

## **Care Standards**

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

**Heard on 13, 14, 15 & 16 February 2023**

**At Beverley Magistrates Court**

**NCN: [2023] UKFTT 275 (HESC)  
[2022] 4579.EA**

**Before**

**Judge Clive Dow  
Miss Rachael Smith (Specialist Member)  
Mr John Hutchinson (Specialist Member)**

**Kodali Enterprise Limited (Woodside Care Home)**

**Appellant**

**V**

**Care Quality Commission**

**Respondent**

### **DECISION AND REASONS**

#### **The Appeal**

1. This is an appeal by Kodali Enterprise Limited (the Appellant) brought under Section 32 of the Health and Social Care Act 2008 (the Act) against a decision of the Care Quality Commission (CQC or Respondent), made on 25 April 2022 to cancel the Appellant's registration as a provider of residential care at Woodside Care Home, Skegness because the service is dormant and has been so for more than 12 months.

#### **The Hearing**

2. The hearing took place at Beverley Magistrates Court. The parties and all witnesses attended in person.
3. The Appellant business, Kodali Enterprise Limited, has two directors, Dr Jagadeeswara Kodali and Mr Robert Baillie. Both attended and gave evidence. Mr Baillie represented the Appellant in the sense that he asked questions of the

Respondent's witnesses and made final submissions. Mr Oliver Connor of Counsel, instructed by Hill Dickinson LLP, represented the Respondent. The Respondent called three CQC employees as witnesses: Mrs Natalie Reed, Interim Head of Inspection, Mrs Catriona Eglinton, Interim Inspection Manager, and Miss Wendy Taylor, Inspector.

4. The documents that we were referred to are in the electronic hearing bundle provided in advance of the hearing (comprising 1070 digital pages) and those we admitted as late evidence (detailed below). We also considered the Respondent's skeleton argument, which was submitted on 9 February 2023 and a floor-plan of Woodside Care Home, provided by Mr Baillie at our request on 15 February 2023.
5. Applying Rule 15 of the Tribunal's Procedure Rules and determining in each case that the document was relevant, its admission caused no obvious prejudice to the other party and would assist us in reaching a fair determination of the issues, we admitted the following documents as late evidence in the course of the hearing:
  - a) For the Respondent:
    - i. A completed factual accuracy check form dated, 3 February 2023; and
    - ii. The final inspection report dated 7 February 2023, both following Miss Taylor's inspection of 6 January 2023 (the version already included in our bundle was a draft version which had been amended to reflect Mr Baillie's comments in the factual accuracy form).
  - b) For the Appellant:
    - i. A supplementary witness statement by Mr Baillie dated 3 February 2023 exhibiting a factual accuracy check form completed on 27 January 2023 and a separate, undated, document detailing actions taken since Miss Taylor's inspection on 6 January 2023;
    - ii. A character reference for Dr Kodali by Mr Keith Baker, a planning and property consultant, dated 7 February 2023;
    - iii. A copy of an email between Dr Kodali and Mr Baillie dated 9 February 2023 detailing an order for a replacement window unit at Woodside Care Home;
    - iv. A letter to Dr Kodali from Lindsey Plumbing & Heating dated 10 February 2023 detailing work done to rectify a fault with the hot water system at Woodside Care Home; and
    - v. A printout of a spreadsheet titled 'staffing ladder', showing how the Appellant plans to deploy staff dependent on the number and needs of service users at Woodside Care Home.
6. The Tribunal visited Woodside Care Home on the morning of 15 February 2023. A record of our questions and the answers provided by Mr Baillie and Dr Kodali in the course of our visit was kindly taken by Mr Leslie, of Hill Dickinson LLP and shared with the parties. We are grateful to him for agreeing to undertake that role. Final submissions were made orally on the afternoon of 15 February

2023. The Panel deliberated on 16 February 2023. The decision has taken slightly longer than usual to finalise because of the Judge's other judicial commitments. The Judge is grateful to the parties for their forbearance.

## **Background & Chronology**

7. Woodside Care Home is a relatively large residential care home in Skegness, Lincolnshire. It was registered in accordance with the terms of the Health & Social Care Act 2008 on 1 October 2010 to provide: (1) accommodation for persons requiring nursing or personal care; and (2) treatment of disease, disorder and injury. The service sought cancellation of its registration for the treatment of disease, disorder and injury in 2018.
8. Accordingly, the only regulated activity carried on at Woodside after 2018 was accommodation for persons who require personal or nursing care.
9. When operational, the service had capacity to support up to 42 older adults.
10. Following a routine inspection, nine conditions were imposed on the Service on 17 September 2020, including that no new service users were to be admitted as it was believed that they would, or may be, exposed to the risk of harm. The service was rated as inadequate as a result of the inspection.
11. On 24 September 2020, Lincolnshire County Council confirmed that all service users had been removed from the service. Since that date, no further service users have been accommodated by the service.
12. The Respondent served a notice of decision to cancel the Appellant's registration on 19 November 2020, based upon the breaches of Regulations identified at the September 2020 inspection. Breaches were identified in relation to: (a) safe care and treatment (Regulation 12(1)); (b) safeguarding service users (Regulation 13(1)); (c) good governance (Regulation 17); (d) staffing (Regulation 18); (e) notification of incidents (Regulation 18); and (f) employment of fit and proper persons (Regulation 19).
13. The Appellant appealed this decision to the Tribunal. The appeal was stayed a total of five times over its lifetime, each time at the Appellant's request and as a result of the Appellant's assurances that it was seeking to address the identified failings and re-open to service users but was hampered in doing so because of difficulties organising materials, labour and staff in view of the COVID-19 pandemic and its ongoing effects.
14. Between 19 November 2020 and 9 February 2022 the Respondent undertook three inspections of the service. Although inspection reports indicated that concerns had not been fully addressed, the Respondent withdrew its opposition to the appeal on 9 February 2022 because (in its own words) *"by the time the matter came to be considered as an appeal, the evidence contained within the initial Notice of Proposal was deemed to no longer present a risk as there were no service users residing at Woodside"*. As a result of the Respondent's change of position, the appeal was allowed.

15. However, on 15 February 2022 the Respondent issued a Notice of Proposal to cancel the Appellant's registration on grounds that no regulated activity had been carried out for at least 12 months (which we will refer to in this decision as 'dormancy'). The Appellant made written representations. However, the Respondent issued a Notice of Decision, cancelling the Appellant's registration, on 25 April 2022.
16. It is that decision which the Appellant now appeals.

### **The Law**

17. The Respondent regulates the Service provided by the Appellant in accordance with Ss. 2 & 3 of the 2008 Act.
18. S.17(1)(e) of the 2008 Act provides that the Respondent may cancel a Registered Person's registration as a service provider in respect of a Regulated Activity "*on any ground specified by Regulations*".
19. Regulation 6(1)(c) of the Care Quality Commission (Registration) Regulations 2009 provides that the Respondent may cancel a Service Provider's Registration if the Service Provider has not carried on the Regulated Activity it is registered to provide for a continuous period of 12 months (a 'dormancy' cancellation).
20. Since the Respondent 'may' exercise such a power, it follows that the power is discretionary. As such, the Respondent (or the Tribunal which decides the matter afresh in the circumstances pertaining at the time of its decision) must exercise such a power fairly and proportionately.

### **The Issues**

21. It was not disputed that the Appellant has carried out no regulated activity for at least 12 months and as such the requirements of Regulation 6(1)(e) of the 2009 Regulations is fulfilled. The question for the Tribunal was whether, in all the circumstances, cancellation of the Appellant's registration in those circumstances is fair and proportionate.

### **The Parties' Positions**

22. At the hearing, the Appellant advanced the appeal on five grounds:
23. First, the Respondent's approach, in abandoning its opposition to the Appellant's appeal against its previous Notice of Decision but then almost immediately proposing to cancel the Appellant's registration on grounds of dormancy, was unfair in that the Appellant was not alerted to the possibility of cancellation on such grounds until it had already been dormant for 12 months.
24. Second, the Respondent's inspection methodology was unfair because different inspectors and inspections raised new criticisms which had not been

identified in previous inspections.

25. Third, the Respondent's direction to the Appellant's manager, Cara Robinson, that she should withdraw her application to become the Registered Manager until such time as this appeal is decided, contributed to her leaving her position and effectively robbed the Appellant of the opportunity to demonstrate that the Service is well-led and to provide the day-to-day supervision which would otherwise have minimised the 'minor' shortcomings in maintenance and cleanliness which underpin the Respondent's conclusion that the Appellant has not yet demonstrated that the Service is safe for new users.
26. Fourth, the Respondent has, in any event, wrongly concluded that the Service is not yet 'safe' or 'well led', which has frustrated the Provider's ability to contract with Local Authorities or otherwise attract new service users so that it could bring about an end to its dormant status.
27. Fifth, the Appellant will, within a reasonably short time, be able to demonstrate that it is safe and well led and will be ready to accept new service users and that in such circumstances, it would be disproportionate to cancel the Appellant's registration and require it to re-register.
28. The Respondent resists the appeal on the basis that its approach to the Appellant has, at all times, been transparent, fair and proportionate.
29. In relation to its decision to pursue cancellation on grounds of dormancy rather than substantial breaches of quality of care requirements it had previously cited, the Respondent maintains its actions were taken in order to demonstrate transparency and fairness and that no prejudice accrued to the Appellant as a result of its actions.
30. The Respondent maintains the position that its inspection methodology reflects its role as Regulator rather than as the Appellant's quality assurer. The Respondent maintains that each inspection stands alone as a snapshot of compliance with the relevant Regulations and it is not (and never was) limited to checking whether specific shortcomings identified in previous inspections had been remedied.
31. The Respondent asserted that each inspector had been fair in its assessment against Regulatory requirements and scrupulous in identifying and recognising improvements made by the Appellant since the previous inspection.
32. The Respondent denied that in discouraging Cara Robinson from pursuing her application to become Registered Manager, it had prejudiced the Appellant in the way alleged or at all.
33. Even if the Service were ready to admit new service users in the 10-12 week period identified by the Appellant (which was not accepted as realistic by the Respondent), there was no guarantee that it would be able to identify prospective service users, because it did not necessarily follow that Lincolnshire County Council or any other Local Authority would wish to, or need to, contract

with the Appellant given vacancies in other services and the Appellant admitted that it would find it difficult to attract privately funded service users.

34. Allowing the appeal would lead to the perverse situation where the Appellant's registration would continue on an 'open-ended' basis, where the Respondent would be required to expend further time and resource inspecting or otherwise actively regulating Woodside Care Home while it remains dormant.

### **Oral Evidence**

35. The hearing was not recorded. The evidence we heard is summarised only as necessary to explain our findings.

### **Findings and Conclusions**

36. There were no substantial factual disputes for us to resolve. The following agreed facts are, however, relevant:

- a) The service at Woodside Care Home ceased to provide a regulatory activity on 24 September 2020;
- b) The Appellant has, at all material times since 24 September 2020, been under conditions which require (among other things) that it must not admit new service users without the Respondent's agreement;
- c) The Appellant has at no time sought the Respondent's agreement to admit new service users to the Service;
- d) The Appellant has, at all material times since 24 September 2020, maintained an express intention to re-open the service and recommence providing regulated activity in the near future;
- e) The Respondent has, between 24 September 2020 and the date of the hearing inspected the service five times, on 12 February 2021, 20 August 2021, 10 November 2021, 4 July 2022 and 6 January 2023;

*Was it unfair for the Respondent to give notice of cancellation of the Appellant's registration on grounds of dormancy, having very recently withdrawn its opposition to the Appellant's appeal against the Respondent's notice of cancellation on grounds of breaches of Regulations?*

37. Although Mrs Reed said she could not recall the order of discussions with other managers or legal advisers, we are sure that the Respondent's decision to withdraw its opposition to the Appellant's appeal against the Respondent's previous notice of cancellation was taken in full knowledge that it would immediately propose to cancel the Appellant's registration on different grounds. It is not credible that the Respondent would otherwise have abandoned its opposition to the Appellant's appeal.

38. However, we do not find that the Respondent's actions were, of themselves, irrational or unfair. The opportunity to cancel for reasons of dormancy having arisen, the Respondent was entitled to pursue cancellation on that alternative basis. That the Respondent chose not to pursue cancellation on grounds of dormancy in parallel with cancellation on grounds of substantive breaches of

Regulations (effectively as an additional ground of its response to the appeal which was then ongoing), we accept was done for reasons of transparency and good faith. On the basis that the Appellant accepts that Woodside Care Home was not in a fit state to receive new service users on 25 April 2022, we can see no basis for concluding that the Respondent's actions were in any way intended to frustrate the Appellant's prospects of successfully appealing against its previous notice of cancellation. It is axiomatic that the result was that the Appellant's appeal against the previous notice of cancellation was allowed.

39. While we accept that having been apparently reprieved, the Appellant will have been disappointed that it was almost immediately faced with a new notice of proposed cancellation, we do not accept that it ought to have come as a surprise because the relevant Regulations are published and publicised. We would expect a reasonably proficient and proactive service provider to have been aware of the possibility of cancellation on the grounds of dormancy at all times. No doubt the Appellant was then required to expend some additional time, effort and money in order to prepare a new appeal. However, in our view, the Appellant having already sought to stay the previous appeal on five occasions, we can infer that the Appellant was itself willing to expend such resources in any event to secure a successful outcome.

40. In any event the Appellant benefited from the Respondent's change of tack. In effect, they were given more time to address the identified breaches of regulations, prepare for re-opening and to identify potential service users. That outcome was precisely what they had been seeking since the Notice of Proposal to cancel their registration was first served in November 2020.

41. In our conclusion on this ground, we are satisfied that it was open to the Respondent to withdraw its opposition to the appeal against cancellation for substantial breaches of Regulations and to pursue cancellation on the alternative ground of dormancy. The Appellant benefited from that change of position. We can see no substantial unfairness to the Appellants in that action.

*Was the Respondent's inspection methodology unfair?*

42. We have carefully reviewed each of the inspection reports contained in our bundle, the written and oral evidence of the inspectors who the Respondent and both Dr Kodali and Mr Baillie's written and oral evidence about these inspections. Naturally, the focus of our attention was drawn by both parties to the inspections on 4 July 2022 and 6 January 2023 because these were the most recent inspections and which the Appellant argued raised new issues or criticisms which had not formed part of the Respondent's previous reports.

43. We conclude that the Respondent's inspection methodology was and is in line with its regulatory role, reflects the Respondent's own policies and has been applied in an objectively fair way by the Respondent's Head of Inspection, Inspection Manager and Inspector in the Appellant's case.

44. The Appellant argued that successive inspections identified new shortcomings and failed to take into account such improvements that had been made, such

that the Appellant did not know what needed to be done in order to comply with the Respondent's expectations and to return to compliance. We wholly reject that approach.

45. We accepted the evidence of the Respondent's witnesses that the role of inspectors is to assess whether any service provider is complying with, or in breach of, applicable Regulations or conditions. We accept and adopt the Respondent's position, that it is not the role of the inspectors to provide a detailed breakdown of all details and areas on non-compliance. We would expect a reasonably proficient and proactive provider to be aware that the methodology of inspection reports is to give examples of shortcomings in order to evidence or demonstrate why the provider has been found in breach of relevant Regulations. Equally, a reasonably proficient and proactive provider will recognise that it is the role of the provider to ensure compliance with all applicable Regulations or conditions. During giving oral evidence both Dr Kodali and Mr Baillie accepted that it was not the function of the Respondent to provide a checklist of issues but to assess compliance with the Regulations. We do not accept that the Appellant was at any time limited, or should have limited itself, to working only towards rectifying the shortcomings identified by the inspection reports. That, in our finding, would have been the wrong approach. Further, if that was the Appellant's approach, it would add weight to the Respondent's cases that the Appellant business is not sufficiently well-led to be able to identify for itself what needed to be done in order to return to compliance. However, we also accept that the Appellant did not follow that approach. We accept that Mr Baillie oversaw the creation and pursuit of an action plan which exceeded the specific shortcomings identified by the Respondent inspectors. That supports the conclusion that the Appellant knew its duty extended beyond rectifying specific shortcomings identified in the Respondent's inspection reports.

46. Finally in relation to this ground, we accepted the evidence of Mrs Reed and Mrs Eglinton that the successive inspections amounted to a departure from the Respondent's normal practices and procedures in that they were additional to and at increased cost that its normal course. We conclude that this was of benefit to the Appellant by providing greater than usual assistance and direction in attaining compliance with the necessary Regulations.

47. For these reasons, we are satisfied that the Respondent's inspection methodology was fair.

*Did the Respondent's refusal to consider the application of the Appellant's manager to be the 'Registered Manager' cause substantive unfairness to the Appellant?*

48. On an unknown date in 2021, the Appellant engaged Cara Robinson to be the manager of Woodside Care Home. As Mr Baillie told us in his oral evidence, Ms Robinson had not managed a care home before. In the early months of 2022, Ms Robinson applied to become the Registered Manager of Woodside Care Home. In email communication with Stephen Quinn of the Respondent on 22 June 2022, Ms Robinson was asked by the Respondent to withdraw her application.



49. In her oral evidence Mrs Reed said that she had not been involved in the process or even aware of Ms Robinson's application but she understood that deferral of an application in relation to a provider which had been subject of a Notice of Decision to cancel was likely to be the Respondent's policy because there is a high volume of applications and deferral would enable the team to focus on applications from providers which were already operating or applying to become registered providers.
50. Although we accept that the Respondent's refusal to consider the application *may* have been a contributing reason why Cara Robinson left her employment, we cannot be confident that it *was* a contributing reason because we heard no evidence from her. Mr Baillie's evidence was not entirely consistent on this point. In his written statement he said Ms Robinson had left because of the CQC's position on her application. At one point in his oral evidence he said that Ms Robinson had left by mutual consent, on her part because of the lack of security in her position and on the Appellant's part because Ms Robinson had not always been competent or transparent about progress with refurbishment or compliance. At another point Mr Baillie said he had dismissed Ms Robinson. Whichever is true, we found on the basis of Mr Baillie's evidence, that Ms Robinson's inexperience, such that she was unable to identify substantial shortcomings in Woodside's organisational and material readiness for inspection and that she had not been reporting fully to her employers what the true situation was in the care home, was a substantial reason for her departure.
51. For these reasons, we were not persuaded that the Respondent's position on considering Ms Robinson's application to become registered manager was the sole reason, or even the main reason, why she ceased in her employment. Even if it was part of Ms Robinson's own reasons for leaving her employment, that reasoning cannot be separated from the evident concerns the Appellant held about Ms Robinson's suitability for the role. It follows that we were unpersuaded that the Respondent's position caused any substantial unfairness to the Appellant in returning to compliance with Regulations or its inability to identify new service users to overcome its dormancy.

*Is the Respondent wrong in its conclusion that the Service remains in breach of Regulations?*

52. This ground of the appeal receded during the hearing. In particular, during his oral evidence, Mr Baillie accepted that there are still significant organisational, material, service and staffing issues to be addressed before new service users can be admitted. Furthermore, in cross-examination of the Respondent's witnesses, the Appellant did not challenge Miss Taylor's oral evidence about the findings of the inspection in January 2023 which included breaches of hygiene standards and health and safety legislation, together with governance and leadership inadequacies. We found both Mrs Eglinton and Miss Taylor to be honest and transparent witnesses. In particular, we had no reason to doubt that Miss Taylor's findings in her most recent inspection were based on an application of her considerable experience in the role, in good faith. We found her to be balanced, giving appropriate credit in her oral evidence for the

improvements and new arrangements made by the Appellant in the course of its nearly two-year refurbishment while maintaining a principled caution about accepting assurances about further improvements yet to be made, or the arrangements for key services such as catering, about which the Appellant had provided the Respondent or the Tribunal with scanty information.

53. However, we carefully considered the evidence of the inspectors against the documents provided by the Appellant, and in particular its action plan and the factual response to the most recent inspection. The panel also used the opportunity of an in-person hearing to visit Woodside Care Home to further inform itself in considering whether the Respondent was wrong in its conclusions that the Appellant has not yet been able to demonstrate that its service is safe or well-led. Nothing in our triangulation of the evidence using these reference points suggested that our confidence in the latest inspection was misplaced.

54. In particular, Mr Baillie's oral evidence identified that there is no manager in post and that no-one has day-to-day leadership of the care home. In his most recent witness statement of 3 February 2023 Mr Baillie described himself as a 'non-executive' director whilst Dr Kodali described himself in oral evidence as being involved only in the finance side of the business. We accept and adopt Miss Taylor's evidence that without key staff in post, including a manager with day-to-day responsibility it is not possible to achieve good governance or test the robustness on the systems and processes in place such that it would be possible to give a categorical assurance that the Appellant's service is safe or well led.

55. In our conclusion on this ground, we are satisfied that the Respondent was correct in its conclusion that the Service remains in breach of the Regulations.

*Would it be proportionate for the Appellant to have additional time to return to compliance with Regulations, identify service users and apply for them to be admitted to the service in accordance with conditions?*

56. We have carefully reviewed the chronology and the history of this Appeal including the circumstances in which the Appellant's service came to be dormant, the circumstances in which the dormancy notice was made, the Respondent's approach to the Appellant's dormancy and the inspections made during the period of dormancy. We have carefully reviewed each of the inspection reports, the evidence of the Respondent's inspection team and the written and oral evidence provided by Dr Kodali and Mr Baillie.

57. This was the central plank of the Appellant's appeal. The Appellant submits that it would be disproportionate to cancel its registration now taking into account:

- a) the challenges posed by the pandemic, including the difficulty the Appellant has experienced in securing labour and materials for its refurbishment;
- b) how close the Service is to returning to compliance;
- c) to the extent that the Service is not yet ready to open, the Appellant's

- hesitation in fully staffing or contracting for services is due to the ongoing uncertainty over the service's future given the threat of cancellation; and
- d) That requiring the Appellant to re-register may harm or extinguish the Appellant's prospects of securing new service users through Lincolnshire County Council or other Local Authorities.

58. In relation to (a), we accept the Appellant's written and oral evidence about the difficulty it has experienced sourcing materials and reliable labour. The Appellant submitted several letters which described such difficulties in 2021 and the first half of 2022. We fully take into account those difficulties and we also accept that the Appellant, particularly through Dr Kodali, has acted with reasonable diligence in attempting to secure reliable contractors. However, these difficulties do not, in our view, represent a complete explanation for why the Service is not ready to open, or even explain why there are still substantial material defects, which the Appellant accepted must be addressed before the Service is ready to accept new service users. In our finding, based on the oral evidence as a whole and the Appellant's own evidence in particular, a major reason for the delay in returning to compliance attaches to the lack of day-to-day supervision of the works by a suitably knowledgeable, experienced or discerning manager, rather than any legacy of the pandemic.

59. In reaching that conclusion, we also take into account in particular the Appellant's own evidence that following Ms Robinson's departure, in part for her inability to drive forward improvement, the Appellant has not appointed another manager. We reject the Appellant's submission that fault for their inability to recruit a replacement can be laid with the Respondent. We accept in particular Mrs Eglinton's oral evidence that providers preparing to open or re-open a location will routinely recruit and retain a full-time manager well in advance of the service opening in order to manage and oversee the working up of capabilities including staffing, services, material readiness and good governance systems. That the Appellant has chosen not to replace Ms Robinson, apparently for business reasons related to the perceived uncertainty around the future of the business pending resolution of the appeal, we conclude has substantially contributed to the Service not being ready to admit new service users.

60. Taking account of the time frame and number of inspections that have taken place during the period of dormancy, we accept the Respondent's evidence that the Appellant has had fair opportunity to demonstrate they are ready to accept service users but have failed to do so.

61. In relation to (b), we accept that the Service has made substantial improvements over the course of its refurbishment. It has, for example, overcome the Local Fire Service's concerns about fire safety of the building's fabric, fixtures and fittings. We accept that the business, through the investment of Dr Kodali in particular, has made substantial financial investment in these improvements – at least £220,000 of capital costs in the last three years, to which must be added the costs of the maintenance and cleaning staff who have been retained and the costs of administering the business. We also accept and take into account that this investment has been made while the Appellant

business has been receiving no income. However, we do not consider the extent of financial investment made is a factor on which we should place particular weight because that investment can be safeguarded either through remaining registered now, or by seeking a new registration once the service is ready to re-open. For the reasons we set out below, we reject the Appellant's reliance (to the extent it was asserted) on the business remaining registered as an effective pre-condition of its remaining viable.

62. Whilst giving oral evidence Mr Baillie asserted that the service could be ready to receive service users in around 10-12 weeks from the date of the hearing. However, the Appellant did not provide us with sufficient evidence to demonstrate how this would be achieved within a ten-week time frame, including the detail, which we invited the Appellant to provide and which Mr Baillie told us was available, about the catering contract and how it would be overseen in relation to the Appellant's own obligations under the Regulations, about the qualifications or experience of the proposed manager and the likelihood of them driving further improvement, or the plan to recruit, induct and train the staff who would be needed before the Service could be ready to receive any new service users. In respect of the latter, we considered the staffing ladder produced by Mr Baillie to fall well short of the detail we expected to see if the service was close to readiness.

63. We also took into account the Appellant's position (albeit the position did not appear to be fully agreed between Dr Kodali and Mr Baillie) that Mr Baillie would be responsible for oversight of work until the new manager could be appointed. That position did not seem promising to us, given Mr Baillie's admission that he lives a long way from Skegness, currently visits the site only monthly and would propose to travel to the site only once per week at most, even during the ramping up of the business to receive new service users.

64. Finally, we accept and take into account Mr Baillie's evidence that being ready to receive service users is not the same as the service being operational. Mr Baillie conceded that the Service is unlikely to attract any private service users in the short term because of its location and relatively basic facilities and presentation. Mr Baillie estimated it might take a similar period (i.e. another 10-12 weeks) in order to revive the arrangement with Lincolnshire County Council for the placement of service users under the Local Authority's responsibility and to identify suitable service users and arrange for them to move in. We also take into account the possibility, as asserted by the Respondent, that Lincolnshire County Council may not require the Appellant's service in order to meet its obligations to entitled older people.

65. For these reasons, we cannot accept the Appellant's assurances about the timeframe for re-opening the service. There is, simply put, too much uncertainty about the plans. Ultimately, we consider that the time frame already afforded to the Appellant by the Respondent would have been sufficient for a committed provider to have made greater progress towards compliance with the Regulations and identify new service users. We do not have confidence that additional time would result in an end to the dormancy status in the short term. As such, we accept and adopt the Respondent's position that it would be

inefficient to require the Respondent to maintain the Appellant's registration on an open-ended basis, particularly in light of the Respondent's evidence, which we also accept, that the process of re-registration would be likely to take around 12 weeks, representing no longer a period than the Appellant itself estimates it will take before the service at Woodside Care Home would be ready to re-open.

66. Finally, we turn to the Appellant's argument that requiring it to re-register once it is ready to re-open would have a disproportionate impact because of the dependency of the Service on Local Authorities (particularly Lincolnshire County Council) for placing eligible service users at Woodside Care Home. We carefully considered the correspondence between the Appellant and Lincolnshire Local Authority, as well as the written and oral evidence of Dr Kodali and Mr Baillie on this issue. While we accept that the Appellant has previously been dependent on the Local Authority for its supply of service users, we are not persuaded that this should be the case now or in the future. Mr Baillie was particularly frank in conceding that Woodside Care Home is unlikely to be attractive to service users in the private market. He also conceded that in a market, it remains open to the Appellant to attract service users by offering an appropriately competitive rate. Even if we accepted that the success of the Service was dependent on the Local Authority, in our assessment, nothing in the correspondence before us supports a conclusion that the Local Authority will only consider contracting with the Appellant's service if there is no break in its registration. We understand the Local Authority's position is that the Appellant's service would need to be registered and demonstrate clear evidence of its return to compliance with Regulatory requirements before it will consider placing service users at the Service. In our conclusion, evidence of a return to compliance is more likely to be demonstrated by successful re-registration at the time when the Service is fully ready to receive new service users. In reaching that conclusion we keep in mind the evidence of the Respondent's witnesses, which we accept, that in its present dormant state, it remains impossible, to conclude that the Service is safe and well-led.

67. For these reasons, we do not accept that requiring the Appellant to apply to re-register as a Provider of residential care or nursing services would place the Appellant's business at such risk of failure that it would be disproportionate to cancel the Appellant's registration.

### **Conditions**

68. Since the main justification for cancellation on grounds of dormancy is to protect the Respondent from expending disproportionate resources regulating a provider which is not providing any Service, it follows that (further) conditions which would enable the Appellant to remain registered would not be appropriate. We did not consider that imposing a further condition, such as a condition on the number of users the Service can admit, would overcome our concerns about regulatory compliance or readiness to admit new service users, or would advance the Appellant's own efforts to identify new service users to overcome dormancy.

### **Conclusion**

69. Having balanced the impact of the decision on the Appellant with the desirability that any Service should fully meet all regulatory requirements, including relevant Regulations, before it is permitted to admit service users, we are satisfied that the decision to cancel the Appellant's registration is fair and proportionate.

70. Nothing in our decision should be taken as implying that we have concluded the service at Woodside Care Home is incapable of being compliant with Regulations or that any application to re-register ought to be prejudiced by the outcome of this Appeal.

### **Decision**

71. The appeal is dismissed.

**Judge C S Dow**  
**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 10 March 2023**