

Care Standards Tribunal

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

[2016] 2597.EA

Before
Mr Hugh Brayne (Judge)
Ms Marilyn Adolphe (Specialist Member)
Mr James Churchill (Specialist Member)

BETWEEN:

Mr Renaud Sockalingum

Appellant

v

Care Quality Commission

Respondent

DECISION

Determined by the panel on the papers in telephone conference on 12 July 2016

The appeal

1. Mr Sockalingum appeals against the decision made on 23 December 2015 to cancel his registration as a manager of the regulated activities of (1) accommodation for persons who require nursing or personal care and (2) treatment of disease, disorder or injury.

The hearing

2. The appellant asked for a determination on the papers. The respondent agreed to proceed without an oral hearing. We apply Rule 23 Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care) Rules 2008 and make this decision without an oral hearing.
3. The Tribunal had a bundle of papers containing the decision, the appeal, the response, and the witness statements with exhibits provided by both parties. We also had the notice of proposal issued under section 17 Health and Social Care Act 2008 dated 28 September

2015 and the evidence appended to that notice, in particular inspection reports relating to the White House Nursing Home and documents relating to those inspections.

The background and events leading to the notice of proposal

4. The White House Nursing Home, in Letchworth, Hertfordshire, is owned by Medical Resources Worldwide Ltd. Mr Sockalingum has worked as the Home's manager since 1998. The two registration certificates to which the appeal relates are dated 7 February 2013. One certificate relates to the regulated activity: accommodation for persons requiring person or nursing care. The other relates to the regulated activity treatment of disease, disorder or injury. Both have a condition that the regulated activity be carried out only at the White House Nursing Home.
5. The CQC carried out an inspection of the White House Nursing Home on 6 November 2014 and found breaches of Part 4 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. As a result of this 2014 inspection the White House Nursing Home was rated "requires improvement" and was required to produce an Action plan to address the shortcomings identified. No such plan was produced by the Home. The inspection report was finally published by CQC in March 2015.
6. The CQC carried out a further inspection on 18 June 2015 and found further breaches of the 2014 Regulations and published on 29 June 2015. Safeguarding alerts were raised with the local authority. As a result of the inspection the location at White House Nursing Home was rated "inadequate" and placed in special measures. The Respondent says in submissions dated July 1 2016 that Mr Sockalingum was required to submit an action plan, the report was addressed to the provider, Medical Resources Worldwide Ltd (page 12 of the inspection report), and this action was the responsibility of the provider.
7. After a CQC management review meeting on 24th June a notice of proposal was issued to the Medical Resources Worldwide Ltd to remove the location from its registration.
8. The CQC records in its submissions to the Tribunal (paragraph 9) that the provider "agreed to take enforcement action against [Mr Sockalingum]" on 30 June 2015, but this is not documented or referred to elsewhere, neither is it made plain what form any such enforcement action might take.
9. Mr Sockalingum attended a meeting with the CQC on behalf of the provider on 10 July 2015, together with a person described in the minute as the Home's administrator. At this meeting the CQC explained the planned enforcement action against the provider [Medical Resources Worldwide Ltd]. The owners were aware of this meeting but did not attend.

10. Mr Sockalingum sent the CQC, as required, a detailed action plan in response, dated 29 July 2015.
11. On 7 August 2015 Medical Resources Worldwide Ltd suspended Mr Sockalingum from his employment. The parties on 9 September 2015 agreed to terminate his employment by consent with the provider paying him £12,000.
12. Mr Sockalingum's direct involvement with the CQC then ceased. The CQC on 26 August 2015 decided to withdraw, for technical rather than substantive reasons, the notice of proposal issued after the 18 June inspection. On inspection on 1 September 2015 the CQC found significant improvements in provision and that immediate risks to service users had reduced.
13. At a review on 2 September 2015 it was decided that the failings identified in the November 2014 and June 2015 inspections were due to ineffective and inadequate management by Mr Sockalingum. The notice of proposal which then led to the decision under appeal was issued on 29 September 2015 as a direct result of this conclusion that Mr Sockalingum was to blame.

The legal framework

14. Section 17(1) of the 2008 Act gives the CQC the discretionary power to cancel the registration of a person as a manager in respect of a regulated activity. The Respondent relies upon the ground contained in Section 17(1)(e) namely "on any grounds specified by regulations." Regulation 8 of the 2014 Regulations requires a registered person to comply with Regulations 9 to 19. We do not set these out in full, but note that the headings relied on by the CQC are (9) Person-centred care, (10) Dignity and Respect, (11) Need for consent, (12) Safe care and treatment, (13) Safeguarding users from abuse and improper treatment, (17) Good governance, and (18) Fit and proper persons employed.
15. Section 32 of the Act states that the Tribunal may either confirm a decision of the Respondent or direct that it is not to have effect. The Tribunal is empowered to direct any discretionary condition it finds appropriate.
16. The Tribunal is required to consider the appeal on the evidence available at the time of the hearing.

Tribunal's conclusions with reasons

17. Inspection reports and notices prior to the notice of proposal of 28 September 2015 to cancel Mr Sockalingum's registration related to services provided by Medical Resources Worldwide Limited. Failings identified, and improvements required, following those inspections were stated to be the responsibility of the provider.

18. It was, according to the respondent's chronology set out in submissions at paragraph 9, on June 30 that the CQC decided to consider action against Mr Sockalingum himself. It was, in fact, only after Mr Sockalingum's employment with the provider had been terminated by mutual consent that the CQC made him aware that it proposed to take such action.
19. From that point the CQC appears to have accepted in its entirety Medical Resources Worldwide Limited's account of the causes of the previous alleged failures, and its claim that it knew nothing of the serious allegations raised by the CQC. The CQC's case is, therefore, that Mr Sockalingum personally bears the responsibility for the serious failings uncovered in the inspections, and that this is demonstrated by improvements which have taken place after his departure.
20. Mr Sockalingum's case, based on his appeal, his witness statement, and records of his meeting with the CQC in July 2015 is, in essence, that he accepted the findings of the CQC at the time of the inspections, but that the failures were because he was under enormous pressures because of he was inadequately supported by the provider and this made it impossible to provide the level of care required in the Regulations.
21. Mr Sockalingum refers to a long and successful history in managing care provision, including 15 years at White House, and he provides strong testimonials to the care provided by him at White House, including from relatives of residents, a present employee and a professor of old age psychiatry. None of these testimonials are disputed, and they are in many ways confirmed by a record of a meeting with residents and relatives conducted by the provider on 12 August 2015. One of the directors himself confirms Mr Sockalingum's contribution, his warmth and his caring attitude. A consultant manager, at the meeting, is recorded as aiming to bring the home back to the levels enjoyed at the home previously (under Mr Sockalingum's management).
22. Mr Tovey, Head of Inspection, says at paragraph 18 that Mr Sockalingum offered no mitigating circumstances. We do not agree. The mitigation he offers is very clearly that he was overwhelmed by managing a Home with over 60 residents, without a deputy, with his office and computer often unavailable to him, and no obvious interest in helping him displayed by the provider. We understand Mr Sockalingum to be saying that, even in these circumstances, he managed to meet needs of residents, even if not all the requirements of the 2014 Regulations. We therefore look at the evidence in support of his mitigation.
23. At the time of the inspections Mr Sockalingum refers in his appeal to the fact that he was "working on my own with no Deputy or administrative support" while "responsible for a programme of renovation throughout the house" during which he "never compromised the welfare and safety of our service users" (section H of appeal application form). His evidence is that when one of the directors was on the premises (which was up to 4 days a week) she used his office,

his chair and his computer, so, on his evidence, not only was he managing extensive renovations while very short staffed, he was not able to access essential equipment. In his witness statement at paragraph 34, dealing with the CQC's finding of limited monitoring systems, he says he had no support from the provider both managerially and administratively – allegations which the CQC has not attempted to rebut. There is no evidence before us that these failings, explicitly raised with the CQC at the latest in their meeting with Mr Sockalingum in July 2015, and which it is likely were in the awareness of inspectors at a much earlier date, have been explored or considered by CQC before issuing the notice of proposal.

24. The daughter or a resident, who we identify as CC, says in her witness statement at paragraph 6 that Mr Sockalingum had very little support and that managing the establishment and sustaining standards in those circumstances was commendable. Khadeza Hare, who worked with Mr Sockalingum from February 2015 (and still works at White House) says in his witness statement that the renovation work had a major and disruptive impact, but the providers had little concern; he confirms Mr Sockalingum lost the use of his office for long periods; he confirms staff shortages. He praises Mr Sockalingum's hard work and care in these circumstances.
25. Poor staffing ratios are acknowledged in the directors' meeting with residents and relatives in the August 2015 meeting. One of the directors, Marie Tayob, is also recorded there as saying that at the relevant time she "took her eye off the ball", despite herself being on the premises up to four days a week. Some of the complaints raised at that meeting are, in fact, complaints about current provision as opposed to provision at the time of Mr Sockalingum's involvement, which raises questions about the CQC's unevidenced assertion that provision improved when Mr Sockalingum left (witness statement Robert Povey paragraph 20 in particular).
26. The CQC appears to have accepted at face value the directors' claims that Mr Sockalingum failed to tell them about the seriousness of the 2014 findings. This is a barely credible excuse, given that a director was on site four days a week, and is minuted as herself telling the meeting of relatives and residents in August 2015 that she took her eye off the ball. Taking her eye off the ball is, however, consistent with Mr Sockalingum's evidence that the directors decided not to attend a meeting with the CQC to discuss the next steps in July 2015.
27. The allegation that Mr Sockalingum "hid" the 2015 report is not credible. This is a public document, and if the owners did not know an inspection had taken place, their own lack of interest exceeds any culpability of Mr Sockalingum. There is no other evidence that Mr Sockalingum has resorted to lying or hiding information. This is in our view a false allegation. There is, in any event, no satisfactory evidence which casts doubt Mr Sockalingum's own evidence that he discussed the 2014 inspection findings with "the director's wife" (we understand in fact she is a co-director). The action list produced by Mr Sockalingum

- on 29 July, with the help of an external consultant, contains references to both directors being responsible for some action points.
28. The directors are recorded as telling residents and relatives in the August meeting that they would, if they had been told of the situation earlier, have brought in outside consultants. Yet the directors were themselves responsible for staffing levels and one was on site four days a week.
 29. In our view both the CQC and the providers have wrongly put the entire blame for the failings onto Mr Sockalingum. We cannot understand why the CQC arranged to meet him to discuss the way forward for the provider, on 10 July 2015 when, according to the submissions to the Tribunal at paragraph 9, it already knew it would be taking enforcement action against him as the registered manager. The purpose of then requiring an action plan, which it must have known had to come from him and not the absent directors, and then issuing a notice of proposal before evaluating that plan or its outcomes is not easy to identify. We have not seen the later plan developed by the consultant Ms Richardson-Hughes only one week later (see minutes of meeting with residents and relatives), and therefore cannot comment on how much it owes to Mr Sockalingum's earlier plan. We do know however that this consultant was already working with Mr Sockalingum by the time he produced his plan.
 30. The CQC and the provider appear to be agreed on the need to put in place a significant increase in staffing, but this happened only once Mr Sockalingum left, but neither appears to take any account of what, on the uncontested evidence Mr Sockalingum puts forward, were serious staffing shortages at a time of significant upheaval. Furthermore there is evidence from Mr Sockalingum that despite this injection of resource (see paragraph 43) there have been three managers in post since he left. This suggests problems may continue to exist. He asks in that witness statement for the CQC to make available to the Tribunal details of any complaints received after his departure, and these might have had some relevance because it might show that there were problems not all of his making. We are not able, ourselves, to check whether any further inspections reports appear on the CQC website, but the CQC could have provided us with such information to dispel or confirm Mr Sockalingum's evidence of ongoing problems. The evidence that there are ongoing problems is not the best available evidence, but nor is it contested.
 31. The decision of the respondent, and now of the Tribunal, as to whether registration should be cancelled is discretionary. We take into account that, even if the appeal is allowed, Mr Sockalingum's registration does not enable him to work as a manager except at the White House Nursing Home, and that there is no prospect of this happening. Any work he obtains in future as a Registered Manager will still require CQC approval. This begs the question why, once Mr Sockalingum left his employment there, a cancellation was felt to be necessary, a matter Judge Brayne raised with the CQC at a telephone case management hearing on 8 July 2016 (when he asked whether it was an option in

these circumstances to withdraw the notice of cancellation). The reason given was that a Tribunal decision would form the basis of any future decision if an application was received from Mr Sockalingum. We are aware, as a result, that the consequences of dismissing this appeal are, effectively, that Mr Sockalingum would have no prospect of a future position as a registered manager.

32. We have concluded, on the basis of the evidence before us, that the discretion was wrongly exercised and Mr Sockalingum's registration should not have been cancelled. The decision was procedurally unfair, in that the causes of failures at White House Nursing Home were not properly considered, and the directors were unreasonably absolved of their own contribution to any failures of Mr Sockalingum.
33. This decision does not mean that Mr Sockalingum is himself blameless. When called on to work under what to this Tribunal look like impossible conditions, he nevertheless still had an obligation to ensure standards were maintained. The positive comments of residents and relatives, and witness statements he provided, show he did his best. But he did not, as was his duty as manager, ensure that the provider, Medical Resources Worldwide Limited, met the standards in the 2014 Regulations. He should have himself informed the CQC; he should have demanded the required resources, and if they were not forthcoming, it was not open to him to provide a service which did not meet standards. He would have had to resign. Mr Sockalingum instead chose to strive to keep the Home (where he had worked so long and, for the most part, so successfully) functioning in impossible circumstances. It was the wrong choice, but his career should not end for that reason. The mitigation is compelling, and the evidence leads us to conclude that the real difficulties were not of his making but arose principally from a lack of support and resource from the provider. Additionally, the clear evidence of his professional commitment, and the evidence provided by significant testimonials, satisfies us that he should not have his registration cancelled.
34. Having reached this conclusion, we do not consider it necessary to look at those parts of Mr Sockalingum's witness statement in which he disputes some of the detail of the CQC's findings contained in the notice of proposal. The CQC's evidence was contemporaneous, detailed and documented, and it was accepted by Mr Sockalingum at the time on behalf of the provider. He is not now able to produce evidence, other than his own retrospective assertion, that some of the findings are unreliable. This does not matter to the outcome of this appeal, as our finding is that these adverse findings do not reflect on his own qualities as a manager to the extent that he should cease to be registered as a manager.

Order

1. The appeal is allowed.
2. The decision to cancel registration dated 23 December 2015 is of no effect.

**Judge Hugh Brayne
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 14 July 2016