

Number 33

## Settling disputes with the Regulator on conditions – a gap in the Act and the Tribunal’s procedural powers

The Commission for Social Care Inspection is able to impose a condition on a provider’s registration under the Care Standards Act 2000, either at the time of granting the application for registration<sup>1</sup> or subsequently<sup>2</sup>. If the provider objects, and the matter is not resolved when the Commission considers the provider’s representations, there is a right of appeal to the Care Standards Tribunal (CST)<sup>3</sup>.

The great majority of appeals to the CST in care homes cases do not go to a full hearing but are either withdrawn or settled on agreed terms. The CST’s decision in the recent case of *Time Focus Ltd v CSCI*<sup>4</sup> has however revealed a technical gap in the Act and the CST’s procedural regulations making it difficult to give effect quickly to settlement terms agreed between the parties where they involve a new condition.

Time Focus was registered in respect of a care home in Portsmouth. The sole director was the Responsible Individual. The company appealed against a decision to impose a condition on its registration and the appeal was settled before the hearing. The agreement provided for a revised condition to apply under which the RI should have no direct or indirect contact with any service user or member of staff of the home, except in very limited circumstances. The CST was asked to make an order disposing of the appeal proceedings on the agreed terms, by exercising its jurisdiction under the Act<sup>5</sup> in one of two ways:

- either confirming the original condition appealed against and then varying it by directing that the agreed new condition should have effect
- or directing that the original condition should not have effect and that the agreed new condition should have effect.

It was only with some reluctance that the CST agreed to make an order, in the second of these ways. It said however that it should never have been asked to impose the agreed condition or any other condition, and gave detailed reasons for that view.

In essence, the CST’s main concern seems to have been that it was in no position to make a judgment on the merits of the settlement whether the agreed condition was appropriate. Such a decision has to be made by the full Tribunal and is not within the limited jurisdiction of the President or nominated chairman acting alone.<sup>6</sup> It suggested that the better course would have been for the parties to agree that the appeal should be withdrawn, upon which the proceedings would be dismissed by the chairman. The parties should then agree between themselves what new condition should apply, and the CST could record the existence of the agreement for a new condition in a *Tomlin* schedule which would not be part of the decision itself.

<sup>1</sup> CSA, s 13(3)

<sup>2</sup> CSA, s 17(4)(c)

<sup>3</sup> CSA, s21(1)

<sup>4</sup> Case ref [2005] 477.EA, reported at <http://www.carestandardtribunal.gov.uk/decisions.htm>

<sup>5</sup> CSA, s 21(3) and (5)

<sup>6</sup> Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, r 33

CARE HOMES BRIEFING

RadcliffesLeBrasseur  
5 Great College Street  
Westminster  
London SW1P 3SJ

Tel +44 (0)20 7222 7040  
Fax +44 (0)20 7222 6208  
LDE 113

6-7 Park Place  
Leeds LS1 2RU

Tel +44 (0)113 234 1220  
Fax +44 (0)113 234 1573  
DX 14086 Leeds Park Square

25 Park Place  
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035  
Fax +44 (0)29 2034 3045  
DX 33063 Cardiff 1

info@rlb-law.com  
www.rlb-law.com

The Commission had taken a different view, that there were statutory obstacles in the way of its imposing a new condition in the agreed terms. It was obliged to follow the procedure laid down in the Act, involving giving notice of a proposal and of the right to make representations, followed by a formal decision and notification of the right of appeal to the CST.

While it is possible for the provider to agree, as part of the package of terms for settling the appeal, not to make representations or appeal against the new condition, that is arguably not as satisfactory a way of giving effect to the agreement as for the CST to make an order for a new condition.

The CST concluded its decision in *Time Focus* by suggesting that amending legislation might be required. It said:

*The Commission and the [CST] President might wish to suggest to the Department of Health that legislation should be introduced to amend the Care Standards Act 2000 so as to enable the Commission to give immediate effect to an agreement to compromise an appeal by varying or imposing a condition of registration without going through the usual statutory procedure. Alternatively, the Secretary of State might be invited to amend regulation 33 so as to require the President or nominated chairman to give effect to any agreement to vary or impose a condition of registration that is part of the settlement of an appeal.*

All concerned in appeals under the Care Standards Act have an interest in keeping costs down and ensuring that agreed settlement terms have a clear legal status. It is to be hoped that the problems encountered in *Time Focus* will be ironed out in the way suggested by the CST. We shall report the outcome in a future Briefing.

**Stephen Janisch**  
© RadcliffesLeBrasseur  
September 2005

For more information on Care Home Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

Future editions can be received by email. Please e-mail: [marketing@rlb-law.com](mailto:marketing@rlb-law.com) or telephone 020 7227 7476.