

Our Ref: LHH/543146.00001

Date: 24th Aug 2021 Wigan Investment Centre

Your Ref: ENF1-11415769373

Waterside Drive

Wigan

By Email: HSCA_Representations@cqc.org.uk

Greater Manchester

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Citygate

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Newcastle upon Tyne

NE1 4PA

lhh@stephensons.co.uk

LHH

Dear Sir/Madam

Our Client: Mrs Rosalind Virasinghe

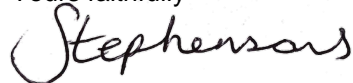
Reference: ENF1-11415769373

We act on behalf of Mrs Rosalind Virasinghe in relation to the Warning Notice dated 11 August 2021, which notifies of a failure to comply with Regulation 17(a)(b)(c) of the Health and Social Care Act (2008) (Regulated Activities) Regulations 2014.

We enclose a copy of our representations and appendices on behalf of our above named client. Please acknowledge safe receipt.

We look forward to hearing from you.

Yours faithfully



Stephensons Solicitors LLP

Please note that from 30th June 2021 we will not send or receive post via the DX. Our full office address is detailed above.

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Representations about a Warning Notice served by the Care Quality Commission

Please fill in **all parts** of this form.

Provider	Mrs Rosalind Virasinghe
Reference number on Notice (important):	ENF1-11415769373
Regulated activity:	Accommodation for persons who require nursing or personal care
Date of Notice:	11 August 2021

If you are sending warning notice representations by post, please send to:

Care Quality Commission
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

If you are sending by email, please send to:

HSCA_Representations@cqc.org.uk

Please note:

You must submit your full representations within **10 days** of service of a warning notice.

I/we wish to make the following representations:

We act on behalf of Mrs Rosalind Virasinghe ["the Provider"] in relation to the Warning Notice ["the Notice"] dated 11 August 2021, which has been served under section 29 of the Health and Social Care Act 2008 ["the Act"], and notifies of a failure to comply with Regulation 17(a)(b)(c), Good Governance, of the Health and Social Care Act (2008) (Regulated Activities) Regulations 2014 ["the Regulations"].

We refer to the Commission's guidance document, 'Warning Notices: Guidance for registered providers and managers' dated February 2020 ["the Guidance"], which confirms on page 5 that providers may make representations against a Warning Notice if:

- it contains an error;
- it is based on inaccurate facts;
- it should not have been issued for some other reason.

The Guidance also make clear that representations can also include reasons for why it would be unfair to publish a Warning Notice.

We wish to make representations against this Notice on behalf of the Provider on the basis that this Notice has been based on some inaccurate and/or incomplete facts; it fails to take into account the difficulties experienced by the Home and the relevant circumstances in place both prior to and at the time of the inspection in light of the Covid-19 pandemic; and in addition, it is no longer proportionate in light of the improvements made. It is our contention that the Warning Notice should be placed on hold until the representations and the associated factual accuracy comments have been considered in respect of the recent draft inspection report. Whilst the Provider does not seek to dispute all of the concerns raised in the Notice which have arisen following the recent inspection, it is submitted that when taken as a whole in conjunction with the published policies of the Care Quality Commission ["the Commission"] and these representations, it is no longer appropriate to proceed with the Notice at this time.

We therefore request that the Warning Notice is withdrawn at this time to reflect the Home's recent and ongoing improvements, which are outlined throughout these representations, and suggest that the Commission review this service again in a couple of months' time once the Provider's new auditing procedures and systems have been fully implemented and the care plans and medications procedures have been reviewed, including by other external agencies.

As outlined in the Guidance, the Commission is not required to publish any information about any Warning Notice that has been issued. Taking into consideration these representations, and the Provider's factual accuracy comments in respect of the draft inspection report, it is our submission that the Notice should be withdrawn and not published. In the event that the Notice is not withdrawn, we invite the Commission to utilise their discretion not to publish the Notice in the circumstances.

The Provider's representations in response to the Commission's reasons for asserting that the Provider is failing to comply with Regulation 17 are outlined below:

- 1. You, the provider, told us that you had a visible presence within the home on a day to day basis. We were told that the registered manager had only had a limited presence on site over the past 17 months and that a new assistant manager post had been created to ensure adequate management cover on site during this period. You, the provider, had failed to ensure there was adequate oversight of the service and monitoring of care delivery, systems and processes. The failure to assess, monitor and mitigate the risks relating to health, safety and welfare of service users placed service users at potential risk of harm.***

As the Commission is aware, from March 2020, the Government stipulated that there was to be a nationwide lockdown and mandated all businesses to make their employees work from home if possible. Urgent discussions were undertaken between the Provider and Mrs Preeti Virasinghe, the Registered Manager, and it was decided that the Provider would attend Eastside House daily and that the Registered Manager would work remotely from home due to the Registered Manager suffering from an underlying auto immune condition.

During this period, the Registered Manager's role included talking to the staff throughout the day and engaging in webchats via WhatsApp and Zoom. The Registered Manager also formed a WhatsApp group to keep all of the staff informed and communication was ongoing. Whilst the Registered Manager was not attending the Home, the Manager was having meetings with staff outside the Home and in her office garden at least twice a week once it was safe to leave home. The reason and rationale for this was to protect the residents, staff and the Registered Manager, who suffered with an underlying auto immune medical condition as outlined above. The Registered Manager was advised by her GP not to attend Eastside House directly. As such, the Registered Manager's lack of physical presence during the pandemic was to protect her from Covid-19, however, this did not prevent her from continuing to undertake her role in some capacity, as most people did all over the world. The Commission is invited to note that there is no regulation or law requiring people to go to work during Covid-19, but there was legislation requiring employers to have their staff work from home and to prevent them from traveling to work during the national lockdown.

It is correct that one of the home's highly experienced care assistants, Majella Travers, was promoted to Assistant Manager to assist in directly managing the Home during the Covid-19 pandemic, which is still ongoing. This was in addition to the existing Assistant Manager, Herodia Amuti, who had held this role since 2017. As such, there were two Assistant Managers in place during this period.

The Commission is asked to note that that there was a lot of extra work during this period to ensure the safety, wellbeing and health of the residents and staff. Extreme safety measures were put in place and carefully managed. At this time, the Registered Manager's entire focus was on carrying out risk assessment and enforcing their Covid-19 policies and procedures. All of the existing care planning, risk assessments, audits and documentation to ensure the safety and care of the residents was maintained and carried out as usual. The Home's management of the Covid-19 pandemic included Covid testing; ordering test kits when they became available; PPE orders; food orders; ensuing medication was being delivered; ensuring the banks were processing wages; ordering extra cleaning supplies; undertaking risk assessments; implementing policies and guidelines; generating information from Care Quality Barnet; and generally keeping everyone, including family and friends, updated on a regular basis via email and phone conversations. Implementing new audits as suggested by the inspector were being completed, however, these were not fully completed due to Covid-19 having to take precedence over everything else.

The Registered Manager was always completely aware of what was happening at Eastside House on an hourly basis, including auditing care plans and completing risk assessments from home. However, as a Registered Manager with no support from any governing entity (such as the CQC, Care Quality Barnet, PHE, CCG and NHS England), the Registered Manager conducted her own risk assessment of what needed to take priority during the pandemic, based on her 10 years' of experience at Eastside House. Following discussions with the Provider and the rest of the team, it was decided that the health, wellbeing and safety of the residents and staff would take absolute priority. As a result, the Home only had one late case of Covid-19 after a visit from the 111 GP, and the staff all remained well throughout the pandemic with minimum sick days (non Covid-19 related). It is therefore submitted that the risk assessment in place at the Home has assured no accidents, hospitalizations, injury or Covid-19 to date.

2. Risks to people were not always assessed, monitored and managed to keep them safe. You, the provider, were not completing any management audits in the areas

where we found concerns to monitor the quality of care delivered and records kept by the service. During the inspection we asked the assistant managers for copies of all of the audits completed by the service, however they were not able to provide copies of audits relating to the areas above completed after July 2020.

All service users have identified care plans with their photograph on the front of it, as well as specific risk assessments for their individual needs in their individual folders. Risk assessments are reviewed every six months or sooner, if required. Care plans are updated as and when needed, and a full review is undertaken twice per year. A yearly care plan review was undertaken in March 2020 (**Appendix EH/1**) and following this (during the pandemic), the Registered Manager was reviewing care plans and risk assessments at home every six months to check that the information contained therein was current and valid and these were signed off by the service users' next of kin.

Following the inspection, the Provider and Registered Manager created a new care plan review to reflect the inspector's feedback and this is now much more detailed. Care plan reviews have since been completed using this new template in July and August 2021 and a copy of the new care plan template is enclosed at **Appendix EH/2**. A new care plan audit has also been implemented and a copy of the audit from July 2021 is enclosed at **Appendix EH/3**.

With regards to the auditing of medications, at the time of the inspection in July 2021 and throughout the pandemic, daily checks were undertaken of the temperatures of the medication fridge and drugs trolley, as well as weekly audits of medication stock in the Controlled Drugs cupboard and medication trolley. The Provider and Registered Manager are currently in the process of implementing new and/or updated audits in respect of covert medications; homeopathic medications; and controlled drugs. In addition, Care Quality Barnet will be completing an independent audit to check the Home's overall medications compliance in due course.

In relation to accidents and incidents, a review of the accident and incident book was being completed to review the accidents and incidents within the home and to identify any trends and this was signed off within the book as completed. However, there was no formal auditing form completed. Since the inspection, a monthly accident and incident audit has been implemented and this is being undertaken by management on a monthly basis. A copy of an accident and incident audit from July 2021 is enclosed at **Appendix EH/4**. A bulletin is also being sent out to all staff every month, which provides guidance to staff based on the outcomes of audits to give feedback on areas such as accidents and incidents. A copy of a recent staff bulletin is enclosed at **Appendix EH/5**.

The Commission is invited to note that the inspector was informed during the inspection that the following audits were being completed at the time of the inspection in July 2021, however, these were not on an extensive scale due to the Covid-19 pandemic and the need to prioritise the health and safety of the residents and staff:

1. Infection control monthly
2. Medication stock on trolley weekly
3. Medication in store cupboard weekly
4. Temperature of taps weekly
5. Shower temperature weekly
6. Fridge temperatures daily
7. Fire checks BD everyday
8. Drug fridge temp daily
9. Drug cupboard daily
10. Drug trolley temp daily
11. Washing machine cleaned weekly
12. Legionnaire waters check twice a year
13. Lift check twice a year
14. Fire extinguishers check twice a year

15. Air mattresses check twice a year
16. Hoist check twice a year
17. All electrical checks yearly

Following the inspection and advice from the inspector, the Provider and Registered Manager have already completed audits for August 2021 as follows:

1. Care plan audit
2. Hoist and lift audit
3. Pressure prevention audit
4. Safeguarding audit
5. Mealtime observation audit
6. First aid audit
7. Moving and handling audit
8. Covid 19 audit
9. Slips, trips, and falls audit
10. PPE audit
11. Dignity audit

Copies of the above audits from August 2021 are enclosed at **Appendix EH/3**.

- 3. *The management of medicines was not safe. We found several areas where the service was not managing medicines safely in line with national guidance. Issues were found with record keeping, medicines stock, staff competency assessments and medicines administered covertly. You, the provider, were not completing any management audits to monitor the quality of care delivered and records kept by the service, which would have identified this issue.***

As outlined above, with regards to the auditing of medications, at the time of the inspection in July 2021 and throughout the pandemic, daily checks were undertaken of the temperatures of the medication room and fridge (**Appendix EH/6**), as well as weekly audits of medication stock in the controlled drugs cupboard and medication trolley (**Appendix EH/7**). The Provider and Registered Manager are currently in the process of implementing new and/or updated audits in respect of covert medications; homeopathic medications; and controlled drugs. In addition, Care Quality Barnet will be completing an independent audit to check the Home's overall medications compliance in due course.

In relation to medicines stock, weekly stock checks of all medications have always been completed by two senior staff. These were completed throughout the pandemic and evidence of these are enclosed at **Appendix EH/7**.

It is understood that from the recent draft inspection report that the inspectors were concerned that medicines stock did not match the MARs. On the day of the inspection, it is acknowledged that there was a discrepancy on one service user's MAR chart when medication counting was completed. However, the Registered Manager investigated this error and it was found that the medication had been refused by the service user and the tablets had been placed in the refused bottle. This had not been properly documented by the staff member as 'refused' on the MAR chart. The medication has since been returned to the Pharmacy and this is evidenced at **Appendix EH/8**.

In respect of staff training and competency assessments, the inspector was informed that all staff had drug management training in 2020, just prior to the start of the Covid-19 pandemic. This consisted of a two-day training day for all staff followed by the completion of a workbook. This was completed by all staff, however, due to the Covid-19 pandemic, staff did not have their workbooks returned. The Registered Manager has been chasing this in order to obtain copies of the staff training certificates.

All staff did have competency assessments completed in July 2021 and up-to-date medication administration training certificates were in their staff folders, which the inspector saw during the inspection. A copy of the updated training matrix at **Appendix EH/9**.

Following the inspection, the Provider and Registered Manager have compiled a medication competency booklet for all staff who administer medication, a copy of which is enclosed at **Appendix EH/10**. This is completed by staff whilst they are being assessed by a senior member of staff. All staff who administer medication have recently completed this, evidence of which is enclosed at **Appendix EH/10**. Staff will be reassessed every three months and this is monitored by management via an Excel spreadsheet. The Registered Manager has also liaised with Care Quality Barnet and they have agreed to complete medication training with staff, as well as review this new medication competency booklet in due course.

The Registered Manager will also be re-implementing spot checks, which will take place two or three times per month. During the pandemic, these spot checks could not take place due to the Registered Manager having to work remotely social distancing, although the Registered Manager was keeping in regular contact with staff and was conducting spot check checks via Whatsapp video on carers to check that they were wearing all of the appropriate PPE and to check the lounge area.

It is understood that the Commission raise a concern within the draft inspection report that appropriate assessments were not carried out before administering medicines covertly, and that there was no evidence that a person's GP or a pharmacist had been consulted to seek advice on the most suitable way to give medicines mixed with food or drink. It should be noted that covert medication was being given during the Home's previous inspection and there were no queries or concerns regarding the Home's covert medication policy and procedures at that time; the Home therefore continued undertaking the same practice. In this instance, the Commission is asked to note that the Home were acting upon the advice received from the SALT (**Appendix EH/11**). This had been discussed with the person's GP but this was not documented in writing at the time of the inspection. Since the inspection, the Home have now obtained a document from the GP which confirms that there are no contraindications when medication is being crushed and it is being administered safely. A copy of this documentation is enclosed at **Appendix EH/12**. The Provider and Registered Manager acknowledge that no best interest decision had been completed but this is now being completed and will be completed in all cases of this nature moving forwards, in line with its policy on covert medication.

4. A variety of activities and meaningful stimulation were not available to people. This meant people did not have access to these in order to promote positive well-being. You, the provider, were not completing any management audits to monitor the quality of care delivered and records kept by the service, which would have identified this issue.

The Commission is asked to note that on the morning of the first day of the inspection, the inspectors were in a room not near the lounge area and as such, it would not have been possible for them to clearly identify what activities were taking place around the Home. There are a number of service users who remain in their room (around four or five out of ten) and therefore, on the first day of inspection, one carer was in room 1 playing scrabble and the other carer was in the lounge ensuring the service users were safe and offering support.

During the afternoon of the first day of the inspection, the inspectors were sitting in a small lounge area with their backs to the service users. As such, it is again not clear how they knew exactly what was occurring in the lounge area, individual service users' rooms or in the outside area at the Home.

On day two of the inspection, the inspector again sat in the small lounge with his back to the main lounge area and it is therefore unclear how he could identify what was occurring in the service users' rooms, lounge or outside. During this second day, two of the residents were sitting outside,

which cannot be seen from the small lounge, and the Assistant Manager did point this out on several occasions.

Prior to the Covid-19 pandemic, the Home did have an Activities Co-Ordinator. However, when the first national lockdown was implemented, the Activities Co-Ordinator has to stop visiting the Home. This role is something which the Provider will be re-instating as soon as possible. However, throughout the pandemic and at the time of the inspection, the Commission is asked to note that the Home had a very clear weekly activity plan which was spread across each area, including the lounge and individual service users' rooms. A copy of this weekly activity plan is enclosed at **Appendix EH/13**. Whilst some activities could not take place, due to social distancing measures and the need to prevent external professionals from entering the Home, there was an array of weekly activities at the Home which were individually tailored to the service users' preferences. These included board games; quizzes; bingo; music therapy; pet therapy; knitting; art sessions; colouring sessions; gardening; monthly cheese evenings in the garden; and beauty therapy sessions. The Home also has an iPad so individuals can watch theatre shows, listen to audible books and music.

Both prior to and during the inspection, carers were undertaking socially distanced one-to-one activities with the residents and some residents were supported to sit out in the garden, although the inspector did not take the appropriate steps to verify this during the inspection, as outlined above. It should also be noted that, whilst activities are offered, not all residents want to engage in these and will sometimes refuse to take part in the activities offered.

5. Care plans were not person centred and did not always include details of people's preferences and choices, as a result people may not have been receiving appropriate care and support that was responsive to their needs and choices. You, the provider, were not completing any management audits to monitor the quality of care delivered and records kept by the service.

It is submitted that care plans are person centred. The care plans have names, photographs and a date of birth on every single document and they are tailored to each service user's own preferences, hobbies, likes and dislikes. It is further submitted that these care plans do have sufficient information about people's preferences and choices, as evidenced by the care plan extract at **Appendix EH/14**.

The Home did not use service users' names within the care plan packets/booklets at the time of the inspection because the Home was told by previous inspectors to take the names out of this document and to use the term 'service user' or 'client'. As such, these terms have been used in accordance with previous inspectors' advice and feedback. The care plans have remained the same throughout all inspections since this time, yet this has never been highlighted as an issue until now. In light of the feedback given at the inspection in July 2021, the Provider and Registered Manager have now changed the care plans so that the service users' individual names are used throughout the care plans, as done previously. An example of an updated care plan is enclosed at **Appendix EH/14**.

In respect of the finding that some of the information within the handwritten care plans was difficult to read or illegible, it should be noted that this relates to just one carer's handwriting. The Registered Manager is currently working with this carer to improve their handwriting and this carer has been reminded of the importance of ensuring that their handwriting is clear and legible at all times.

Conclusion

It is submitted that it would be wholly disproportionate for the Commission not to take into consideration the effects of the Covid-19 pandemic on the Home since March 2020 and the undeniably significant impact this has had on the Provider and Registered Manager's ability to sustain compliance during this period. This is in addition to the ongoing improvements that are

being made towards compliance by the Provider since the inspection on 7 and 12 July 2021, over six weeks ago, as outlined above.

During the Covid-19 pandemic, the Provider and Registered Manager did not accept any new service users into the Home to protect the residents and staff in light of the high risk of Covid-19 entering the Home; Covid-19 tests were not being undertaken regularly or accurately in the community and there were delays in the vaccination rollout. Now that the majority of people have been vaccinated and tests are readily available, the Provider and Registered Manager are now in a position to accept new service users into the Home. It is submitted that publishing this Notice would be a misrepresentation of the care provided at Eastside House. It will jeopardise and question the reputation of the Home, which is regarded very highly in their community. The Home does not use an advertising company and comes highly recommended by GPs and families who have previously used the service. The Home depends on its reputation in the community to keep their beds full and the service running.

Eastside House is also one of the few multicultural care homes in a predominantly Jewish area and to publicise this Notice will only discourage people who have been living in this community for a very long time. This Notice does an injustice to the service that they have provided, especially during the pandemic. Eastside House is one of the few care homes, if not the only care home in Barnet, to not have been taken over by the coronavirus. The Provider and Registered Manager took extreme measures to keep all of the residents and staff safe and free from Covid-19. Without any support from any outside agencies or Government entities, the Home has successfully come out of the worst of the pandemic.

In light of the above, we submit that there is no public interest served by the Commission in publishing this Notice and it would be unfair and disproportionate for the Commission to do so; publishing the Notice will place out of date and damaging information into the public domain. Instead, we request that the Commission review the service's compliance with Regulation 17 in a couple of months' time once the Provider has had a reasonable opportunity to evidence sustainable improvements its auditing, care planning and medication procedures.

The Commission, as a regulator, has a duty to be balanced and proportionate in its findings. It is therefore respectfully submitted that this would be a fair approach and one which would enable both the Commission and Provider to work together to achieve the best possible outcome for the residents residing at the Home. In any event, we would submit that, at the very least, the Notice is not published until an independent review of the factual accuracy comments is properly considered alongside these representations.

Please continue on additional numbered sheets (box will expand if used on a computer)

Tick here if you have made comments about the factual accuracy of the inspection report, and wish us to consider those comments when making a decision about publication.

Completed by (name(s))	Stephensons Solicitors LLP
Position(s)	Solicitors for and on behalf of Mrs Rosalind Virasinghe
Date	24 August 2021