

Care Standards

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

**Pocock Street, Southwark, London
17, 18, 19 August 2015**

**Before
Ms Melanie Lewis- Tribunal Judge
Ms Margaret Diamond – Specialist Member
Dr Surendra Kumar – Specialist Member**

[2014] 2344.EA

BETWEEN:

WELLBEING CARE LTD

Appellant

-v-

CARE QUALITY COMMISSION

Respondent

1. Wellbeing Care Ltd appeal against a decision of the Care Quality Commission ('CQC') made on 1 December 2014 to adopt CQC's Notice of Proposal of 28 August 2014 to cancel the registration of the care home ('The Dell').

Representation

2. The Appellant was represented by Mr Engelman, Counsel instructed by Mitre Consultancy. Their witnesses were Farooq Patel, Director, Wellbeing Care Ltd and Frederick Fennell, Fennell Solutions – Consultants to Wellbeing Care Ltd. We additionally read statements from Ms Andrews the new Manager.

3. The CQC were represented by Mr Green QC, instructed by Ward Hadaway. Their witnesses were Ms Govett, Inspection Manager CQC, Ms Patience, Inspector CQC. Two observers from CQC attended but took no part in the proceedings – Ms Dhiliwayo and Ms Devlin. We additionally read Statements from Mr Andrews Medicine Management Inspector dated 23 April 2015 and 28 May 2015 and Ms Willcox Inspector dated 21 April 2015.

Documentation

4. The Tribunal considered the main bundle tabs A to E which ran to 680 pages. We also considered a supplemental Tribunal bundle prepared by the Appellant containing the February 2015 CQC Enforcement Policy and Enforcement Tree. We read the CQC inspection report 28 April 2015 and draft report following inspection on 3 August 2015. At our request we were additionally presented with a CV for Sharon Hurren who had been a manager at The Dell and email clarification from Ms Govett on her application of the Decisions Tree during submissions.

5. Both Counsel provided opening skeleton arguments and written closing submissions which they amplified orally. We were assisted by the clarity with which both parties' cases were presented and record our thanks to Counsel.

The parties' positions:

6. The Respondent's position as set out in the opening statement is that if the appeal succeeds service users at the Dell will continue to be exposed to risk of harm. Any change was 'too little too late' and the CQC based on the history had real doubts about the long term sustainability of any improvement in a home where there were long term systematic failures. Past promises of improvement, with time given to make changes had not come good and the end of the road had been reached.

7. The Grounds of Appeal accepts the facts set out in the Notice of Proposal but relies on steps taken to resolve the problems. It accepts that until the end of 2014 it was a failing home but put forward a case that since then it had turned a corner with the greater involvement of Mr Patel, a new manager Ms Andrews and the assistance given by Fennell Solutions. The two most recent inspection reports of 28 April 2015 and 3 August 2015 both show the Home is rated overall as 'requiring improvement.' The clock should be reset to September 2015. To confirm closure now would not be proportionate to risk, which could be met by the offer of conditions by the Appellant and any others that the Tribunal saw fit to impose.

Background:

8. The Appellant, Wellbeing Care Ltd, took over the running of the care home, The Dell, on 20 February 2011 and were granted registration for a maximum of 40 service users. There was also a Supported Living Unit in the grounds (subject to separate registration). Wellbeing Care Ltd is a large company. Mr Patel is not a shareholder, but an employee of the company. On the registration, the Nominated Individual was a Mr Sunderland who has a background in the care industry.

9. CQC carried out ten inspections since 21 February 2013 and identified concerns about its running on each occasion. The letter dated 1

December 2014 notified the Appellant that the CQC relied on this and the lack of any sustained changes. As an example the inspections had identified a breach of Regulation 9 at six of ten of the inspections and a breach of Regulation 13 at seven of the ten inspections. A summary of the Chronology sets the scene for concerns of CQC and the failure to remedy failings over a long period of time.

10. Inspections took place on 5 June 2013, 18 September 2013, 10 October 2013, 6 November 2013 and 8-9 January 2014 which led to a warning letter on 27 January 2014 relating to the care needs of Service Users who were suffering weight loss.

11. Following further inspections on 1 and 9 April 2014, 26 June 2014 and 14 August 2014 further concerns were identified. These are set out in a Notice of Proposal dated 28 August 2014. Of particular concern was that there had been 5 managers at the location since February 2014 which had been a contributory factor in the failure of the service to improve.

12. By letter dated 24 September 2014, Mr Patel informed Ms Govett, a CQC Inspection Manager that Mr Sunderland would step down and thereafter he would become the Nominated Individual. He stated that Fennell Solutions would take over the role as general managers. The letter acknowledged the poor performance in relation to medication, ordering, control and administration. He acknowledged that past performance had not been acceptable. A number of staff had left the employment of the home following disciplinary meetings and they were working to a new recruitment process including a new manager Ms Shimmins.

13. Matters came to a head in November 2014 when a whistle blower complaint was made about care given to a number of Service Users which led to 9 safeguarding referrals to Suffolk County Council.

14. The inspection report following inspections on 13, 20 and 26 November 2014 stated that 'action was needed' in respect of the care and welfare of people who used the service, management of medicines and assessing and monitoring the quality of service provision. Again, it raised basic concerns about service users having sufficient liquid and nutrition, noted some caring interaction, but some poor practice, care not being delivered in line with care plans, and the lack of effective and robust systems of management to identify short falls in staff practice and service provision before CQC had to point them out.

15. In respect of the visit on 26 November it was acknowledged that some improvements had been made. The CQC in response to the standard questions 'Is the service safe?' 'Is the service effective?' 'Is the service caring?' 'Is the service responsive?' 'Is the service well led?' were all in the negative. In between the inspections on 20 and 26 November 2014 a meeting took place between Ms Govett, Ms Patience, Mr Patel, Mr Fennell and Ms Hurren who was about to commence as the new manager on 1 December 2014, and Mr Bull, Mr Patel's solicitor. The view of the CQC was that there

were deep seated systemic problems within the home and that they needed to move to closure.

The Legal Framework

16. The Dell provides services which fall to be regulated under the Health and Social Care Act 2008 (Regulated Activities Regulations 2010). The service provider must comply with 16 aspects of the regulated activity (Regulations 9-24 of the 2010 Regulations) including ensuring the care and welfare of patients, cleanliness and infection control, management of medicines, safety of premises and equipment, complaints handling, patient records and the training and recruitment of staff.

17. The CQC may under Section 12 of the Health and Social Care Act 2008 impose at any time such conditions upon a service provider as it thinks fit. Under Section 17 of the Act, the CQC may cancel the registration of a service provider on the ground that regulator activity is or has been carried out otherwise than in accordance with the relevant regulations.

18. Under Section 26 of the 2008 Act, the CQC must give notice to the service provider of a proposal to cancel registration or impose a condition on registration. Under Section 31 the CQC may, if it has reasonable cause to believe that a person may be exposed to a risk of harm, vary, remove or add a condition to a service provider's registration.

19. Under Section 32 of the 2008 Act, the service provider may appeal the CQC's decisions on registration to the First Tier Tribunal within 28 days of the decision. The FTT may confirm the decision or direct that it is not to have effect, or vary a condition or impose any condition itself if it thinks fit.

20. It is for the respondent to establish on a balance of probabilities the facts upon which they rely in establishing that the registration of the appellant should be cancelled.

21. We are not simply reviewing the decision of the Care Quality Commission but making the decision anew. As such we can consider post decision evidence.

The Evidence

22. Ms Govett became the Responsible Inspection Manager from April 2014. We read statements from her dated 23 April 2015 and 37 exhibits, a second statement dated 28 May 2015 plus 3 exhibits. She set out in close detail with supporting documentation the history which we do not repeat as it is summarised in the Background and was not challenged.

23. Matters, as stated, came to a head in August 2014, following which a Notice of Proposal was issued on 28 August 2014 pursuant to section 26 2008 Act. The tone of the correspondence was positive and Ms Govett's assistance was acknowledged by Mr Patel. That correspondence is included

and is relied on by CQC to show that Mr Patel was communicating an admission of fault and the need for change but that change would happen now he was more active in the Home and following the appointment of Mr Fennell.

24. That promise of change was not fulfilled. Following inspections on 3 and 13 November, the Local Authority were involved due to safeguarding concerns. An urgent action letter was sent on 18 November 2014 following the management review requiring receipt of an action plan to be provided by 4 pm on 19 November 2014. It requested the providers' representatives attend at a meeting on 20 November 2014. Mr Patel and Mr Funnell responded that this was too short a time but in fact a meeting took place in Ipswich on 24 November 2014. We read the agreed minutes, which showed that a number of points and intended action were covered. Adverse reliance was placed by CQC on an answer given by Mr Fennell that they had previously said the service was safe relying on feedback from senior care staff. CQC said this failed to show a robust quality of monitoring. Mr Fennell stated he was referring to the serviced apartments and that he had been instructed only in relation to the Dell. During cross examination it was established that those minutes had not had not been put before the Decision Maker when the Notice of Proposal was then issued

25. The Inspectors returned on 26 November 2014 and whilst there had been some progress such that no urgent action was required, the events had confirmed the action to serve a Notice of Proposal.

26. Ms Govett then had less direct influence, but became involved again on 6 March 2015 when Mr Patel shared concerns about the manager Ms Hurren. Mr Fennell and Mr Patel had thought long and hard about dismissing Ms Hurren who hadn't in their view delivered what her interview and CV promised. At our request we received a copy of her CV and we noted that she had far more management experience than her predecessor. They hesitated as they were aware that the problems had been caused by the multiplicity of management. Whilst of course it was not the role of CQC to become involved with management, they spoke with Ms Hurren and she gave them a picture of being in the middle of Mr Patel and Fennell Solutions, who did not accept that was the case and put forward a different view.

27. Management was then increased. Gill Jeffers took over as Operations Manager. She is also a Director of Wellbeing. In April 2015 Ms Andrews, an experienced manager came into post and her registration was confirmed during the hearing. Her CV demonstrated considerable management experience. Her Statement which set out her commitment both to the Dell and to bringing about change. She was offered assistance to move to Norfolk, where she has family to take up the post. We considered the invitation for her to be called but decided that we had no specific questions for her as her Statement was not in issue.

28. When cross-examined, Ms Govett was pressed on the detail of the inspection reports of 28 April 2015 and 3 August 2015. Whilst the finding may

have been 'inadequate', she was taken to more positive aspects of the narrative. It was suggested to her that this was not the profile of a failing home. Her response, which underpins the CQC case, was that a home could not sit at 'inadequate' indefinitely. Put in the context of the time this had gone on, movement was needed and in a sustained way. The same reasoning applied to why on her recent assessment on the 'seriousness of concerns' criteria on the Decisions tree she has graded the Dell as 'high' even though the impact was 'moderate'. That meant enforcement options were 'cancellation, suspension or more significant conditions (impose, vary or remove).

29. Mr Engelman additionally took her to the imposition of conditions in November 2014 which he suggested didn't imply great risk, but she said they were imposed as the lesser step due to having to balance the impact of closure.

30. We additionally read witness statements of Ms Patience the lead inspector dated 25 June 2015. She essentially confirms the facts given by Ms Govett and that she was actually the person carrying out the inspections together with Ms Wilcox in the last part of 2014. She had then had a period off work and on her return in May 2015 was concerned that things had not moved on and that in particular Mr Patel was relying on others to support him in bringing about change, which despite reassurances had not happened. There were no questions for Ms Patience who had not attended the inspections in April and August 2015.

31. Mr Patel made two statements dated 27 April 2015 and 6 July 2015. He has a financial background but no background in the care sector. We clarified that he is not a shareholder in the parent company and as such has no personal interest in the home although he said that he had set himself a personal challenge of putting the home back on course and has recommended to the Board that this is a viable proposition. Wellbeing Care Ltd (the current ownership) had been the service provider of The Dell since February 2011. The role of Mr Patel was to visit every 2 weeks and advise on financial and business aspects with Mr Sunderland the operations manager and Nominated Individual (now Responsible Person).

32. With hindsight Mr Patel now realises that he wasn't told everything that was happening. He became aware of problems in December 2013. In January 2014 he arranged for JH Health and Care Associates set up by two former CQC inspectors to provide independent advice. He was introduced to Fennell Solutions by the bank, but we clarified that that was not because they had particular concerns about the running of the business or that future funding was contingent upon bringing in an expert consultant.

33. Mr Patel appears at all times to have had a reasonable working relationship with CQC. He frankly accepts that he had given insufficient personal attention to problems that developed and does not seek to be negative about the involvement of CQC. He said that he now has done, particularly after September 2014 when Fennell Solutions came on board. He

now visits at least weekly from his home in London, often staying over. The home is located in Lowestoft, Suffolk. He has attended key meetings: the 'Ipswich meeting' on 13 November 2014 and the meeting in April 2015.

34. Mr Patel and Mr Fennell were largely agreed in their evidence. Mr Patel's written evidence was that he has worked closely with Mr Fennell and that there have not been financial constraints upon his involvement. We pressed him about how long he thought the change would be. He stated that he thought it could be 12-15 months but he and Mr Fennell agreed that 3-4 months had been lost due to the time that Ms Hurren was in post.

35. His evidence supported that set out in the witness statement of Ms Andrews, the new manager. The home was now on track with regards care home audits and medications. She had set up meetings with staff and families of the service providers and users. His view was that it was worth going on as things were changing and they had the support of families and the Local Authority who despite the safeguarding issues had not sought to remove service users.

36. Mr Green pressed him that if was saying the service was now well led, it had still led to a recent finding of 'inadequate' in August 2015. He didn't appear to disagree with that, but his point was that every aspect of regulation had to be met before one could say that the service was well led. It was suggested to him that that was putting the cart before the horse.

37. We were interested to know more about the history of managers and he was able to take us through the list of managers. There had been seven since March 2013. He acknowledged the difficulties of recruiting and said that managing a home about which concern had been raised was not for everybody. He and Mr Fennell both spoke about the limitations of relying on a CV and references and that a candidate who interviewed well would not necessarily meet that promise.

38. Mr Fennell made statements dated 27 April 2015 with 9 exhibits and 27 May 2015 with 1 exhibit. Mr Fennell's first priorities had been medication and care plans. His role as a consultant showed that he has a wide experience of the care sector and a familiarity with CQC. Like Mr Patel he made no criticism of them and said that he had respect for Ms Govett. He felt it unfair to say he had not responded to the 'urgent Action' letter of November , which even if they had not done so within 24 hours they had taken immediate steps, including attending a meeting on 24 November 2014.

39. The finances of the home was raised by the Tribunal, not because it was in issue but to get a broad understanding. Mr Patel relied on Mr Funnell who as a Consultant, we would expect to be 'short term', but he appeared to be much more involved. Mr Funnells' answers in cross examination on the financial resources were vague and rather defensive, saying his son's company or Mr Patel dealt with the finances. In response to the questioning by the Tribunal he was clearer about his future time inputs. He had put in two days per week and had been paid. This confirmed the written evidence that

no financial constraints had been placed on him and tended to support Mr Patel that he would put in what it took. He saw this reducing to one day to the end of the year, with quarterly audits thereafter.

40. Mr Fennell stated that he expected to stay with 20 service users but perhaps gradually move up to one extra per month after say three months. There are currently six care staff, four care assistants, two team leaders, one junior and one senior who deals with medications. There are also two activity co-ordinators. There is an operations manager as well as the manager. He gave detailed comment on the 15 August 2015 inspection which would be the subject of the 'factual accuracy' comment. He felt it was unfair to state the medication practice was inadequate although he accepted it would be good practice to record when 'PRN' drugs had been given. He gave a detailed explanation as to why a service user was found in her night-clothes in the day and why a wheel chair user was scooting himself about. He had identified the individuals but stated that what had been observed by the inspectors had in fact been through patient choice and circumstance.

41. When cross-examined he agreed that the biggest mistake had been the time lost through the employment of Ms Hurren and that they had not been quick enough to part company with her when it became clear that she wasn't proving effective.

42. With our permission and with no objection from Mr Green, Mr Patel was recalled on the financial details. He was very clear on the figures. The company needed to grow slowly and at the moment staff wages take 98% of the income and the home is currently running on an overdraft of £4-8,000 per month. This will change once they move up from 20 service users as they have capacity for 40, but this needed to move slowly. The company had previously had a much larger overdraft which they had not used and the current overdraft of £25,000 had been offered by the bank and was a cushion not a necessity.

Conclusions and Reasons

43. Mr Engelman presented the case for the Appellants in a robust way accepting the numerous past failings of the home, but invited us to look with closer scrutiny from the point that Mr Patel and Mr Fennell moved into a front position. We have carefully looked at the number of inspections prior to that which fully supports the case put by the CQC that a large amount of time, effort and no doubt money has been invested by them in monitoring this home but no sufficient change took place. It is not the role of CQC to monitor. The concerns raised were of a very basic and of a very concerning nature: nutrition, hydration, medication and basic care. There was a fundamental failure of management which cannot just be explained by the number of managers who left but by the Responsible Person and the owners of the home failing to have a proper grip of the situation.

44. We must however look at the current situation in the light of that adverse history, looking at any improvement but applying a test of whether

any of the service users are at risk of harm. We have decided not to confirm the cancellation but do so on the basis that this is the last chance for changes to be made.

45. We have examined the case put on behalf of CQC which rests on the history, the fact that the two most recent inspection reports did not support that change had been made and a lack of confidence in the assertions of Mr Patel and Mr Funnel. Looking at each inspection report, we have kept in mind the CQC enforcement policy which came into force in February 2015 and the enforcement decision tree, which assisted us in understanding CQC's thinking and the need for a measured and proportionate response.

46. As an overview there are positives in the current situation. The Home has accepted its past poor performance, not spent time making excuses and put time money and effort into bringing about change. It has a new manager who appears to have sound experience. It has made staffing changes and the Home appears to have retained the confidence of service users' families and the Local Authority, although we weigh that factor with some caution given the impact of change on the residents.

47. We broadly accept the evidence given on behalf of the Appellants and not substantially challenged, that it can take about 12-15 months to turn a failing Home around. There are a number of aspects to this and whilst procedures can change there is also the need to have in place an effective manager and well trained staff. That can take time to put in place and time for good practice to become embedded.

48. Overall we formed a favourable view of Mr Patel. He has been straightforward in his written and oral evidence and realistic about his own lack of experience in the care sector. He would appear to have the confidence of the Board/shareholders who have been prepared to invest considerable sums in Fennell Solutions and staff which backs up his statement that he would and could do 'whatever it takes'. We take at face value his statement that he likes a challenge, although he was aware of the option to recommend a sale of the Home, which is on a site with further potential to develop other care resources.

49. Mr Green invited us to draw a negative inference from the fact that it was not his money and he is an employee of the company. To make that inference ignores that his professional reputation is at stake. We found the evidence of Mr Patel to be frank and realistic. We reject Mr Green's submissions that his answers as regards the time frame for the turnaround of The Dell were vague and unsatisfactory. We kept firmly in mind and carefully investigated whether they were empty promises and an expression of optimism over reality. He took advice and the advice from Mr Fennell which we judged to be realistic was at least 12-15 months to turn around a failing care home. Using the expressions such as 'don't quote me on this', our view was that he was not 100% clear.

50. The home is operating on a non-loss making basis. The shortfall overall is not great and is backed by the Board and indeed the bank with whom Mr Patel is having weekly telephone discussions. These issues arose as a result of questions by the Tribunal not because CQC or the papers revealed any obvious financial inadequacy but inevitably staffing, consultancy and change require financial support.

51. We did have some concerns that Mr Fennell said he had 'no idea' about the finances but when this was probed further, including questions from the Tribunal and Mr Patel was recalled we got a clear understanding. Mr Patel has the background in banking, so it is not unreasonable to leave that aspect to him. We accept that the overdraft was to provide a cushion, not support the business. This is the purpose that many businesses would use an overdraft for, particularly ones such as this where there may be a delay in fees coming in and outgoings being due. We do not conclude that Mr Patel or Mr Fennell has an open chequebook or was without sense or business prudence. The home is currently running at a loss but this is time limited and it should go into small profit once new residents are admitted on a gradual basis. We reject Mr Green's submission that it is now 'shrouded in greater mystery'

52. From April 2015 Ms Andrews has been the manager, Ms Holland deputy manager, six care staff and two team leaders, together with care staff, domestic staff, kitchen assistants, a cook and two activities assistants. Gillian Jeffers is also a director and operations manager, carrying out provider audits of compliance. Mr Fennell is time limited, so that makes the recovery plan clearer. He will continue to be involved for two days for the next six weeks but would then be likely to move to quarterly audits.

53. In short, we accept that Mr Patel has listened carefully to residents, families, staff and the local authority. He has satisfied himself that there is a viable core of operation and that he has seen the need and acted upon the need to be more personally involved.

54. There was an issue as to whether the cart was going before the horse in the issue of leadership. But this may be to twist Mr Patel's words because his view was that once all the other areas of rating became green and the manager's registration was successful, then the leadership rating would reflect it and turn green. Overall we take the view that his leadership is there in that he is putting in staff but a number of factors need to come together to turn the business around.

55. Part of that process was moving from one firm of consultants JH Solutions to Fennell Solutions who came in with a view to 'turning the ship around'. He had been paid a considerable sum and has put at least two days a week into building up the care plans and medication issues, as well as advising on staff. Again, we have examined the involvement to see if there has been any lack of objectivity or focus, but we could find no major faults lines. We noted in particular that there were points when Mr Fennell had gone back to a position thinking it might well be best for the home to be sold,

but had revised that view. When questioned he was clear where things had gone wrong, namely employing the wrong manager but accepting he should have acted sooner to move her on.

56. Mr Fennell has focussed on Care Plans, medication and staffing. He accepted that there were a number of criticisms validly made in the draft August 2015 report and any such issues would be investigated. Care Plans had now been simplified and personalised but he had identified a need for staff to read the actual plan, rather than having an 'official' care plan and a working shorthand.

57. He agreed the leadership required improvement but argued it was impossible to have issues and be well led. He felt a judgement of 'requires improvement' would have been more accurate than the August 2015 judgement of 'inadequate'. We established via the Decision tree that that judgement was reached because of the length of time that had elapsed, which is the key element in CQC's case.

58. The April 2015 report in respect of The Dell was that the caring service was rated 'good'. Only leadership was 'inadequate' and the questions as to whether the service was safe, effective and responsive were all 'requiring improvement'. We have looked carefully at the narrative to support the finding and it appears to us that there had been some improvement in the areas, in particular that Mr Fennell was working on namely medication and care planning. We accept Mr Fennell's evidence that it takes time to turn a care home around and that he was focussing on those areas which are ones we accept a consultant might be expected to focus upon.

59. Overall with regard to the April 2015 report on which The Dell had had the opportunity to submit facts and inaccuracies we found the explanations of Mr Fennell plausible on this point.

60. We next looked at the draft August 2015 report. There has not yet been an opportunity by The Dell to provide a 'factual inaccuracy report'. We heard the detail of the response of Mr Fennell which we found plausible. Particular concerns had been raised about a wheelchair user, whom he explained chose to manoeuvre his chair with his feet, which had to be respected even if it was not a choice he personally advocated. Similarly there was concern raised about a service user in her night-dress mid-day, whom he said was confused and disorientated as she was changing rooms albeit that had yet to be approved by her son.

61. Concerns were raised in the August 2015 report about the levels of staffing but these appear to turn on comments by service users' families. We have set out the staffing levels. We were assisted by a very detailed response from Mr Fennell on this point namely that previously ratios were in force in the industry and now homes often used computer tools, which he personally did not favour unless they were used with a manual spreadsheet. His advice was to assess need in half hour slots and allocate staff accordingly. This appeared to us to show a more personal response to

service users' needs than simply using a computer tool. Again, when taken with the evidence read overall the major concerns of nutrition, hydration, medication and care plans were being addressed.

62. We have examined the issue of managers very carefully because clearly in recent times three managers came in under the regime of Mr Fennell and Mr Patel. We have had the benefit of looking at the CV of all three relevant managers. Ms Simmins did not have substantial management experience and asked to be downgraded to a deputy manger but eventually left. We have in mind the point made by both Mr Fennell and Mr Patel that other than by agreement it may take some time to change staff. At our request we were provided with a copy of the CV of Ms Hurren. Her CV supports the evidence of Mr Patel and Mr Fennell that she looked the right fit as she had substantial management experience including in the local authority, appropriate for somebody who was going to have to manage a failing provision and bring about change. We have noted comments Ms Hurren made to CQC inspectors and we have heard what Mr Patel and Mr Fennell said. Mr Fennell frankly admitted that they should have moved her earlier, but we can see reasons why they did not.

63. The evidence of the new manager Ms Andrews was unchallenged. Again, she is somebody who is very experienced. She was paid an enhanced package which has allowed her to move to take up the post. She has in a short time put in place a senior team leader to cascade information to staff, undertaken the task of simplification and personalisation of care plans and put in place a monitoring and auditing system. In particular staffs have responded and there are staff meetings. There are also meetings with relatives, all of which have been picked up positively in the August report.

64. CQC do not have the resources to act as monitors, nor should they. The current position is the one we must look at, albeit set in the context of a long period of involvement and intensive activity on behalf of CQC. Overall we accept Mr Engleman's submission that there have in recent months been substantial improvements. We accept that the home is no longer a failing home but one that certainly requires improvement and one that we are satisfied that there is sufficient evidence to suggest on balance can make that turn around in a short time. There appears to be a good management structure in place and the essentials of medication, care plans and care given are all in place too. There is no obvious dissatisfaction by service users, the authorities or the relatives. We have no issues over the finances.

65. A key issue for us is clearly the impact of closure upon the lives of the service users and we do not find it proportionate at this stage. The proportionality of the situation can be met by imposing conditions. We make it clear that further conditions were offered. Our view is that it is down to this home to know what to do and do it within a short time frame. Mr Engelman accepted on behalf of his clients that this really was the last chance.

66. We take a wider view because we must look at the opinions of Mr Patel, Mr Fennell and the board and shareholders. In particular we clarified

that the recent judgements of CQC might have been placed not at high level but at the lower medium level were it not for the extensive history. That history is given weight by us but we have analysed it in time periods but asking ourselves if there is serious risk of harm to service users. In leaving this case we make clear that we make no criticism of CCC who have shown professionalism and patience with this provider but we have exercised our discretion differently in the light of late improvement.

ORDER

The appeal is allowed. The cancellation is not confirmed.

SUBJECT to three conditions:-

- (i) There should be a registered manager as required by the existing registration certificate.
- (ii) Quality assurance audits are to be undertaken by the home to include the audit of management which is to be undertaken by Fennell Solutions. This condition shall subsist until 31 December 2015.
- (iii) The home shall not admit any new residents until 1 November 2015 and then only at 2 per month. The condition will subsist until 31 December 2015.

Judge Melanie Lewis
Tribunal Judge
Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 2 September 2015