

# **First-tier Tribunal Care Standards**

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

**[2022] 4729.EA  
Neutral Citation Number: [2023] UKFTT 835 (HESC)**

**Heard on 12-15 September 2023  
At Bradford Tribunals Centre and remotely by video conference (V Kinly)**

**Before**

**District Tribunal Judge Clive Dow  
Mrs Denise Rabbetts (Specialist Member)  
Mr Matthew Turner (Specialist Member)**

**Between:**

**iCare Solutions (Wakefield) Limited**

**Appellant**

**V**

**Care Quality Commission**

**Respondent**

## **DECISION AND REASONS**

### **The Appeal**

1. This is an appeal by iCare Solutions (Wakefield) Limited (the Appellant) brought under Section 32 of the Health and Social Care Act 2008 (the Act) against the decision of the Care Quality Commission (CQC or Respondent) on 11 August 2022 to cancel the Appellant's registration as a provider of Personal Care, a regulated activity, because the Service is in breach of Regulations made under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2014 Regulations).

### **Order under Rule 14(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008**

2. We make an order prohibiting any person from disclosing or publishing any matter likely to lead members of the public to identify any Service users named during the hearing. Although the hearing was public, no members of the public attended to observe the hearing and so the only people who heard or read the name of the Service users were those referred to in the next section of this

decision.

## **The Hearing**

3. The Appellant business, iCare Solutions (Wakefield) Limited (iCare or the Service), has a single director, Izqar Hamid. He is also the Nominated Individual. Mr Hamid represented the Appellant and gave oral evidence. Clare Burden (Branch Manager) also gave oral evidence for the Appellant.
4. Ryan Donoghue, a barrister instructed by Hempsons LLP, represented the Respondent. The Respondent's oral witnesses were Helyn Aris (former Inspection Manager), Paula Fretwell (Inspector), Michelle Richardson-Christie (Inspection Manager) and Sheila Grant (Head of Inspection/Deputy Director).
5. We also considered a written statement by Hayley Skinner (Inspector) for the Respondent. All the Respondent's witnesses are employees of the CQC.
6. The documents that we were referred to are in the electronic hearing bundle provided in advance of the hearing (comprising 1484 digital pages) and those we admitted as late evidence (detailed below). We also considered the Appellant's and Respondent's skeleton arguments.

## **Preliminary Matters**

7. On the day before the hearing began, Mr Hamid informed the Tribunal that he had tested positive for COVID-19. He reported feeling well enough to participate in the hearing but applied to be allowed to participate remotely.
8. We considered the application as a preliminary issue at the final hearing. Satisfied that Mr Hamid was able to participate effectively at that time and there being no objection by the Respondent, we allowed the application. We experienced very few problems with Mr Hamid's connection through the hearing, although at one stage while Mr Hamid was giving his evidence, the video connection became unstable and Mr Hamid dialled in by telephone so that we could hear his evidence clearly while the video streamed at a slightly lower quality. We regularly checked throughout the hearing that Mr Hamid remained well enough to participate. At the end of the hearing we were satisfied that Mr Hamid had been able to participate effectively as both representative and witness.

## **Late Evidence**

9. Applying Rules 5 and 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 during the hearing:
  - a. The Appellant's written representations dated 10 June 2022 against the Respondent's Notice of Proposal dated 11 May 2022 comprising 377 pages; and

- b. A third witness statement by Paula Fretwell dated 5 September 2023 covering the Respondent's final report of its targeted inspection of 3 and 7 August 2023, also dated 5 September 2023 and comprising 15 pages.

10. We note that the Appellant would have wished to have the opportunity to question Jessica Allen, who was the Respondent's lead inspector at the inspection of 23 & 30 March 2022 (the March 2022 Inspection) and 9 & 11 November 2022 (the November 2022 Inspection). She had not made a written statement and was not available to attend the hearing because she is on maternity leave. In the event, we did not consider it necessary or proportionate to require the Respondent to call Ms Allen, bearing in mind that the Appellant did not dispute the factual findings of either Inspection led by her, and we had the written and oral evidence of Ms Aris in relation to the March 2022 Inspection and Mrs Fretwell in relation to the November 2022 Inspection, which was not directly challenged.

### **Background & Chronology**

11. iCare Solutions (Wakefield) Limited is a care agency delivering home-based personal care. The Service was developed as part of a larger service called Care Solutions Limited, based in Manchester. However, the Service was established in its own right and registered as a provider of personal care within the meaning of the 2014 Regulations on 9 September 2021. As well as being the Nominated Individual for the Service, Mr Hamid became the Registered Manager.
12. At the March 2022 Inspection the Appellant was found in breach of Regulation 12 (safe care and treatment), Regulation 17 (good governance), Regulation 18 (staffing) and Regulation 19 (fit and proper persons). The Service was assessed across five domains, where it was found to be inadequate in the domains 'safe' and 'well-led' and to require improvement in the domains 'effective', 'caring' and 'responsive'. The Service was rated 'inadequate' overall.
13. The Respondent issued a Notice of Proposal (NoP) to cancel the Appellant's registration on 11 May 2022. The Appellant made representations on 10 June 2022. The Respondent issued a Notice of Decision (NoD) cancelling the Appellant's registration on 18 August 2022. Simultaneously, a NoD was sent to cancel Mr Hamid's registration as Registered Manager.
14. The Appellant appealed the NoD with respect to its registration as a provider on 26 September 2022. Mr Hamid did not contest the decision to cancel his registration as Registered Manager.
15. Between the NoD to cancel the Appellant's registration and the date of the final hearing, the Respondent inspected the Appellant's service on three further occasions.
16. Following the November 2022 Inspection, the Respondent identified that the breach in relation to Regulation 18 (staffing) had been addressed but the Service remained in breach of Regulations 12, 17 and 19. As this was a targeted inspection, only the domains 'safe' and 'well-led' were assessed. Both were

found to remain 'inadequate'.

17. Further targeted inspections on 21, 23 & 30 March 2023 (the March 2023 Inspection) and 3 & 7 August 2023 (the August 2023 Inspection) made similar findings that the Service remained in breach of Regulations 12, 17 & 19 and that the domains 'safe' and 'well-led' remained 'inadequate'.
18. It is common ground that Mr Hamid does not, and never intended to, exercise day-to-day supervision of the Service, instead relying on a branch manager, care-coordinator and compliance and training officer to carry out that function. It is also common ground that during the enforcement period, the Service has experienced several changes of day-to-day leadership, resulting in the appointment of Ms Burden to the role of Branch Manager on 21 March 2023, the first day of the Respondent's second inspection of the Service following the NoD.

### **The Law**

19. The Respondent regulates the Service provided by the Appellant in accordance with Sections. 2 & 3 of the Health and Social Care Act 2008 (the Act).
20. S.17(1)(c) of the Act provides that the Respondent may cancel registration as a service provider in respect of a Regulated Activity *"on the grounds that the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements."*
21. Relevant requirements include:
  - a. Conditions imposed by or under Chapter 2 of the Act;
  - b. Requirements of any other enactments which appear to be relevant to the Respondent, i.e. those made by the 2014 Regulations or the Care Quality Commission (Registration) Regulations 2009 (the 2009 Regulations).
22. The power of the Respondent to grant or refuse the registration of a service provider is set out in s.12(5) of the Act, which also permits the Respondent to *"impose any additional condition"* at any time.
23. 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.
24. In appeal proceedings, the burden of proof rests with the Respondent to prove, on balance, that its decision was justified. The burden of proof rests with the Respondent throughout.

### **The Issues**

25. At the hearing, Mr Hamid confirmed that the Appellant does not dispute any of the factual findings made by the Respondent at any of the four inspections of

the Service. The appeal was therefore advanced on the basis that a decision to cancel the Appellant's registration is neither fair nor proportionate because:

- a) At the second, third and fourth inspections, the Respondent's inspectors adopted a forensic or otherwise disproportionately detailed approach, effectively looking for fault until they found it and therefore holding the Service to a higher standard than other services;
- b) The Respondent's approach to the issue of who should take the role of Registered Manager unfairly hindered the Service in identifying and recruiting a Registered Manager to take on that role from Mr Hamid;
- c) In all the circumstances, and in particular bearing in mind the Appellant's difficulties with recruiting and retaining a competent manager, and the prospect that with additional time, the provider can make and sustain improvement so that it is compliant with the Regulations, the Appellant should be afforded a further opportunity to make such improvements; and
- d) The Appellant remains willing to comply with any conditions the Respondent or the Tribunal considers it necessary to impose.

26. The Respondent resists the appeal on the basis that its approach to the Appellant has, at all times, been transparent and procedurally fair, its decisions have been based on fair and accurate reporting and that cancellation is a proportionate to the Appellant's ongoing and long-term breaches of Regulations. The Respondent submits that the Appellant cannot make or sustain substantial improvement without continuing support or at all and does not have the capacity to further improve to provide a 'Good' service across all domains within a reasonable period.

### **Oral Evidence**

27. The evidence we heard was recorded and it is not necessary to reproduce or extensively summarise it in this decision. The oral and written evidence is referred to only as necessary to explain our findings and conclusions.

28. We note here that because the Appellant was not professionally represented and Mr Hamid and Ms Burden had submitted only relatively brief written statements which were not up to date, the Tribunal deployed its inquisitorial role to the fullest extent, questioning both witnesses in order to establish additional context for the case and to ensure we understood the key points of the Appellant's case, which might otherwise have remained unexplored.

29. Where new arguments were advanced by the Appellant's witnesses in response to our questions, we were careful to ensure no prejudice to the Respondent by allowing Mr Donoghue to ask follow-up questions. Where Mr Hamid and Ms Burden's assertion that Inspectors including Mrs Fretwell had deployed a disproportionate approach during later inspections, we decided to recall Mrs Fretwell at the close of the Appellant's case so that the allegation could be put to her.

30. No objection was taken by either party to our approach.

## **Findings and Conclusions**

31. For the reasons set out below, we uphold the Respondent's decision to cancel the Appellant's registration and dismiss the appeal.

### *The Tribunal's approach*

32. The Tribunal reminded itself that we are looking at matters afresh. We do that by taking into account all of the evidence in the hearing bundle and the oral evidence from all the witnesses, including Mr Hamid and Ms Burden. We have applied the requirements in sections 3, 4 and 17 of the Act and considered the requirements set out in Regulations 12, 17 and 19 of the 2014 Regulations. We have considered at all times the principle of proportionality, which we must consider, amongst other factors, further to section 4 of the Act.

33. We have considered first of all whether the Service is, at the time of our decision, in breach of the Regulations as the Respondent alleges. Given that aspect of the Respondent's case is not challenged, our consideration of that question is brief. The greater part of our decision therefore focuses on the four overlapping issues identified by the Appellant above which go to the proportionality of any decision to cancel, despite the admitted ongoing breaches of Regulations.

### *Is the Service in breach of Regulations?*

34. Although it was not in dispute, we record our finding that each of the allegations relied on by CQC within the Scott Schedule were established and that as of the date of our decision, the Appellant's service remains in breach of Regulations 12, 17 and 19.

35. We also record our finding that the continuation of these breaches over the course of 18 months and four inspections would justify the Respondent's decision to cancel the Appellant's registration unless other factors are present which would render cancellation disproportionate. Having made such findings, we make no extensive reference to the evidence of Ms Aris, Ms Richardson-Christie or Ms Grant. We accept and adopt their reasoning for their part in the decision to cancel the Appellant's registration based on the information available to them.

### *Has the Respondent's approach to inspections resulted in an unfair assessment of the Service, including by comparison with other services?*

36. Although this was a complaint not advanced in either Mr Hamid or Ms Burden's written statements, both Mr Hamid and Ms Burden gave oral evidence that they considered Mrs Fretwell had dismissed improvements made in, for example, the content and detail of care plans which, they claimed had been extensively revised. Ms Burden described Mrs Fretwell's approach as 'nit-picking' and Ms Burden felt she had met previous criticisms by adding detail and clarifying what

was expected of carers, without making the plans unnecessarily long and cumbersome. Mr Hamid said that although he did not dispute their factual findings, he considered that inspectors including Ms Allen and Mrs Fretwell had, in successive inspections, gone deeper into records until they found evidence which could support a finding that the Service remained in breach of the relevant Regulation. He described this as 'looking for the negative'. Again, without disputing the Respondent's factual findings, Mr Hamid pointed to the findings of the mock inspection he had commissioned which gave a slightly less critical assessment of the Service's regulatory compliance. He also asserted to us that the Local Authority which commissions the Service to provide care for eligible adults are broadly satisfied with the Appellant's performance of the contract.

37. Mrs Fretwell denied that she had 'looked for the negative'. She recalled the Respondent's approach to inspections is to expect 'good' and to look for evidence which supported or undermined that assumption. We asked her about the possibility of 'confirmation bias', particularly where she had been involved in previous inspections. Mrs Fretwell said that she was aware of the possibility of confirmation bias and well as unconscious bias, was trained to account for these possibilities in both her enquiries and findings and could confidently discount them as a factor in her findings.

38. Mrs Fretwell said that it was reasonable to look again at the same evidence which had contributed to the finding of a breach in a previous inspection. She said this is what she had done and the failures she based her assessment on in August 2023 had been largely the same as identified in the two previous inspections, including in relation to specific care plans and risk assessments. Mrs Fretwell said that she had not looked at much new information in August 2023, although it would have been reasonable to do so in order to check whether improvements were embedded across all relevant records. Where she had looked at new records, such as recruitment files for new recruits, it was important to see that previous criticisms had been addressed in the Service's approach. In iCare's case, she said, the evidence reflected that the Service had not embedded improvements and the same flaws in recruitment remained present.

39. Although we acknowledge both Ms Burden and Mr Hamid's honestly held belief that inspectors did not give proper credit for improvements made, had taken an unfairly critical approach or had looked for new criticisms to make, we can find nothing to criticise in any Inspector's approach. The Respondent was entitled to, and did, undertake targeted inspections, specifically to consider whether and to what extent the Service had addressed the failures identified in previous inspections and to ensure such improvements as had been made to records or practices were embedded across the Service. We accept Mrs Fretwell's oral evidence, which is borne out by the reports of the November 2022, March 2023 and August 2023 Inspections, that the failings identified in each inspection are very similar. We do not accept that Mrs Fretwell was 'nit-picking'. Her written explanation of the evidence underlying her opinions and judgement are, in our view, balanced and fair. The shortcomings she identified, for example, in care plans and risk assessments in relation to Regulation 12 (safe care and treatment) are not simply 'technical' nor are likely to be mitigated by other safeguards such as the skills, training or experience of the care staff. We accept

as true Mrs Fretwell's evidence that during the inspection, many of the serious failings she identified were immediately accepted by Ms Burden and other members of staff.

40. More broadly, we considered that the evidence from the Inspectors called by the CQC was balanced and persuasive and clearly demonstrated the evidential basis for the findings of each inspection. We are satisfied that the inspectors applied their decision-making policy and process correctly and completed their work in a diligent manner.
41. Finally, we cannot place any significant weight on the findings of the mock inspection commissioned by Mr Hamid because, unlike the Respondent's inspections, we were unable to assess the methodology or conditions under which the mock inspection had been undertaken, its scope or depth, or the skills and experience of the person conducting it. Nor could we weigh in the views of the Local Authority because there was no statement before us which explained the Authority's views in context or detail. We also observe that the Local Authority's role as service commissioner and its expectations under a contract for care are very different to those of the Respondent as Regulator.
42. For these reasons, we dismiss this element of the appeal.

*Has the Respondent's approach to the issue of cancelling Mr Hamid's registration as Registered Manager and preventing him from nominating a new Registered Manager unfairly hindered the Appellant in recruiting a suitably qualified and experienced person to undertake that role and so ensure Regulatory compliance?*

43. As set out above, Mr Hamid does not, and never intended to, provide day-to-day supervision of the Service. In his oral evidence he told us he owns an electrical engineering business, as well as three domiciliary care businesses including iCare. His other care businesses are in Liverpool and Blackpool. Mr Hamid told us that these services each have their own Registered Manager. Both services are currently rated 'Good' by the Respondent. Mr Hamid was very candid that he relies almost entirely on the skills and experience of those Registered Managers in order to ensure the Blackpool and Liverpool services remain compliant with Regulations and the Respondent's reasonable expectations more generally. He said this was a successful arrangement which is relied on by many owners of care businesses.
44. Mr Hamid's evidence was that despite the relatively straightforward process of registering himself as manager of iCare, he had quickly realised he lacked the skills, experience and capacity to undertake the onerous responsibilities of a Registered Manager. This insight was behind his acquiescence to the Respondent's decision to cancel his registration as Registered Manager.
45. Mr Hamid said that he had wanted to divest himself of the Registered Manager role as quickly as possible but the Respondent had been slow to cancel his registration. He said that he wanted to appoint a suitably skilled and experienced person as Registered Manager but Ms Allen or another of the inspectors had told him that he could not do so while enforcement action was going on against him as the Service provider. Mr Hamid said that this limitation



had hampered his ability to identify and recruit a suitable candidate and placed a burden on him that he could not reasonably be expected to fulfil. He readily accepted that the Service had parted with at least four managers between March 2022 and March 2023 and that a consultant who he had engaged following the March 2022 Inspection had also withdrawn from the arrangement after about three months.

46. In answer to our questioning why it had not proved effective to have a manager who was not registered, Mr Hamid said it was important for a service to have a Registered Manager because that person would bear much of the statutory responsibility for complying with Regulations. Mr Hamid said that a manager who is not registered could not be trusted to carry out their duties as diligently as if they were registered and this largely explained why the Service had failed previous inspections.
47. None of the Respondent's witnesses could help us as to whether the CQC has a policy of refusing to consider applications to register managers for services which are subject to cancellation notices nor whether Mr Hamid had been told that any application made in respect of iCare would not be considered or approved. That said, we had no reason to doubt Mr Hamid's oral evidence that he was discouraged from making such an application.
48. Ms Aris gave oral evidence that it is important for any service to have a Registered Manager. We agree that must be right, and it was clearly Parliament's intention that every Service should have a Registered Manager in order to share with the Nominated Individual the burden of responsibility for operating a compliant service. If it were the case that the Respondent operated or operates a policy or made an individual decision in iCare's case to preemptively discourage a request to register a new manager, we would deplore that policy or decision because we are sure that it will have contributed to Mr Hamid's difficulties, as both service provider and Nominated Individual, to assure himself that regulatory matters not within his immediate, individual control were being attended to. We can foresee circumstances where a refusal to consider a reasonable application to register a new manager while enforcement action is ongoing would render a cancellation unfair and disproportionate.
49. However, in the circumstances of this case and accepting that Mr Hamid probably was discouraged from seeking registration of a new manager, we do not accept that means he could or would have identified a suitable person to take on the role of Registered Manager, or that the reason why the Service was unable to improve or comply with its duties was because there was no regulatory 'stick' operating on those individuals appointed in the non-statutory role of branch manager. We note that in certain circumstances, services are managed and operated successfully for relatively long periods without the manager being registered. We accept that greater responsibility falls on the Nominated Individual during such periods and that not all directors of service providers are themselves experienced care professionals. However, we also see that it is reasonable in such circumstances that the service provider should avail themselves of such support as is necessary, including by appointing a suitably knowledgeable and experienced Nominated Individual, to ensure

overall regulatory compliance during the period where no manager is registered. In our view, Mr Hamid's own lack of professional knowledge and experience as Nominated Individual, and his failure to harness and deploy the support which he commissioned in order to close the gap in knowledge and inexperience was far more damaging than any fault of the Respondent for discouraging him from nominating a new Registered Manager.

50. Nor are we persuaded that the inability to register was the only reason, or even the main reason, why Mr Hamid was unable to recruit or retain an effective manager or why the Service was unable to address the various breaches of Regulations identified by the Respondent. We certainly cannot distinguish that factor from many others which we reasonably suppose will have influenced the effectiveness of recruitment, including the effectiveness of Mr Hamid's recruiting methods, which appeared to be relatively informal, subjective and driven by pressure of circumstance (and where his ability to engage fit and proper persons is itself an accepted breach of Regulation 19).

51. Bearing in mind the evidence of the CQC's witnesses about comments made by staff during successive inspections and Ms Burden's own frank account of the pressures of the role, we anticipate that contributing factors also included:

- a) the weight of pressure on the Service through factors such as the pandemic;
- b) short staffing;
- c) limited financial resources;
- d) the uncertainty for candidates around the future of the Service pending resolution of the cancellation notice, and
- e) the relatively light engagement by Mr Hamid and the weight of his expectation on managers to drive improvement themselves without his close support.

All of these factors will, we reasonably suppose, have impacted on the decisions of managers to leave the Service or for potential candidates to overlook the role.

52. For these reasons, we dismiss this limb of the appeal.

*Should the Service be given more time to improve?*

53. We accept that cancellation ought to be a last resort in the sense that a service provider must be afforded sufficient opportunity to demonstrate compliance with the Regulations and that it can attain and maintain at least a 'Good' service overall. However, cancellation may be justified in circumstances even where there is no imminent risk of serious harm (which would otherwise justify urgent cancellation). Such circumstances arise where ongoing breaches of the Regulations leaves service users at some risk of harm and where it is no longer proportionate for the Respondent to be expected to expend time and resource in inspecting with little or no prospect that the Service will achieve and sustain a good standard of care or governance.

54. We approached this question with an open mind. Taking into account the impact

on Service users and the Appellant's business and its staff, and the effort and investment the Appellant has made in good faith to try and improve the Service to a compliant standard, we consider that it would be disproportionate to cancel the Appellant's registration if we could be confident that within a reasonable period (of say six months), the Appellant will be in compliance with all relevant Regulations, will reach a 'good' standard across all domains and could be expected to maintain that standard.

55. We accept that both Mr Hamid and Ms Burden are committed to the Service and individual service users. They clearly hold good intentions but the evidence is compelling that between them they are unable to effectively manage or provide a service that complies with expected standards to ensure the safety and wellbeing of service users. Each of the inspections, including the most recent which took place nearly six months after Ms Burden was appointed, points to the same serious shortfalls and, as we record above, we have found no persuasive evidence that indicates those findings are in error or exaggerated.

56. Ms Burden was an engaging witness and her commitment to self-improvement as a means to improving the Service does her great credit. We do not underestimate the personal or professional challenges she has surmounted to achieve her position as manager of the Service. We consider that she has the personal qualities, professional background and commitment to care to make a good service manager. However, by her own admission, she lacks the 'industry standard' Level 5 NVQ vocational qualification which would help her understand the regulatory responsibilities of a Registered Manager. She also accepted in evidence that she currently relies on Mr Hamid to explain the relevant Regulations and she does not know, without considerable support and guidance, what is needed in order to achieve regulatory compliance. It was clear from his evidence that Mr Hamid, in turn, did not have the necessary detailed knowledge of the Regulations or the responsibilities of a Registered Manager to adequately support Ms Burden. She accepted examples put by Mr Donoghue about how her lack of understanding of the Regulations had meant some notifiable incidents had not been reported.

57. We are sure that in time Ms Burden will be able to close such gaps in her knowledge of the Regulations and we acknowledge (as does the Respondent) that she has already affected some small improvements in the Service. However, we must also record our view that the suite of documents devised or completed by Ms Burden to show how the Appellant is making improvement lacks the scope, detail and rigour we would expect of a service looking to demonstrate capacity for immediate and dramatic improvement. We do not consider that the approach reflected in these documents is sufficiently robust to enable Ms Burden or Mr Hamid as Nominated Individual to identify risks or shortcomings, remedy or mitigate them and then to monitor the effectiveness of their solutions as would be required to achieve regulatory compliance. Ms Burden accepted that she had not seen any service improvement or action plan and had not thought to devise one herself so that she could demonstrate what she is doing. She readily conceded that she had simply considered the Respondent's inspection findings and then compiled handwritten 'to do' lists which she has not retained for audit or put before the Tribunal.

58. Whilst we accept that Ms Burden is capable of closing the gaps in her knowledge we have identified, we cannot conclude with any confidence that she can do so within a reasonable time nor affect the substantial improvements that would need to be made as a matter of urgency if the Service were to continue. Notwithstanding the fact that a Level 5 NVQ might typically take a candidate between 9 and 36 months to complete, we do not think there is any realistic prospect that Ms Burden would be able to devote the necessary time and energy to her management role, given her acceptance that she worked continuously for over 60 days immediately before the hearing, during which time she estimated she was delivering care for over 30 hours each week. Although we accept that in the two weeks before the hearing she was able to devote more time to her management responsibilities and hopes to do so exclusively from now on because the Service's care coordinator has returned from maternity leave, we consider that is likely to be a very fragile arrangement. We cannot conclude with any confidence that the staffing plan within the Service is sufficiently robust to ensure that Ms Burden will not have to return to front line care giving in the future.
59. While we accept Mr Hamid is a caring and emotionally supportive employer, we do not have confidence that Mr Hamid has the competence, expertise or resources to adequately guide Ms Burden, or to meet his duties as Nominated Individual. We have no confidence in the continuing service, even to a the very limited number of existing service users being safe or well led.
60. This blunt conclusion reflects Mr Hamid's own admissions that he lacked the skills and experience to be an effective Registered Manager and his near total reliance on others to meet the Respondent's regulatory requirements. He frankly admitted that although he is able to (and does) review care records and other information available on the Service's shared drive and/or App, he does not completely understand what he should be looking for in order to identify shortcomings or question the quality of the information he is looking at in order to comply with his responsibilities as Nominated Individual for the delivery of safe care and treatment or good governance. Similarly, he was not able to say what he should have done differently in relation to the recruitment of Ms Burden or other members of staff in order to comply with his responsibilities as Nominated Individual for the recruitment of fit and proper persons.
61. Although we accept that Mr Hamid has maintained apparently good services by relying on experienced managers, we do not accept that any Registered Manager should take on the regulatory responsibility which properly sits with the Nominated Individual or that the absence of a Registered Manager means that the Nominated Individual should not themselves be responsible for taking whatever action is necessary to ensure that Regulatory requirements are met, including through the engagement of external support.
62. To some extent, Mr Hamid did engage external support for iCare, through consultants, mock inspection and support from the Registered Managers of his other services and the Care Solutions service from which iCare was derived. However, it is clear that this support has not resulted in anything like the improvement necessary to bring iCare to a compliant standard.

63. We will not speculate on all reasons why support has not resulted in improvement. However, one feature stands out. Despite at least two different service improvement plans being created for him in addition to the recommendations of the mock inspection, Mr Hamid admitted that he has not maintained any overarching plan for the improvement of the Service. We found this astonishing. This could not be attributed to any lack of specialist knowledge of the Respondent's regulatory requirements or of the care industry generally. We would expect the creation and regular review of a robust written improvement or action plan to be the cornerstone of any business in iCare's precarious position, regardless of its small size.

64. Although very belatedly Mr Hamid expressed to us some insight into this specific failure and recognised his need to 'continue to learn from other managers and providers', we observe that he has already had considerable support, both from the consultants engaged on his own initiative, from the Local Authority and from the Respondent in the form of detailed findings from four inspections. Having been provided with such detailed insight into what needs to be done (including more than one service improvement plan) Mr Hamid has elected to put such material to one side and instead trust managers to know what must be done to bring the Service to a compliant standard. We can have no confidence that he would act any differently in the future.

65. Finally, given his other business interests and responsibilities, we do not consider it realistic to suppose that Mr Hamid will be in a position to give the considerable amount of time to overseeing iCare that would be required in order for it to make the improvements required at the pace required.

66. We therefore dismiss this limb of the appeal.

*Are there any conditions which would mitigate the risk to the safe care and treatment of patients while the Service strives to improve?*

67. We carefully considered whether imposing conditions of our own device, would provide the framework to manage the current level of risk and help drive the urgent and sustained improvements necessary to avoid cancellation. Conditions we considered included: conditions requiring monthly reporting; conditions on the maximum number of service users or the rate at which the Service could take on new service users, which might help manage the current level of risk. However, given the very limited number of service users now (and whilst recognising the potential impact upon them), previous external support from consultants or mock inspection has had no significant impact, because we cannot be confident that the Appellant has a robust plan to bring about improvement, and because there is no firm or immediate prospect of additional support in the form of an external consultant or more experienced manager, we concluded that it was not a proportionate call on the Respondent's resources to maintain the Appellant's registration or expend substantial resources regulating or supporting the Service in the mere hope (rather than confident expectation) that conditions would lead to compliance and a good service across all domains.

## **Conclusion**

68. We are satisfied that the Appellant's breaches of Regulations are as stated by the Respondent in successive inspection reports since the Service was first inspected in March 2022. We are satisfied that at the time of our determination, the Service remains in breach of at least Regulations 12, 17 and 19.

69. Having balanced the impact of the decision on service users so far as we can assess it, the impact on staff and Mr Hamid himself against the desirability that any service should fully meet all regulatory requirements, including the relevant Regulations, we are satisfied that the decision to cancel the Appellant's registration is fair and proportionate.

### **Decision**

The appeal is dismissed.

The decision of the Care Quality Commission to cancel the Appellant's registration as a Service Provider dated 18 August 2022 is confirmed.

**Judge C S Dow**

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

**Date Issued: 11 October 2023**