

**Care Standards**

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

[2016] 2846.EA

Heard on 21 & 22 June 2017 at the Employment Tribunal Manchester

**BEFORE**

**Mr H Khan (Tribunal Judge)  
Ms M Harris (Specialist Member)  
Mrs D Rabbetts (Specialist Member)**

**BETWEEN:**

**Miss Faith Dennis**

**and**

**Glory Comfort Care Limited**

**Appellant (s)**

**-v-**

**Care Quality Commission**

**Respondent**

**Decision**

**The Appeal**

1. Glory Comfort Care Limited & Miss Faith Dennis (“the Appellants”) appeal to the Tribunal against the Care Quality Commission’s (“the Respondent”) decisions dated 4 October 2016. Glory Comfort Care Limited (“Glory”) appeals against the Care Quality Commission’s decision to cancel its registration as a service provider and Ms Faith Dennis (“Miss Dennis”) appeals against the Respondent’s decision to cancel her registration as a registered manager. Both decisions are in respect of the regulated activity of personal care.

**Restricted reporting order**

2. 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 so as to protect their private lives.

### **Attendance**

3. Miss Dennis appeared in person and represented Glory. Miss Dennis also gave oral evidence. The Appellants had one other witness, Mr Kevin Yoxhall.
4. Ms Anna Wilkinson (Counsel) represented the Respondent. The Respondent's witnesses were Ms Joy Needham, Adult Social Care Inspector, Ms Acosia Nyanin, Head of Inspection for Adult Social Care in the Central Region and Mr Francis Burrows, Inspection Manager for the North Staffordshire and Stoke-on-Trent Team (Adult Social Care Directorate),

### **Late Evidence**

5. The Tribunal was asked to admit additional evidence by the Appellant. This included an activity record sheet marked Annex 57 and evidence of spot checks. We admitted the additional evidence on the ground that it was relevant to the issues before us. However, it was disappointing that some of this evidence was not produced earlier. As there were a number of individual items that we were asked to admit, we do not propose to particularise each and every item but we shall refer to them specifically where relevant.
6. In considering any late evidence, the Tribunal applied rule 15 and took into account the overriding objective as set out in rule 2 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008 ("2008 Rules").

### **Events leading up to the issue of the Notice**

7. Glory was registered as a provider with the Respondent on 11 March 2014. It was registered under the provisions of the Health and Social Care Act 2008 ("2008 Act") to provide the regulated activity of personal care. The Registered Manager at Glory was Miss Dennis. The certificate of registration is dated 9 April 2015.
8. On 11 May 2016, after concerns had been raised by the Police at a multiagency safeguarding meeting about Glory, the Respondent noted that the service had not yet received a rating and that statutory notifications had not been received by the Respondent since the provider was registered. The Respondent decided to undertake its first unannounced inspection of the service on 17 May 2016.

9. It was agreed that at the time of the inspection in May 2016, the Appellants were providing domiciliary care to a single service user (Service User A). In addition, the Appellants were providing agency staff to other care services, which was not within the remit of the Respondent's inspection.
10. The inspection took place at 788A Uttoxeter Road. It was carried out by Ms Joy Needham and Ms Katy Pahir Van de Sand. This was an address to which the Appellant had applied to amend Glory's registration, although the application, at that time, had not been determined.
11. At the inspection on 17 May 2016, the Respondent alleged that it had found significant failings within the provision of care that placed individuals at serious risk of immediate harm to their health, safety and well-being. The concerns identified included the failure to protect individuals from the risk of abuse or avoidable harm, failure to identify and manage risks to an individual's health and failure to keep accurate, up-to-date and accessible records.
12. The Respondent, having considered the evidence, concluded that this was in breach of the regulation 12, (Safe Care and Treatment), regulation 19, (Fit and Proper Persons Employed) and regulation 17 (Good Governance) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ("2014 Regulations").
13. In addition, in due course breaches of section 64 of the Health and Social Care Act 2008, (power to require documents and information) and regulation 18 of the Care Quality Commission (Registration) Regulations 2009 (Notification of Other Incidents) ("2009 Regulations") were identified.
14. As a result of the inspection on 17 May 2016, the service was rated as inadequate overall. Miss Dennis was informed of the concerns that the Respondent had during the course of the inspection and having judged the only service user (Service User A) to be at risk of harm, a decision was taken to contact Stoke-on-Trent Local Authority who arranged to take over the calls to Service User A from the date of inspection onwards.
15. A management review meeting took place on 18 May 2016 and the Respondent decided to issue a Notice of Proposal to cancel the provider and registered manager's registration. The Appellants were given an opportunity to provide further information to the Respondent by way of the section 64 letter on 19 May 2016. The Respondent alleges that the Appellants response did not address the issues regarding the two main carers who were looking after Service User A and therefore following a further management review meeting on 25

May 2016, it was decided to issue the Notices of Proposal on 20 June 2016.

16. On 11 July 2016, representations to the notices were submitted by the Appellants and considered by Ms Beverley Cole, Head of General Practice for the North and she replied on 4 October 2016 with the Notice of Decisions in respect of the service provider and registered manager.
17. The Appellants appeal those decisions by way of an application form dated 24 October 2016. The Respondent maintains that the decision to cancel the Appellants registration remains justified, proportionate and reasonable following serious breaches of the regulations. The Appellants deny that they are in breach of any regulations.

### **Legal framework**

18. The statutory framework for the registration of providers of regulated services and that we were referred to by the Respondent is set out in the Health and Social Care Act 2008 and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936. The relevant parts relied on by the Respondent in this appeal are as set out below.

### **The Health and Social Care Act 2008**

#### **17 Cancellation of registration**

(1) The Commission may at any time cancel the registration of a person ("R") under this Chapter as a service provider or manager in respect of a regulated activity—

...

(c) on the ground that the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;

...

(4) In this section "*relevant requirements*" means—

- (a) any requirements or conditions imposed by or under this Chapter, and
- (b) the requirements of any other enactment which appears to the Commission to be relevant

#### **32 Appeals to the Tribunal**

(1) An appeal against—

(a) any decision of the Commission under this Chapter, other than a decision to give a warning notice under [section 29 or 29A] <sup>1</sup>, or

.

(2) No appeal against a decision or order may be brought by a person more than 28 days after service on the person of notice of the decision or order.

(3) On an appeal against a decision of the Commission, other than a decision to which a notice under section 31 relates, the [First-tier Tribunal] <sup>2</sup> may confirm the decision or direct that it is not to have effect.

(6) On an appeal against a decision or order, the [First-tier Tribunal] <sup>2</sup> also has power—

- (a) to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates,
- (b) to direct that any such discretionary condition is to cease to have effect,
- (c) to direct that any such discretionary condition as the [First-tier Tribunal] <sup>2</sup> thinks fit shall have effect in respect of the regulated activity, or
- (d) to vary the period of any suspension.

(7) In this section—  
“*discretionary condition*”, in relation to registration under this Chapter, means any condition other than a registered manager condition required by [section 13\(1\)](#)

## **64 Power to require documents and information etc.**

(1) The Commission may require any person mentioned in subsection (2) to provide it with any information, documents, records (including personal and medical records) or other items which the Commission considers it necessary or expedient to have for the purposes of any of its regulatory functions.

(2) The persons are—  
(e) a person who carries on or manages a regulated activity [, or] <sup>4</sup>

(3) The power in subsection (1) to require the provision of information, documents or records includes, in relation to information, documents or records kept by means of a computer, power to require the provision of the information, documents or records in legible form.

(4) A person who without reasonable excuse fails to comply with a requirement imposed under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale

## **The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936**

### **12 – Safe care and treatment**

- (1) Care and treatment must be provided in a safe way for service users.
- (2) Without limiting paragraph (1), the things which a registered person must do to comply with that paragraph include—
- (a) assessing the risks to the health and safety of service users of receiving the care or treatment;
  - (b) doing all that is reasonably practicable to mitigate any such risks;
  - (c) ensuring that persons providing care or treatment to service users have the qualifications, competence, skills and experience to do so safely;
  - (d) ensuring that the premises used by the service provider are safe to use for their intended purpose and are used in a safe way;
  - (e) ensuring that the equipment used by the service provider for providing care or treatment to a service user is safe for such use and is used in a safe way;
  - (f) where equipment or medicines are supplied by the service provider, ensuring that there are sufficient quantities of these to ensure the safety of service users and to meet their needs;
  - (g) the proper and safe management of medicines;
  - (h) assessing the risk of, and preventing, detecting and controlling the spread of, infections, including those that are health care associated;
  - (i) where responsibility for the care and treatment of service users is shared with, or transferred to, other persons, working with such other persons, service users and other appropriate persons to ensure that timely care planning takes place to ensure the health, safety and welfare of the service users

## **17 – Good governance**

(1) Systems or processes must be established and operated effectively to ensure compliance with the requirements in this Part.

(2) Without limiting paragraph (1), such systems or processes must enable the registered person, in particular, to—

(a) assess, monitor and improve the quality and safety of the services provided in the carrying on of the regulated activity (including the quality of the experience of service users in receiving those services);

(b) assess, monitor and mitigate the risks relating to the health, safety and welfare of service users and others who may be at risk which arise from the carrying on of the regulated activity;

(c) maintain securely an accurate, complete and contemporaneous record in respect of each service user, including a record of the care and treatment provided to the service user and of decisions taken in relation to the care and treatment provided;

(d) maintain securely such other records as are necessary to be kept in relation to—

(i) persons employed in the carrying on of the regulated activity, and

(ii) the management of the regulated activity;

(e) seek and act on feedback from relevant persons and other persons on the services provided in the carrying on of the regulated activity, for the purposes of continually evaluating and improving such services;

(f) evaluate and improve their practice in respect of the processing of the information referred to in sub-paragraphs (a) to (e).

(3) The registered person must send to the Commission, when requested to do so and by no later than 28 days beginning on the day after receipt of the request—

(a) a written report setting out how, and the extent to which, in the opinion of the registered person, the requirements of paragraph (2)(a) and (b) are being complied with, and

(b) any plans that the registered person has for improving the standard of the services provided to service users with a view to ensuring their health and welfare.

## **19 – Fit and proper persons employed**

(1) Persons employed for the purposes of carrying on a regulated activity must—

(a) be of good character,

(b) have the qualifications, competence, skills and experience which are necessary for the work to be performed by them, and

(c) be able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the work for which they are employed.

(2) Recruitment procedures must be established and operated effectively to ensure that persons employed meet the conditions in—

(a) paragraph (1), or

(b) in a case to which regulation 5 applies, paragraph (3) of that regulation.

(3) The following information must be available in relation to each such person employed—

(a) the information specified in Schedule 3, and

(b) such other information as is required under any enactment to be kept by the registered person in relation to such persons employed.

(4) Persons employed must be registered with the relevant professional body where such registration is required by, or under, any enactment in relation to—

(a) the work that the person is to perform, or

(b) the title that the person takes or uses.

(5) Where a person employed by the registered person no longer meets the criteria in paragraph (1), the registered person must—

(a) take such action as is necessary and proportionate to ensure that the requirement in that paragraph is complied with, and

(b) if the person is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.

(6) Paragraphs (1) and (3) of this regulation do not apply in a case to which regulation 5 applies

19. The powers of the Tribunal are set out in section 32 and it stands in the shoes of the decision maker as at the date of its decision. The Tribunal may either confirm a decision of the Respondent or direct that it is not to have effect. The Tribunal is also empowered to direct any such discretionary condition as it thinks fit. The burden of proof is on the Respondent. The standard of proof is the balance of probabilities.

### **Evidence**

20. We took into account all the evidence that was presented in the bundle and at the hearing. We have summarised the evidence insofar as it relates to the relevant issues before the Tribunal. We wish to make it clear that what is set out below is not a reflection of everything that was said or presented at the hearing.

21. Ms Beverley Cole gave evidence that she was the individual responsible for reviewing the registered providers and the registered manager's written representations against the Notices of Proposal dated 20 June 2016. She confirmed that she reviewed both the representations and the bundle of evidence sent in support of the review.

22. She took the decision to adopt both notices of proposal due to the serious risk posed to Service User A who was vulnerable. Further, due to the nature and seriousness of the concerns, she took the view that Miss Dennis, as registered manager, would have been instrumental in ensuring that the company operated in line with the regulations and therefore also adopted the notice of proposal in relation to the registered manager.

23. Ms Joy Needham gave lengthy evidence regarding her involvement. She became involved with the service on 11 May 2016 following concerns raised by the Police at a multiagency safeguarding meeting.

24. She reviewed the information that was held by the Respondent and noted that no statutory notifications had been received from the Appellant since its registration in April 2015. The service had also not been inspected and had not received a rating. She described how all services registered with the Respondent were expected to have a rating inspection by the end of April 2017.

25. She discussed the matter with Mr Francis Burrows, her manager. They agreed that given the concerns raised, the lack of notifications and the fact that the service had not had a rating inspection, this meant that the levels of risk were sufficiently high enough to warrant an unannounced inspection on 17 May 2016. It was decided that the inspection would be unannounced because of the level of risk that was identified and of the need to inspect the service quickly.
26. The inspection took place on 17 May 2016. The inspection consisted of two inspectors of which Ms Needham was the lead inspector. On arrival, an office assistant greeted them and Ms Dennis arrived at the service at 10am. Ms Dennis informed them that at the time, they provided a service to only one person (Service User A) and provided three 30 minute calls each day to this user.
27. At the inspection, Ms Needham found significant concerns and failings with the provision of care that placed individuals at serious risk of immediate and continued harm to their health, safety and well-being. She outlined that these concerns/failings included, failure to protect individuals from the risk of abuse or avoidable harm, failure to identify and manage risks to individual's health, safety and well-being and failure to keep accurate, up-to-date and accessible records. She identified the following breaches of regulations.
28. The support plan for Service User A recorded that the Service User A needed prompts to take medication and staff were to prepare sandwiches of their choice. Service User A was said to become "confused with information". He was in the early stages of dementia.
29. Ms Needham was told by the Appellant that the two staff members who were providing a service to Service User A had not received any medication training. This lack of training meant they were unaware of the medication they were administering and unable to identify if Service User A had any adverse reaction or side effects from taking the medication. In Ms Needham's view, this meant that there was a risk that potential changes in Service User A's health would not be identified and acted upon as the staff did not know what sign and symptoms to look out for to promote Service User A's health, safety and well-being. In her view, this placed the individual at risk of immediate and continued harm to their health, safety and well-being.
30. The list of medication in the care file recorded prescribed medicines and this was supplied from the pharmacy in blister packs. The Appellant told Ms Needham that staff had not received medication training but the monitored dose, blister pack system was used which gives staff the information they required as it was recorded on the back of the package. Miss Needham did not think this was sufficient. The lack of staff training meant that staff were unaware of the medicines they administered and would be unable to identify if Service User A had any adverse reactions.



31. She had been told by the Appellant that there were no written protocols or guidance available to ensure that staff knew when, why or how often to give medication to Service User A. This was despite Service User A receiving three care visits a day to be provided assistance with medicines. The absence of any guidance for staff to follow meant that Miss Needham could not be assured that the medication would be given in a safe and consistent manner.
32. Ms Needham was informed by the Appellant that she was aware of one instance when a call to Service User A was missed and therefore Service User A did not have the support that they required with their medication. No action had been taken by the Appellant to mitigate any ill effects on Service User A not having the prescribed medicine. This placed Service User A at risk of harm to their health, safety and well-being.
33. Ms Needham was of the view that regulation 12 had been breached in relation to the proper and safe management of medication. The lack of staff training and guidance meant that medicines were not consistently and safely administered by staff. There were no plans in place to guide staff on how to effectively manage Service User A's medicines so there was a risk to his health and well-being.
34. As a consequence of the breach, Service User A had received inconsistent and unsafe care and was put at high risk of a re-occurrence because the Appellant had not assessed and mitigated the risks to the Service User A.
35. Ms Needham confirmed that she had been told that Service User A's main carer was staff member SS (referred to as S5) who was covered by JR (referred to as S6) in his absence. The Appellant confirmed that S5 was an asylum seeker who volunteered his services and was providing the three calls on the day of the inspection.
36. The Appellant was not able to produce any employment records for S5 when requested. She had looked for these in the filing cabinets and other areas but eventually confirmed "*no records were available for Staff 5*". This led Ms Needham to conclude that no checks had been made to determine the good character, qualifications, skills and experience of S5 to ensure they were suitable to provide care and to check there had been no concerns from previous employments.
37. Further, there was no record of medication or food hygiene training despite the Appellant confirming that S5 was the main carer to Service User A in relation to the administration of medication and food preparation. In Ms Needham's opinion, this meant that staff did not have the knowledge and skills to keep service users safe and to provide a safe and effective service.

38. Ms Needham also asked to see the personnel file for S6. This was eventually found but information was not readily available. The Disclosure and Barring Service check (DBS) was dated 16 March 2016 although S6 had worked a shift on 3 March 2016. The Appellant claimed that DBS had been applied for whilst S6 was working for another provider but could not produce a document to show this was the case. This meant that S6 was working without a valid DBS check for a period of 13 days.
39. Further, there were no character or previous employment references on file. The Respondent could not be assured of the staff members' suitability to work with vulnerable people as the necessary checks on their appropriateness and good character had not been carried out.
40. There were also three filing cabinets which contained numerous staff files. Ms Needham looked at 14 randomly selected staff files. The staff at the time of inspection did not support Service User A, however, there was potential they could work with other service users (including as Ms Dennis accepted at the hearing, Service User A) if further care packages were agreed.
41. Of the 14 files, 10 did not have references, either character or professional, 7 did not have an employment history or a DBS check and one did not have a work permit. One contained a residency permit that had expired on 15 February 2016 but the Appellant had told Ms Needham that this individual's last recorded shift was on 8 May 2016. The Appellant had failed to make any further checks to ensure the person was eligible to work in the UK.
42. Ms Needham concluded that she could not be assured that staff were of a suitable character to work with vulnerable people because DBS checks had not been completed and references and work histories had not been sought. This indicated to her that staff were working without proper checks in place and service users were at serious risk of harm because the Appellant did not have safe recruitment practices.
43. Ms Needham observed that there was a safeguarding policy and procedures available but there was no record of staff having been trained in the procedure. In her view, this lack of staff training placed individuals at the risk of immediate and continued risk of harm.
44. Ms Needham looked at a time sheet for S5 for April 2016 where there were gaps for 26, 28 and 30 April 2016. In Ms Needham's view, this was evidence of three missed calls to Service User A. The Appellant told her that S5 had not undertaken the calls but it had in fact been herself who dealt with them. However, she was unable to produce any record to confirm this. Further, there was no evidence of incident monitoring despite the Appellant herself accepting there had been at least one occasion where Service User A had not received the medication due to a missed call. This meant that the Appellants did not

have in place robust systems in order to monitor the service and mitigate risks.

45. There was also no feedback from service users. The Appellant told Ms Needham that they asked for feedback on each occasion. There was no record that this feedback had been considered and if improvements had been made. The care and support plan for Service User A had not been reviewed and revised since the beginning of the care package.
46. Ms Needham was also concerned as the Appellants had advised the Respondent that they planned to provide a service to people living with dementia, mental ill-health, eating disorders, learning disabilities or autistic spectrum disorder. However, in all personnel files that she looked in, she saw no reference to training in these or any other service specific topic.
47. The staff had not received medication administration training needed to provide a safe and effective service. In her view, this meant that the Appellant did not have arrangements in place to adequately support service users with their individual care needs when and if care packages were agreed. Prospective service users were therefore at risk of receiving care and support from untrained and unskilled workers.
48. The office was disorganised and information Ms Needham requested was not readily available. The documents asked for at the inspection were either unavailable or difficult to locate. The Appellant was unable to produce the audits and checks required to ensure a safe and quality service was provided. There were no audits in place to monitor and assess the quality of care provided. This meant individuals who used the service were at risk of receiving care and support that was not safe because the Appellant had no systems in place to check the effectiveness of the service provision.
49. Ms Needham also requested information regarding the training programme, quality monitoring arrangements, complaints procedures, staff supervision and appraisal plans, service user and relative feedback, incident and accident records and safeguarding referrals and statutory notifications. None has been provided.
50. Ms Needham had serious concerns regarding the safety of Service User A. The level of concern was serious enough for Miss Needham to contact the Stoke-on-Trent Local Authority, who in turn arranged for the local enablement team to cover the calls. The Appellant was in full agreement with this course of action. The Appellant also confirmed to Ms Needham that she would arrange medication administration training with an external trainer.
51. Following the inspection, a management review meeting was held on 18 May 2016. A discussion took place about the level of risk the service presented to individuals and it was agreed that a Notice of

Proposal to cancel the provider and registered manager's registration was appropriate. The risk was high but the Respondent decided that urgent action was not required as the one person receiving care from the provider was now receiving care from the Local Authority and therefore any immediate risk was reduced.

52. The Respondent then decided that it would send a section 64 letter. This was pursuant to Section 64 of the 2008 Act and gives the Respondent powers to compel a specific person to provide them with documents, information, records and explanations. This letter was sent out by recorded delivery on 19 May 2016 with the deadline for a response from the Appellant of 4pm on 23 May 2016. The deadline for responding to the section 64 letter was extended to 25 May 2017 by the Respondent. However, the Appellant failed to provide any information regarding the two main carers for Service User A so the Respondent was therefore unable to establish their suitability. Notices of Proposal to cancel the provider and registered manager's registration were issued on 20 June 2016.
53. Ms Needham was concerned that despite the Appellant having had a number of opportunities to produce evidence, she had produced some evidence very late including records of the missed calls. The Appellant was asked to provide information at the inspection, after the inspection, following the section 64 letter, at the written representation stage to the Notice of Proposal and during the Tribunal process. However, she had not produced this and now sought to introduce extracts on the day of the hearing. There was also some concern expressed about the authenticity of such records. For example, the spot check records were dated a year after the spot check had taken place and some had a completion date missing.
54. Mr Francis Burrows submitted that there was a serious risk to a person's life, health or well-being. He confirmed that the Respondent made its decision in line with the enforcement policy and the decision tree. This applies across all decisions. The decision to cancel is made having assessed all the evidence based on the individual circumstances of the case. He denied any discrimination in this case.
55. Ms Acosia Nyanin gave evidence around the decision making process. She had been informed that there was sufficient evidence that the threshold for taking action under section 17 of the 2008 Act had been met. She also considered that this was the most appropriate and proportionate option in order to protect service users as the Appellants had failed to allay the Respondents concerns. Ms Nyanin confirmed that the service is assessed independently under the Respondent policies and procedures.

### **The Appellants Case**

56. The Appellant's position was that the Respondent must have been satisfied with her process and procedures as it had registered both Glory as service provider and her as registered manager. As part of that initial registration process, they had visited her offices and had remained there for about six hours.
57. Glory had moved from Hanley town centre because of health and safety issues. This was on the advice of the health and safety consultant. At the time of the inspection on 17 May 2017, they were still working on "*maintaining order*" following the move. Therefore, the information requested at the inspection was in boxes and could not be located.
58. Service User A had been with them since 28 January 2016. His care plan was due for review on 28 May 2016. However, she states his support was continually being monitored and any changes would have triggered an immediate review. She was adamant in this case that his plan was working fairly well.
59. There was only one occasion when there was a mixup as to who was attending the call with Service User A. This was on 3 March 2016. She denied putting Service User A at risk. His family were very much involved in his care. His sister was also his next of kin and took responsibility for his medicines and for taking him to his medical appointment.
60. She denied putting service users at the risk of harm. She accepted that S5 was an asylum seeker and worked as a volunteer. However, she referred to an employment contract she had with him but made it clear he was only paid his expenses. She acknowledged that as a volunteer he could withdraw his services at any time. However, she emphasised that she knew him personally and did not think he would do that.
61. The Appellant had been carrying out spot checks and referred to documentation produced at the hearing. She acknowledged that some on the documents evidencing the spot checks did not enter a date for completion (Annex 59 E) and a number related to Guardian Care (not related to these proceedings) and even then the record showed that the spot check was carried out in 2015 but the document was completed a year later in 2016 (Annex 59 C).
62. All staff went to the induction training. This included communication and record-keeping, data protection and confidentiality, health and safety, fire safety, duty of care, equality and diversity and other aspects outlined in their compliance documents. They had commissioned an external training organisation based in Leicester called Health Links services to deliver the training. Each staff member was issued with a handbook which outlined most of the issues relating to the job role and what action to take in different situations.

63. She referred to evidence in the bundle (D828) referring to training entitled "*Induction Training, Theory and Practice Covering Quality Assurance Systems in Compliance with the Health and Social Care Act 2008 (Regulation 2010) the 2010 Regulations*". Her case was that quality assurance meant everything was covered including medication. Under cross-examination, after it was pointed out to her that the regulations referred to the old regulations, she stated that this was training on the 2014 regulations. There was also a training plan in place for the staff to take up level 2 and Level 3 Diploma in Health and Social Care
64. She believed that the Appellants had a robust recruitment and selection policy and procedure. She did not accept that there were no staff records available in respect of S5. She had known S5 for a long time. She had, at the time, been waiting for information from him in order to complete the DBS. However, she accepted that his application form was not complete as he had not declared his immigration status nor details of any medical conditions such as TB.
65. Miss Dennis claimed that she had been given false information by the Respondent. They had asked her to provide details of the staff on her books and she should not have had to do that. She accepted that any of the staff on her books could have potentially provided care for Service User A and other potential service users.
66. In her view, she had been discriminated against on the grounds of race. She referred to the providers who had been identified as failing to meet standards but whose registration had not been cancelled. She believed that it was the Respondent who was in breach of the 2014 regulations.
67. Mr Kevin Yoxhall gave evidence around his attendance and support to staff at the training day on 17<sup>th</sup> of October 2016. He confirmed that he undertook a health and safety inspection of the previous premises and in doing so advised the Appellants that the premises were not adequate for the business requirements of the company.

### **The Tribunal's Conclusions with Reasons**

68. We took into account all the evidence that was presented to us both orally at hearing and in the hearing bundle.
69. We concluded that regulated activity is being, or has been at any time, carried on otherwise than in accordance with the relevant requirements. The relevant requirements are set out in 2014 Regulations. We concluded that the Appellant were in breach of Regulation 12 (safe care and treatment), Regulation 17 (good governance) and Regulation 19 (fit and proper persons employed). Our reasons are set out below.

70. We found all of the Respondent's witnesses to be credible. Their oral evidence was consistent with the documentary evidence they provided in support of the Respondent's case.
71. We found the Appellant was unclear and evasive in her responses to questions at the hearing. It became very clear at the hearing that the Appellant did not understand and/or appreciate the extent of her obligations. For example, the Appellant confused the Health and Social Care Act 2008 and the regulations in her responses. It was clear to us that she was not aware that the Regulations had changed in 2014 despite asserting that she had been on the Respondent's website and had read the guidance. Her lack of understanding of the regulations was demonstrated by the fact that in her closing submissions she argued that it was the Respondent who was in breach of the specific regulations as set out in 2014 regulations.
72. We were not presented with any persuasive evidence that the Respondents had discriminated against the Appellant in any way. The two other providers referred to by the Appellant in support of her claim of discrimination were dealt with under the same process but involved completely different inspectors. The Appellant did not provide any supporting evidence beyond her own assertion to support her position that she was discriminated against. We had no reason to doubt the evidence provided by the Respondent that its decision was based on its enforcement policy and the decision tree. The decision taken by the Respondent in this case involved consideration of the evidence and involved going through a series of processes. No one individual was responsible for taking the decision to cancel the registrations.
73. We did not find that the Respondent gave false information to the Appellant. The Respondent had requested evidence of staff members who would potentially be working with Service User A. The Appellant in her oral evidence accepted that all the staff, including those that she supplied on an agency basis, could potentially have work with Service User A. We, therefore, did not understand why, given that she accepted all those staff could potentially work with Service User A, she objected to providing their information to the Respondent.
74. It was clear to us that the Respondent has provided the Appellant with a number of opportunities to provide them with information they required in order to demonstrate her compliance with the Regulations. However, she had failed to do so. We acknowledged that at the time of the inspection, the Appellant had moved premises. We could not understand why, given that there was only one Service User, those records could not be found at the inspection or shortly thereafter. The service user was vulnerable, in the early stages of dementia and therefore the Appellants should have ensured that the records were readily available in case any issues arose.

75. Further, the Appellants have been given a number of opportunities since then to produce the documents. They have had opportunities following the inspection, after service of the Section 64 letter in May 2016, at the Notice of Proposal Stage and during the course of this Tribunal process to produce evidence such as that relating to the missed calls and to staff member details. The Appellants have simply failed to produce that information and when they have produced it, it has been in a drip like manner.
76. We shared the Respondent's concerns regarding the authenticity of the records. For example, the spot check records either related to matters not relevant to these proceedings, were uncompleted (annexe 59E) or were completed a year after the spot check (annexe 59C). Furthermore, the staff training records produced referred to the wrong regulations.
77. In our view, the Appellants only had one service user at the time of the inspection. This was a vulnerable service user who had been assessed as requiring three 30 minute calls per day. We found that there was no risk assessment in relation to Service User A. In our view, one should have been produced given that Service User A was suffering from the early stages of dementia and staff were attending to him in his house. We were told that a risk assessment existed in relation to him receiving care in his home but none was produced either before or during the hearing.
78. We found that S5 who was caring for him had not had a DBS check carried out. He was an unpaid volunteer who could have withdrawn his services at any time. There was no documentary evidence demonstrating what would happen if this was the case. The Appellants lack of understanding was demonstrated by the fact that she referred to an employment contract with him as evidence of him being unable to leave despite accepting that she had no legal right to avoid him leaving.
79. It was clear that S5 had received insufficient training on medication administration. We did not accept the Appellants argument that the induction training covered medication sufficiently. The documentation produced regarding the training course was confusing and the Appellant's evidence did not provide any clarity as to what had happened. The training certificates produced referred to old regulations and the Tribunal was asked to infer that training on "quality assurance" covered all aspects of what was legally required. We declined to do so as it was not clear to us what was covered and the Appellant's own evidence was not consistent on this issue. We found that she was confused on the extent of her legal obligations as she was unaware on the first day of the hearing that the Regulations had changed.



80. We found that there were missed calls on 26, 28 and 30 April 2016. Although the Appellant produced an activity record sheet on the day of the hearing, this appeared to be an extract of a much larger document which has not produced. The extract produced does not even include the whole of 30 April 2016. Furthermore, no explanation was provided as to why there had been a delay of over a year in producing this document.
81. We were also concerned that the activity record sheet contradicted the information given to the inspectors at the inspection on 17 May 2017. For example, the Appellant told the inspector that she had personally attended the calls on 26, 28 and 30 April however, the Appellants activity record shows that this was completed by s5 and S6 only.
82. The Appellant complained that she should have been inspected before the hearing. However, it was not clear to us how this would occur given that she claimed that she had no staff and no service users since the inspection on 17 May 2016.
83. We found that she was in breach of regulation 19. Initially, this was a difficult task for the panel given that the Respondent had redacted all details of individual staff members from the bundle and replaced it with a numerical list. However, it was agreed by both the Appellants and the Respondent agreed that staff member SS was referred to as staff member 6 in the bundle and staff member JR was referred to as staff 7. We proceeded on that basis.
84. The Appellant accepted that the other staff available to her could potentially support Service User A. We accepted Ms Needham's evidence that those staff did not have references, either character or professional, employment histories or DBS checks on the basis that the Appellants have not produced these documents. We acknowledged that the Appellants had moved into new premises, nevertheless, at the time, she only had one service user and two members of staff and therefore it would be reasonable to expect the Appellants to furnish the Respondent with that information within a reasonable period of time. The fact that she wasn't able to do so for over a year undermines her argument that it was there but couldn't be found on the day of the inspection.
85. We concluded that the Appellants lacked any insight into her failings despite the clear evidence against them. The Appellants don't accept there have been any failings and Miss Dennis was adamant that there has been no breach of the regulations. She has, therefore, not taken any steps to address the issues which led to the notice of decisions being issued in the first place. We were troubled by this lack of insight when the evidence demonstrated clearly that there were failings and there were serious breaches of regulations.

86. We, therefore, concluded that the decisions to cancel the Appellants registrations were proportionate and reasonable for the reasons set out in our decision.

**Decision**

87. The appeal is therefore dismissed.

88. The decisions of the Care Quality Commission dated 4th October 2016 cancelling the registrations of Glory Comfort Care Limited as the service provider and of Miss Faith Dennis as the Registered Manager are both confirmed.

**Judge H Khan**  
**Lead Judge Primary Health Lists/Care Standards**  
**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 12 July 2017**