



“Registering the Right Support”: Tribunal rules against CQC

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The First Tier Tribunal has this week issued a welcome judgment, criticising CQC for its decision to refuse an application by Centurion Health Care Limited to vary the conditions of its registration to add an additional location to their registration in order to provide services to people with a learning disability and/or autism. In its judgement, the Tribunal concluded that CQC has “*fallen into the very trap that their own guidance warns against*”.

Since the publication of CQC’s policy, Registering the Right Support, in June 2017, we have seen a marked increase in refusals of applications to register new care homes or vary existing conditions of registration to increase capacity of existing services.

In Registering the Right Support, CQC states: “*We do not wish to be overly prescriptive, and it is not our intention to create a ‘one size fits all’ approach*” and “*We will not adopt ‘six’ as a rigid rule for providers of any service*”. However, in our experience so far, CQC appears to have adopted a blanket approach to applications, interpreting and applying its policy too strictly, in particular where applications are for more than six residents or if it appears to CQC new services have been developed as part of a “*campus style*” development or “*congregate setting*”.

As a result of CQC’s approach, many providers, who had agreed plans for new developments with local commissioners before the publication of Registering the Right Support, have found their applications for registration turned down. There have been long delays in processing applications, providers have had to modify their plans and spend additional financial resources to comply with CQC’s recommendations prior to decisions being made on their applications. Meanwhile, properties have been left empty and some people with learning disabilities have been waiting in inappropriate placements. In such circumstances, providers have had no choice but to pursue their cases to appeal, despite CQC awarding those same providers “Good” or even “Outstanding” ratings for providing high quality, person centred services.

In this latest judgement, the Tribunal considers that CQC has failed to look “*at the proposals holistically*” and to consider whether they “*would meet the specific and specialist needs of the service users*”. The Tribunal also criticised the fact that CQC could show no evidence that enquiries had been made into the service users’ needs and the provider’s track record in meeting those needs, agreeing with the provider that consideration should be given to the suitability of urban and rural areas in accordance with service user’s right to have a choice.

Moreover, the provider had shown clear evidence of local need and the Tribunal pointed out that, as a commercial organisation, Centurion would not have undertaken this project without a clear understanding of the market.

The Tribunal's comments echo the concerns which have been voiced by providers about CQC's current interpretation of Registering the Right Support and the national guidance including Building the Right Support and the accompanying Service Model.

However, providers should bear in mind that this decision turns on the particular facts of the case and that an earlier decision by the Tribunal in August 2018 found in favour of CQC. Nonetheless this is an encouraging decision and one which may trigger CQC to reconsider its approach in the future.

We are currently acting for a number of providers, supporting them with their applications to register and/or vary conditions of registration in the context of the requirements of Registering the Right Support. We can provide specialist legal advice on this issue and if you wish to discuss the implications of the judgement and what it means for you, please contact us on the details above.