IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Case No. HC/566/2018

Appellant:	Button Space Limited
Respondent:	The Care Quality Commission

DECISION OF THE UPPER TRIBUNAL

M R HEMINGWAY

JUDGE OF THE UPPER TRIBUNAL

ON APPEAL FROM:

Tribunal:	First-Tier Tribunal (Care Standards)
Tribunal Case No:	[2017] 2977.EA-MoU
Tribunal Venue:	Manchester
Hearing date:	24 November 2017

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Case No. HC/566/2018

Before: M R Hemingway; Judge of the Upper Tribunal

Representation

The appellant was represented by Mr AP Drummond, its Company Secretary.
The respondent was represented by Mr D Pojur of Counsel

Decision of the Upper Tribunal:

The First-tier Tribunal's decision did not involve the making of an error of law. Accordingly, the appeal to the Upper Tribunal is dismissed.

REASONS FOR DECISION

Introduction

1. This appeal to the Upper Tribunal raises issues concerning the approach which the First-tier Tribunal (F-tT) should take when it is dealing with an appeal from an Order made at a Magistrates Court under section 30 of the Health and Social Care Act 2008 (the 2008 Act) to cancel the registration of a service provider or manager in respect of an activity regulated under the provisions of that Act, on an urgent basis.

2. Put simply, the Care Quality Commission (the respondent in this appeal) was created by section 1 of the 2008 Act. Its functions are set out at section 2 and those include certain registration functions (section 2(2)(a)). Regulated activity is defined at section 8 of the 2008 Act and relevantly for the purposes of this appeal, includes activity which involves or is connected with the provision of health or social care. A service provider who provides regulated activity is required to register with the Care Quality Commission and providing such activity without registration is an offence (section 10(1) of the 2008 Act). The Care Quality Commission is given various enforcement powers including the power to cancel the registration of a service provider or manager (section 17 of the 2008 Act). The Care Quality Commission may impose, vary or remove conditions in force relating to registration either upon granting an application for registration or afterwards (see section 12 of the 2008 Act). As to urgent cancellation of registration, section 30 of the 2008 Act relevantly provides:

> **"30. Urgent procedure for cancellation**
> (1) If –
> (a) The Commission applies to a justice of the peace for an order cancelling the registration of a person as a service provider or manager in respect of a regulated activity, and
> (b) it appears to the justice that, unless an order is made, there will be a serious risk to a person's life, health or well-being,
> (c) the justice may make the order, and the cancellation has effect from the time when the order is made ..."

3. There is a right of appeal to the F-tT from such a decision. As to that, Section 32 of the 2008 Act relevantly provides;

> **"32 Appeals to the Tribunal**
> (1) An appeal against-
> (a) any decision of the Commission under this chapter, other than a decision to give a warning
> notice under section 29 or 29A, or
> (b) an order made by a justice of the peace under section 30,
> lies to the First-tier Tribunal.
> (2) ...
> (3) ...
> (4) On an appeal against an order made by a justice of the peace the First-tier Tribunal may
> confirm the order or direct that it is to cease to have effect..."

4. This appeal is brought by the appellant Company with my permission which I granted on limited grounds (see below) after an oral hearing of the application for permission to appeal.

The background

5. It is not necessary, in part because of my refusal of permission to appeal in relation to a number of proposed grounds, to set out the relevant history and factual background at any length. But shorn of all but essential detail, the appellant company, Button Space Ltd, was registered as a social care provider on 19 March 2014 so as to enable it to provide the regulated activity of accommodating persons who require nursing or personal care. There was one registered location I shall simply call "the Home". The Home had been rated inadequate on the basis of inspections and had been in "special measures" since May 2016. Relevant inspections undertaken by the Care Quality Commission had taken place in March, April and October of 2016. A number of decisions followed from those inspections. Specifically, on 14 April 2016 the Care Quality Commission imposed a condition which according to the F-tT was in terms that:

> "The Registered Provider must not admit any service users to [the Home] until compliant with the Health and Social Care Act (Regulated Activities) Regulations 2014".

6. Then, on a date in July of 2016 the registered manager's registration was cancelled. On 6 October 2016 the registration of the service provider was cancelled. Appeals to the F-tT against the decisions of 14 April 2016 and 6 October 2016 have been made and have been dealt with by the F-tT together, but separately from these proceedings.

7. Notwithstanding the above decisions, some of which were challenged as indicated, the appellant continued to provide the above regulated activity. On the weekend of 4-5 March 2017, there was an emergency evacuation of the Home because, it was said, a water pump had become overwhelmed and part of the home had flooded, thus comprising the electrics and the safety of the Home. It was against the backdrop of the previous concerns, additional concerns as to how the difficulty which had caused the evacuation had been allowed to come about, concerns as to how the evacuation had been undertaken and concerns for the service users if returned to the Home, that the Care Quality Commission decided to apply at the Manchester Magistrates Court for

urgent cancellation of the registration of the service provider under section 30 of the 2008 Act. The decision to make that application was taken on 7 March 2017, the appellant having been made aware of the intention to apply. On 8 March 2017 a District Judge granted the order and the registration certificate of the appellant was cancelled with immediate effect. An appeal to the F-tT followed.

The tribunal's consideration of the appeal

8. The F-tT considered the appeal by way of what was clearly a lengthy hearing. The matter was heard, initially, on 1 and 2 August 2017 but the proceedings had not been concluded so it was further heard on 11 and 12 October 2017 and, finally, on 24 November 2017. It then received quite detailed closing written submissions from each party. It dismissed the appeal and explained why in its detailed written reasons of 4 January 2018. It is apparent from those reasons that it had heard extensive evidence from a number of witnesses for each party.

9. The F-tT, in its written reasons, explained how it had dealt with a number of preliminary matters, set out something of the factual background, and then set out the test which appears at section 30 of the 2008 Act. It then summarised its powers on appeal under section 32. It correctly directed itself in this way:

> "28. The powers of the Tribunal are set out in section 32 of the 2008 Act and it stands in the shoes of the decision-maker so that the question for the tribunal is whether at the date of its decision, it reasonably believes that unless the order is made, the continued provision of the regulated activity by the registered provider will present a serious risk to a person's life, health or well-being.
>
> 29. The burden of proof is on the respondent and the standard of proof is the balance of probabilities".

10. The F-tT then considered the evidence which had been presented to it. It then explained why it found certain of the evidence presented by the appellant to be unpersuasive. Clearly having in mind an argument which had been put to it to the effect that there could be no risk to service users because other decisions taken by the Care Quality Commission (see above) had had the effect of obviating any risk anyway, it said this:

> "79. We rejected the Appellant's contention that the effect of such order being made by this tribunal cannot and will not result in a serious risk to a person's life, health or well-being due to the restriction imposed on 15 April 2016 being in force preventing the appellant from admitting new service users to the home.
>
> 80. We rejected it on the basis that whilst we acknowledge that there are restrictions in place, we reminded ourselves that concluded that (sic) question for the tribunal is whether at the date of its decision it reasonably believes that unless the order is made, the continued provision of the regulated activity by the registered provider will present a serious risk to a person's life, health or well-being. We concluded there was a serious risk based on the list of outstanding work provided by the appellant's own witnesses".

11. More generally as to the nature and extent of the risk it went on to say this:

> "81. The home is arguably worse now than it was when it was closed in March 2017. In addition to there being no electrical condition report, or a contract for repairs to the pumps, the Home has been empty for nine months. During that time, the Appellant accepts that it has fallen into further disrepair (for example, the conservatory roof is now damaged). The list provided by both Mr McKenzie and Ms Webb of work that needed to be done before the Home could reopen is a lengthy one. The Appellant accepts that improvement works will need to be taken to the Home before it can reopen. It accepts that this will not be an overnight process and the steps will take a number of months.
>
> 82. It is also accepted by the Appellant since the Home closed in March 2017, no works have been undertaken to the Home to either improve it or to rectify any damage at the Home. This is an important consideration and demonstrated to us that the Appellant was waiting for his insurance claim to be processed, in our view, it was not clear, why, for example, the contingency plan had not been updated to ensure it was more comprehensive and covered all eventualities. In short, no work has been undertaken since the order was made on 8 March 2017.
>
> 83. In addition, there was no action plan presented as to what would be done and by when. There was no schedule of policies which were to be updated. The contingency plan which was wholly inadequate for a professional care providing environment had not been updated despite Ms Webb accepting it needed updating.
>
> 84. We, therefore, having considered all the circumstances, concluded that there remained a serious risk to a person's life, health or well-being if the order ceased to have effect.
>
> 85. As we have made findings in relation to the serious risk to a person's life, health or mental well-being as at the date of our decision, we do not need to make further detailed findings around the events as at 8 March 2017.
>
> 86. However, if we had gone on to consider the circumstances as at the date of the order, we would have agreed with the observations of District Judge Goozee as set out in his order dated 8 March 2017. We agreed that there were inadequate measures taken to address the risks in managing the evacuation, there was a lack of effort to find alternative appropriate care accommodation or liaise with the Local Authority and there were inadequate care facilities at the hotel as well as poor contingency planning.
>
> 87. We also noted that from the Appellant's own evidence, it accepted that it would have done things differently. For example, Ms Webb, whilst recognising that it was an urgent situation, accepted that the contingency plan should have been more detailed and should have been a fully comprehensive set of documents covering almost every eventuality that could lead to a change in circumstances at the home. Furthermore, there should have been individual risk assessments 3which would have also avoided situations whereby vulnerable service users were place in accommodation which was clearly inappropriate.
>
> 88. We also carefully considered and rejected the other grounds put forward on behalf of the Appellant, including, for the reasons as set out above.
>
> 89. We, therefore, concluded that there remained a serious risk to a person's life, health or well-being if the order ceased to have effect".

12. So, the appeal failed.

The permission stage

13. As indicated, permission was sought and an oral hearing of the application was held. The original written grounds, all of which were pursued at the hearing of the

application, were extensive. I organised them into six broad categories, most of which were concerned with the F-tT's treatment of the evidence and with certain of its case management decisions. I refused permission to appeal to appeal on five of those, for reasons which I explained in my permission decision of 31 August 2018. I granted permission on the basis of one ground which I broadly summarised as amounting to a contention that the F-tT had erred in various ways when considering whether the test in section 30 of the 2008 Act had been met. I explained my reasoning in a little more detail in this way:

> "10. I consider ground (e) to be arguable and I have decided to grant permission on but limited to this ground. In particular it was a key aspect of the applicant's case that the "serious risk" requirement had not been and could not have been satisfied in circumstances where there were other factors, most notably the condition of 14 (or possibly 15) April 2016 (see paragraph 15 and 79 of the written reasons) which, it was contended, served to obviate any risk. I have seen that sort of argument raised in other cases recently though there is, so far as I know, no recent Upper Tribunal decision which actually addresses it. It might be that the tribunal failed to adequately address the specific issue raised by this argument. On one view it may be that the use of the word "unless" in the statutory test means that the making of an appropriate order by the Magistrate's Court must be the sole means of preventing the risk arising before such an order can lawfully be made. If so, perhaps that supports the argument put on behalf of the applicant. But it may be important not to confuse that with any argument as to whether the risk must be imminent or immediate. No such word is used in the statutory test so it might be possible to argue that certain restrictions, whilst preventing imminent risk, do not prevent risk on a more, perhaps only slightly more, long term basis unless there is evidence that they are very likely to remain in place for a period of some length. But the ground is arguable and merits the further attention of the Upper Tribunal".

14. When I granted permission, I invited the parties to indicate whether they would like an oral hearing of the appeal. Although I expressed the view that such might not be necessary given the limited basis upon which I had granted permission, both parties sought an oral hearing, and since there was agreement between them I decided to hold one.

The oral hearing of the appeal before the Upper Tribunal

15. By the time the oral hearing came around I had considerable written argument before me comprising the appellant's original grounds of appeal, its written submissions of 29 November 2017, its further submissions of 21 November 2018, and the respondent's written submissions of 26 June 2018, 13 September 2018 and 15 February 2019.

16. There were a couple of preliminary points I was required to deal with. First of all, it was apparent from Mr Drummond's most recent written submission that he was seeking to argue what was on one view a new point to the effect that the statutory test under section 30 of the 2008 Act gives a discretion to make an order cancelling registration and the F-tT had not consciously acknowledged that or indicated that it was exercising such discretion. Generally speaking, if a new point is to be taken at an oral hearing, an application to amend the grounds of appeal to the Upper Tribunal ought to be made in advance. That had not been done but I decided to permit amendment to the grounds to encompass such an argument because Mr Drummond (although clearly competent) is not a lawyer; because Mr Pujor did not object; because Mr Pujor had in any event sought to address the point in his most recent submission; and because I

thought the point was at least tangentially related to the ground in respect of which I had granted permission.

17. The second preliminary issue resulted from Mr Drummond objecting to the admission of Mr Pujor's most recent written submission on the basis that it had been filed "late". As to that, it is right to say that I had directed that any further written material should be provided at least five working days prior to the date of the hearing. The submission in question had been received on 18 February 2019, the date of hearing being 21 February 2019. Mr Drummond asserted that, in any event, Mr Pujor should explain why the submission had been late. But in response to my questions he confirmed that he had had the opportunity of reading and understanding the submission and that he did not require an adjournment to afford him further time for that purpose. Of course, the Upper Tribunal expects, absent good reason, that its directions will be complied with but the sheer artificiality of refusing to admit a written submission may be illustrated by making the point that there would have been nothing, in such circumstances and had I refused to admit the submission, preventing Mr Pujor simply reading it out. Accordingly, I admitted the submission for consideration.

18. Mr Drummond then addressed me and framed his argument along the lines in which it had been set out in his submission of 21 November 2018. In summary, he contended that the use of the word "may" in section 30 of the 2008 Act imported a discretion as to whether or not to make an order. That was so even where the statutory test was met. The F-tT, however, had not recognised that it had a discretion and had, therefore, erred in law by not exercising it. In other words, it had simply asked itself whether the test in section 30 was met and had then treated that as being determinative of the appeal. Further, section 30 of the 2008 Act should be read in such a way as to import a requirement of "immediate or imminent danger" before an order can lawfully be made. There was no such danger in this case. In any event, the other restrictions in place (see above) did mean that any risk had been obviated without the need for a section 30 Order. The tribunal had failed to consider the relevance of the other restrictions. It had also failed to consider whether it might have been able to impose other conditions rather than confirming the order.

19. Mr Pujor, for the Care Quality Commission, argued that it was clear from the F-tT's reasoning that it had exercised discretion even if it had not expressly said that it was doing so. Further, on the evidence and on the facts as found by the F-tT there would have been a serious risk unless the order had been made and the F-tT was entitled to so find. It was not necessary to read into the statutory test additional words with respect to any risk being immediate or imminent and that risk remained notwithstanding the absence of any service users in the home. Mr Pujor also disagreed with a contention made by Mr Drummond that any risk for the purposes of section 30 of the 2008 Act should be confined to service users as opposed to any other person.

My reasoning

20. As the parties appreciate, the Upper Tribunal may only interfere with decisions made by the F-tT where the F-tT has erred in law. I have set out above, the various ways in which Mr Drummond contends that this F-tT has so erred.

21. I have also set out section 30(1) of the 2008 Act which provides the urgent procedure for cancellation. It is, I understand, a relatively infrequently used provision

and that is perhaps not surprising given the stringency of the test and the range of other enforcement methods available to the Care Quality Commission as a result of various other provisions contained within the same Act. But that is not to say that the procedure should not be used in appropriate cases.

22. Mr Drummond's first point as the case is now argued, is the one relating to discretion. I accept without reservation, as indeed does Mr Pujor on behalf of the Care Quality Commission, that section 30(1) of the 2008 Act, through the use of the word "may" confers a discretion upon a justice of the peace (to use the term used in the legislation) when it is being decided whether to make an order and much more relevantly for my purposes in this appeal upon the F-tT, when it is deciding whether to confirm one. As a result of the way in which section 30(1) is structured, two requirements must be satisfied before an order may be made. The first of those is that the Care Quality Commission must have made an application (section 30(1)(a). The second is that it must appear that unless the order being sought is made, there will be a serious risk to a person's life, health or well-being (section 30(1)(b)). It is only where those two conditions are met that a decision-maker, including an F-tT, is then called upon to decide, in its discretion, whether to confirm the order cancelling registration or whether to direct that the order is to cease to have effect. All of that may seem obvious but it is worth stating.

23. I accept Mr Drummond's argument about the existence of a discretion, as I have already said, because of the use of the word "may" and the what I assume to be deliberate non-use of a compelling word such as "must". But that discretion only comes into play where the existence of the risk envisaged in section 30(1)(b), but for an order, has been established. It seems to me that, in those circumstances, it might well be rare for an F-tT to exercise discretion not to make an order. After all, if it has been demonstrated that unless the order is maintained there will be serious risk to a person's life, health or well-being, that would seem to represent a strong imperative for the maintaining of such an order. I do not preclude the possibility that there may be cases where, nevertheless, discretion ought to be exercised not to make one but I would not expect that to be common. Of course, there will be cases where the urgent procedure for cancellation test was met when the matter was before the Magistrates Court but is no longer met by the time the case comes before the F-tT. But that is really a different point. The F-tT, as it correctly directed itself, stands in the shoes of the justice of the peace albeit on the basis of an assessment as to circumstances as they stand as at the date it is considering and deciding matters for itself. It is against that background that I now come on to consider Mr Drummond's argument regarding discretion.

24. The F-tT set out the relevant terms of section 30 of the 2008 Act and its task under section 32. So, it knew the terms of the statutory test it was required to apply. There is no reason to suppose it misunderstood or overlooked the meaning or the use of the very simple and straightforward word "may". After it had assessed the evidence it concluded that the statutory test under section 30 had been met. It said it was reaching that conclusion at paragraph 70 of its written reasons and it then went on to explain why. It did not, at any stage in its written reasoning, say that it followed from it having decided the applicable statutory test was made out, that it was compelled, as a matter of law, to confirm the order. It does not appear to have been argued before it that if it found the test was met it should, nevertheless, exercise discretion not to confirm the order. Rather, the focus seems to have been upon the contention that the requisite risk

did not exist. In my judgment and against that background and on a full reading of the whole of what it had to say, the F-tT was deciding the test was made out and that there was nothing before it to suggest, that being so, it should not exercise discretion in favour of confirming the order. Perhaps it might be thought, for the sake of completeness, that it would have been better if it had expressly referred to its discretion but I am satisfied it exercised it as it was required to do. Accordingly, it did not err in law in the manner suggested.

25. Mr Drummond's next contention was to the effect that any serious risk as the phrase is used at section 30(1)(b) of the 2008 Act had to be about to be realised or, to use Mr Drummond's phrase, had to be "immediate or imminent" before the requisite test could be considered to be met. Mr Drummond says, in effect, that the F-tT effectively misdirected itself through not appreciating the requirement to interpret the test in that way.

26. Of course, underpinning Mr Drummond's argument as to this is the point that at the time the application to the justice of the peace was made and indeed at the time the F-tT was deciding the appeal, there were no service users on the premises. It seems to me, though, that that aspect is best considered under Mr Drummond's ground relating to there being other restrictions in place which prevented any risk arising. The question here is really whether it is legitimate to read the sub-section of the 2008 Act as incorporating a requirement of immediacy.

27. I see no basis to interpret the statutory test contained within section 30 of the 2008 Act in any other way than that in which it has simply and clearly been expressed. So, there is no reason to put a gloss upon the test or to import additional requirements not contained within the plain wording of the test. The F-tT applied the test as it is expressed and was entitled indeed obligated to do that. It did not, therefore, err in law in the manner which has been suggested.

28. The next argument, indeed the one which specifically persuaded me that I should grant permission, is that in which it is contended that it was not open to the F-tT to find that there would be serious risk unless the order was made because there were already, in place, other measures that meant that such a risk could not arise.

29. As has been noted, other enforcement action had been taken by the Care Quality Commission. Mr Drummond put the point in this way in his written submission of 21 November 2018:

> "At the time of the decision of the First-tier Tribunal there were no service users in the Home and the Appellant could not admit any service users due to the existence of a separate Notice by the Respondent preventing the Appellant admitting new service users therefore per se there could be no serious risk present and the upholding of the appeal by the First-tier Tribunal could not have exposed any service users to any such risk (even if it was accepted that service users even if resident in the Home would be subject to such a risk".

30 The F-tT, as is apparent from the part of its written reasons which I have set out above, did decide, in effect, that any such service user present in the home at the material time when the tribunal was assessing matters, could be at risk, though that, of course, is not all that it decided. The F-tT was clearly entitled to so decide on the

material before it and no successful challenge as to that was able to pass through the permission stage.

31. It is perhaps worth noting, by way of background, that the existence of the above orders and conditions did not appear sufficient to prevent an attempt to return some service users to the Home. I note, in that context, the written decision explaining the making of the order of 8 March 2017. The decision appears from page 43 to page 47 of the Upper Tribunal bundle. The District Judge who made the order said this:

> "Although the residents have now returned to the care home, I am not satisfied that the building's electrics remain safe. The certificate provided by A Able Group on the 7th March 2017 follows what can only have been a cursory inspection as it is clear from the invoice that it only lasted half an hour. The electrical inspection commissioned today by CQC has taken several hours and standing water has still been located close to electrical supplied [sic] and causing risk to electrical system at the property. The "contract" Mr McKenzie has exhibited to confirm arrangements for the pump station to be evacuated by A and D Drainage is simply an email confirmation of the arrangement and does not provide me with the appropriate assurances that adequate measures are in place pending the pump being replaced to eliminate risk".

32. So, it would appear from that, that some residents had in fact returned or been returned to the Home after the event which had led to the evacuation. Such was also touched upon in Mr Pujor's closing written submission to the F-tT of 1 December 2017 in which he made reference to what he described as "a unilateral move of the service users back to the home when the electrics were still compromised by the water seeping into the electrical system".

33. The F-tT clearly felt and clearly found, for reasons which were open to it, that the condition of the home at the time, viewed in isolation, was sufficient for it to properly conclude that the serious risk envisaged by section 30 would arise if the order was not to be confirmed. It was fully aware of the enforcement action which had been taken by the Care Quality Commission outside the urgent cancellation procedure. As has already been noted it referred to that other action and what it described as the "restrictions in place" at paragraph 80 of its written reasons as set out above.

34. The wording of section 30 of the 2008 Act ties the making of the order to the obviating of the relevant serious risk through the use of the word "unless". So, if it appears to the F-tT (applying the appropriate burden and standard of proof) that absent such an order the requisite serious risk will be present it is, speaking generally, likely that it will confirm the order notwithstanding, as noted above, that it has a discretion as to whether to do so or not. Its assessment as to risk though, does have to be a holistic one in the sense that it is not required to ignore and should not ignore any other relevant factors including other restrictions imposed in consequence of the exercise of regulatory functions which might prevent the serious risk arising even if the order is not confirmed. So, it is not asking itself hypothetically, whether absent any such other restrictions there would be risk unless an order is confirmed. But it is nevertheless open to it, notwithstanding the existence of other restrictions, to conclude that the statutory test is met. All of that will depend upon a range of matters which may well include such as the nature of the restrictions, the certainty of the restrictions, their likely continuance within the foreseeable future and any prospect of an attempt being made to circumvent them.

35. In this case, as noted, the F-tT did take the other restrictions into account. It is fair to say that it could have said more than it did and in a more direct way about why it

felt that those other restrictions did not have the effect of obviating the risk. But this was an expert tribunal which was fully appraised of all of the circumstances. It reached a decision which, in my judgment, was open to it and which, when its written reasons are read as a whole, it adequately explained. I can understand why Mr Drummond argued the point but I have concluded, in the end, and not withstanding that I was persuaded to grant permission largely if not wholly on this basis, that the ground is not made out. But I could see circumstances in other cases where such a ground might be made out if an F-tT has not at least addressed other potentially relevant factors which might lead to a conclusion that no risk can arise whether an order is confirmed or not.

36. Mr Drummond sought to attack the F-tT for failing to consider alternatives to confirming the order. To some extent Mr Drummond's criticism is extended to the decision of the District Judge as well as to the F-tT but it is only the F-tT's decision which is before me. The F-tT was tasked, as a result of the content of section 32 of the 2008 Act (see above) with deciding whether to confirm the order made by the District Judge or to direct that it was to cease to have effect (see section 32(4)). It had to do one or the other and it made its choice. It clearly did not think there was sufficient material before it to lead it to conclude that other measures could and would be taken to reduce or extinguish risk such that it should direct that the order should cease to have effect. That was its decision to take in light of its findings. Again, therefore, I conclude that this ground is not made out.

37. There was one additional point of difference between the parties which, as it turns out, has not impacted upon my decision. But it is perhaps worth saying something about it. Mr Drummond argued that the "serious risk" as set out in section 30 of the 2008 Act related only to service users. Mr Pujor argued that it related to any person, whether a service user or not, who might face such a risk. I accept that the persons most likely to require the protection which the urgent cancellation procedure offers will be service users or potential service users. Nevertheless, if it had been intended to limit protection under the urgent cancellation procedure that could easily have been stated in section 30. Indeed, the selection of the phrase "serious risk to a person's life, health or well-being" (my underlining) connotes an intention to apply the protection afforded by the section to persons who are not service users or potential service users. There is, indeed, no need to go beyond the literal wording but it is also the case that there is no logical reason why the section should be limited to service users only. So, although I have not found it to be relevant to my deliberations, I have concluded that the approach urged upon me by Mr Pujor, as to this discrete matter is the right one.

38. In the circumstances I have concluded that the tribunal did not, in this case, err in law. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

M R Hemingway: Judge of the Upper Tribunal

Dated: 17 April 2019