

First-tier Tribunal Care Standards

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

[2024] 01033.EA-W
Neutral Citation Number: [2024] UKFTT 00911 (HESC)

Heard on 1 - 2 October 2024 at Mold Crown Court

**Before
Judge Meleri Tudur,
Mr Matthew Turner, Specialist Member
Ms Rachael Smith, Specialist Member**

BETWEEN:

Pleasant Valley Care Ltd

Appellant

v

**Welsh Ministers
(Care Inspectorate Wales)**

Respondent

DECISION

At the oral hearing on the 1 and 2 October 2024:
The Appellant was represented by Ms S Rickard, counsel.
Mr J Edwards, counsel, represented the Respondent.

APPEAL

1. The Appellant appeals under section 26 of the Regulation and Inspection of Social Care (Wales) Act 2016 against the decision of the Welsh Ministers by the Care Inspectorate Wales (the Respondent) made on the 15 December 2023 to cancel the registration of Pleasant Valley Care (Shropshire) Ltd (the Appellant) as a domiciliary care provider in respect of the regulated activity of personal care.

Preliminary matters

2. Both parties made preliminary applications in the ten days leading up to the final hearing. These were considered on the papers and dealt with at the start of the first day of the hearing.

3. The Tribunal allowed the Appellant's application dated 26 September 2024, to submit two further witness statements from Mrs K.C. Akpoteni, dated 25 September 2024, a witness statement from Mrs Jennet Marie Hartrick and permission to call her as an additional witness to give oral evidence at the hearing. The Respondent's application for late submission of a supplementary statement by Miss W Sims was also allowed and permission granted for Miss Sims to join the hearing to give oral evidence by video rather than in person.

4. During the course of the hearing, the Respondent made a further application to admit late evidence, in respect of Home Office guidance for the period from June to August, regarding the Skilled Workers Sponsorship Scheme. The application was opposed by the Appellant. The Tribunal refused the admission of the evidence on the basis that it was not relevant to the issues for consideration and determination by the Tribunal.

5. On the first day of the hearing, the Tribunal made a restricted reporting order pursuant to rule 14 of the Tribunal Procedure Rules 2008 in relation to the proceedings, preventing the publication of any documents or information which might lead members of the public to name any vulnerable service users or members of staff from another branch of the business, who were not directly involved in the current proceedings.

Mode of hearing

6. The hearing was held at Mold Crown Court with a CVP link to enable participation by a witness by video and observation of the public hearing. No connectivity issues were encountered during the two day hearing.

THE LAW

7. The Respondent regulates the service provided by the Appellant in accordance with Sections. 2 & 3 of the Regulation and Inspection of Social Care (Wales) Act 2016 (the Act).

8. Section 4 of the Act sets out the general objectives of the statutory scheme:

"The general objectives of the Welsh Ministers in exercising their functions under this Part are—

(a) to protect, promote and maintain the safety and well-being of people who use regulated services, and

(b) to promote and maintain high standards in the provision of regulated services."

9. Section 14(1) of the Regulation and Inspection of Social Care (Wales) Act 2016, makes provision about applications for cancellation of registration as a service provider and states;

"14. (1) If a service provider applies to the Welsh Ministers for cancellation of the provider's

registration, the Welsh Ministers must grant the application unless they have taken action with a view to cancelling the registration under section 15 or 23.”

10. Section 15 of the Act provides:

“15 Cancellation without application

(1) The Welsh Ministers may cancel the registration of a service provider on any of the following grounds—

(a) the service provider no longer provides any regulated services;

(b) the Welsh Ministers are no longer satisfied that the service provider is a fit and proper person to be a service provider (see section 9);

(c) there is no responsible individual designated in respect of each place at, from or in relation to which the provider provides a regulated service (and the time limit for applying to vary the registration prescribed in regulations made under section 11(2) has expired);

(d) the service provider or a responsible individual designated in respect of a place at, from or in relation to which the provider provides a regulated service has been convicted of, or has been given a caution in respect of, a relevant offence in connection with a regulated service provided by the service provider;

(e) any other person has been convicted of, or has been given a caution in respect of, a relevant offence in connection with a regulated service provided by the service provider;

(f) a regulated service provided by the service provider is not being provided in accordance with the requirements mentioned in section 7(1)(d) so far as applicable to that service.

(2)....

(3) No cancellation may be made under this section unless the requirements of sections 16 and 17 are met (but this does not affect the Welsh Ministers' power to urgently cancel a registration under section 23).”

11. Section 16 of the Act provides:

“16 Improvement notices

(1) This section applies where the Welsh Ministers propose to—

(a) cancel the registration of a service provider under section 15, or

(b) vary a provider's registration under section 13(3) or (4).

(2) Before cancelling or varying the registration the Welsh Ministers must give an improvement notice to the service provider.

(3) An improvement notice given under subsection (2) must specify—

(a) the ground on which the Welsh Ministers propose to cancel or vary the registration and, in the case of a variation, the manner of the variation,

(b) action the Welsh Ministers think the provider must take, or information the provider must provide, in order to satisfy them that cancellation or variation on the basis of that ground is not appropriate, and

(c) a time limit within which—

(i) the action must be taken or the information must be provided, and

(ii) the service provider may make representations.

(4) The service provider may make representations to the Welsh Ministers before the expiry of the time limit specified in the improvement notice and the Welsh Ministers must have regard to those representations when deciding what to do under section 17”

12. S.17(1)(c) of the Act provides:

“17 Notice of decision following improvement notice

(1) If the Welsh Ministers are satisfied that—

(a) action specified in an improvement notice has been taken, or

(b) information so specified has been provided, within the time limit specified in the notice they must notify the service provider that they have decided not to cancel or vary the provider's registration on the ground specified in the improvement notice.

(2) If the Welsh Ministers are not satisfied that information specified in an improvement notice has been provided within the time limit specified in the notice they must give the service provider a decision notice stating that the provider's registration is to be cancelled or varied on the ground specified in the improvement notice.

(3) If the Welsh Ministers are not satisfied that action specified in an improvement notice has been taken within the time limit specified in the notice they must either—

(a) give the service provider a decision notice stating that the provider's registration is to be cancelled or varied on the ground specified in the improvement notice, or

(b) notify the provider—

(i) that the action has not been taken,

(ii) of a new date by which the action must be taken,

(iii) that, following that date, an inspection under section 33 of the regulated service or place to which the improvement notice relates will be carried out, and

(iv) that, following that inspection, if the action has not been taken they will proceed to cancel or vary the provider's registration on the ground specified in the improvement notice.

(4) If, after the inspection, the Welsh Ministers are satisfied that the action specified in the improvement notice has been taken they must notify the service provider that they have decided not to cancel or vary the provider's registration on the ground specified in the improvement notice.

(5) If, after the inspection, the Welsh Ministers are still not satisfied that the action specified in the improvement notice has been taken they must give the service provider a decision notice stating that the provider's registration is to be cancelled or varied on the ground specified in the improvement notice.

(6) A decision notice given under subsection (2), (3)(a) or (5) must—

(a) state the reasons for the decision (including the grounds for cancellation or variation), and

(b) explain the right of appeal conferred by section 26.

(7) A decision stated in a notice given under subsection (2), (3)(a) or (5) takes effect—

(a) if no appeal is made against the decision, on the day after the last day of the 28 day period referred to in section 26(2), or

(b) if an appeal is made, on the day specified by the tribunal in determining the appeal or on the day the appeal is withdrawn.”

13. The burden of proof is upon the Respondent who must establish the facts upon which they rely to support cancellation on the balance of probabilities.

14. The powers of the Tribunal on an appeal are set out in section 26 of the Act. They are to—

(a) confirm the decision;

(b) direct that the decision is not to take effect (or, if the decision has taken effect, direct that the decision is to cease to have effect);

(c) substitute for the decision appealed against another decision that the Welsh Ministers could have made;

(d) make such other order (including an interim order) as the tribunal thinks appropriate.

15. The issue is determined afresh and is not a review of the Respondent's decision. The Tribunal may take into account circumstances and evidence since the Notice of Decision was issued.

16. In essence, the Tribunal has to determine and make findings of fact about breaches of relevant requirements and if so, decide whether cancellation of registration is a proportionate and necessary step.

Background

17. The Appellant was registered as a provider of domiciliary care by the Respondent on the 25 February 2022, to carry out the regulated activity of “personal care”, pursuant to s2 of the Act. The Responsible Individual was Mrs K C Akpoteni and she is the sole director of the company. Her husband, Mr E Akpoteni is employed as the company secretary.

18. On 14 November 2022, the Appellant was added as an approved domiciliary care provider with Powys County Council and began delivering care and operating as the “Shropshire Branch” in January 2023. The Tribunal was not presented with evidence that this was a separate company or operation from that which operated in England at the same time, although an office was set up in Oswestry.

19. In January 2023, the Respondents were made aware that the Appellant had been operating within Wrexham City Council area, delivering domiciliary support since about October 2022. Their registration permitted them to provide domiciliary support service in the Powys Regional Partnership area which does not include Wrexham City Council.

20. On the 21 March 2023, the Respondent carried out its first inspection of the service. The inspection was carried out by Ms Sue Hale and Ms Claire Rickard. Safeguarding concerns had been raised in respect of a service user in January 2023 by Mr Craig Williams, on behalf of the Councillor Gwynfor Thomas. Concerns had also been raised about the ability and skills of the Appellant's staff.

21. Following the inspection, safeguarding concerns were raised by the inspector, Ms Sue Hale, regarding the welfare of the staff employed through the Home Office Skilled Workers' Sponsorship Scheme and referrals were made to both Powys and Wrexham Councils' safeguarding teams.

22. Following the inspection, six Priority Action Notices were issued to the Appellant and a Professional Concerns meeting was arranged by Powys County Council on the 28 March 2023 to discuss the issues identified. As a result, Powys County Council placed the service into the "Escalating Concerns" process, with a corrective action plan in place.

23. Extensive failures to comply with the Regulations had been identified and the six Priority Action Notices issued to the provider, with a completion date for compliance set as the 30 June 2023, were as follows:

Regulation 66 – Supervision of management of the service

Regulation 15 (1), 15 (3), 15 (5), 15 (6), 15 (7) – Personal plan

Regulation 36 (2) – Supporting and developing staff

Regulation 35 (1), 35 (2), 35 (3) – Fitness of staff

Regulation 7 (1) – Requirements in relation to the statement of purpose

Regulation 6 – Requirements in relation to the provision of the service

24. The Appellant acknowledged that a regulated service had been delivered in an area which their registration did not allow them to operate and that in providing the Wrexham service between October 2022 and January 2023, they were operating without registration.

25. On the 31 March 2023, Mrs Akpoteni contacted Powys County Council by email copying in the Respondent, letting them know that the Appellant wanted to withdraw from the Powys domiciliary care contract, giving one month's notice.

26. A further professionals meeting was held on the 14 April 2023, when it was reported that the Appellant had withdrawn the notice and was requesting additional work and support through a corrective action plan.

27. On the 18 April 2023, a district nurse made a safeguarding referral following a visit to a service user discharged from hospital the previous evening, who were found the

following morning, still in the hospital gown in a seat with the hospital bedding at their feet and without adequate care provided.

28. Given the level of the Respondent's concern the Appellant was the subject of consideration at the Respondent's Securing Improvement and Enforcement Panel on the 20 April 2023 under the Response Pathway. The outcome of the panel meeting was that the Respondent decided to hold a provider meeting with the Responsible Individual to emphasise the concern and to address the issues. The decision was also made to issue a notice of proposal to vary the conditions of registration and prevent the Appellant from taking on any new packages of care.

29. On the 10 May 2023, the Respondent issued a notice of proposal to impose a condition to prevent the provider from taking on any new packages of care. The Appellant did not submit any representations in response to the notice and the notice of decision imposing the condition was issued on the 15 June 2023.

30. On the 11 May 2023, the Inspection report and Priority Action Report was published. The breaches of regulation 6, 15, 35, 36 and 66 were risk assessed in the report as "Major" with likely re-occurrence. Breach of regulation 7 was assessed as 'moderate' risk. All were to be remedied by the 30 June 2023.

31. A second safeguarding referral was made by the district nursing team in June 2023 due to a service user being left in an undignified and unpleasant situation following poor catheter management by the Appellant's staff.

32. A second inspection was carried out by Ms C Rickard and Mrs Y Matthews on the 5 July 2023. The inspectors concluded that insufficient progress had been made to address the areas of non-compliance identified at the inspection in March 2023.

33. Mrs Akpoteni informed the inspection that the Appellant had been inspected by the Home Office in response to concerns about the provider not meeting the requirements of the Skilled Workers' Sponsorship Scheme. The Home Office had suspended the Appellant's Sponsorship Licence whilst an investigation was carried out. During the feedback meeting, the inspectors informed Mrs Akpoteni that she could not take on any further packages of care in any form, as a result of the condition imposed on the company's registration.

34. Following the inspection and prior to the issue of the report, the Respondent held a provider meeting with Mr and Mrs Akpoteni to allow the provider to discuss how they intended to address the non-compliance and any mitigating circumstances ahead of the

service being the subject of discussion at the Respondent's Securing Improvement and Enforcement Panel.

35. The Securing Improvement and Enforcement Panel met again on the 10 August 2023 to discuss the findings of the most recent inspection and the continued non-compliance with the Priority Action Notices issued in May 2023. The Inspection and Priority Action Report were issued to the provider on the 4 August 2023. The panel concluded that an Improvement Notice to cancel the registration of the service should be issued if improvements were not made with a three month timescale.

36. An Improvement Notice was issued under s16(2) of the Act on the 17 August 2023. Representations were invited from the Appellant but the Appellant did not offer representations by the deadline of 14 September 2023. The Improvement Notice required the provider to comply with the requirements by the 11 November 2023.

37. The Respondent's reasons for issuing the notice included the following comment: *"CIW consider it is necessary and proportionate to issue an Improvement Notice prior to cancelling the provider's registration because the inspection, feedback meeting and provider meeting provides evidence the service provider has not taken appropriate action to address the areas of non-compliance identified at the inspection in March 2023 and does not fully recognise the risk this poses to people using the service. The Improvement Notice requires the service provider to take action to address the issues and provide assurances the service is delivered in a way which promotes people's health, safety and well-being, having regard to the requirements of the Regulations."*

38. On the 25 August 2023, the Respondents were informed that the Home Office overseas Sponsorship Licence held by the Appellant had been revoked.

39. The Respondent met with Powys County Council at a Joint Interagency Monitoring Panel meeting on the 30 August 2023 to discuss how the revocation of the provider's sponsorship licence would affect people currently receiving a service and the staff working for the Appellant. Powys County Council agreed that all current packages of care would be transferred back to the council on the 16 October 2023, once the staff employed by the Appellant were no longer employed by the provider.

40. The provider is required to notify the Respondent pursuant to regulation 60 of the Regulations of any event which prevent or could prevent the provider from continuing to provide the service safely – the Appellant notified the Respondent of the revocation of the licence on the 31 August 2023.

41. On the 6 September 2023, Mrs Akpoteni notified Ms Rickard, the Inspector, that the provider intended to continue to provide a service and keep clients safe following the withdrawal of their sponsorship licence.

42. On the 12 September 2023, the Appellant took on an additional funded private package of care and delivering support, in breach of the conditions of registration and the condition imposed following the Notice of Decision in June 2023. The explanation provided was that the contract had been accepted by Mr Akpoteni, without the Responsible Individual's knowledge and that it had been assumed because the recommendation had come from Powys County Council to the client, the package of care had been approved. The Appellant did not have any other staff working at the service who were not employed through the sponsorship scheme and were not therefore in a position to be able to continue providing support to the service users.

43. The Improvement Notice provided time until the 14 September 2023 for the Appellant to respond to the Notice of Proposal. No representations were received.

44. The Appellant contacted the Respondent on 5 October to seek advice about being able to evidence compliance with the Priority Action Notices and Improvement Notice, given they were intending to stop delivering care and employing staff. The Respondent responded on 13 October 2023 with advice and the Appellant responded to confirm they understood and had noted how to proceed.

45. On the 18 October 2023, the Appellant notified the Respondent's inspectors, Claire Rickard and Yvonne Matthews that all Powys clients had been successfully transferred back in house to the council from the 16 October 2023. The email also confirmed that there was one private client left who had been referred on the 12 September 2023 by Powys Adult Social Care services. Mrs Akpoteni acknowledged that the package of care should not have been taken on and confirmed that the family had been informed and were looking for another provider.

46. On the 24 October, Ms Rickard sent the Appellant an email stating that the provider was to be discussed once again at the Respondent's Securing Improvement and Enforcement Panel to discuss the breach of the conditions of registration and to consider further enforcement action.

47. In response, Mrs Akpoteni, by email, confirmed that the private package of care would end on the 25 October. She explained that following a period of reflection and advice from an expert, *"...we realise that our 'lack of research' as put by the previous inspector, has caused us to make numerous mistakes and we need time to put things right. We never meant to cause any harm and simply were working on our business and dealing with the*

multi-faceted challenges that we faced along the way nearly every day in the last year and we just tried to handle the problems in the best way we could and with the resources we had available.

At this juncture, I would like to apologise unreservedly, hold my hands up as the RI and take responsibility for the state of affairs. We now wish to withdraw the Powys registration, so that we can go back to the drawing board, make all the necessary improvements and then hopefully make a fresh application if the CIW allows. I have submitted a withdrawal request via the CIW portal and have also emailed the CIW contact email..”

48. On the same date, a letter was sent to both Powys County Council and to the Respondent, requesting the withdrawal of the Appellant’s registration from the Powys Regional Partnership area following poor ratings at the most recent inspections. The provider had concluded that it was in the best interest of clients and the community to withdraw the registration and stated: *“This decision is made with the intent of addressing these issues comprehensively with the goal of reapplying for registration once we have made the necessary improvements.”*

49. At a providers’ meeting on the 27 October 2023, it was recorded that Mrs Akpoteni had explained the difficulties encountered with the delivery of the care in Sandwell, Birmingham, Staffordshire, Powys and Wrexham. She notified the attendees that *“..it has been a constant battle last month and a half.”* Sandwell had terminated their contract with the provider on the 4 September after seven years and Birmingham issued a section 114 notice cancelling their service due to the situation regarding the Council’s budget.

50. Following the meeting, Ms Rickard responded to the application to voluntarily withdraw the registration by referring the Appellant to the provisions of s14(1) of the Act which stated that an application must be granted unless the Respondent has taken action with a view to cancelling the registration under section 15 or 23.

51. The Appellant was discussed at the meeting of the Improvement and Enforcement Panel on the 7 November 2023 following disclosure and admission of the further breach of conditions of registration by accepting a private care package on the 12 September 2023. The decision was made to reinspect the service again in line with the timescales of the Improvement Notice dated 17 August 2023, which set a deadline of the 11 November 2023 for compliance.

52. The reinspection took place on the 13 November 2023 and the Respondent was unable to fully test some areas of noncompliance due to the Appellant having stopped delivering packages of care on the 25 October 2023 and was no longer employing any staff within the Powys Regional Partnership area.

53. In those areas capable of inspection, some improvements had been made and partially met, but could not be fully tested due to there being no provision of the service at the date of inspection and there was still non-compliance with Regulations 6, 15 and 66. The statement of purpose had been updated and the action met; the fitness of staff criterion was deemed as met because there were no staff and no new recruitment had taken place since the previous inspection and the staff records were consolidated onto a HR system. The regulation providing for supporting and developing staff was also considered to be met. Despite the improvements, the Respondent concluded that the service provider had not ensured the service is managed effectively and safely in line with people's best interests and the requirement of the Regulations. The current inability to take on new packages of care had been taken into consideration and the Respondent concluded that it was necessary and proportionate to issue a Notice of Decision to cancel the registration based on the evidence from the three inspections, provider meetings and actions and breach of conditions of registration and failure to address the areas of noncompliance.

54. On 15 December 2023, the Respondent issued a Notice of Decision, under sections 17 and 15 of the 2016 Act, to vary the Appellant's registration by removing Pleasant Valley Care Limited as a regulated service. The Notice provided the right of appeal to the Tribunal against the cancellation decision.

55. Mrs Akpoteni emailed the Respondent on the 15 December acknowledging receipt of the cancellation notice and confirming that whilst they were disappointed at the outcome of the inspections, they would reflect, amend, rebuild and implement the learning "*..for a better company*". A further email dated 20 December 2023 sought further clarification about the impact of the Notice of Decision on future applications for registration and provision.

56. The Appellant appealed the decision on the 15 January 2024. The grounds of appeal were that the evidence of the Respondent was accepted to a large extent but that improvements had been made to the service to enable it to be delivered safely and that the action to cancel was disproportionate in light of the progress made since the last inspection.

57. In the Response to the appeal, the Respondent maintained that the decision to cancel was appropriate and proportionate and that the notice of appeal did not provide any new evidence or information to justify a change of position by the Respondent. Nevertheless, the response made concessions regarding the improvements to the compliance with Regulations 36(2) and Regulations 7 (1) confirming that both had been met "*..albeit to a restricted means.*"

58. The Respondent's position was that the Appellant continued to be in breach of Regulations 66, supervision of management of the service; regulation 15(1), (23), (6), and (7) relating to personal planning; Regulations 6 – provision of the service. It was also submitted that compliance with Regulations 35(1), (2) and (3) were also causing concern despite an earlier indication that the action had been met. The issue by the time of the response was that the Appellant had been non-compliant in their ability to provide a fit and proper workforce in both England and Wales, had been unable to take on additional packages of care or retain staff at the time of inspection, the Respondent's concern about the ability to provide and sustain a fit and proper workforce had returned.

59. In preparation for the final hearing, the Appellant had completed a Scott Schedule and confirmed that of the 19 issues raised, the Appellant admitted eight of them, partly admitted another eight and denied three of the alleged breaches of regulation. They were the allegation that the Responsible Individual does not have sufficient understanding of the responsibilities of the role of Responsible Individual; that the Responsible Individual failed to act on advice in a timely manner meaning that the service users' safety and welfare has been compromised and that Powys County Council decommissioned all of their contracts with the Appellant on the 1 September 2023 because of repeated concerns about the service.

The Evidence

60. The Tribunal had before it a bundle of documents running to 896 electronic pages, together with the additional witness statement evidence submitted by the parties in advance of the hearing.

61. The majority of the factual chronology set out above was not in dispute. Mrs Akpoteni, both in correspondence and in oral evidence at the hearing, acknowledged that there had been past failures to comply with the statutory requirements and apologised for the Appellant's failures.

62. Three issues were however in dispute. They were identified in the Scott Schedule as being:

- a) The Responsible Individual does not have sufficient understanding of the responsibilities of the role of Responsible Individual;
- b) the Responsible Individual fails to act on advice in a timely manner meaning that service users' safety and welfare has been compromised.
- c) Powys County Council decommissioned all of their contracts with the Appellant on the 1 September 2023 because of repeated concerns about the Service;

63. Ms Claire Rickard, one of the inspectors who conducted the inspections of the service in March, August and November 2023 gave evidence confirming the contents of the inspection reports and stated that it was her view that there was no option available to the Respondent by November 2023, other than to cancel the registration of the Appellant, given the very limited progress they had made in addressing the issues contained in the Priority Action Notices and the Improvement Notice over a period in excess of six months. She stated in evidence that she did not believe a lesser action was available and that cancellation was the only likely outcome.

64. She described a conversation she had had with Mrs Akpoteni following the final inspection in November 2023, when she explained that the Appellant had received advice from solicitors to let the business wind down which led to Ms Rickard's view that the Mrs Akpoteni had no intention of continuing to operate in Powys, which did not give her confidence that there was a commitment to deliver the service. The statement of Mrs Hartrick had not provided her with the reassurance necessary to make her change her mind about the cancellation decision: in fact, her evidence was that reading the statement gave her the impression that it supported her findings and confirmed the areas requiring improvement.

65. In her witness statement of the 4 June 2023, Mrs Akpoteni submitted that despite having received a Cease and Desist letter on the 7 December 2023 from the Sandwell Slavery and Human Trafficking Operational Partnership, there were no ongoing criminal investigations and no further action being taken against the Appellant in respect of the allegations made against them and referenced in the Cease and Desist letter.

66. In view of the denial by Mrs Akpoteni of any ongoing investigation, a second witness statement was obtained from Miss Wendy Sims, now Programme Manager for Modern Slavery, Human Trafficking and Exploitation for Sandwell Council and Miss Sims was called to give oral evidence at the hearing. In her witness statement dated 9 April 2024, Miss Sims identified that initial concerns regarding the Appellant's involvement in Human Trafficking and Modern Slavery were raised on the 18 July 2022. In her second witness statement dated 20 September 2024, Miss Sims confirmed that the investigation into the activities of the Appellant was still ongoing and significant. She was not cross examined on any aspect of her evidence.

67. The Tribunal admitted as late evidence a witness statement from Mrs Hartrick, the social care consultant engaged by the Appellant to address the issues in the service. In her witness statement which was submitted in draft on the 25 September 2024, Mrs Hartrick set out her experience as a Market Manager in Commissioning Centre of Excellence in the delivery of domiciliary care, supported living and extra care and community living in Birmingham City Council over a period of 33 years, up to her departure

six years ago. She subsequently set up her own company, A1 Domiciliary Care Consultancy Ltd. She works part time as the Nominated Individual for a Health and Social Care provider providing domiciliary care services in England.

68. Her statement confirmed that she had been approached by Mrs Akpoteni to advise on improving the Respondent's service in December 2023 but did not have the capacity to do so then. The situation had changed over time however, and she had been able to offer her services and those of her consultancy for two days a week, on site from April 2024, to undertake the following tasks among others: review and rewrite the company's statement of purpose, develop new standards, a management framework and a review of policies and procedures in line with the new CQC Single Framework.

69. The purpose of the exercise was to work to a timescale that would enable the CQC to be invited to reinspect the provider in England, with a full audit being concluded before the inspection. In her witness statements, Mrs Hartrick described how she had worked with the Appellant to revise their policies and procedures and advised on action to be taken to address the deficits in the service. She confirmed in oral evidence that she had agreed with the CQC inspector in August 2024 that the shortcomings had not yet been fully addressed to a position where the service was ready for a further inspection. She acknowledged that the improvements continued to be a "*work in progress*." In her statement, she confirmed that at the end of September 2024, the Appellant's company was now in a position to invite CQC to reinspect the English service with a view to being able to accept new service packages in England by the end of October 2024.

70. Mrs Hartrick's evidence was that her previous experience of the Appellant was that they did not have any difficulties until they used the sponsorship licence arrangements. She suggested that Mrs Akpoteni was overwhelmed by the consequences of a poorly run scheme and could now return to being a confident and compliant provider. Her proposal was to work with the Appellant as their Nominated Individual and Responsible Individual for a minimum period of two years to develop them into being an excellent provider in both England and Wales.

71. In oral evidence, Mrs Hartrick gave evidence about her current employment as a Nominated Individual in England on a part-time basis and described the difficulties she had encountered with her current employer. She stated that she had a verbal agreement with Mrs Akpoteni to join the Appellant and become the Responsible Individual for the Welsh service working two days a week, whilst during the same period, relocating to live in Devon. She had issued an ultimatum to her current employer to provide assurances about her position by the 4 October 2024 and would be leaving her current employment if the assurances weren't forthcoming.

72. She described how she had been persuaded by her employer to set up a company of which she was the sole director with the intention of expanding the service to provide children's homes and other care settings. She had however found that the employer had not paid her tax and national insurance contributions for the last two years and consequently, had reported the matter to HMRC. She was proposing to dissolve the company and move on. She confirmed that at the time of the final hearing, the Appellant had five members of staff including Mr and Mrs Akpoteni covering the Birmingham and Powys branches and one of those members of staff was on long term sick leave. At the time, the Appellant had one client.

73. Mrs Akpoteni gave evidence that she had acknowledged the errors made in the setting up and running of the Powys service and that she had not fully understood the different requirements of the statutory framework. She accepted that at the time of the inspections, she had not been fully aware of the responsibilities of the Responsible Individual but knew the position now, having undertaken training to address her own lack of knowledge about the Welsh statutory framework. She apologised for the shortcomings of the service during 2022 – 23 explaining that she had been overwhelmed by the many issues going on around her both in terms of the Appellant's company and her own personal role of elected councillor.

74. In relation to the acceptance of the contract in Powys, she explained the difficulties caused by the lack of public transport, which required the Appellant to provide two pool cars for the staff to go to work and confirmed that she had failed to appreciate in advance the different working environment from the Appellant's usual workplaces of Birmingham and Sandwell. They had been surprised by the unexpected snowfall in January 2023, the lack of public transport, the distances involved in a rural population and the uncertainty regarding the arrival of foreign workers under the sponsorship scheme.

75. When asked about the concerns raised about the staff's understanding of English and inability to follow the instructions for preparation of a ready meal, she attributed the difficulties to the heavy regional accents of some of the staff, rather than an issue with their competency in the English language. She maintained that the new members of staff had been properly trained before being sent out to service users but that they had not then performed to the expected standard on the job. She confirmed that in total, the Appellant had offered sponsorship to about 150 workers from abroad but they had not arrived at the same time and had sometimes arrived with their families, which caused problems with accommodation. At the same time, the contracts for services in Birmingham and Sandwell had been cancelled and the Appellant had found themselves unable to provide the level of work anticipated for the workers. Because they did not meet the residence threshold and had lived in the UK for less than 3 months, DBS checks could not be obtained for them and the Appellant had struggled to find training providers to deliver the All Wales Induction

Framework. Sourcing training delivery to suit the demands of the business was expensive and problematic: they had tried to deliver to cohorts of staff because it was expensive to source individual training.

76. Mrs Akpoteni was adamant that the service now met the required standards and that improvements had been made through the investment of time, money, effort and resources to update policies, introduce new software systems to manage staff and rotas as well as regular staff meetings and structure to the work. It was her intention that Mrs Hartrick should become a director of the company and the Responsible Individual in Wales and the Nominated Individual in England, with Mrs Akpoteni remaining the Registered Manager for both services.

77. The Tribunal read further evidence in the witness statement of Rebecca Baldwin, District Nurse, dated 17 June 2024 and Samuel Evans, Powys County Council, dated 22 May 2024.

SUBMISSIONS TO THE TRIBUNAL

78. In the notice of appeal, the Appellant submitted that in view of the fact that there were only two employees now left in the Powys operation, namely Mr and Mrs Akpoteni, they were able to take the lessons learned and enhance the English service. The selection and vetting systems are in place with full recruitment checks in place for the English operation which has five members of staff. The introduction of a new system of rota and care planning are in place and regular team meetings have been introduced. The notice acknowledged that the new recruitment service in Powys had not yet been put to the test and therefore evidence to support the assertion that this was effective was not available.

It was submitted that it was not proportionate to cancel the registration because of the engagement of the Appellant in improving the service by securing the services of Mrs Hartrick as a consultant and proposed Responsible Individual, the acceptance of past breaches and future proposed improvements.

79. Ms Rickard, on behalf of the Appellant, submitted that despite the fact that proportionality is not specifically mentioned in the legislation, any consideration of cancellation of registrations should be undertaken having considered the risk of harm to users. She submitted that the absence of any service users using the service reduced the risk to nil and that it was therefore disproportionate to cancel the registration.

80. The Appellant's position remains that the Respondent's decision was and is not a justified and proportionate decision in all the circumstances. The Appellant submits there

have been significant improvements made since November 2023. The Appellant seeks that the Respondent's Notice of Decision dated 17 December 2023 does not take effect.

81. The Respondent submitted to the Tribunal that the decision to cancel remains reasonable and proportionate. The breaches had been identified in March, July and November 2023. The outcomes obtained from provider meetings and Priority Action and Improvement Notices, indicate that the provider does not have sufficient oversight of the running of the service. The breaches are serious and the Appellant was operating without registration in Wrexham in January 2023 and took on an additional package of care in September 2023, contrary to the conditions of their registration as amended by Notice of Decision in June 2023. Whilst some improvements have been made to the processes, all the deficits have not been addressed and evidence has not been produced to indicate that the improvements proposed have been embedded in the practice. It was submitted that if the decision to cancel does not take effect, service users will be at risk of receiving care not compliant with the relevant regulations and would be placed at risk of harm.

CONCLUSIONS AND DECISION

82. The Tribunal has taken into consideration the documentary evidence provided, the oral evidence at the hearing and the statutory framework under the Act and its secondary legislation.

83. We have noted that about eighteen months have passed since the Appellant was first notified of breaches of the regulations, at the first inspection in March 2023, with deadlines set to ensure compliance by the 30 June and subsequently by the 11 November 2023 for the Improvement Notice. Despite the time allowed to carry out that work, the improvements were still a "work in progress" at the end of August 2024 and this was acknowledged by Mrs Hartrick in her oral evidence.

84. The Priority Action Notices issued in May 2023 covered very significant areas of deficit, the most important of which were the five "Major" areas where reoccurrence was likely. These were not matters to be taken lightly. They affected the care planning, delivery and management of the service, the fitness and training of staff. These go to the core of care delivery and such serious breaches required immediate and effective action by the Appellant, yet such action was not undertaken.

85. Although the Appellant's case was based on acknowledgement of the past faults and omissions and apologies for those errors, we were provided with only very limited evidence of action being taken in response to the notices. The absence of any representations in response to the Priority Action Notices, the Notice of Proposal to impose a condition, the Improvement Notice and the Notice of Proposal to cancel, was indicative

of an unacceptable approach to serious regulatory issues. The lack of response demonstrated a lack of understanding of the seriousness of the concerns and the urgency of taking action. No attempt was made to try to explain why the provider had committed such serious breaches of the regulations, despite the fact that the oral evidence at the hearing from Mrs Akpoteni was that she had been overwhelmed by the issues surrounding her both in the professional and personal spheres. It was of additional concern that no attempt had been made, despite several provider meetings, to explain to the Respondent and to the Powys County Council why the breaches had occurred and what the issues were.

86. We noted that Mrs Akpoteni acknowledged the support provided by the LAs in Wales and from the Respondent themselves in trying to assist to ensure that the deficiencies were addressed. The evidence presented did not suggest however, that she had understood the urgency of remedying the breaches of the regulations nor the seriousness of the Appellant's situation in the context of the Notices of Proposal. Such a lack of understanding shows a serious failure to appreciate the role and responsibilities of the Responsible Individual and confirms the findings of the Respondent that the Responsible Individual lacked sufficient understanding of the role and the responsibilities.

87. We noted that in oral evidence, Mrs Akpoteni referred to the time, money, effort and resources dedicated to improving the service, the many obstacles placed in her way which took her attention away from the service and the urgent need to address the deficiencies and whilst she apologised for her failures, we did not get the impression that she was prepared to take personal responsibility for any of the failures. There were explanations which were directed at others, at the circumstances beyond her control but no clarity about how the time, money, effort and resources were reflected in an improved service for the service users. We did not accept her explanation of the staff failure to understand the instructions on the preparation of a ready meal was a reflection of different regional accents: the instructions on a ready meal are in writing and if the staff could not understand the instructions, it would have been a difficulty with the written English rather than regional accents. We were not satisfied on a balance of probability that the changes made had been embedded or could be reflected in improved practice or service delivery. We noted with concern that despite Mrs Hartrick having been involved for two days a week since April 2024, the improvement of the policies and paperwork was still not complete at the end of August 2024.

88. We noted that the evidence of Mrs Hartrick was brought into the appeal at a very late stage. Her evidence was that she had been involved in the overhaul of the Appellant's service since April 2024, yet she was only mentioned as a potential witness on the 25 September 2024. At that point, her evidence was that she had already been working for two days a week on site since April 2024, yet, by the end of August 2024, the improvement

of the Appellant's structure and management was still a work in progress. In what was, by then, such a very small organisation, we found that evidence surprising, particularly where the CQC inspector had stated that the employee records were not complete – and there are only five employees in total working for the company. The evidence confirmed that the Appellant was not responding in a timely fashion to advice and guidance provided.

89. Whilst we recognise Mrs Hartrick's experience in the sector, we noted very carefully her evidence about her current employment, being persuaded by her current employer to set up of a company of which she is the sole director to expand the business, yet not being able to deliver on that intention. We noted her insistence that she could not work in any organisation without a written contract, yet was prepared to explain that her new arrangements with the Appellant would not crystallise formally until January 2025 and that there was not yet anything in writing. Her evidence in relation to the proposal that she should become the Responsible Individual for the Welsh operation appeared inconsistent with her ultimatum to her current employer for confirmation of the current employment arrangements by the 4 October 2024. She was assured the confirmation she sought would not be forthcoming but did not address the question of what would happen if they did. Furthermore, her clear intention to move to Devon when she has sold her current home seems to create a long distance relationship with the Appellant which is unlikely to be sustained in the longer term of even two years as she was proposing in her statement.

90. We were concerned that Mrs Hartrick appeared to have been taken in by her current employer to the extent of setting up the limited company on the strength of his promises of expansion and greater service delivery, whilst at the same time being defrauded of her tax and national insurance contributions. Having stated in oral evidence that she did not now undertake any business without a written agreement, she also confirmed that her agreement for employment and partnership with Mrs Akpoteni was verbal and would not be committed to paper until at least the 8 January 2025. In those circumstances and noting that she confirmed her intention to move to Devon as soon as she has sold her house, having already sold two rental properties she owned, we were not persuaded that she had made any real commitment to the Appellant's business other than to offer her consultancy services on a day fee basis. We were not persuaded that the evidence supported the conclusion that a firm arrangement had been made for sound future supervision of the service by a Responsible Individual and we concluded that the breach of regulation 66 had been remedied.

91. We accepted the evidence that with Mrs Hartrick's support, new software and care planning resources have been obtained and in future, staff will be given an app to put on their phones to track whether they have read training materials and accessed relevant documents. We conclude however that such an arrangement is not a guarantee that the information has been inwardly digested or understood and consequently, until it is tested

in the field, and demonstrated through robust auditing to be effective, we cannot be reassured that this will resolve the issues around the training of new staff.

92. The issue of staffing and recruitment is a live issue, now that the evidence confirmed that the Appellant has only five members of staff and one client in Birmingham. We noted that both Mrs Akpoteni and Mrs Hartrick had attended a Home Office seminar recently, and the possibility of their applying for a new sponsorship licence was not denied. There is no certainty that a sponsorship licence will be granted and given the acknowledgement by Mrs Akpoteni that the previous scheme was a cause of the difficulties encountered in 2022-23, suggests that it may not be a solution to the staffing issues and could exacerbate an already difficult situation.

93. On the current evidence, it is questionable whether the Appellant's business is sustainable: we had concerns that Mrs Akpoteni had twice, during the short time that the Appellant was contracted by them to provide services, informed Powys County Council that they wished to voluntarily withdraw the Appellant's service with one month's notice, to then change their mind and return to providing care on both occasions. We conclude that this was indicative of a Responsible Individual who was prone to changing her mind and could not be relied upon to deliver a consistent and stable care service. Such a situation is not a reassuring one in terms of consistent service delivery.

94. We concluded that the evidence of the Respondent pertaining to the continued failure to comply with the registration requirements were ongoing and had not been sufficiently addressed even after a period of 18 months, since they were first raised with the Appellant. The evidence presented did not identify how the staffing issues were to be overcome or how the Appellant would address the serious nature of the risk to service users from insufficiently trained staff and inadequately prepared care plans. We accepted Ms C Rickard's assessment that throughout the inspections, the Appellant had not been able to demonstrate an understanding of the risk presented to service users by a poorly run service.

95. There were very real concerns raised about the care planning and the assessment of those service users who were using the service and whilst there was some positive evidence about the quality of the care, once the provider had become established, the underlying structure and management of the service remained very unsatisfactory up to the last inspection in November 2023. Although Mrs Akpoteni dismissed the safeguarding concerns as being, in effect, teething troubles, we concluded that they were sufficiently separated in time (January, April and June 2023) to demonstrate an ongoing issue which had not been resolved up to the point where the cancellation notice was issued. The evidence presented in the appeal did not persuade us that the importance of the

assessment and care planning had been understood nor the breach of the regulation addressed.

96. Ms S Rickard on behalf of the Appellant submitted that there was no risk to the service users by December 2023 because there were no users by that point. We do not accept this submission since the legislation and the provision in section 14(1) of the Act specifically prohibits the voluntary withdrawal of registration where enforcement proceedings have been commenced. In those circumstances, the argument that a service has no service users cannot be fatal to a cancellation decision. If the registration were to continue, the Tribunal must consider the risk to new service users and our conclusion is that the risk from the Appellant remains.

97. We reached the conclusion on the basis that we were not satisfied that the Responsible Individual had a grasp of her responsibilities in respect of the service, that the evidence of new software systems went some way to address the issues in relation to the writing of care plans, but would not resolve the absence of a structured assessment of the service user prior to starting the care provision; we were not satisfied on the evidence presented, that the revised policies were now compliant with the statutory requirements in Wales. The focus and the emphasis by Mrs Akpoteni and Mrs Hartrick was on the English service, with the provision in Powys very much a secondary consideration, even after the enforcement proceedings were commenced. The fact that Mrs Hartrick was not brought into the proceedings as a witness until 25 September 2024 demonstrates that her contribution from April to September does not appear to have been appreciated by the Appellant and was not evidenced clearly in the appeal proceedings up to that point. We were not satisfied on the evidence that we could accept her as the new Responsible Individual, given the verbal agreements not evidenced in writing with the Appellant and the uncertainty about the position in relation to her current employment and her future plans. That is not to question Mrs Hartrick's competence, but is a reflection of the uncertainty of the future plans.

98. We were not persuaded by the evidence that the Appellant had the staff or would be able to safely recruit and train staff in order to deliver care packages. The serious failures in relation to staffing, lack of references and lack of DBS checks, were all matters which placed service users at risk and the Appellant was not able to demonstrate that these issues had been resolved in the period up to the 25 October 2023, when they ceased to deliver care in Powys. They could have demonstrated and evidenced those matters at any time up to the end of the delivery of care and it was particularly damning that the evidence of the CQC inspector when he visited the Birmingham office was that the employee records were still incomplete in August 2024 when Mrs Hartrick had already been working with the Appellant for two days a week since April and the Appellant had only five employees.

99. Whilst the certificates demonstrated that some training had been undertaken in November and December 2023, the dates of the proposed training in 2024 showed that the Responsible Individual should have been at training on the day of the hearing – yet that evidence remained in the papers, seeking to persuade the tribunal that appropriate training was being delivered. We were not persuaded that all the listed training had been attended, with only some certificates for November and December 2023 available in evidence. On a balance of probability, we concluded that the issues relating to staff training had not been resolved.

100. On the three issues in the Scott Schedule disputed by the Appellant, we concluded that: the Responsible Individual, Mrs Akpoteni, had not demonstrated sufficient understanding in the regulatory structure, the importance of ongoing compliance and the need to address issues promptly when they were highlighted to the Appellant. Taking over 18 months to address breaches did not demonstrate an understanding of the importance of the regulations and compliance with them or appreciation of the risk presented to service users by the breaches. The dismissal of safeguarding issues as one-off incidents did not demonstrate engagement with the importance of person centred care delivery. Both the acknowledgement that the Appellant had delivered services in Wrexham over a period of months without registration and had accepted a new care package in September 2023, contrary to the condition imposed on its registration by the Respondent in June 2023, was evidence that showed at best a lack of understanding and at worst, contempt for the regulatory regime.

101. We have accepted the evidence that the Responsible Individual, by her own admission had failed to understand the separate regulatory arrangements in Wales, had not responded in a timely fashion to the Priority Action Notices and Improvement Notice and had made only limited progress over a considerable length of time in response to those notices. The lack of understanding of the responsibilities of the Responsible Individual's role and the failure to register a manager with the Respondent all indicate that this was not a service that was effectively or properly managed. The challenge in the appeal against the first two grounds which were contested as set out in paragraph 59 above therefore fails.

102. In relation to the termination of the Powys Contracts on the 1 September 2023, we accept the evidence of Mr Evans, Strategic Commissioning Manager at Powys County Council that the contract was terminated by the Council rather than by the Appellant. Mr Evans' statement confirms that concerns began to be raised from December 2022 and centred around the readiness and infrastructure of the Appellant and related to the recruitment plan, lack of business continuity planning and arrangement for the staff on arrival. The statement confirms that notice was given to the provider on the 1 September

2023 to terminate all contracts and to facilitate an exit strategy. The challenge to the third breach which was challenged by the Appellant therefore also fails.

103. The reasons for concluding that the breaches of regulations remained were that on the basis of the evidence, we concluded that the breaches of Regulation 66 – Supervision of management of the service, Regulation 15 (1), 15 (3), 15 (5), 15 (6), 15 (7) – Personal plan, Regulation 36 (2) – Supporting and developing staff, Regulation 35 (1), 35 (2), 35 (3) – Fitness of staff and Regulation 6 – Requirements in relation to the provision of the service still remained at the date of the hearing. The only breach remedied by the Appellant had been confirmed by the Respondent to be Regulation 7 (1) – Requirements in relation to the statement of purpose.

104. We conclude that the Respondent's decision to cancel the registration was both proportionate and necessary, noting the Appellant's failure to remedy the breaches identified within a reasonable time and the continuing failure to demonstrate compliance even now 18 months after the first concerns were raised. As a result, the appeal fails.

ORDER

1. Pursuant to Rule 14 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, No.2699, an order is made prohibiting the disclosure or publication of the content of Ms Sims statements to any party or persons not privy to these proceedings and prohibiting the disclosure or publication of any information or matter likely to lead members of the public to identify any service user or member of staff of the Appellant, not directly involved in the proceedings.
2. The appeal is dismissed.
3. The decision of the Respondent to cancel the registration of Pleasant Valley Care Ltd is confirmed.

Judge Meleri Tudur
Mr Matthew Turner (Specialist Member)
Ms Rachael Smith (Specialist Member)

Date Issued: 16 October 2024