

Care Standards Tribunal

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

**Heard at Field House, London
Tuesday 29th April 2014**

Before:

**Judge John Aitken
Deputy Chamber President (HESC)
Ms J Cross Specialist Member
Ms L Redford Specialist Member**

Ms Sharon Martin

V

Care Quality Commission

Decision

[2013] 2149.EA

1. The Appellant appeals the Respondent's decision dated 3 December 2013, to refuse the Appellant registration as a registered manager in respect of the following regulated activity – accommodation for persons who require nursing or personal care at Sahara Parkside, 101-113 Longbridge Road, Barking, Essex IG11 8TA.
2. The decision to refuse the application is based upon an on-going police investigation of the Appellant in relation to an allegation raised by her previous employer, The Hoffman Foundation for Autism, of the theft of service users' monies. The fact of the police investigation was identified in the enhanced CRB check and confirmed by the Appellant in her application and fit person interview. The sum initially referred to in the enhanced CRB check is £1,350. Enquiries of the police have confirmed the Appellant's arrest and ongoing investigation, involving forensic accountants, with a decision on charge expected from the CPS and potentially involving sums of up to £40,000. The Respondent concluded that in such circumstances the Appellant cannot meet the requirement of regulation 6 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 in that she is unable to demonstrate that she is fit to be registered.
3. The Appellant for her part does not dispute the facts of this matter, rather she protests her innocence. She submits to us that she has

waited almost 2 years for the Police to conclude their enquiries and it is unfair that her life should be placed on hold like this, she is unable to work in her chosen field, not because she has any conviction or has even been charged, but simply because there is a very slow investigation which is as far as she is concerned not going anywhere.

4. Section 15(2) of the Health and Social Care Act 1988 places the following obligations upon the Care Quality Commission:

“2) If the Commission is satisfied that—

*(a) the requirements of regulations under section 20, and
(b) the requirements of any other enactment which appears to the Commission to be relevant, are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.”*

5. Section 20 provides for regulation of those who are fit and proper persons, Regulation 6 of the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2010** requires:

“6. (1) A person (M) shall not manage the carrying on of a regulated activity as a registered manager unless M is fit to do so.

(2) M is not fit to be a registered manager in respect of a regulated activity unless M is—

(a) of good character;

(b) physically and mentally fit to carry on the regulated activity and has the necessary qualifications, skills and experience to do so; and

(c) able to supply to the Commission, or arrange for the availability of, the information relating to themselves specified in Schedule 3.”

6. Schedule 3 provides for enhanced CRB or DBS checks and *“Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to—
(a) health or social care; or
(b) children or vulnerable adults”*

7. The Care Quality Commission’s position is that whilst there is an active Police investigation there is no satisfactory evidence of conduct in previous employment.

8. Before us Mrs Martin accepted that there was a Police investigation into a significant matter, but pointed to its length. We have a great deal of sympathy for her, there must come a time when an investigation is so old or so slow it cannot be properly termed as such, and it may well be that that time is approaching here. However we heard evidence albeit secondhand, that the Police were awaiting a decision from the CPS. We consider that the stage has not yet been reached when the investigation might properly have to be disregarded as an aspect of fitness in such a case. Since there is an active investigation, we consider that the appellant has not produced evidence of satisfactory conduct under Regulation 6, although we have seen good references,

because frauds are often not visible to referees, and until the investigation clears her, we, like the Care Quality Commission before us, cannot properly consider her to have produced satisfactory evidence and thus to be a fit and proper person.

9. This situation cannot be indefinite, and it is open to the appellant to reapply for registration. Were we to look again at this situation in 3 months we may well not be persuaded that there was an active investigation certainly not without hearing from the officer in the case what exactly was going on and how the delay was accounted for.

Decision

We dismiss the appeal, the Appellant has not at this time established fitness under regulation 6, the decision is confirmed.

**Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber**

Tuesday, 6 May 2014