

THE HIGH COURT

JUDICIAL REVIEW

2018 No. 315 J.R.

BETWEEN

BRED A PAKENHAM

EDWARD PAKENHAM

BRED A AND EDWARD PAKENHAM PARTNERSHIP

(TRADING AS CARYSFORT NURSING HOME)

APPLICANTS

AND

CHIEF INSPECTOR OF SOCIAL SERVICES

RESPONDENT

JUDGMENT of Mr Justice Garrett Simons delivered on 14 December 2018

INTRODUCTION

1. The within proceedings raise a net point of law in respect of the regulation of nursing homes. More specifically, the proceedings raise an issue as to the circumstances in which the Chief Inspector of Social Services ("*Chief Inspector*") is entitled to demand information from a registered provider of a nursing home. Section 65 of the Health Act 2007 empowers the Chief Inspector to demand "such information at such time" as the Chief Inspector considers necessary to enable her to carry out her functions. It is a criminal offence to fail to comply with such a demand. Notwithstanding the mandatory nature of such a demand, the parties have employed the term "request" to describe same. For the sake of consistency, I will adopt the same term for the balance of this judgment.

2. The Chief Inspector purported to rely on this section to request the owners and operators of a nursing home to submit information to her in respect of fire safety issues. This demand was made in circumstances where (i) the nursing home was then under investigation by the Chief Fire Officer of Dublin Fire Brigade (following a referral made by one of the Chief Inspector's own inspectors), and (ii) there was an application for the renewal of the nursing home's registration pending before the Chief Inspector.

3. The dispute in these judicial review proceedings is as to whether, on the facts, the request for information was made in pursuit of a "function" of the Chief Inspector. The Applicants contend that the statutory provisions relied upon by the Chief Inspector to ground the request for information relate to *powers* and not functions. On this argument, the request for information was said to be invalid.

4. Initially the Applicants had also pursued a further argument to the effect that—insofar as the regulation of nursing homes is concerned—there is a strict demarcation of functions as between (i) the Health Information and Quality Authority ("*HIQA*") and (ii) the Chief Inspector. It had been alleged that the requests for information issued in the present case were invalid in that same related to matters within the exclusive jurisdiction of HIQA and not the Chief Inspector. This argument was ultimately abandoned at the hearing before me. Instead, the remarkable proposition was advanced that the legislation should be interpreted as providing that neither HIQA nor the Chief Inspector are charged with monitoring ongoing compliance at a nursing home.

HIQA AND CHIEF INSPECTOR OF SOCIAL SERVICES

5. Given that much of the Applicants' case as pleaded centres on the respective roles of HIQA and the Chief Inspector of Social Services, it may be useful at this early stage to provide an overview of the regulatory scheme.

6. HIQA was established under the Health Act 2007. Under section 7, HIQA's object is to promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public. Its functions are set out at section 8. These are considered in detail at paragraph 62 below. For present introductory purposes, it is sufficient to note that one of HIQA's functions is to set standards on safety and quality in relation to services provided by a nursing home.

7. The Health Act 2007 also established the office of Chief Inspector. Insofar as nursing homes are concerned, the functions of the Chief Inspector include the establishment and maintenance of a register, and the carrying out of inspections in order to assess compliance with standards and regulations. In circumstances where there is significant disagreement between the parties as to the nature and extent of the Chief Inspector's functions, it will be necessary to return to discuss these in more detail (see paragraph 47 below).

8. One of the issues which was canvassed at the hearing before me was the precise status of the Chief Inspector within HIQA. On behalf of the Applicants, it was contended that the Chief Inspector had the status of an independent officeholder. Conversely, it was argued on behalf of the Chief Inspector herself that her status was that of an employee of HIQA. In the event, it is not necessary for me to resolve this dispute in order to determine these proceedings. This is because I find that the request for information was made in support of functions of the Chief Inspector. This finding makes it unnecessary to consider the alternative argument that the Chief Inspector *qua* employee would be entitled to carry out functions reserved to HIQA. For the sake of completeness, however, I set out below a brief summary of the key features of the role of Chief Inspector.

9. The Chief Inspector is appointed by HIQA. (Special provision is made for the appointment of the first Chief Inspector under 40(3)). The Chief Inspector shall be paid the remuneration and any allowances for expenses that HIQA may determine with the approval of the Minister for Health given with the consent of the Minister for Finance.

10. HIQA has the power to dismiss the Chief Inspector from her office if satisfied that the Chief Inspector:

(a) has become incapable through ill health of effectively performing the functions of the office,

(b) is adjudicated bankrupt,

(c) is convicted of a criminal offence,

(d) has without reasonable excuse failed to discharge her functions for a continuous period of 3 months beginning not earlier than 6 months before the day of dismissal, or

(e) should be dismissed for any other stated reason.

11. The Chief Inspector is accountable to the Oireachtas under section 42 of the Health Act 2007. More specifically, the Chief Inspector, at the request in writing of an Oireachtas Committee, shall attend before the committee to give a general account of the activities of the office of the Chief Inspector. Counsel on behalf of the Applicants, Ciaran Craven, SC, attached much significance to this. It was, he suggested, indicative of the independent nature of the office. In response, counsel on behalf of the Chief Inspector, Remy Farrell, SC, suggested that it was not inconsistent with the alleged status of the Chief Inspector as an employee for her to be accountable to the Oireachtas.

12. Express provision is made under section 43 of the Health Act 2007 for the appointment of inspectors to assist the Chief Inspector. Significantly, these inspectors are appointed by HIQA and not the Chief Inspector herself.

"43.—(1) The Authority, in accordance with section 26, may appoint the number of persons as it may determine to assist the chief inspector in the performance of the chief inspector's functions and—

(a) the persons appointed shall be known as Inspectors of Social Services, and

(b) are referred to in this Act as 'inspectors'.

(2) An inspector shall perform the functions of the chief inspector, to the extent the chief inspector may determine, and, in performing those functions to that extent, the inspector has the same powers and duties as the chief inspector has in performing his or her functions under this Act.

(3) A person appointed as an inspector under this section shall be given, by the Authority, a certificate of his or her appointment and, when exercising any power duly conferred on an inspector under this Act, shall produce, on request by any person affected, the certificate or a copy of the certificate, together with a form of personal identification."

13. As appears from the above, in accordance with subsection 43(2), an inspector may have the same powers and duties as the Chief Inspector has in performing his or her functions. This assumes a particular significance on the facts of the present case in terms of the legal status of inspections carried out at the relevant nursing home in December 2017 and January 2018. The inspections were carried out by appointed inspectors.

FACTUAL BACKGROUND

14. These proceedings concern events which occurred in respect of a nursing home in South Dublin known as "Carysfort Nursing Home" during the period December 2017 to March 2018. Carysfort Nursing Home is a "designated centre" within the meaning of section 2 of the Health Act 2007.

15. The owners and operators of Carysfort Nursing Home are a partnership known as the Breda and Edward Pakenham Partnership (*"the partnership"*). The partnership has been registered as the "registered provider" pursuant to the provisions of section 50 of the Health Act 2007.

16. The partnership is the third named applicant to the judicial review proceedings. The first and second named applicants are the members of the partnership, and are a mother and son. Edward Pakenham, the second named applicant, has averred in his grounding affidavit (at paragraph 5 thereof) that both he and his mother are actively involved in the management of the designated centre on behalf of the partnership, and are the contact persons in dealings with HIQA and the Chief Inspector.

17. The partnership made an application on or about 31 July 2017 to the Chief Inspector to renew the registration of Carysfort Nursing Home as a designated centre for a further three years from the date of the expiration of its existing registration (13 February 2018).

18. It is common case between the parties that inspections were carried out at the nursing home on 13 December 2017 and 10 January 2018, respectively. There is, however, a significant dispute as to how these inspections should be characterised in legal terms. In brief outline, the Applicants have pleaded that the inspections were compliance monitoring inspections, and were carried out on behalf of HIQA and not on behalf of the Chief Inspector. Conversely, the Chief Inspector maintains that these inspections were carried out as part of the process of determining the application for a renewal of the registration of Carysfort Nursing Home which had been made in July 2017.

19. The relevance of all of this to the central issue in the proceedings is that, on the Applicants' case as pleaded, the Chief Inspector cannot have lawfully relied on these inspections as a basis for her subsequent invocation of section 65 of the Health Act 2007. In brief, the Applicants plead that the carrying out of what they characterise as "compliance monitoring inspections" is not a "function" of the Chief Inspector as enumerated under section 41. On this argument, the power under section 65 was not available to the Chief Inspector.

20. At all events, it seems that following the second of these two inspections (10 January 2018), Dublin Fire Brigade was notified of fire safety concerns by one of the inspectors (Niall Whelton). A document described as a "Referral to External Agency Form" dated 19 January 2018 addressed to the Chief Fire Officer, Dublin Fire Brigade has been exhibited in the proceedings ("MD3" of the Affidavit of Mary Dunnion). Thereafter, staff of the Chief Fire Officer carried out two inspections at the nursing home on 29 January 2018 and 2 February 2018, respectively.

21. A brief notification of the outcome of these inspections on behalf of the Chief Fire Officer was furnished to Mr Pakenham by email and report dated 2 February 2018. Mr Pakenham avers that immediate steps were then taken by the partnership to address and remedy the concerns raised by the Chief Fire Officer. These steps are said to have included interim protective and preventative measures.

22. Thereafter, on 8 February 2018, a letter was sent by the Chief Inspector addressed to Edward Pakenham at Carysfort Nursing Home. This letter is challenged in these proceedings, and, accordingly, it is necessary to set the terms of same out in full.

"Dear Mr Pakenham,

I understand that you have been in recent correspondence and met with the office of the Chief Fire Officer of Dublin Fire Brigade following our referral issued on 19 January 2018. The Chief Inspector understands that there has been ongoing engagement between the Chief Fire Officer of Dublin Fire Brigade and your good self in terms of both identifying particular issues of fire risk in Carysfort Nursing Home on behalf the Chief Fire Officer and the actions you have taken/proposed to alleviate or mitigate same in the short and medium term. As you will appreciate, it is of vital importance that the Chief Inspector, in carrying out her statutory function, is in a position to assess the risks identified by the Chief Fire Officer and the actions you have taken/proposed to alleviate or mitigate such risks in the short and medium term.

Request for information

Arising out of this I require the following information pursuant to Section 65 of the Act and consider this information necessary to enable the Chief Inspector to carry out her statutory functions.

I require you to submit the following information to the Chief Inspector by or before 09.00am on 9 February 2018 by email at the following address chiefinspector@hiqa.ie:

1. Please set out precisely and in full what risks/hazards/dangers have been identified by the Chief Fire Officer of Dublin Fire Brigade since the referral issued in 19 January 2018. In addition please provide all correspondence, including but not limited to all assessment reports issued from the Chief Fire Officer and the Dublin Fire Brigade issued to you since 19 January 2018
2. Please set out precisely and in full what actions you have taken/proposed to alleviate or mitigate these risks, both in the short and medium term. In addition please provide all plans, submissions and proposals prepared/issued by you in this regard since 19 January 2018.

In this regard, please note that failure to comply with a request under Section 65 of the Act is an offence under section 79(2) of the Act.

Please also note that pursuant to section 79(4) of the Act, a registered provider guilty of an offence under Section 79(2) is liable:

- a. on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or
- b. on conviction on indictment to a fine not exceeding €70,000 or imprisonment for a term not exceeding 2 years or both:

Please note that similar penalties apply in respect of a breach of section 47 (Prohibition against false or misleading applications for registration) pursuant to section 79(1). I look forward to hearing from you on or before the dates and times set out above."

23. The letter is signed by Mary Dunnion, Chief Inspector of Social Services, Director of Regulation.

24. There then followed an extensive exchange of correspondence between the solicitors acting on behalf of the partnership and the Chief Inspector. It is not necessary to set this correspondence out in full in this judgment. I have carefully considered same, and the key points which emerge are as follows.

25. By letter dated 8 February 2018, the partnership's solicitors stated that it was not clear to them which statutory function of the Chief Inspector was being exercised to ground the request by reference to section 65 of the Health Act 2007. It was suggested that the request did not appear to flow from any defined statutory function of the Chief Inspector. The letter went on to say that the request by reference to section 65 was respectfully declined as it was not grounded on any proper or identifiable legal basis.

26. This letter was responded to by the Chief Inspector on 9 February 2018. In that letter, the Chief Inspector purported to identify the legal basis for the section 65 request as follows.

"1. Please note that Section 41 of the Act outlines the functions of the Chief Inspector and I refer you to Section 41(1)(c) which sets out the statutory basis for registration and inspection of designated centres to assess whether the registered provider is in compliance with the regulations and the standards.

2. As you may be aware, an inspection of Carysfort Nursing Home was carried out on the 13th December 2017 and 10th January 2018 pursuant to the functions of the Chief Inspector under Section 41(1)(c). The purpose of the inspection was to inform the Chief Inspector with regard to a decision on the registered provider's application to renew the registration of this designated centre pursuant to Section 48 of the Health Act 2017 as amended and to assess compliance with the regulations and standards. The current registration certificate is due to expire on 15th February 2018.

3. Please note that concerns with regard to fire safety issues were observed during this inspection and I refer you in this regard to the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013. Due to the nature of the concerns observed during the inspection a referral was issued to the Chief Fire Officer of the Dublin Fire Brigade on 19 January 2018. Following this referral we were informed by the Chief Fire Officer that there are serious issues with regard to fire safety in this designated centre.

4. As you will appreciate, in order for the Chief Inspector to make a decision on foot of the registered provider's application to renew the registration, the Chief Inspector must be assured that the registered provider is in compliance with the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 and the National Standards for Residential Care Settings for Older People in Ireland.

5. The Chief Inspector also has statutory powers where she believes on reasonable grounds that there is a risk to the life, or a serious risk to the health or welfare, of the persons resident in a designated centre and in order for the Chief Inspector to make a decision in this regard the Chief Inspector must be assured that the registered provider is in compliance with the Health Act 2007 (Care and Welfare Of Residents in Designated Centres for Older People) Regulations 2013 and the National Standards for Residential Care Settings for Older People in Ireland."

27. The letter went on then to repeat the request for the information first sought by the Chief Inspector in her earlier letter. A new date for the submission of this information was fixed, namely 17.00 pm on 9 February 2018.

28. The letter also goes on to rehearse that a failure to comply with a request under section 65 of the Health Act 2007 is an offence, and to set out the penalties for such offence.

29. This letter was replied to by a letter on behalf of the Applicants' solicitors (also dated 9 February 2018). The letter suggests that the inspections carried out in December 2017 and January 2018 were "compliance monitoring inspections". In this regard, reference was made to a draft report entitled "compliance monitoring inspection report". It was suggested that the inspections clearly and solely related to the monitoring of compliance with regulations and standards, and that this was a discharge of the functions of HIQA by reference to section 8(1)(c) of the Health Act 2007, albeit the stated purpose was also to inform a registration renewal decision.

30. The letter then goes on to state as follows.

"That being the case, it is somewhat difficult to understand what is set out at numbered paragraph 2 of your letter under reply, viz. that the inspections (albeit you use the singular) were carried out 'pursuant to the functions of the Chief Inspector under section 41(1)(c)' of the Act. They clearly were not: however it might be considered that the inspections were to inform the Chief Inspector with regard to a decision on an application to renew the registration of the designated centre, they were carried out in *discharge of the functions of HIQA* which necessarily engages further processes of which you are well aware and have not been completed (i.e. (i) submission of the Factual Accuracy Form and Action Plan (in this case by 13 February 2018, as already noted), (ii) issuing of a second draft HIQA report, with a right to make a Form 01 Submission within 15 working days, (iii) issuing of a revised report when the Submission has been considered, (iv) formal (Form 02) Appeal, if considered necessary, to a HIQA Appeals Panel, (v) issuing of a finalised report, (vi) issuing of a Notice of Proposed Decision, (vii) making of representations, within 28 days, if considered necessary, and (vii), finally, issuing of a Notice of Decision, with a right of statutory appeal with which you will be familiar.

It seems, therefore, with respect, that you have, unfortunately, not alone sought to ignore a process that is clearly under way, in accordance with the Act, but also conflated the functions of HIQA and those of the Chief Inspector. This is not permissible."

31. This letter was responded to by the Chief Inspector by an undated letter. (This letter was seemingly sent by way of email dated 19 February 2018). The key point of this letter is as follows.

"I note your client's refusal to comply with Section 65 of the Act. I do not accept that the Section 65 request made to your client was not grounded in law. I have already set out you in my letter dated 09 February 2018 the grounds under the Act upon which the Chief Inspector can request information under Section 65 and I do not propose to set them out again. I reiterates that contravention of Section 65 is an offence under Section 79 (2) of the Act."

32. There was a further response to this letter by the partnership's solicitors dated 20 February 2018. Relevantly, this letter states as follows.

"Neither we, nor our clients, know what information you may have received from the Chief Fire Officer. Neither we, nor our clients, were asked to respond to any such information that you may have received. It is, therefore, with respect, most improper to assert in open correspondence that you note that information (of which we have no knowledge) and to which, it appears only you are privy, was not challenged (when it was never disclosed) and to seek to, it seems, "fold" this into consideration of our clients' Nursing Homes registration. To do so, you will agree, is fundamentally unfair and a breach of any standard of procedural propriety. It is, you will also understand and agree, unlawful and indefensible to seek to proceed in such a manner and it would be quite astonishing, if you were to do so."

33. A further request was purportedly made pursuant to section 65 by the Chief Inspector in or about 8 March 2018. Summonses were subsequently issued before the District Court in this regard in or about 26 March 2018, and the matter was made returnable before the District Court on 30 April 2018.

34. In the event, the Applicants instituted the within judicial review proceedings. The High Court (Noonan J.) granted leave to apply on an ex parte basis on 23 April 2018. A stay was placed on the District Court prosecution.

35. The proceedings ultimately came on for hearing before me on 29 November 2018 for two days.

36. It should be noted that these proceedings do not seek to quash the District Court summonses. Nor do they seek to quash the section 65 request of 8 March 2018. The point was made in argument before me that it was unnecessary to seek specific relief in respect of the request of 8 March 2018 in circumstances where that request is—or so it is alleged—part of the same process as the original section 65 request in February 2018. I will return to this point at paragraph 84 below.

THE CASE AS PLEADED

37. There is a significant difference between the case as pleaded in the statement of grounds and the case as argued at the hearing before me in November 2018. Indeed, there must be some doubt as to whether the case as argued actually comes within the grounds upon which leave to apply for judicial review was granted at all. It is necessary, therefore, to consider the statement of grounds in some detail.

38. At its core, the Applicants' case is based on a simple proposition, i.e. that the information requested by the Chief Inspector was

not sought for the purposes of any of her statutory functions as enumerated under section 41 of the Health Act 2007. The case as pleaded is to the effect that the inspections carried out in December 2017 and January 2018—and, by implication, the subsequent request for information—were for the purpose of monitoring compliance with standards on safety and quality set by HIQA. It was pleaded that compliance monitoring is a function of HIQA and lies outwith the statutory remit of the Chief Inspector.

39. The relevant part of the statement of grounds reads as follows.

"Reliefs (i) and (ii), (viii) and (ix)

(vi) There was no lawful basis for this request and, in acting as she did, the Respondent impermissibly and unlawfully conflated the separate statutory functions of HIQA and those of the Respondent. Although the Respondent is represented as being both the Chief Inspector of Social Services (an independent statutory office with defined statutory functions set out in section 41 of the Act of 2001) and HIQA's Director of Regulation (an administrative unit within the Health and Information Quality Authority which is a separate statutory body with defined statutory functions set out in section 8 of the Act of 2001), there is no statutory provision or any other lawful basis for the subsuming of the Office of the Chief Inspector of Social Services within an administrative unit of HIQA or for the subsuming into the Office of the Chief Inspector of Social Services any functions or division of HIQA and/or for the conflation of the separate statutory functions and roles of those two different statutory bodies. The combining of the discharge of HIQA regulatory functions with those of the Chief Inspector is not contemplated by statute.

(vii) The Respondent's assertion by letter dated 9 February 2018 that the inspections of the Third Named Applicant's Designated Centre were carried out 'pursuant to the functions of the Chief Inspector under s.41(1)(c).. (...) to inform the Chief Inspector with regard to a decision on the registered provider's application to renew the registration of this designated centre pursuant to Section 48 of the Health Act 2007 as amended and to assess compliance with the regulations and standards,' in other words, on behalf of, and in furtherance of the statutory functions of, the Office of the Chief Inspector is unsustainable in fact: the draft Reports which followed those Inspections were monitoring in nature; each was entitled a 'Compliance Monitoring Inspection Report'; they referred to compliance with HIQA standards only; they issued from the Regulation Directorate of HIQA.

(viii) The Respondent's assertion, in the same letter, that she '... also has statutory powers where she believes that there is a serious risk to life, or a serious risk to the health or welfare of the persons resident in a designated centre and in order for the Chief Inspector to make a decision in this regard the Chief Inspector must be assured that the registered provider is in compliance with the Health Act 2007...' represents an unlawful arrogation of a power that is exclusively that of HIQA pursuant to section 9 of the Act of 2007. In addition, there is no statutory basis for the Respondent's being assured of compliance with standards: compliance monitoring is a function of HIQA. The Respondent's function is to assess compliance. This constitutes statutory over-reach.

(ix) The Respondent was requesting information by reference to section 65 of the Act of 2007 on the basis that the information is necessary for her to perform a statutory function which is conferred on HIQA and lies outwith her statutory remit.

(x) Despite request, the Respondent, irrationally and unreasonably, failed to set out any adequate or proper reasons for the statutory basis for her request by reference to sections 65 of the Act of 2007."

40. As appears from the foregoing, the gravamen of the Applicants' case is that monitoring of compliance is a function of HIQA and not of the Chief Inspector. Thus it is alleged at paragraph (viii) that "there is no statutory basis for the Respondent's being assured of compliance with standards: compliance monitoring is a function of HIQA".

41. A separate allegation is made at paragraph (viii) to the effect that the Chief Inspector was arrogating to herself the power of statutory investigation provided for under section 9 of the Health Act 2007.

42. In each instance, the essence of the complaint is that the Chief Inspector has trespassed on a function which has been conferred on HIQA.

43. At hearing in November 2018, however, it was accepted that, as a matter of law, HIQA has no function at all in respect of the monitoring of compliance with the standards in nursing homes. This is because the language of section 8(1)(c) of the Health Act 2007 expressly *excludes* designated centres from HIQA's monitoring of compliance function.

44. Further, the allegation that the Chief Inspector had arrogated to herself HIQA's power of investigation under section 9 of the Health Act 2007 was not pursued. It was instead accepted that the Chief Inspector, in her letter of 9 February 2018, was not referring to section 9 of the Health Act 2007, but rather was referring to section 59 which allows the Chief Inspector to apply to the District Court for certain orders.

45. The argument at the hearing instead shifted to a technical argument to the effect that the Chief Inspector is in error in characterising her role—to use a neutral term—under either section 48 and 50 (application for renewal) or section 59 (District Court application) as coming within her "functions" under section 41(1). As I say, I have some doubts as to whether this reformulated case comes within the terms of the order granting leave to apply for judicial review. However, rather than determine the case on a pleading point, I propose to address the merits of the case on a *de bene esse* basis.

46. The grounds alleging inadequate reasons were not pursued at the hearing. In truth, the Applicants' case is not so much that the reasons were inadequate but rather they disclosed an improper basis for the requests.

DISCUSSION

(i) Functions of the Chief Inspector

47. The central issue for resolution in these proceedings is whether, in light of the events that occurred between December 2017 and February 2018, the Chief Inspector was lawfully entitled to invoke the provisions of section 65 of the Health Act 2007. It may be useful to set out the precise wording of section 65.

"65.— A registered provider of a designated centre shall submit to the chief inspector such information at such time as

the chief inspector considers necessary to enable the chief inspector to carry out the chief inspector's functions."

*Emphasis (italics) not in original.

48. As appears, the power to make a demand for the submission of information arises where the Chief Inspector considers it necessary to enable her to carry out her functions.

49. The Applicants' case is a simple one. They argue that the "functions" of the Chief Inspector are exhaustively set out at section 41 of the Health Act 2007 (as amended by the Child Care (Amendment) Act 2015).

"41.— (1) The functions of the chief inspector are to—

(a) inspect the performance—

(i) by the Executive of the Executive's functions under section 10 of the Health (Nursing Homes) Act 1990, and

(ii) by the Agency of the Agency's functions under sections 39 to 42 and section 53 of the Child Care Act 1991,

(b) establish and maintain one or more registers of designated centres,

(c) register and inspect designated centres to assess whether the registered provider is in compliance with the—

(i) regulations, and

(ii) standards, if any, set by the Authority under section 8 (1)(b),

[...]".

50. Insofar as designated centres, i.e. nursing homes, are concerned, the functions are those set out at subsection 41(1), subparagraphs (b) and (c). These include, it will be noted, an express power to *inspect* a nursing home.

51. It will be recalled that the Chief Inspector, in her letter of 9 February 2018 (see paragraph 26 above), had purported to identify two "functions" which she relied upon as the legal basis for the section 65 requests.

(i). The first referred to her role—to use a neutral term—as decision-maker on an application for renewal of registration. It was stated in the letter of 9 February 2018 that, in order for the Chief Inspector to make a decision on foot of the registered provider's application to renew the registration, the Chief Inspector must be assured that the registered provider is in compliance with the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 and the National Standards for Residential Care Settings for Older People in Ireland.

(ii). The second referred to the Chief Inspector's statutory powers where she believes, on reasonable grounds, that there is a serious risk to the life, or a serious risk to the health or welfare, of the persons resident in a designated centre. Although the letter of 9 February 2018 does not expressly cite the section, both sides at the hearing before me accepted that this was intended as a reference to section 59 of the Health Act 2007. In brief, this section allows the Chief Inspector to apply to the District Court for an order (i) cancelling the registration of a designated centre, (ii) varying or removing any condition, or (iii) attaching an additional condition.

52. The Applicants' case is that the Chief Inspector is in error in characterising her role—to use a neutral term—under either section 48 and 50 (application for renewal) or section 59 (District Court application) as coming within her "functions" under section 41(1)(c). At the hearing before me, it was suggested that these are at most *powers* which the Chief Inspector enjoys, but that they are not *functions* within the meaning of section 41.

53. With respect, I cannot accept the Applicants' interpretation of the legislation, for the following reasons.

Registration or renewal of registration

54. It is an express function of the Chief Inspector under section 41(1) to establish and maintain one or more registers of designated centres, and to register and inspect designated centres. The making of a determination on an application for registration or for the renewal of a registration is an integral and fundamental part of this function. It is entirely artificial to suggest that the process of adjudicating on an application for registration or the renewal of a registration can be divorced from the registration function under section 41(1). The establishment and maintenance of a register of designated centres, i.e. nursing homes, is not an abstract exercise but involves the making of adjudications upon individual applications.

55. In determining an application for the renewal of a registration, the Chief Inspector is *obliged* to satisfy herself that the applicant is in compliance with the standards and the regulations, and is required to refuse the application if not so satisfied. See section 50(1) of the Health Act 2007 as follows.

"50.— (1) Where an application is made under section 48 for the registration or renewal of the registration of a designated centre, the chief inspector, if satisfied that the person who is the registered provider, or intended registered provider, and each other person who will participate in the management of the designated centre—

(a) is a fit person to be the registered provider of the designated centre and to participate in its management, and

(b) if the application is for registration, will comply with, or, if for renewal, is in compliance with—

(i) standards set by the Authority under section 8(1)(b),

(ii) regulations under section 101, and

(iii) any other enactment which appears to the chief inspector to be relevant, and is cited to the applicant in writing by the chief inspector,

shall grant the application and if not so satisfied shall refuse it.”

56. As part of this exercise, the Chief Inspector must consider *inter alia* whether the applicant complies with the fire safety requirements specified in the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013.

57. Regulation 28 of the 2013 Regulations provides as follows.

“Fire precautions

28. (1) The registered provider shall:

- (a) take adequate precautions against the risk of fire, and shall provide suitable fire fighting equipment, suitable building services, and suitable bedding and furnishings;
- (b) provide adequate means of escape, including emergency lighting;
- (c) make adequate arrangements for:
 - (i) maintaining of all fire equipment, means of escape, building fabric and building services;
 - (ii) reviewing fire precautions, and
 - (iii) testing fire equipment.

(d) make arrangements for staff of the designated centre to receive suitable training in fire prevention and emergency procedures, including evacuation procedures, building layout and escape routes, location of fire alarm call points, first aid, fire fighting equipment, fire control techniques and the procedures to be followed should the clothes of a resident catch fire.

(e) ensure, by means of fire safety management and fire drills at suitable intervals, that the persons working at the designated centre and, in so far as is reasonably practicable, residents, are aware of the procedure to be followed in the case of fire.

(2) The registered provider shall make adequate arrangements for:

- (i) detecting, containing and extinguishing fires;
- (ii) giving warning of fires;
- (iii) calling the fire service; and
- (iv) evacuating, where necessary in the event of fire, of all persons in the designated centre and safe placement of residents.

(3) The person in charge shall ensure that the procedures to be followed in the event of fire are displayed in a prominent place in the designated centre.”

58. The letter of 9 February 2018 indicates that the information sought in the section 65 request was necessary in order for the Chief Inspector to make a decision on foot of the Applicants’ application to renew their registration. The information was thus properly sought in support of a function of the Chief Inspector.

Section 59

59. Just as the decision to grant or refuse an application for registration is part and parcel of the function of establishing and maintaining a register and registering nursing homes, so too is the *cancellation* of an existing registration. Section 59 establishes a procedure whereby the Chief Inspector may apply to the District Court for an order (i) cancelling the registration of a designated centre, (ii) varying or removing any condition, or (iii) attaching an additional condition. Section 59 is set out below.

“59.— (1) If the chief inspector believes on reasonable grounds that there is a risk to the life, or a serious risk to the health or welfare, of the persons resident in a designated centre, because of any act, failure to act or negligence on the part of—

- (a) the registered provider carrying on the business of the designated centre, or
- (b) a person acting on behalf of the registered provider,

the chief inspector may apply to the District Court for an order—

- (i) cancelling the registration of the designated centre,
- (ii) varying or removing any condition attached to the registration of the designated centre, or
- (iii) attaching an additional condition to the registration of the designated centre.

(2) Notice of an application for a final determination of the matters that are the subject of the application must be given by the chief inspector to the registered provider.

(3) The District Court, on hearing an application under this section, may make an order—

- (a) in the terms sought by the chief inspector in the application, or
- (b) in other terms as the Court considers appropriate.

(4) An application under subsection (1) shall be made to a District Court judge assigned to the district in which the designated centre is located.”

60. The argument that the Chief Inspector’s role—to use a neutral term—under section 59 does not involve the discharge of her functions under section 41 is untenable. Whereas the final arbiter of whether to cancel or vary an existing registration is the District Court, it is the Chief Inspector who is the moving party. The ability to make an application under section 59 is an integral part of the Chief Inspector’s function of maintaining the register of designated centres, i.e. nursing homes. It ensures the integrity of the register by allowing for the cancellation of entries where there is a serious risk to the life, or a serious risk to the health or welfare, of the persons resident in a nursing home. It is of a piece with related provisions of the Health Act 2007, such as section 51 which allows the Chief Inspector to cancel a registration herself, i.e. without court order, in certain specified circumstances.

61. As discussed under the next heading below, the Applicants also make an argument that the Chief Inspector has no function to inspect a nursing home for the purpose of *monitoring compliance* with standards. Her function is—it is argued—confined to one of *assessment*. For the reasons detailed below, I reject this argument also.

(ii) Functions of HIQA

62. As appears from the correspondence passing between the Applicants’ solicitors and the Chief Inspector in February and March 2018, the position appears to have been adopted by the Applicants at that time that the Health Act 2007 confers distinct functions on HIQA and the Chief Inspector, respectively, in respect of designated centres, i.e. nursing homes. In particular, it was suggested that there was a distinction between (i) *assessment* and (ii) *compliance monitoring*, with the latter function said to fall within the exclusive remit of HIQA. In brief, it was suggested that an assessment involves a once-off assessment of compliance for the purposes of registration, whereas compliance monitoring is said to be a continuing process.

63. Mr Craven, SC submitted that the fact that the section 65 request of 9 February 2018 expressly sought details of actions proposed “both in the short and medium term” meant that the Chief Inspector was proceeding beyond an assessment of compliance and engaging in “compliance monitoring”. (Day 1, 3.54pm).

64. Criticism was also made of the language used at page 8 of the “National Standards for Residential Care Settings for Older People in Ireland” (published by HIQA in May 2016). In particular, it was submitted that it is not a function of the Chief Inspector to carry out “continual monitoring”. (For ease of reference, an extract from the national standards is set out as an appendix to this judgment).

65. This theme was then taken up in the statement of grounds (as discussed above at paragraphs 37 and onwards).

66. However, at the hearing before me in November 2018, it was accepted that, as a matter of law, HIQA has no function at all in respect of the monitoring of compliance with the standards by nursing homes. This is because the language of section 8(1)(c) of the Health Act 2007 expressly *excludes* designated centres from HIQA’s monitoring of compliance function. Insofar as relevant, section 8(1) provides as follows.

“8.— (1) The functions of the Authority are as follows:

(a) subject to this Act and to the extent practicable, to further the Authority’s object;

(b) to set standards on safety and quality in relation to—

(i) services provided by the Executive or a service provider in accordance with—

(I) the Health Acts 1947 to 2007, except for services under the Mental Health Acts 1945 to 2001 that, under the Health Act 2004, are provided by the Executive,

(II) the Child Care Acts 1991 and 2013,

(III) the Children Act 2001 ,

and

(ii) services provided by a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990, in this section called the “services”, and advise the Minister, the Minister for Children and Youth Affairs, the Agency and the Executive as may be appropriate in relation to the particular service in respect of which the standards are set.

(c) to monitor compliance with the standards referred to in paragraph (b), except any standards in relation to designated centres, and the performance of the Executive’s and the Agency’s functions referred to in section 41(1)(a) and to advise the Minister, the Minister for Children and Youth Affairs, the Executive and the Agency accordingly

(d) to undertake investigations in accordance with section 9;

[...]”

67. HIQA thus has the function of setting *standards* for nursing homes, but has no function in *monitoring compliance* with those standards. This is because the monitoring function under section 8(1)(c) expressly excludes standards in relation to “designated centres”. It will be recalled that a “designated centre” is defined under section 2 of the Health Act 2007 as meaning *inter alia* an institution that is a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990. HIQA is also excluded from monitoring compliance with functions referred to in section 41(1)(a) (as amended). The structure of the legislation is thus that certain functions which have been conferred on the Chief Inspector under section 41(1)(a) are outside HIQA’s remit.

68. Notwithstanding that these statutory provisions constitute a complete answer to the argument that the Chief Inspector has no

function in monitoring compliance with standards, the Applicants continued to press this argument to some extent. It was suggested that if—as is undoubtedly the legislative position—HIQA has no role in monitoring compliance with standards by nursing homes, then no authority has that function. Put otherwise, it was argued that neither HIQA nor the Chief Inspector has this function.

69. It is worth pausing to appreciate the enormity of the Applicants' argument in this regard. On this argument, a statutory officer who is expressly charged *inter alia* with registering nursing homes and carrying out inspections to assess compliance with regulations and standards is precluded from seeking information on fire safety issues if the request makes any reference to *future* actions. This is so notwithstanding that the 2013 Regulations expressly address the issue of fire precautions. (The text of regulation 28 has been set out at paragraph 57 above).

70. With respect, there is simply nothing in the statutory language to suggest that the Oireachtas intended such an extraordinary outcome. Such an interpretation would require the court to do violence to the statutory language. As appears from section 41(1)(c), the Chief Inspector has an express function *to inspect* designated centres to assess whether the registered provider is in compliance with the (i) regulations and (ii) standards. On its ordinary and natural meaning, this would authorise the Chief Inspector to carry out precisely the type of inspections which her inspectors carried out in December 2017 and January 2018. This would be so even if there had not been a pending application for the renewal of registration at the time. The rigid distinction which the Applicants contend for between once off assessments and continuing monitoring is entirely artificial, and there is no basis for same under the legislation. The statutory language of section 41(1)(c) embraces both types of assessment. The Applicants' argument would also lead to the absurd result that no authority would have the function of ongoing monitoring, i.e. during the currency of a registration.

71. In summary, the scheme of the legislation is clear, and provides that the regulation of nursing homes is the responsibility of the Chief Inspector. There is nothing in the legislation which suggests that it must be read as harbouring some unarticulated distinction between "once-off" assessment and ongoing monitoring, with no competent authority charged with the latter function. Such an interpretation would not only be contrary to the ordinary and natural meaning of the statutory language, but would also be contrary to the legislative purpose and produce an absurd result.

National standards

72. Finally, for the sake of completeness I should note that during the hearing before me an attempt was made at various stages by the Applicants' counsel to rely on documentation generated by HIQA in support of the argument that the Chief Inspector has no role in monitoring compliance. With respect, the calling in aid of such documentation is not a permissible approach to statutory interpretation. It is a matter for this court—and the appellate courts in the event of an appeal—to rule on the correct interpretation of the legislation. The fact that HIQA may or may not have put forward a different interpretation is irrelevant to this exercise. (See by analogy *Sherwin v. An Bord Pleanála* [2008] 1 I.R. 561 (guidance material provided by a Minister to assist in the interpretation of legislation could not alter the meaning of that legislation).)

73. Having said that, I simply note that, in any event, the description of the role of the Chief Inspector as set out in the "National Standards for Residential Care Settings for Older People in Ireland" (published by HIQA in May 2016) is consistent with the wording of the legislation. The national standards correctly identify that the monitoring of compliance is a function of the Chief Inspector. The relevant extracts are set out as an appendix to this judgment.

ALLEGED IMPERMISSIBLE PURPOSE

74. The Applicants advanced an alternative argument in their written legal submissions to the effect that—even if the Chief Inspector had sought the information by reference to her statutory functions—she had also sought the information for the purpose of advancing *additional* aims that were not part of her statutory function, viz. compliance monitoring or a section 9 investigation, which were said to be matters specifically reserved by statute to HIQA. The Applicants cited the judgment of the Supreme Court in *Kennedy v. Law Society* [2002] 2 I.R. 458 in support of an argument that the introduction of an impermissible purpose would undermine what might otherwise have been a valid exercise of a statutory power.

75. For the reasons outlined earlier, I have already rejected the Applicants' argument that the Chief Inspector does not have a compliance monitoring function. She does: it is part and parcel of her function of assessing compliance with standards and regulations. This finding is sufficient to dispose of the Applicants' alternative argument also. For the sake of completeness, however, I find as a fact that the Chief Inspector did not have an ulterior purpose in making the request for information. Rather, same was sought in support of her function of determining the application for renewal of the registration, and for deciding whether to make an application to the District Court under section 59. As part of those functions, the Chief Inspector was entitled to assess whether the nursing home was in compliance with the 2013 Regulations.

76. The Chief Inspector, Mary Dunnion, has averred as follows in her affidavit, and no application was made for leave to challenge that averment by way of cross-examination.

"8. On foot of this application, and for the purpose of informing my decision on the application to renew registration of this designated centre pursuant to Section 48 of the 2007 Act, and to assess compliance with the Regulations and the Standards, my inspectors carried out an announced inspection of Carysfort Nursing Home on 13 December 2017. This inspection was carried out by Sonia McCague lead inspector who is an inspector appointed solely under Section 43 of the 2007 Act. As is apparent from page 3 of the draft inspection report, exhibited below, "*purpose of this inspection was to inform a decision in relation to the application to renew the registration of this designated centre.*" During the course of the first day of inspection on 13 December 2017, and while a number of matters arose, a substantial area of concern related to certain potential fire safety issues identified by the inspectors. The Applicants were notified subsequently that an inspection by the Inspector of Social Services – Fire and Estates would be required. The inspectors carried out the second day of inspection on 10 January 2018 with Mr Niall Whelton, who is the Inspector of Social Services – Fire and Estates, present to review any potential fire safety issues [...]

9. Arising out of the concerns identified by Mr Whelton on 10 January 2018, I say and believe that Mr Whelton contacted the office of the Chief Fire Officer of Dublin Fire Brigade ("the Chief Fire Officer") by telephone on 17 January 2018 and by email and letter on 19 January 2018 enclosing a Referral to External Agency Form addressed to the Chief Officer, Dublin Fire Brigade ("the Form"). A copy of the Form that was also sent to the Respondent on 19 January 2018. Shortly after the aforementioned email was sent attaching the Form, an email confirming receipt was sent by the Chief Fire Officer.

[...]

11. Following on from the aforementioned correspondence, I was informed of certain concerns raised by the Chief Fire Officer. I beg to refer to an undated letter written by me to the Chief Fire Officer, which was sent on 2 February 2018. In this letter I set out certain of my statutory powers, in particular those under Section 59 of the 2007 Act which provides for an application to be made to

the District Court cancelling registration and further powers for the Health Service Executive to make alternative arrangements which is provided for under Section 64 of the 2007 Act. I requested Chief Fire Officer provide me with the information grounding his assessment of risk to the safety and welfare of residents.”

77. These averments are entirely consistent with the language actually used in the inspection reports as follows.

“This inspection report sets out the findings of a monitoring inspection, the purpose of which was to inform a registration renewal decision. This monitoring inspection was announced and took place over 2 day(s).

[...]

Summary of findings from this inspection

This purpose of this inspection was to inform a decision in relation to the application to renew the registration of this designated centre. The provider submitted an application for the renewal of registration six months in advance of the registration expiry date of 13 February 2018. Inspectors found discrepancies between the information received and the information provided in the application to renew documentation. A key issue was the omission of a building, which was part of the designated centre, from the plans of the centre and application form. The building was included in the Statement of Purpose. This was communicated to the provider during and following this inspection. An amended statement of purpose and floor plan of the main building was received on 28 December 2017. However, the revised documents still did not include the separate building located on the grounds that was used as an office by the person in charge and those participating in management for the storage of residents’ and general records, and safekeeping of some resident’s personal property.

[...]

Inspectors were not assured that the fire safety arrangements in place were adequate to ensure prompt, safe and efficient evacuation of residents from the designated centre. A lack of compartmentation of the building to contain the spread of fire and smoke in the event of a fire was found. As a result, a written referral was made to the Fire Safety Authority for assessment and consideration.”

DISTRICT COURT SUMMONSES

78. As noted earlier, the Chief Inspector caused a District Court Summons to be issued against each of the first and second named applicants. The Summonses are both dated 26 March 2018, and were initially returnable before the District Court on 30 April 2018.

79. The Applicants have not sought an order setting aside the District Court Summonses. Rather, the Applicants have sought an order of *certiorari* quashing the *decision* of the Chief Inspector to prosecute the first and second named applicants. Related declaratory relief is also sought in this regard.

80. The *ex parte* order granting leave to apply for judicial review provided that the prosecution of the first named applicant and the second named applicant be stayed until the determination of the application for judicial review or until further order.

81. The challenge to the decision to prosecute is pleaded on two grounds as follows. First, that there was no lawful or proper basis for the section 65 requests. Secondly, that the summonses are bad on their face. I address each of these in turn below.

(i) No lawful or proper basis for the section 65 requests

82. This ground is pleaded as follows in the statement of grounds.

“(xii) The Summonses are predicated on a proper and lawful request for information by reference to section 65 of the Act of 2007. There was no such lawful or proper basis for the reasons set out.”

83. This aspect of the challenge to the criminal prosecution is to the effect that the section 65 request was invalid for the reasons pleaded earlier in the statement of grounds. This ground is thus entirely contingent on the Applicants’ succeeding on the substantive issue.

84. The Chief Inspector had originally raised an objection that this aspect of the judicial review proceedings was moot in circumstances where no challenge has been made in the proceedings to the section 65 request upon which the summonses are actually based, i.e. the request by letter dated 8 March 2018. The judicial review proceedings are confined to the *earlier* requests of February 2018. Ultimately, however, at the hearing before me all parties accepted that the central issue in the judicial review proceedings, namely the correct interpretation of section 65, should be determined in any event. It was explained to me that this issue arises in the case of other nursing homes, and that it is in public interests that it be resolved.

85. For the reasons outlined in the first part of this judgment, I have rejected the Applicants’ interpretation of section 65, and have concluded that the impugned requests of February 2018 were lawfully made. The same logic applies to the March 2018 request.

86. In circumstances where I have resolved the substantive issue against the Applicants, this aspect of the challenge to the District Court Summonses must also fail.

(ii) Summonses are bad on their face

87. These grounds of challenge are pleaded as follows in the statement of grounds.

“(xiii) In addition, the Summonses are bad on their face: neither the First Named Applicant nor the Second Named Applicant is a ‘Registered Provider’ of a Designated Centre within the meaning of the Act of 2007.

(xiv) Pursuant to the provisions of section 80(4) of the Act of 2007, the liability of the Third Named Applicant Partnership is a condition precedent to any such liability on the part of the First Named Applicant and the Second Named Applicant, insofar as they are actively engaged in the day to day management of the Designated Centre and the purported prosecutions are misconceived in law and unlawful.”

88. These grounds raise an issue as to whether an unincorporated body such as a partnership can have a liability for a criminal offence separate to that of the individual partners. It will be necessary to consider the principles established in judgments such as *Director of Corporate Enforcement v. Gannon* [2002] 4 I.R. 439. An issue also arises as to the implications of section 80 of the Health Act 2007 which addresses the joint liability of other persons where an offence has been committed by *inter alia* an unincorporated body with the consent or approval of that other person or is attributable to any neglect on the part of that other person.

89. These are all matters which should be raised by way of defence before the District Court. This represents the appropriate forum for these issues. There is nothing pleaded which would make it appropriate for the High Court to determine these matters by way of judicial review. In particular, there is no challenge to the constitutional validity of the underlying legislation which might justify by-passing the District Court. I respectfully adopt the following passage from the judgment of Fennelly J. in *Blanchfield v. Harnett* [2002] 3 I.R. 207 at 225 (cited in the judgment of Twomey J. in *Foley v. Workplace Relations Commission* [2016] IEHC 585 which was relied upon by the Chief Inspector in her written legal submissions).

"Counsel for the applicant, of course, relies on this decision for the proposition that judicial review is an available remedy which permits challenge to decisions made in the course of a criminal trial. Clearly, it is available in principle but only in the most exceptional cases. What emerges, therefore, is that, while decisions of a court of trial may be the subject of certiorari, this will scarcely ever occur during the course of the trial. I have already explained my view that the court of trial has the necessary power in cases concerning discrete orders affecting the accused, though not necessarily in the cases of measures of a more general normative character."

90. In the present case, of course, the Applicants moved for judicial review at an even earlier stage, i.e. prior to the commencement of the criminal prosecution. This makes judicial review even less appropriate, especially in the absence of a challenge to the underlying legislation.

91. Moreover, judicial review would be inappropriate in any event because the Applicants have failed to put before the High Court any evidence as to the precise nature of the partnership said to exist between the first and second named applicants. For example, no partnership deed has been exhibited. It would not be possible to adjudicate on the legal issue in a vacuum, without the relevant factual background having been set out. Moreover, this issue is not addressed in the written legal submissions filed by the Applicants.

92. Finally, it should be recalled that the proceedings involve a challenge to the decision to prosecute and no relief is actually sought in respect of the District Court Summonses. Any challenge to a prosecutorial decision must meet the high threshold identified by the Supreme Court in *H. v. DPP* [1994] 2 I.R. 589. The Applicants do not come close to that threshold in circumstances where, for the reasons set out earlier, their challenge to the section 65 requests is misconceived.

CONCLUSION

93. It is an express function of the Chief Inspector under section 41(1) of the Health Act 2007 to establish and maintain one or more registers of designated centres, and to register and inspect designated centres. The making of a determination on an application for registration or for the renewal of a registration is an integral and fundamental part of this function. It is entirely artificial to suggest that the process of adjudicating on an application for registration or the renewal of a registration can be divorced from the registration function under section 41(1).

94. Just as the decision to grant or refuse an application for registration is part and parcel of the function of establishing and maintaining a register and registering nursing homes, so too is the *cancellation* of an existing registration under section 59.

95. Accordingly, the Chief Inspector acted lawfully in issuing requests under section 65 of the Health Act 2007 in February 2018. The requests were properly made in the course of the carrying out of her functions under section 41(1).

96. The grounds raised in respect of the validity of the District Court Summonses are matters which should be pursued before the District Court, and not by way of an application for judicial review. This is especially so where no relief has been sought quashing the summonses.

97. The application for judicial review is dismissed in its entirety.

APPENDIX

Extract from "National Standards for Residential Care Settings for Older People in Ireland"

6. Regulation of residential services

Residential and residential respite centres are prescribed as 'designated centres' in the Health Act 2007 (as amended). The Authority has, among its functions under law, responsibility to regulate the quality of services provided in designated centres for older people. The Health Act 2007 (as amended) empowers the Chief Inspector, a statutory officer within the Authority, to carry out this function through the processes of registration, continual monitoring and inspection and, where necessary, the application of its powers of enforcement. The purpose of regulation in relation to designated centres is to safeguard people who are receiving residential services. Regulation provides assurance to the public that people living in designated centres are receiving services and supports that meet the requirements of National Standards, which are underpinned by regulations.

Regulation has an important role in driving continual improvement so that people have better, safer lives. When a designated centre does not meet the required standards and or the provider fails to address the specific areas of non-compliance, appropriate enforcement action is taken to either control or limit the nature of the service provided, or, to cancel a centre's registration and prevent it from operating. Under the Health Act 2007 (as amended), any person carrying on the business of a residential service and or a residential respite service within a designated centre can only do so if the centre is registered under this Act and the person is its registered provider. As part of the registration and onward process of regulation, the provider must satisfy the Chief Inspector that she or he is fit to provide the service and that the service is in compliance with the Act, the Regulations and these or other specified standards.

By regulating the entry and exit of services within the market, the Authority is fulfilling an important duty under Section 41 of the Health Act 2007 (as amended). However, registration relates to a judgment of fitness at a specific point in time. It is the monitoring process that underpins continuing fitness and compliance and ultimately promotes continuous improvement.

The monitoring of compliance is a continual process which checks that providers continue to be fit persons and continue to deliver an appropriate standard of service as prescribed by the registration authority. At all times the Chief Inspector must continue to be satisfied that the provider and all persons involved in the management of the centre are fit and that the centre is operating within the conditions which have been attached at registration. The monitoring of compliance contains a number of different activities to inform an inspector's judgment in relation to a provider's continuing fitness and compliance with the conditions of registration. These activities inform ongoing decision-making and the subsequent actions of the regulator.

Monitoring activities have set business rules, operating procedures and tools, all of which make up the assessment framework and includes: inspections, the review of action plans, the review of notifications, the management of unsolicited information and secondary information received (media, other professional bodies), and the assessment of risk. These procedures and tools ensure that the functions of the Chief Inspector are carried out in a consistent manner and are guided by agreed principles rather than subjective judgment.