



## Care Standards

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

[2020] 3976.EA-MoU

Heard on 31 January 2020 – hearing on papers without attendance by parties

BEFORE  
CHRISTOPHER LIMB (TRIBUNAL, JUDGE)  
MICHELE TYNAN (SPECIALIST MEMBER)  
LORNA JACOBS (SPECIALIST MEMBER)

IN THE MATTER OF AN APPEAL  
BETWEEN:

LCT AMBULANCE LTD

Appellant

-v-

CARE QUALITY COMMISSION

Respondent

### DECISION

#### Introduction and Background

- 1 LCT Ambulance Ltd (“LTC”) was registered as a service provider in respect of transport services, triage and medical advice provided remotely in 2014. LTC provides a patient transport service.
- 2 Following an inspection in 2017 a requirement notice was served. Issues highlighted included the need for action to ensure the service was able to meet the requirements of patients with

additional needs when an escort was not provided, and identification and assessment of risks.

- 3 This decision arises from the outcome of a short notice inspection on 16, 18 and 20 December 2019. Following that inspection, the CQC issued an urgent notice to suspend the registration of LCT by letter of 24 December 2019 (page 33 onwards) until 21 February 2020.
- 4 This appeal is brought by application dated 20 January 2020 (page 7 onwards). The reasons are set out (page 10) and should be read in full in conjunction with this decision. They refer to not currently being involved in regulated activity, to the registered manager having qualifications and experience, to employees being given training and weekly appraisals, and to checks being carried out by the Job Centre. No other evidence was provided by the Appellant.
- 5 The Appellant applied for a hearing on the papers. By order of 21 January 2020 both parties were ordered to serve any witness statements and evidence relied upon by 28 January. The CQC served the statement and various exhibits of Fiona Wray (page 31 onwards). LCT have not served any evidence.

### **Legal framework**

- 6 Section 18 of the Health and Social Care Act 2008 (“the Act”) provides that the CQC may suspend the registration of a service provider on the ground that the regulated activity is being or has been carried out other than in accordance with the relevant requirements. Section 20 of the Act provides for Regulations to make requirements.
- 7 The requirements as relevant to these proceedings are those within the Health and Social Care Act (Regulated Activities) Regulations 2014 (“the Regulations”). Regulation 8 provides that a regulated person must comply with regulations 9 to 20A. Our later references to regulations should be read in conjunction with the full wording of those regulations.
- 8 Section 31 provides that if the CQC has reasonable cause to believe that unless it acts under this section any person will or may be exposed to the risk of harm, it 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 that is mentioned in subsection (2) to take effect from the time when the notice is given. Those decisions include a decision under section 18 to suspend the registration.

- 9 On an appeal to this tribunal section 32 of the Act provides that the tribunal may confirm a decision of the CQC or direct that it shall cease to have effect.
- 10 We approach our findings of fact on the basis of whether we are or are not satisfied on the balance of probabilities.

### **Evidence**

- 11 Save for the extremely brief assertions within the Reasons for Appeal, we have no evidence from the Appellant. Unless we were to find any aspects to be objectively unreliable, we therefore have to consider this case by reference to the evidence provided by the CQC and in particular the statement of Fiona Wray and its various exhibits.
- 12 We do not summarise all her evidence and the statement of Fiona Wray ("FW") and its various exhibits must be read in conjunction with this decision.
- 13 For the purpose of this decision, the central evidence is that which is most relevant to the issue of whether patients (users of the service) will or may be exposed to the risk of harm.
- 14 The service is only provided to self-funding patients (FW para 20). LCT drivers are therefore working directly with such members of the public and not subject to any contractual arrangements as would be expected from a commissioned service. There is no evidence of DBS checks for all drivers ((FW para 22 and pages 25, 39 and 45) and the DBS of one driver showed convictions for theft, arson, carrying a weapon, and assault, in respect of which there was no evidence of a risk assessment and an assertion was made without producing any evidence that there were not convictions despite the DBS (page 39). There was no evidence of proof of identity for two of the drivers (page 45). LCT did not have references and relied upon the Job Centre having obtained references, which the registered manager had not seen (FW para 22).
- 15 A carry chair was used for some patients (page 40 and FW para 25). Some patients have dementia (FW para 28). Some patients required oxygen and when no hospital or care home staff or relative accompanied the patient the driver would be asked to monitor the delivery of oxygen (page 43). There was no evidence that any of the drivers received guidance, supervision, training or assessment in respect of such tasks.
- 16 We note more generally that there is evidence indicating objective grounds for concern as to cleanliness and infection risks, and as to the knowledge and ability of the registered manager in relation to good governance and statutory requirements.

### **Findings of fact and as to breaches of regulations**

- 17 We do not consider that there is any objective basis or reason to reject the evidence of FW in her statement and its exhibits. Such conclusion does not prevent either party from arguing to the contrary in any future dispute or hearing if or when further evidence is available. This decision is based upon the evidence currently available.
- 18 We accept the evidence summarised in paragraphs 14 -16 above.
- 19 It follows that some of the patients using the services of LCT are vulnerable and particularly exposed to risk of harm if the service is provided by staff who are not appropriately vetted, trained, supervised or assessed. We especially note the vulnerability and exposure to risk of harm of patients using oxygen, being in chairs or suffering dementia.
- 20 In the context of section 31 of the Act, we are satisfied on the current evidence that there are breaches of regulation 12 (a), (b), (c), (e) and (h). We find in such circumstances that users of the service will or may be exposed to risk of harm.

### **Proportionality**

- 21 We now consider whether it is proportionate to suspend registration. The current suspension is until 21 February 2020.
- 22 The safe care and treatment of patients is central to the purpose of the Act and Regulations. On current evidence there is a definite risk of harm to patients and there is no evidence of any plan for meeting the various and numerous areas of concern.
- 23 The current breaches are not isolated either in number or nature.
- 24 Each of the breaches is of importance in its own right but taken together they demonstrate that the shortcomings are numerous and widespread in many areas of the service's functioning.
- 25 A suspension is by its very nature not equivalent to a cancellation. It permits the provider to remedy breaches. The current suspension is relatively short, albeit the CQC have power to extend the period depending upon progress made or not made.

### **Conclusion**

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

**Decision**

27 We confirm the decision of the CQC to suspend the registration of LCT until 21 February 2020.

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

**Date Issued: 07 February 2020**

