there appears to be no substantial factual dispute which might affect our decision. In the circumstances, we consider that we can properly make a decision on the papers without a hearing.

2. The Appellant appeals to the Tribunal against the Respondent's decision dated 11 December 2015 pursuant to section 31 of the Health and Social Care Act 2008 to impose a condition on their registration as a service provider in respect of the regulated activity of providing accommodation for persons who require nursing or personal care. The condition was that the

Registered Provider must not admit any service users to Ranelagh Grange Care Home (“the Home”) until it is compliant with the Health and Social Care Act (Regulated Activities) Regulations 2014.

### **Restricted reporting order**

3. 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 vulnerable adults or their families in this case so as to protect their private lives.

### **Events leading to the issue of the notice of imposition of condition**

4. The Appellant is a registered provider of a regulated activity since 2011 and the Home is registered to provide accommodation for persons who require nursing and personal care.

5. On the 22 May 2015, St Helen’s Council wrote to the Appellant advising it that due to concerns expressed by its quality monitoring officer who undertook four visits to the Home and the failure of the Appellant to improve the quality of its service, it was issuing the Home with a default notice under its contract agreement and prohibiting any new placements from it into the home until it was satisfied that remedial actions had been effected to ensure an acceptable quality standard of service provision.

6. On the 8 August 2015, the Respondent formally notified the Appellant of their proposal under section 17 of the Health and Social Care Act 2008 to cancel their registration as a service provider in respect of the regulated activity.

7. The Respondent undertook inspections of the Home on the 8, 13 and 21 October 2015 and identified a number of failings in the delivery of provision.

8. On the 26 November 2015, it was brought to the attention of the Respondent that the registered provider had admitted two service users, an action which was alleged to be in breach of the contractual arrangements with St Helen’s local authority.

9. On the 11 December 2015 pursuant to section 31 of the Health and Social Care Act 2008 the Respondent imposed a condition on the Appellant’s registration that the Registered Provider must not admit any service users to the Home until it is compliant with the Health and Social Care Act (Regulated Activities) Regulations 2014.

10. The Appellant appealed against the decision and the appeal is dealt with under the Tribunal’s expedited procedures.

## Legal framework

11. The statutory framework for the registration of providers of regulated services is set out in the Health and Social Care Act 2008. Section 32 provides a right of appeal to the Tribunal against any decision made pursuant to Chapter 2 of the Act and specifically provides as follows:

“(5) On an appeal against a decision to which a notice under section 31 relates, the Tribunal may confirm the decision or direct that it is to cease to have effect.

(6) On an appeal against a decision or order, the Tribunal also has power—

(a) to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates,

(b) to direct that any such discretionary condition is to cease to have effect,

(c) to direct that any such discretionary condition as the Tribunal thinks fit shall have effect in respect of the regulated activity, or

(d) to vary the period of any suspension.”

12. When deciding whether to impose a condition, the test is set out in section 31 as follows:

“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.”

13. The powers of the Tribunal are set out in section 32 and it stands in the shoes of the Commission so that the question for the tribunal is whether at the date of its decision it reasonably believes that the continued provision of the regulated activity without the condition imposed, by the registered person will or may expose any person to the risk of harm.

14. The burden of proof is on the respondent. The standard of proof ‘*reasonable cause to believe*’ falls somewhere between the balance of probability test and ‘*reasonable cause to suspect*’. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that any person might be at risk.

## Findings

15. The Home has been the subject of 12 inspections by the Respondents over a period of four years. Each of the inspections had identified non-compliance with the Health and Social Care Act (Regulated Activities) Regulations 2014. The inspections held in October 2015 found breaches of the following regulations:

Regulation 9: person-centred care

Regulation 11: Need for consent

Regulation 12: safe care and treatment  
Regulation 14: meeting nutritional and hydration needs  
Regulation 15: premises and equipment  
Regulation 17: good governance  
Regulation 18: staffing

16. The Appellant had made a complaint about the way in which the inspectors had conducted the inspection and has made submissions to the Tribunal in support of the appeal. The Appellant draws attention to the fact that the relevant information about the admission of two service users was available to the Respondent from the inspection held on the 21 October 2015 yet the issue was not raised in the draft report sent to the Appellant on the 25 November 2015 but dealt with as an urgent imposition of a condition on the 11 December 2015.

17. The Appellant's position is that the concerns of the Respondent are not genuine concerns and the pre admission assessment was done comprehensively in respect of Service User 1 on the 1 October 2015. The Appellant maintains that improvements have been made to the Home since the notice of proposal to cancel registration was issued in August 2015 but that these are not acknowledged by the Respondent.

18. The Respondent explains the issue in relation to the admission of Service User 2 from the 16 – 23 June 2015 as non-compliance with the contractual obligations and an ongoing failure to demonstrate compliance with the regulations in that it indicated a failure to plan and deliver the care needs of service users.

19. The issues in relation to the two admissions are different: Service User 1 was not subject to a comprehensive pre-admission assessment and his needs were not properly identified prior to his admission leading to challenging behaviour and difficulties on the first night at the Home. Service User 2 was admitted in contravention of an embargo imposed by the Commissioning Authority, St Helen's Council, as a result of breaches of the contractual obligations.

20. The Tribunal was not provided with evidence to support the assertion that the Appellant had provided an undertaking to the Respondent not to admit new service users nor does the embargo by St Helens Council bind other local authority commissioners who wish to place service users at the home.

21. We conclude that the admission of service user 1 had been allowed without a comprehensive assessment of his needs is sufficient to support the conclusion that he and other service users were placed at risk of harm by the failure to clearly identify the challenging behaviours and their triggers prior to his admission. The admission was not a breach of an undertaking not to admit, because the service user was from the Liverpool area, and not St Helen's and was a private admission and no evidence has been provided of an undertaking by the Appellant not to admit new users into the home.

22. The admission of service user 2 is a breach of the embargo placed by St Helen's local authority commissioning body, of which the Appellant was well aware, and at best, accepted the oral reassurances of a local authority officer who was not in a position to remove the embargo. Such a breach is not only a breach of the contractual terms but also an indication that the Appellant is not demonstrating good governance of the home.

23. A review of the Medicines Administrations Record Sheets (MARS) for five service users in the Home by the Pharmacy Inspector revealed breaches in compliance with the requirement to administer medicines safely in respect of all five patients. The statement of Sean Patrick Christopher Reck sets out the involvement of the pharmacy inspector and records that the inspection history of the service has demonstrated non-compliance with the requirements on the majority of inspections. The inspection on the 13 October 2015 identified concerns that the inspector judged placed people at serious risk of harm because medicines had not been managed safely in the Home.

24. We accepted the evidence of the pharmacy inspector as set out in the statement because it was clearly cross referenced to the relevant service users' charts and supported the conclusion that the failures to record matters in the MARS placed service users at risk of harm. Although some of the comments of the pharmacy inspector were challenged by the Appellant in the Factual Accuracy Response document, it was a challenge to the way in which the inspectors had dealt with the issues found rather than a challenge to the accuracy of the findings. We accept the evidence of the pharmacy inspector and conclude that the approach to the recording of medicines administration and storage is an issue of major concern which could lead to service users being placed at risk of harm.

25. We considered the breaches of Regulation 14 and the failure to meet the requirements in relation to nutritional and hydration needs. The evidence about the recording of fluid intake by Volunteer A indicated that the volunteer was on the premises on each of the three days when the inspections were carried out in October 2015 and that the volunteer was recording the fluid intake on charts inaccurately and confirmed that there had been no training on the completion of the chart. We noted the volunteer's regular attendance with concern, and consider that the monitoring and recording of fluid intake is a particular issue which if not addressed quickly could lead to a real and significant deterioration in a service user's health. We accepted the evidence of the inspectors that the process for ensuring accurate recording of fluid intake was ineffective and put service users at risk of dehydration. The Appellant did not challenge either the finding that the system was ineffective nor that an untrained volunteer was recording the fluid intakes on a regular basis but confirmed in the Factual Accuracy Comments that the issue had been addressed and new forms implemented to record fluid intake from the date of the inspection. We accept that the issue may subsequently have been addressed, but on the basis of the evidence available as found by the inspectors on the day, we have concluded that the practice was inadequate and placed service users at risk of harm.

26. We accepted the evidence of the inspectors in relation to the other breaches of regulations set out above. We do not deal in detail with each of them individually because we have concluded that the three issues outlined in paragraphs 17 – 25 of this decision are of such gravity that they of themselves are sufficient to require the imposition of a condition to prevent the admission of further new service users until the Appellant has improved the standards of care in the Home.

### **Decision**

The appeal is dismissed and the imposition of the condition not to admit further service users is confirmed.

**Judge Meleri Tudur  
Deputy Chamber President  
Primary Health Lists/Care Standards  
First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 25 January 2016**