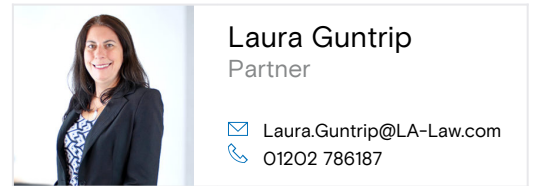




AUTHOR / KEY CONTACT

Tribunal Criticises CQC



The First Tier Tribunal ended 2019 with an unusual and interesting case in which the panel were clearly unimpressed with CQC and voiced criticisms of the inspectors involved. In fact, the Tribunal began its judgment by stating:

“This is a case which, in the tribunal’s view, the CQC has done more to lose than the Appellant (save for its substantial financial input into improving the fabric and furniture) has done to win. The entrenched positions taken by certain witnesses and a reluctance to concede any point were profoundly unhelpful.”

Although the facts of this case (ASC Healthcare Limited v CQC) are slightly unusual, it is an interesting case because it included many of the behaviours which we often see from CQC inspectors whilst we are representing providers in defending enforcement action, such as cancellation of registration. Behaviours which were described by the Tribunal in this case as “disingenuous” or “smacked of unfairness”. There also appeared to be some elements of embellishment in the witness statements of the CQC Inspectors, with some information conveniently omitted and other allegations changing during the hearing.

The case concerned The Brightmet Centre, a purpose-built independent hospital providing in-patient services for individuals with learning disabilities or severe autism. It had been registered with CQC since 2013. It had been rated as Good in 2018 but concerns were raised in December 2018, leading to visits from the CCG which became concerned about staff knowledge of the Mental Capacity Act, staff training and other matters.

CQC inspected in June 2019. On 2 July, CQC made a statutory request for information “in order to make a fair decision based on all the relevant information”. However, before the responses were due, CQC served a Notice of Decision imposing conditions. After a further inspection in July 2019, CQC served a further Notice of Decision under its urgent powers, removing the provider’s registration for this location with immediate effect. Reasons given by CQC were poorly maintained environment, failure to consistently protect privacy and dignity, failure to update risk assessments following incidents, lack of understanding of the Mental Capacity Act and failure to obtain references and DBS checks prior to new staff commencing work.

The Tribunal noted that this caused problems, not only for the provider but also CQC and the CCG which had placed residents at the service. Alternative placements would be difficult to find. As a result, NHS England had discussions with CQC and offered the provider support and supervision from Mersey Care NHS Foundation

Trust (Mersey Care) to enable the provider to continue to operate the service whilst it appealed the Notice of Decision. CQC confirmed it would allow ASC to continue to operate the service on the basis of a service level agreement with Mersey Care. This meant that the service would be operating under Mersey Care's registration but essentially continued with ASC's staff and part time support from four members of management from Mersey Care who allocated actions to ASC staff, monitored and oversaw their progress with ASC management.

Immediately prior to the hearing in October, CQC re-inspected the service and noted significant improvements. However, CQC insisted that this inspection had been an inspection of Mersey Care only (as the provider with registration at that time, ASC's registration having ended in July when the Notice of Decision was served). The CQC Inspectors would only engage with the members of Mersey Care management during the inspection and did not speak to any of the ASC staff, with the exception of one. CQC insisted that this inspection did not evidence that ASC was capable of improvement and that it had been an inspection of Mersey Care only, with all improvements noted being attributable only to Mersey Care. Only 4 Mersey Care staff were working part time at the service, the remainder of the staff were those employed by ASC and ASC had also invested approximately £250,000 in refurbishing the premises since July 2019 and planned to spend a further £650,000 on further refurbishment.

However, CQC also sought to rely on this inspection to make allegations against ASC. During the hearing, the CQC Inspectors alleged that the Mersey Care staff had made certain statements about ASC. The Inspectors had not asked ASC about those matters or given any opportunity for ASC to comment. The Tribunal commented that *"[the Inspector's] various explanations as to why she did not seek to engage with ASC staff, or ask them for their account of adverse comments ostensibly made by Mersey Care staff smacked of unfairness; a breach of one of the very basic principles of natural justice.....'hear the other side' One particular example is the allegation that ASC staff had deliberately attempted to downgrade items ordered to ones of a cheaper specification, which under cross examination changed to her merely having been told that certain items were being returned as they were unsuitable"*.

The Tribunal also noted that, in respect of the one member of ASC staff the Inspector did speak with *"although she took three and a half pages of notes of their conversation not one word appeared in her witness statement, she merely stating that she had the opportunity to speak with [her]"*.

The Tribunal favoured the evidence of ASC staff and allowed the appeal, restoring ASC's registration subject to conditions. Interestingly, the Tribunal also noted that CQC would be anxious to re-inspect the service within 3 months and that inspection should be undertaken by a fresh inspection team.

If you would like more information, please contact our [healthcare solicitors](#).