



First-tier Tribunal Care Standards

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

**2024-01083.EA
[2025] UKFTT 00031 (HESC)**

Hearing at Southend Court
On 2 to 6 December 2024
Submissions and panel deliberations on 18 December 2024

BEFORE:

**Tribunal Judge Siobhan Goodrich
Specialist Member John Hutchinson
Specialist Member Lorna Jacobs**

BETWEEN:

**MAVISWOOD LIMITED
(ASHINGDON HALL CARE HOME)**

Appellant

- v -

CARE QUALITY COMMISSION

Respondent

DECISION AND REASONS

The Appeal

1. This is an appeal against the decision made by the Respondent on 27 February 2024 to cancel registration so that the Appellant is no longer authorised to carry on the regulated activity at the location at Ashingdon Hall Care Home, Church Road, Ashingdon, Rochford, Essex, SS4 3HZ (the location).

2. The Appellant company is a registered provider in respect of the regulated activity of “Accommodation for persons who require nursing or personal care” (the Regulated Activity) at the location. Mrs Stewart is the sole director of the company and, at the time the decision was made, was the Nominated Individual (the NI). The registration certificate permits a capacity of up to 28 residents.
3. The Respondent is the statutory body responsible for the registration of those who seek to provide regulated activities i.e. activities connected with the provision of health or social care. The main statutory objective of the Commission in performing its review and investigative functions is to protect and promote the health, safety and welfare of people who use health and social care services.

Restricted Reporting Order

4. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the service users in this case, so as to protect confidentiality and privacy. We will also refer to the names of staff who have not given evidence, and about whom unfavourable comments have been made, by initials only.

The Chronology of Inspections and Regulatory action

5. The main key dates and events appear to be as follows:

1 October 2010: the Appellant was registered to provide the regulated activity at the location of Ashingdon Hall Care Home (“Ashingdon Hall” or “the Home”)

7 June 2016: inspection. Rated ‘Good’.

6 November 2018: inspection. Rated ‘Good’.

21 February 2022: inspection regarding Infection Prevention Control. Not rated.

4-5 and 11 July 2023: inspection carried out by Ms Love. Rated ‘Inadequate’ and placed into Special Measures. Concerns in relation to Regulations 9, 11, 12, 17, 18 and 19 of the 2014 Regulations.

12 July 2023: the Respondent issued an Urgent Notice of Decision pursuant to section 31 HSCA 2008 to impose conditions [p319/C803]. The five conditions imposed included as Condition 1:

“The Registered Provider must not admit any service users to Ashingdon Hall, Church Road, Ashingdon, Rochford, Essex, SS4 3HZ without the prior written agreement of the Care Quality Commission. This includes service users returning from hospital or where people are to be admitted as respite.”

The imposition of the conditions imposed generated a right of appeal which the Appellant did not exercise.

4 and 7 December 2023: Inspection was conducted by Ms Love, Ms Chamberlain and an Expert by Experience, Ms Livermore on 4 December. Another inspector, Ms Green, attended on 7 December 2023. On 4 December there were some 15 residents living at the Home. On 7 December there were 14 residents as one had been transferred to another care home. Continued breaches under regulations 11, 12, 17 and 18, and a new breach with regard to regulation 13 (safeguarding service users from abuse and improper treatment) were identified. Rated 'Inadequate'.

18 December 2023: the Expert by Evidence completed telephone calls to relatives of Service Users as part of the inspection.

15 January 2024: the Respondent issued Notice of Proposal (NOP) to cancel registration. The NOP made clear that the Appellant had the right to make representations within 28 days.

January 2024: The Appellant did not challenge the factual accuracy of the draft inspection report sent on or about 15 January

9 February 2024: the Inspection Report was published.

21 February 2024: HLTH Group, the consultancy firm who had been engaged by the Appellant soon after the NOP dated 15 January 2024 terminated the contract.

27 February 2024: the Respondent issued the Notice of Decision (undated) to cancel registration and informed the Appellant of the right of appeal.

25 March 2024: Respondent held a provider meeting with the Appellant to ensure that Mrs Stewart understood that registration will be cancelled if an appeal was not submitted.

25 March 2024: the Appellant submitted its appeal. It was stated in the appeal document that the Appellant had only been informed "today that the NOD ends tomorrow, 26/03/2024."

25 April 2024: the Respondent filed a response opposing the appeal.

15 and 16 October 2024: A further inspection was carried out at the Location by Ms Love and Ms Green. At this time there were some 5 residents living at the Home. Continued breaches under Regs. 11, 12, 17 and 18 and a new breach (Reg. 19 Fit and Proper Persons employed) were identified. Judgements were made as follows regarding the following questions:

- Safe and protected from abuse? Requiring Improvement
- Are they effective? Requiring Improvement

- | | |
|----------------------------------|-----------------------|
| • Are they caring? | Requiring Improvement |
| • Responsive to people's needs ? | Requiring Improvement |
| • Well Led? | Inadequate |

The Notice of Proposal (NoP)

6. The NoP dated 15 January 2024 set out in great detail the basis for the Respondent's proposal to cancel registration and provided some 32 appendices. The NoP included notification of the Appellant's right under Section 27 of the Health and Social Care Act 2008, to make written representations if the Appellant did not agree with any or all of the reasons given within 28 days. As set out above no written representations were received.
7. In essence, the NoP was made because the regulated activity "is being, or at any time has been, carried on otherwise than in accordance with the relevant requirements." We need not set out all the detail as the key matters are set out in the NoP and the Scott Schedule (SS) but we note that part of the Respondent's case regarding lack of governance included that the Appellant had failed to comply with the condition 1 imposed in July 2013. This occurred in relation to 2 patients who were discharged back to the Home (SU J on 8 November 2023 and SU P on 7 December 2023) without the Appellant having contacted the CQC to provide assurance that the Home could continue to meet the needs of the residents and to gain written agreement.

The Decision under Appeal

8. The Decision was made by the Respondent on 27 February 2024 to adopt the NoP because of breaches of standards of care under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (2014 Regulations) in respect of:
 - Regulation 11: Need for consent
 - Regulation 12: Safe care and treatment
 - Regulation 13: Safeguarding service users from abuse and improper treatment
 - Regulation 17: Good governance
 - Regulation 18: Staffing

The Appeal

9. The amended grounds for the appeal lodged in June 2024 can be summarized as follows:

Ground 1 - Procedural unfairness / serious procedural irregularities because the draft inspection report was emailed on 23 January 2024 and the Appellant did not have an opportunity to address the report/make representations that would and/or could have affected the decision to issue an NOP and then NOD.

Ground 2 - Bias or the appearance of bias and/or prejudging the outcome of the inspection and assessment process.

Ground 3 - Procedural unfairness / serious procedural irregularities in that the Inspection Report found a failing to produce a new care plan and have it approved without giving any notice to the Appellant that this was required.

Ground 4 – the Respondent classified the return of 2 residents from hospital as being new admittances requiring approval of a new care plan, which was an error and unfair.

Ground 5 – the Respondent conflated issues found in the December 2023 inspection with those found in the July 2023 inspection.

Ground 6 – the Respondent failed to recognise that some of the issues in the July 2023 Inspection Report had been addressed and remedied and Respondent applied a draconian and unnecessarily harsh sanction in all the circumstances.

Ground 7 – the Respondent acted in bad faith, or gave the impression that bad faith was involved, in the manner in which the December Inspection was carried out and in compiling of the December Inspection Report.

The Respondent's Reply

10. The formal amended Response relied on the NoP. The Respondent also responded the allegations of procedural unfairness and/or bias in detail.
11. The Respondent's central submission in response to the appeal is that the decision was founded, amongst other reasons, on identifiable failings in respect of the Appellant's leadership, governance, and the safety of the service such that service users have been and will or may be exposed to the risk of harm. Specifically, the Appellant's failure and lack of effective oversight placed service users at risk of physical harm, financial abuse, exploitation, and not having their needs met. The Respondent's position is that the cancellation decision remains necessary, reasonable, and proportionate as the Appellant continues to fail to comply with the relevant requirements and this poses an unacceptable risk to service users at the Location.

Attendance

12. Mrs Stewart appeared in person for the Appellant. The Respondent was represented by Ms Amy Taylor of counsel, instructed by Mr Buxton, solicitor, CQC Legal Services.
13. Mrs Stewart wished to be assisted and supported by Ms Lavinia Moore. A late witness statement from Ms Moore dated 1 December 2024 was also provided. It became clear that Mrs Stewart wished Ms Moore to ask questions of the witnesses on her behalf, and also to be a (new) witness. There was discussion about whether this dual role was appropriate or desirable. We heard representations from both sides, and we also heard from Ms Moore. We considered the overriding objective. We decided that in the circumstances of this case it was in the interests of justice that Mrs Stewart be assisted by Ms Moore.

14. The panel was informed that JF, who had provided a witness statement dated 20 November 2024 in her capacity as Regional Manager for the Appellant (appointed in mid-October 2024), was in hospital having suffered a heart attack. JF stated in her statement that she had applied to be registered manager at the Home and had also applied to become the NI. The judge pointed out to the Appellant that JF was an important witness in her appeal and asked if she wished to seek an adjournment to enable JF to give evidence. Mrs Stewart made clear that she wished to proceed.
15. We are grateful to all concerned for the cooperative manner in which the proceedings were conducted. We express our particular thanks to Mr Buxton who assisted the Appellant during the hearing (and, therefore, the panel) in relation to additional documents that were produced by the Appellant so that these were duly lodged in proper format.
16. The judge took time at the start of the hearing to explain the nature of the appeal right and the hearing process. In particular, she referred to the reasons for appeal that had been lodged and explained that the panel is not engaged in a review type process but would be making a fresh decision in the light of the evidence as at today's date. This can include considering new and up to date evidence regarding improvements and changes made since the decision was made. She also explained the burden and standard of proof.

Late Evidence

17. We had received and read the e-bundle consisting of 433 pages before the hearing. We also received the Respondent's skeleton argument (RSA).
18. At the start of the hearing Mrs Stewart made an application to adduce late evidence. Mrs Stewart explained that, in addition to the witness statement of Ms Moore (dated 1.12.24), the late evidence largely consisted of correspondence between the parties pre and post the decision. The late evidence had not yet been served or formally collated in a bundle.
19. The Respondent agreed that, in principle, the correspondence might be relevant and that it might be fair that we should receive it, but the Respondent and the panel needed to see the Appellant's proposed new bundle first. Collation of the evidence was arranged, and with the assistance of Mr Buxton, a supplemental bundle was lodged on 3 December (177 pages). In the event there was no issue regarding its reception into evidence and we agreed to receive the additional bundle. The Respondent also agreed to the reception of the late witness evidence of Ms Moore.
20. The Appellant also raised on 2 December that she wished to seek to rely on an additional witness: SM, a senior carer. In answer to the judge's inquiry it became clear that a statement from SM had not yet been prepared but the Appellant anticipated that SM would provide a first-hand account of the hearsay evidence already set out in Ms Moore's statement dated 1 December 2024 at page 5. The judge stated that if the Appellant wanted permission to rely on late witness evidence, an actual statement with a statement of truth signed by SM should be

provided. In the event Mrs Stewart said on 3 December that she did not seek to rely on SM as a witness because she did not want to give evidence.

21. On 2 December the Judge had asked the parties to work together so as to provide:

- A schedule to identify staff and service users for forensic purposes
- A timeline document identifying
 - who had fulfilled key roles, such as NI and RM and over what period across the years
 - when applications had been made etc. and what other external assistance/expertise had been obtained

Final versions of these documents (the Identification Key and what was called the “Timeline”) were duly provided on 3 December 2024.

22. The extracts of the “Review of the CQC Single assessment framework” on which the Appellant relied were also produced with the agreement of the parties as part of closing submissions.

Reasonable Adjustments

23. The evidence in the bundle referred to Mrs Stewart’s health in very general terms. The judge explained to Mrs Stewart that it was open to her to explain her health circumstances in private session if she wished to do so. Mrs Stewart said she did not need to explain her health. It was clear to us from the outset of the hearing that Mrs Stewart, whilst clearly able to articulate her case, found the proceedings stressful. This was entirely understandable. The panel was mindful of the need to ensure a fair hearing and that there were background health issues that might impact on the Appellant’s ability to participate fully in her appeal. We made sure that regular breaks were taken, and also suggested that breaks were also taken when it appeared that Mrs Stewart might need to confer with Ms Moore. We also acceded to all requests for a break made by Mrs Stewart and/or Ms Moore.

24. We note here that on 2 and 3 December the hearing room was excessively warm because the central heating/air conditioning system was not working properly. Repair was awaited. The panel enquired as to the availability of a different hearing room but were informed that the issue was affecting all court rooms. Arrangements were made for portable fans which were placed near the parties. This meant that the parties’ experience of the heat was likely to be less than that of the panel who were seated on a raised bench. We made clear that the parties should let us know at any stage if they felt unable to continue. We took breaks to accommodate the heat and also rose early on 2nd December. In the event the heating issue was fixed during the course of 3 December.

25. Starting on 3 December we heard evidence from the following witnesses and in the following order.

For the Respondent:

- Mrs Love, Inspector
- Ms Debbie Green, Inspector
- Ms Gaynor Chamberlain, Inspector
- Mr Colin Babb, Inspection Manager
- Ms Love was recalled (to respond to an allegation that should have been put to her)

For the Appellant:

- Mrs Stewart
- Mrs Tanya Robertson
- Ms Moore

The General Legislative Framework

26. Amongst other matters s. 2 of the Health and Social Care Act 2008 (the Act) invests in the CQC “*review and investigation functions...*” – see section 2 (b).

27. Section 3 provides that:

“(1) The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.

(2) The Commission is to perform its functions for the general purpose of encouraging–

(a) the improvement of health and social care services,

(b) the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and

(c) the efficient and effective use of resources in the provision of health and social care services...”

28. Section 4 provides:

Matters to which the Commission must have regard

“(1) In performing its functions the Commission must have regard to—

(a) views expressed by or on behalf of members of the public about health and social care services,

(b) experiences of people who use health and social care services and their families and friends,

(c) views expressed by Local Healthwatch organisations or Local Healthwatch contractors about the provision of health and social care services,

(d) the need to protect and promote the rights of people who use health and social care services (including, in particular, the rights of children, of persons detained under the Mental Health Act 1983, of persons who are deprived of their liberty in accordance with the Mental Capacity Act 2005 (c. 9), and of other vulnerable adults),

(e) the need to ensure that action by the Commission in relation to health and social care services is proportionate to the risks against which it would afford safeguards and is targeted only where it is needed,

(f) any developments in approaches to regulatory action, and

(g) best practice among persons performing functions comparable to those of the Commission (including the principles under which regulatory action should be transparent, accountable and consistent).”

The Regulated Activity Regulations

29. The regulations made under s. 20 of the Act are the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, SI 2014/2936 (the Regulations). Part 3 contains various provisions under the heading “Fundamental Standards”.

Self-Direction

30. The right of appeal lies under section 32 (1) of the Act. The panel takes into account evidence as at the date of the hearing and considers the current position.

31. The burden of proving the breaches of the standards on which reliance is placed rests on the Respondent. The standard is the balance of probabilities.

32. The burden of satisfying us that the decision is today justified, necessary and proportionate, lies on the Respondent.

33. If a party makes an allegation, such as bias or bad faith, it bears the evidential burden of adducing evidence to prove that allegation on the balance of probabilities.

34. The panel can receive hearsay evidence. This can include records made by staff or others. It can also include unattested statements/letters and/or duly attested statements (i.e. backed by a statement of truth) made by persons not called to give evidence. The weight to be attached to such evidence calls for evaluation in the context of all the evidence. Generally, the weight to be afforded to disputed hearsay evidence is less than it might carry had the evidence been tested in cross examination.

35. The panel can also receive opinion evidence. The weight to be attached to such evidence is a matter for evaluation in the context of all the evidence. In very general terms the panel considers issues such as the extent and/or basis of the

knowledge and/or experience of the person giving their opinion as well as factors that may affect their objectivity.

36. On consideration of the appeal the Tribunal may confirm the decision or direct that it is to cease to have effect – see s. 32 (5). Under s. 32 (6) of the Act the Tribunal has power to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates. A “discretionary condition” means any condition other than a registered manager condition required by s. 13.
37. The judge raised the issue of the conditions that had been imposed on 12 July 2023. Since no appeal had been made against that decision logic might suggest that if the decision to cancel registration were to be set aside, then those conditions would still remain in place. The Respondent took instructions and confirmed that it considered that it was open to the panel to consider the issue of conditions in any event and that the issues should be considered in the round. The Appellant did not disagree.

The Respondent’s Policy/Guidance on enforcement

38. In this appeal we consider it appropriate to summarise the main elements of the Respondent’s guidance on enforcement. We recognise that the Decision Tree (DT) must be read in the context of the Enforcement Policy (EP). Both policies provide guidance but emphasise the need for judgement in the individual circumstances of each case.

The Enforcement Policy

39. The Introduction to the EP recognises that:

“there will be occasions, when, depending on the facts of an individual case it will not be appropriate to follow the precise steps described in this policy. It should be read as a general guide to good practice when carrying out or considering enforcement action. It cannot substitute for judgement in individual cases.”

40. The purpose and principles of enforcement are described at pages 7 and 8 of the policy. The main features of the EP are that:

- a) The two primary purposes of the CQC are:
 - 1. To protect people who use regulated services from harm and the risk of harm to ensure they receive health and social care services of an appropriate standard.
 - 2. To hold providers to account for failures in how the service is provided.
- b) The principles that guide the use of enforcement powers make clear that the starting point for considering the use of all enforcement powers is to assess the harm or risk of harm to people using the service.

- c) As to Proportionality section 3 (at page 9) of the EP states:
“We will only take action that we judge to be proportionate. This means that our response, including the use of enforcement powers must be assessed by us to be proportionate to the circumstances of an individual case. Where appropriate, if the provider is able to improve the service on their own and the risks to people who use the service are not immediate we will generally work with them to improve standards rather than taking enforcement action. We will generally intervene if people are at an unacceptable risk of harm or providers are repeatedly or seriously failing to comply with their legal obligations.”

The Decision Tree

41. Stage 3 of the Decision Tree (DT) concerns the selection of appropriate enforcement action. Amongst other matters, this states:

“...the decision-making process seeks to ensure that we take consistent and proportionate actions without being too prescriptive. It should not result in mechanistic recommendations but should guide decision makers to reach appropriate decisions.”

This stage uses two criteria which are:

- “Seriousness of the breach
- Evidence of multiple and/or persistent breaches”.

42. The DT then addresses Stage 3A (1) “Potential impact of the breach” which concerns the assessment of the level of the potential impact that would result if the breach of the legal requirements was repeated. It states: “The focus is on reoccurrence to assess if we should act to protect people using regulated services from harm in the future.” It provides three categories regarding the risk of harm: Major, Moderate and Minor

43. “Major” is defined as:

“The breach, if repeated, would result in a serious risk to any person’s life, health or wellbeing including:

- permanent disability
- irreversible adverse condition
- significant infringement of any person’s rights or welfare (of more than one month’s duration) and/or
- major reduction in quality of life”

44. “Moderate” is defined as

“The breach, if repeated, would result in a risk of harm including:

- temporary disability (of more than one week but less than one month's duration)
- reversible adverse health condition
- significant infringement of any person's rights or welfare (of more than one week but less than one month's duration); and/or
- moderate reduction in quality of life."

45. "Minor" is defined as:

"The breach, if repeated, would result in a risk of:

- Significant infringement of any person's rights or welfare (of less than one week's duration; and/or
- minor reduction in quality of life
- minor reversible health condition."

46. The next stage 3A (2) refers to the assessment of "Likelihood that the facts that led to the breach will happen again". The likelihood should be based on the control measures and processes in place to manage the risks identified, including changes in practice.

47. Stage 3A (3) deals with the "Seriousness of the breach". It provides a chart which, by reference to the assessment of the potential impact of the breach (3A (1) above), and the likelihood that the fact giving rise to the breach will happen again (3A (2)) above, produces a description of the potential impact in grid form ranging from low, medium, high and through to "extreme".

48. Stage 3A (4) is then used to reach an initial recommendation about which enforcement powers should be used to protect people using the service from harm or the risk of harm. The initial recommendation where the seriousness of the breach has been identified as "Extreme" is:

"Urgent cancellation

Urgent suspension

Urgent imposition... of conditions."

49. Where the risk is judged to be "high" the initial recommendation is for the same actions as above but on a non-urgent basis (i.e. by reference to the ordinary enforcement measures, which require service of an NOP as a first step). This affords time (28 days) for any Appellant to provide representations and to show how it will address issues going forward.

50. Stage 3B involves "Identifying multiple and/or persistent breaches." This can result in a change to the initial recommendation for enforcement action by increasing or decreasing the severity. This stage involves consideration of the 3B factors:

- 3B (1) Has there been a failure to assess or act on past risks?

- 3B (2) Is there evidence of multiple breaches?
- 3B (3) Does the provider's track record show repeated breaches?
- 3B (4) Is there adequate leadership and governance?

51. The DT guidance is that, depending on the answers to each of the above, inspectors should make an overall assessment about the most appropriate action to take. The answers to the 3(B) questions above may increase or decrease the severity of any recommended enforcement action.

Our Consideration

52. We have considered all the witness statements, documentary and oral evidence before us, as well as the skeleton arguments and oral closing submissions, in the round. If we do not refer to any particular part of the evidence or submissions, it should not be assumed that we have not taken all matters before us into account.

53. Ashingdon Hall has been registered since 2010 to provide accommodation and personal care for up to 28 residents. The Home, which is set in grounds, comprises an older building which is the residential suite for up to 18 people, and a newer building which is the Dementia Suite for up to 10 people. We noted that Mrs Stewart is also the NI for another company of which she is director which has provided supported living services in Essex for many years.

54. We took into account the background which includes that Mrs Stewart has been the NI for the Ashingdon Hall Care Home since 2010 and prior to 2023 all inspections judgements were good. We are mindful that Mrs Stewart has incurred significant expenditure in providing the Dementia Suite. She has also invested significant sums in external consultancy services from Ashtons, Kresh Ramanah and Chris Cole, amongst others. Further there has never been any issue about the quality of the building which, by all accounts, is in a beautiful setting.

55. The Scott Schedule before us set out 44 allegations regarding breaches of Regulation 11, 12, 13, 17 and 18. Some of these were admitted: see paras 8, 13, 21, 25, 26, 27, 29, 32, 33, 39, 41. We find those matters proved.

56. In closing, Mrs Stewart relied on the representations written by Ms Moore submitted on 18 December 2024. Amongst other matters the Appellant contends that: the CQC failed to understand that assessments, care plans, risk assessments, policies and procedures in accordance with legislation had, in the main, been completed; the CQC's negative confirmation bias resulted in them looking for information to support their belief that the Home was inadequate, rather than seeking the evidence to support otherwise; if the CQC had had taken into account qualitative data, the service users/residents' lived experience, they would have found that feedback from both service users/residents and their families is positive and complimentary; Staff interviewed for the October 2024 visit at Ashingdon Hall, state that their conversations with inspectors have been taken out

of context. They both had worked at Ashingdon Hall for a number of years and were fully able to undertake the tasks relating to procedures and documentation; Staff interviewed for the October 2024 visit at Ashingdon Hall, state they believe they were “gaslighted” into giving negative feedback; the NI at the time of above, (JF) continues to report that Inspectors asked her ‘if she could turn it around’ meaning improve Ashingdon Hall. She reports she said ‘yes’ with the inspector replying ‘well I have seen it done before.....but I wouldn’t bother if I was you’; CQC’s inspectors on the witness stand repeatedly spoke of the risk to residents but there has never been a ‘risk’ alert raised by any one of them; where CQC inspectors report incomplete fluid charts as being a serious risk to a service user, she (the SU) was consistently monitored and overseen by a senior care assistant – as well as daily district nurse visits; regarding ‘well led’, the Appellant has repeatedly relied on external experts to take the necessary remedial action but, at no fault of her own, they have over promised and under-delivered; the Appellant recently employed a RM who is now very unwell and in hospital for heart problems: the above demonstrates the Appellant’s determination to resolve the issues regarding ‘well led’: The Appellant is in the process of engaging a resident manager, and has taken urgent remedial action to resolve the issue in the interim.

57. In her oral submissions Mrs Stewart made clear that she feels very strongly that the CQC and the inspectors were biased. Amongst other matters, she questions why Ms Love was involved after July 2023, and she questions why the same two inspectors (Ms Love and Mrs Green) were sent to carry out the October 2024 inspection rather than different inspectors. Mrs Stewart’s perspective is that she had “not neglected her duties” but had called in third party professionals to advise at very considerable expense. Mrs Stewart’s view is that Ms Love is a generalist with no specific expertise and who had not herself undergone manual handling training for 3 years. Amongst other matters, she relies on an account given by SM to Ms Moore that Ms Love had insisted that an ambulance was called for a patient, despite being told by staff that the service user’s behaviour was normal for her.

58. Mrs Stewart wants there to be a re-inspection carried out by a different team. She contends that the current conditions should be lifted.

59. We consider that the Appellant’s case involves the following overarching issues:

- Procedural unfairness and/or bias by inspectors
- Positive historic performance
- Post-inspection improvements
- Proportionality

60. We have considered all the allegations of procedural irregularity made in the amended grounds. As we pointed out at the outset of the hearing, any procedural defects are at least capable of being cured by the fact that this is a redetermination. In any event, it is our view there is no substance to any of the arguments made regarding process. The Act provides a clear structure regarding the issue of an

NoP and the ability to make representations before a decision whether or not to adopt the proposal is made. There is nothing in the Respondent's guidance that requires that the draft inspection report must be published before a decision to issue a NoP is taken. In our view this would involve very considerable delay in decision-making regarding enforcement action which may be urgently required. Experience informs us that, dependent on the extent of the challenge made the factual accuracy process can take a considerable length of time.

61. It is also relevant to point out that the points taken in the grounds of appeal overlook that the Appellant did not lodge any representations in response to the NoP (nor any challenge to factual accuracy of the draft report). The Appellant says that she thought that the HLTH consultancy she instructed in January 2024 would deal with the NoP. In our view it is difficult to envisage how she thought representations would be made within 28 days unless she, as NI, was very actively involved in instructing the consultancy as to the reasons why the NoP should not be confirmed.
62. An additional matter of some relevance is that the grounds of appeal overlook the fact that the process involves that any representations received are considered by the CQC's National Representations team who make a recommendation to the person who has the authority under Scheme of Delegation to make a final decision on the outcome of the representations review. Both are independent of the inspection team who made the decision to serve the Notice of Proposal.
63. We recognise, of course, that the Appellant's contention about bias on the part of the inspectors is a different matter and we will deal with this at a later stage.
64. It is appropriate at this stage to make general findings about the witnesses who gave evidence before us. We will also consider some aspects of the disputes regarding the breaches of standards alleged as set out in the SS.
65. Ms Love was cross-examined at length. She came across as a quiet and mild-mannered person. Generally, she maintained her composure throughout her evidence although she was visibly upset and tearful at some of the allegations made. It was suggested that the Home had been "targeted" by her/the CQC. It is common ground that the inspection had been prompted by concerns raised with the Respondent, but we struggle to see any evidence that rationally supports that the Respondent and/or Ms Love were motivated to "target" the Appellant so that the result of the inspection would be enforcement measures. In our view the suggestion that the Respondent set out with the intention to cancel registration is unfounded.
66. It was also suggested by the Appellant that Ms Love was "high-handed, insensitive and officious". Whilst these matters were put to Ms Love, she was also asked about the comfort she had provided to members of staff who were anxious about the possible outcome of the inspection. We noted also that Ms Moore when she gave evidence said that she had been present on at least one day of the July 2023 inspection, although she was not present when Ms Love was talking with SM. Asked by Ms Taylor about her interaction with Ms Love, Ms Moore said that it was

“fine” and Ms Love was “open and transparent.” This does not support the allegation that Ms Love “gaslighted” members of staff such as LA (the deputy manager), and SM into making negative comments about the Appellant.

67. Having seen and heard her give evidence we reject the suggestion that Ms Love’s findings or her judgement regarding the standard of care at the Home in July 2023 was the product of bias, bad faith or any impropriety.
68. Ms Moore went on to explain that the inspection in July 2023 had been the last occasion she had been at the Home at all until about two weeks before this hearing. The effect of her evidence was that it was Chris Cole, another consultant who had worked for the Appellant, who had asked Ms Moore during the inspection, and on Mrs Stewart’s behalf, not to return to the Home. This was despite the fact that Ms Moore had been working there in a consultant capacity since December 2022.
69. We found Ms Moore to be a straightforward witness. She explained that her background as a social worker meant that her approach is always person- centred and is to look for qualitative evidence of the person’s lived experience, rather than quantitative evidence. She was unaware that the inspectors used a Short Observational Framework in inspection (SOFI) which is a way of observing care to help inspectors understand the experience of people receiving care who may be unable to express their views.
70. We formed the impression that Ms Moore’s opinion about matters was strongly influenced by her loyalty to Mrs Stewart. They have been friends for over forty years and were witnesses at each others’ weddings. Ms Moore’s direct involvement in the business was for a limited period between late 2022 and July 2023 and, as set out above, ended very abruptly when she was effectively dismissed during the July 2023 inspection. She told us that she felt responsible and that she had let Mrs Stewart down.
71. We heard evidence from TR who was employed by Mrs Stewart as a manager at the supported living service houses. We found that TR was a straightforward witness. She acknowledged that she had made best interests’ decisions for residents for service users who, in fact, had the capacity to make their own decisions. She accepted that her understanding of the MCA at that time was poor.
72. We considered the history of recruitment/vacancies in the role of RM at the Home. There was a registered manager in post between November 2015 and October 2018 during which time inspection outcomes were good. There was then a gap in management of about eight months. In June 2019 TR took on the role of registered manager (albeit she not registered for the post with the Respondent). She stood down from the role in January 2023. We were told that the Appellant had funded NVQ level 4 training in health and social care management for LA but she did not complete the course. The effect of TR’s evidence, and that of Mrs Stewart, was that TR had again agreed to step up in July 2023 in order to take on the RM role at Ashington Hall on an interim basis (in addition to her managerial role in the SLS houses) so as to help Mrs Stewart out. TR made an application to the CQC to be

the RM in October 2023, but this took a long time. Although she attended the Fit Person Interview in June 2024 her application was still not decided. In August 2024 she left her employment with Mrs Stewart (both her role at the Home and at the SLs) and withdrew her RM application. Mrs Stewart's evidence was that the RM role was too much for TR given that she had "a life and 5 children". When asked about future recruitment Mrs Stewart said in terms that she would not do as she had done in the past and ask TR to step in.

73. It emerged during the hearing that there had been two other resident managers employed by the Appellant at the Home. Each had left after being in role for periods of about two to three week periods in 2024. This had not been mentioned in the evidence at all or in the Timeline document we had requested but we do not consider that this omission was deliberate.
74. Mrs Stewart's evidence about these registered managers was illuminating. Amongst other matters she considered that one of these managers, in particular, spent too long in the office looking at paperwork, and not enough time caring for residents. In our experience a competent registered manager recruited to address repeated breaches across a number of fundamental standards, such as in this situation, would have to spend most of his/her time for some considerable period considering the systems and processes in use and devising (and continually working on) a realistic action plan for improvement.
75. Mrs Stewart also made it very clear indeed that she had formed a very unfavourable view of JF since she began employment in mid-October 2024. JF told Ms Love during the inspection that she had been told by Mrs Stewart that her employment would not continue on at least one occasion. It is apparent to us from Mrs Stewart's own evidence that she disagreed with JF's approach and thought she had been too compliant with/accommodating to the Inspectors. It appears to us that, irrespective of her recent health, JF's future at the Home was always doubtful.
76. Returning to the earlier inspection history, the Respondent undertook a further inspection in December 2023 which was led by Ms Love and also attended by Ms Green and Ms Chamberlain, as well as the Expert by Experience.
77. Ms Green was a very impressive witness. She was specifically asked to attend on the second day of the inspection because Ms Love wanted her to assess staff understanding of the Mental Capacity Act (MCA). Amongst many other qualifications, she has 16 years' past experience front line experience as a Dementia Manager for an organization consisting of 28 homes. She was able to explain the reasons for her views in a cogent and measured way. There was little or no substantive challenge to her evidence in cross examination.
78. Ms Chamberlain was also an impressive witness. Her background is as a nurse. It was apparent to us that she was on top of the detail and was conscientious in her approach to the evidence relevant to risk assessment. For example, she considered that the Appellant had failed to comprehensively risk assess the use of

a catheter in SU N's care; failed to monitor fluid intake and output consistently; failed to notice significant gaps in fluids being offered all of which placed SU N at increased risk of dehydration. Ms Chamberlain agreed that she could not exclude that a member of staff (MoS) had attended SU N whilst her attention was elsewhere. Her evidence regarding the risks posed to particular patients was challenged on the basis that a district nurse was attending daily. However, she was very clear that she had looked at the available care records as well as the visitor's book. There was no indication that a district nurse (DN) was attending SU N daily. In any event she would not expect a DN to be calculating fluid intake or inspecting fluid charts: this was the role of the Appellant as they were responsible for care.

79. Another aspect in Ms Chamberlain's evidence was her views in relation to the care of SU G. Whilst the care plan identified that SU G was at high risk of pressure damage to her skin, no risk assessment had been completed to assess the risk and to guide staff about the steps to be taken to mitigate risk. Repositioning records were not kept which, in her view, placed SU at risk.
80. A specific matter was put to Ms Love to the effect that she had in October 2024 asked JF if she could "turn the home around" and, when the latter said yes, Ms Love said "I would not bother if I were you." This is not a matter mentioned in the statement of JF - which we would expect if this has been said. Having seen and heard her give evidence we consider it highly unlikely that Ms Love would have said something so unprofessional.
81. Mrs Stewart said time and time again that the breaches relied on by the Respondent are just matters of "paperwork". We made considerable allowance for the fact that she was, and remains, very upset with the Respondent. At times during Ms Taylor's very courteous cross-examination Mrs Stewart made comments which came across as sarcastic and facetious. When the judge intervened to let her know that this was not helpful to her case, she did try to modify her responses. However, the overwhelming impression given is that Mrs Stewart is angry and has real difficulty in taking ownership of her responsibility for governance as the NI. For example, her reaction to the allegation regarding consent for the use of CCTV cameras in bedrooms was that ECC had not told the Home that they needed to ensure there was proper consent. Further, her evidence was to the effect that it was ridiculous to be worrying about whether the rights of "a little old lady" regarding privacy in her bedroom would be infringed. She gave the clear impression that the fact that CCTV would be helpful in the event of an allegation was more important than any lack of consent. In our view she demonstrated an inability to understand that the Respondent was not saying that CCTV could not be used in bedrooms, but was saying that consent had not been properly obtained.
82. In her witness statement Mrs Stewart had dealt with the issues regarding consent by stating that "The Dementia Care Suite is advertised and always has been advertised as having CCTV in place. Residents are given the opportunity to opt in or opt out. Consent is obtained from the residents, their families and advocates if they have one." At paras 25 – 29 she effectively set out why she had cameras

installed and did not deal with the Respondent's concerns regarding the MCA. When cross examined Mrs Stewart, whilst seeming to understand the MCA principles that had been explained very clearly by Ms Green, went on to say that even when a service user has capacity the Home would act on family views, rather than those of the service user.

83. We found Mrs Stewart's evidence to be generally unsatisfactory. For example:

- i) We find that on two occasions the Appellant did not comply with Condition 1 which was imposed on 12 July 2023. The point and purpose of that condition was to ensure that the Home could show to the CQC that it was able to meet the individual service user's needs following a period in hospital or in respite care. The point is that in any given case the illness that precipitated admission to hospital may alter the level of care needed and/or increase the risk and/or potential consequences in the event that a care directed to the new situation is not provided. Mrs Stewart has not been consistent in her explanation for why the Appellant did not comply with this condition on 2 occasions. In the SS the explanation provided was that the Home had responded to a humanitarian situation where the service users were distressed in hospital and wanted to go back to the Home. However, it was also said that permission had been granted by a member of the CQC team. In cross-examination she said that staff has not been able to reach the CQC in order to discuss readmission. Ultimately she said that she had not told staff of the condition.
- ii) Mrs Stewart showed a very poor understanding of the importance of proper pre-employment checks, including a DBS certificate. For example, her explanation for the fact that the hairdresser attending the Home had not been asked to provide a DBS was that she was related to the deputy manager and was well-known and trusted in the locality. She also said that a DBS was not necessary because the hairdresser's work was always in the presence of staff. This came across very much as an afterthought. We consider it unlikely that a MoS is always present at such times.
- iii) Amongst other matters, Ms Love found that it was common practice for staff to borrow money from one SU on behalf of another but without any record of consent, invoice or receipt. Whilst we accept that steps have since been taken to comprehensively address this issue the fact that it occurred at all over a period of many months speaks to the lack of governance in the Home. In her evidence Mrs Stewart was very dismissive of the concerns regarding the handling of service users' personal money and said in effect that the police and relatives thought that this was ridiculous. In our view this shows a lack of insight into her responsibility to ensure that systems and processes respected the rights of residents.

84. We have considered all the points made by the Appellant in the SS regarding the findings and judgements made by Ms Love, Mrs Green and Ms Chamberlain arising out of the December 2023 and October 2024 inspections. This is a case where many criticisms and assertions have been made by the Appellant about the conduct of the inspectors but there is a lack of direct evidence to support the assertions made by the Appellant. If senior and experienced staff such as LA (who was the Deputy Manager from July 2023) and SM (a senior carer) had experienced that which they have apparently relayed to Mrs Stewart and Ms Moore, it is surprising that they have not been prepared to provide witness statements and be cross-examined.
85. Further, there is in this appeal a dearth of documentary evidence to substantiate the assertion that the Home had appropriate care plans, audits, risk assessments, policies or guidance etc. that would have met the inspector's concerns, but (it is said) the inspectors did not ask for it.
86. We find that the Respondent has proved the breaches alleged at paragraphs 1-44. In so far as there is any conflict between the evidence of the witnesses for the Appellant and those for the Respondent we prefer the evidence of the inspectors. In our view their evidence was consistent, credible and reliable.
87. Having found the breaches of the standards contained in the SS proved as set out above, we turn to our consideration of the potential impact of such breaches and the issue of risk.
88. Overall we consider that the nature and extent of the proved breaches amounts to a serious departure from fundamental standards, and on a recurring basis.
89. Section 4 (b) of the Act requires the Respondent (and so the panel) to have regard to the views of service users. We reminded ourselves of what service users and their family members have said to inspectors and to the expert by experience. The feedback is very complimentary. We also take into account the evidence that residents wish to remain as residents at the Home and their relatives are happy with the service provided.
90. When considering the discharge of our functions, standing in the shoes of the Commission, we are also required to have regard to the views of contractors - see s. 4 (c). The main contractors were Essex County Council (ECC). There is no formal evidence from ECC but we were informed by Mrs Stewart that in light of the conditions imposed by the Respondent in July 2023 the ECC had effectively placed an embargo on further placements at the Home for ECC funded residents. We proceed on the assumption that this "embargo" by ECC would be reconsidered if this appeal were to be allowed. We draw the inference from the minute of what SC, the Head of Provider Quality at ECC, said at the provider meeting on 25 March 2024 that ECC was not of the view the Home presented a safeguarding risk such as to necessitate any urgent action on their part. We take this into account.

91. We have considered the overall context of the service provided and have considered the Enforcement Policy and the Decision Tree. It appears to us today on the basis of all of the material before us that:

- the potential impact of the breach in terms of the risk to life, health or wellbeing to which any service users will or may be exposed if enforcement measures are not taken is at least moderate and the likelihood of future breach is probable. The seriousness is, therefore properly categorized as high. This gives rise to an initial recommendation of cancellation, suspension or more significant conditions.
- the analysis of each of the 3B (1) to (4) factors is not in the Appellant's favour.
In summary we find that:
 - 1) There has been a repeated failure to assess or act on past risks.
 - 2) There is clear evidence of multiple breaches.
 - 3) The provider's track record shows repeated breaches.
 - 4) Leadership and governance is inadequate.
- Although the outcome of the inspections in 2016 and 2018 had been judgements of "good" the overall pattern since July 2023 has been that of repeated breach of fundamental standards. Although there have been improvements so that the assessment in October 2024 across 4 of the key questions is that of "requires improvement" rather than "inadequate", the Home is still not compliant with the regulations which are designed to ensure the safety and well-being of services users.
- The core issue is the adequacy of governance. In our view the overall response to the range and seriousness of the matters raised by the Respondent has been that Mrs Stewart has sought to deflect her responsibility as the provider in a number of ways. This includes: seeking to allege bias and/or bad faith on the part of the Respondent; blaming non-compliance with fundamental standards on the difficulties in recruiting and/or retaining a registered manager; blaming external consultants. In our view the bulk of the breaches proved are serious and repeated breaches which go far beyond what Mrs Stewart sees as a demand for paperwork. We consider that repeated breaches arose because the Appellant did not have sufficient oversight over the day to day operation of the service and has shown overtime that she is unwilling or unable to address the core issue which is the adequacy of leadership and management.

92. The reality is that the Appellant seeks that the decision to cancel registration is set aside so that the service may continue at the location without any conditions, including that requiring prior CQC permission for new or re-admissions.

93. This appeal is against the decision made on 27 February 2024 but the concerns raised were not new. Mrs Stewart has had a very long time to seek to address the compliance issues at the Home and to address governance issues. We have little or no confidence that Mrs Stewart will be able to find and/or retain a registered manager.
94. We are told that the family members of the current residents want the service to continue. We have not been provided with any letters or direct representations from family members, but we do recognise that relatives who expressed a view to the expert by experience were extremely positive about Ashington Hall. Their perspective is that their loved ones live in a home where compassionate care is provided. The Respondent has never questioned that staff are compassionate. It is understandable that the remaining residents and their family members are very concerned about the prospect of the Home closing. We recognise that there are clear risks involved if elderly and vulnerable residents are effectively forced to move, and to adjust to a new home.
95. We are satisfied that the Appellant has had ample opportunity to address the issues but the evidence regarding the October 2024 inspection shows that, despite some welcome improvement, breaches of the fundamental standards of care have recurred. We must have regard to the issue of risk in a number of respects and must seek to protect the safety, needs and interests of both current and future service users. We consider that it is a matter of serious concern that in October 2024 there were still repeated breaches of fundamental standards, and a new breach regarding regulation 19, even though only five service users were resident.
96. We considered whether conditions might be adequate. Our overall view is that the evidence as a whole shows that Mrs Stewart is unable to acknowledge the potential impact of breaches of fundamental standards in terms of the risks posed to the safety, health and well-being of service users. We find that she does not really understand the role of a registered manager or the role of the regulator. Conditions were imposed in July 2023 but proved to be ineffective. We find that the Respondent has used all appropriate measures to enforce the improvement of fundamental standards at the Home but improvement is still required and governance is inadequate. We consider that the response since the NOP and the NOD and the overall regulatory history shows that the Appellant does not have the capacity to effect sustained improvement to the provision of services at the Home so as to achieve compliance.
97. We find that the continuance of the regulated activity at the location by the Appellant poses a clear risk to the health and well-being of residents. We find that Mrs Stewart lacks any real insight or understanding as to the risks posed to residents by the lack of governance. In short, she persists in her view that the perceived breaches relate to "paperwork". Given our views regarding Mrs Stewart's attitude and lack of insight we consider that there are no conditions that could realistically be devised to address the risk to the health, safety and well-being of service users.

98. We have considered all of the evidence. The Respondent has satisfied us that in all the circumstances its decision to cancel registration is justified, necessary and proportionate to the risks against which safeguards should be provided. In view, the need to protect the health and safety of vulnerable service users outweighs the impact of the decision on the Appellant and all the employees affected and, not least, the impact upon current residents and their family members.

Decision

The appeal is dismissed. The Respondent's decision is confirmed.

Judge Siobhan Goodrich

First-tier Tribunal (Health Education and Social Care)

Date Issued: 14 January 2025

