

First-tier Tribunal Care Standards

The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008

NCN: [2024] UKFTT 00165 (HESC)
Consolidated appeals under [2023] 5011.EA

Hearing held The Royal Courts of Justice, London
on 20th and 21st February 2024

BEFORE

**Mr L Ford - District Tribunal Judge
Ms D Forshaw - Specialist Member
Mr M Turner - Specialist Member**

BEFORE

**(1) SUN MOON CARE LIMITED
(2) NASIMA JAHAN**

Appellants

and

CARE QUALITY COMMISSION

Respondent

DECISION

The Appeals

1. Sun Moon Care Limited appeals the decision of the CQC dated 23rd May 2023 to refuse its application to register it as a service provider of the regulated activity of personal care.
2. Mrs Nasima Jahan appeals the decision of the CQC to refuse to register her as a manager of the service provider of the regulated activity of personal care.
3. The appeals were lodged on 16th June 2023 and have been consolidated.

The Hearing

4. The hearing took place on the 20th and 21st February 2024 at the Royal Courts of Justice, Strand, London. The parties and witnesses attended in person.

5. The parties' representatives made oral submissions at the end of the hearing.

Attendance

6. Mr Henry Mainwaring, Counsel, represented the Appellant and Ms Mary Teresa Deignan, Counsel, represented the Respondent.
7. We heard oral evidence from Ms Louise Clarke, Registration Inspector, Ms Lynsey Canty, Registration Inspector, and Mr Lee Boland, Registration Manager, on behalf of the Respondent. Oral evidence was also given by Mrs Nasima Jahan, the Appellant and director of Sun Moon Care and as their nominated individual, and Dr M D Tanvirul Islam. Mrs Jahan's husband attended. Ms W Mbieli, the Respondents solicitor attended and Ms J O'Neil as an observer from the CQC.
8. The hearing took place on the 21st and 22nd February 2024 at the Royal Courts of Justice, London.

Late Evidence

The only application for admission of late evidence was made on the second day of the hearing during the evidence of Ms Canty. A 29-page document entitled 'Registration Report' was admitted as it was relevant to the issue as to accuracy of her recording of the interview as compared to the automated transcript produced by Microsoft Teams. The parties agreed that it should be admitted and it was in the interests of justice to do so. Mr Mainwaring was given time to consider the document before continuing his cross examination.

Background

9. On 7 July 2022 an application was made by Sun Moon Care Limited to register as a service provider together with an application by Mrs Jahan to register as manager of a service provider. On 6 October 2022 an assessment interview of both applicants was conducted by Ms L Clarke. On 12 October 2022 the Respondent issued Notices of Proposals to refuse (NoPs) indicating an intention to refuse both applications. Mrs Jahan made representations in relation to the NoPs and on 7 February 2023 the Respondent confirmed that it would not adopt them and both applications were reassigned for reassessment.
10. On 14 March 2023 further interviews were carried out of Sun Moon Care as provider and Mrs Jahan as registered manager, with Ms L Canty. Following these interviews the Respondent issued NoPs refusing both applications on 17 April 2023. No representations were received and on 23 May 2023 Notice of Decisions (NoDs) were issued following the recommendations made in the NoPs.
11. The current appeals were lodged on 16 June 2023. Sun Moon Care Limited appeals the decision to refuse its application to register as a service provider of the regulated activity of personal care and Mrs Jahan appeals the decision of the Respondent to refuse to register her as a manager in respect of the service

provider of the regulated activity of personal care. Mrs Jahan is the director of Sun Moon Care Limited and is the Applicant provider's nominated individual for the purposes of the application and for this appeal.

Legal Framework

12. Section 2 of the Health and Social Care Act 2008 ('the 2008 Act') invests in the Respondent registration and review and investigation functions. By virtue of section 3(1) of the 2008 Act, the Respondent's main objective is to protect and promote the health, safety and welfare of the people who use the health and social care services.
13. Section 12 of the 2008 Act obligates the Respondent to grant an application as a service provider where the Respondent is satisfied that the requirements of the Regulations are being and will continue to be complied with in relation to the regulated activities. If it is not satisfied, it must refuse it.
14. Section 15 of the 2008 Act obligates the Respondent to grant an application to register as manager of a service provider where satisfied that the requirements of the Regulations and any other enactment which appears to be relevant, are being and will continue to be complied with. If not so satisfied, it must refuse it.
15. Under section 20 of the 2008 Act, the Secretary of State is empowered to make regulations in relation to the regulated activities by way of regulations. The Regulations made under this section are the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, SI 2014/2936 ('the Regulations') and The CQC (Registration) Regulations 2009.
16. Sections 26, 27 and 28 of the Act set out the procedural requirements in relation to notification of the Respondent's decision.
17. Section 32 of the Act provides for a right of appeal to this Tribunal against a decision to refuse the registration of a service provider in relation to a regulated activity or the registration as a manager to a service provider. The Tribunal may confirm the decision or direct that it is not to have effect.
18. Part 3 of the Regulations sets out the Fundamental Standards that registered providers must comply with when carrying on a regulated activity.
19. The Appellant bears the burden of persuading the Tribunal that the Regulations have been complied with at the date of the hearing, including 'by having regard to' guidance issued under the 2008 Act. The findings of fact are made on the basis of whether or not the Tribunal is satisfied as to the facts on the balance of probabilities.
20. The Tribunal is required to determine the matter afresh and make its own decision on the merits and evidence as of the date of hearing. Subject only to relevance and fairness, this can include new information that was not available or presented at the time when the decision under appeal was made. The fresh determination in this appeal includes consideration of the detailed documentary evidence provided by both parties, as well as the oral evidence, subject to

questioning throughout the hearing. We have considered all of the evidence and the written and oral submissions before us, even if we do not mention every point of it in our decision. We refer only to the parts of the evidence which were of particular importance in reaching our findings.

Evidence

21. In addition to considering the witnesses' written evidence we heard oral evidence from the following: –

Mrs Nasima Jahan

22. The parties agreed that it would be beneficial for Mrs Jahan to give her evidence first which would negate the need to recall the Respondent's witnesses following her evidence. The tribunal agreed that would be appropriate.

23. The tribunal and the party's representatives made considerable effort throughout their questioning to ensure that Mrs Jahan understood the questions that were being asked of her and repeated and rephrased those questions as required. At no point was Mrs Jahan pressed to answer quickly and was given time to consider the questions and provide her answers. On occasions it would be several minutes until Mrs Jahan provided an answer to a question and the vast majority of her answers consisted of short phrases rather than full explanations and complete sentences.

24. We took into account that English was not Mrs Jahan's first language. We are satisfied that Mrs Jahan understood the questions being asked of her and if there was some doubt, both parties' representatives were at pains to ensure that questions were rephrased. We note that no request was made to the tribunal for an interpreter and no other reasonable adjustments were requested by Mrs Jahan's solicitors or Counsel. Further, we note that no adjustments were sought in response to the Respondents standard forms requesting details of any necessary adjustments prior to her two CVP interviews. Mr Mainwaring emphasised that there was no suggestion that there was any language barrier that would prevent Mrs Jahan from performing as a Registered Manager.

25. Mrs Jahan confirmed the contents of her statement and those of Sun Moon Care dated 18th October 2023 and 2nd November 2023, with exhibits.

26. Mrs Jahan gave evidence over several hours divided by a lunch break. Under cross-examination Mrs Jahan expressed her concern as to the accuracy of the Microsoft Teams recording of her meeting with Ms Canty and did not accept that she was told that a written record of both interviews would be kept. It was suggested that there were words missing from Ms Canty's account of the interview although Mrs Jahan was not able to indicate what answers she thought she had given which were not recorded.

27. Mrs Jahan asserted that Ms Canty did not inform her that she was keeping a separate written note of her interview and suggested that she was subject to verbal pressure with Ms Canty continuing to ask questions before she had had an opportunity of completing her answers. She thought, therefore, the interview

was unfair to her.

28. She confirmed in relation to the suggestion in her statement that she had taken on staff, that there was only one staff member, and that was Dr Islam.
29. When asked whether she felt that she had informed Miss Canty that she felt distressed she said that she did and stated again that she had not been given time to answer questions.
30. Mrs Jahan was questioned at length in relation to the statement in her written evidence that she was committed to conducting regular audits to ensure the quality of services. She confirmed that as registered manager she would carry out the audits and referred to her experience as a 'superior' member of staff when working for Bioluminax. She was asked what it was she audited there and referred to 'accessibility and medication audits'. She confirmed that these were being carried out monthly and when asked what she did in the audit process she simply said 'medication audit'. When asked what she would do with the information obtained from audits and whether she would look for trends she was not able to provide any clear information. When asked how often she would carry out audits and what was in place to tell her how often they should occur she simply referred to a monthly or quarterly planner or a six monthly planner. Although she referred to having an audit policy it was clear from the oral evidence that she was not able to describe the strategic purpose of audits in the context of a nominated individual for the provider, or as registered manager.
31. Mrs Jahan was asked about her 'person centred policy' and what she meant by 'person centred planning'. She replied "personalised individual care". She was asked about her practice/'dummy' care plan and the concerns that were expressed about its adequacy by Ms Canty in her second statement. Mrs Jahan agreed with some of the criticisms and the only thing she didn't agree with was a failure to sign it and 'financial arrangements'. She stated that she had now had some care planning training from Dr Islam. She confirmed that she understood Ms Canty's concerns in relation to the care plan and when asked what particular concerns she has taken on board, she said that she had forgotten. She similarly confirmed that she had read the concerns of Ms Canty in relation to the practice mental capacity assessment that she had carried out but had also forgotten the concerns. She indicated that she had re-done the practice capacity assessment but was not able to produce it. She stated she had done this on the basis of a different scenario. In response to questioning about her understanding of the mental capacity act she generally referred to the existence of procedures without describing the principles underlying it and their application.
32. After the lunch break Mrs Jahan was questioned further in relation to her statement and the long list of medication documents consisting of 19 different policies/forms and what was the purpose of so many forms. When asked about the difference between particular forms in relation to whether they are weekly or monthly she simply replied one is for monthly, one is for weekly and referred to differences in clients taking daily medication for a short time and those that needed weekly medication. She repeated the same answer to subsequent

questions.

33. Mrs Jahan was asked about her approach towards PRN medication referred to in paragraphs 46 to 51 of her first statement and what guidance she had in relation to PRN misuse. She answered by saying 'staff supervision or spot check' and referred to the involvement of Dr Islam, and then talked about the four stage supervision process and stated that she would train staff. When asked what spot check she would carry out she stated that 'you check medication, consider any shortfall, missing medication'. She confirmed that she would be the member of staff referred to in paragraph 48 of her statement and when asked what advice she would give she simply stated she would send staff for further training. She was not able to describe the processes and principles as set out in her own statement in relation to PRN medication.
34. Mrs Jahan was asked about paragraph 59 of her statement on the basis that there was no faulty staircase and what would be her thought processes regarding mobility issues. She replied 'risk of falls and hazards'. She was asked again about the risk assessment process and replied in single phrases such as 'slip and trip risk, safety floor, a regular check'. She did not describe, and appeared not to be able, to describe the processes that are set out in her statement.
35. Mrs Jahan was asked what 'good governance' means. She referred to protecting the individual, keeping them safe and their well-being. She went on to refer to 'regular monitoring, assessing and quality assurance meeting'. She was asked what would be discussed at such meeting and she replied 'overall care' she said the office staff and Dr Islam would be at the meeting.
36. Mrs Jahan was asked how she would deal with complaints and referred to a three step procedure - first informally calling staff into the office, and decide if the formal complaint process was appropriate to follow. She indicated she would gather more information and if it was a formal complaint fill in the form give it to the office which would be considered in one day. The Registered Manager would deal with it within five days and invite the person in for formal discussion. She was asked whether the CQC have a role in complaints, confirming that at stage 3 if someone is not happy then 'fill in the form and if not happy complain to the local authority or CQC'.
37. Mrs Jahan was asked about her role in monitoring performance. She replied 'spot checks identify better performance and supervisor meetings four times a year'. She referred to her previous experience at Bioluminax where she was carrying out spot checks and supervising staff. She was asked what the 'governance planner' was that she had referred to. She referred to it being for monitoring and assessing performance of staff.
38. Mrs Jahan was questioned at length about her understanding of some paragraphs in her first statement, particularly paragraph 95. Although she was given a long time to read the paragraph and consider what it meant, even after repeating the question and several very long pauses, she was not able to confirm what it meant. She indicated that Dr Islam had not written the

statement. When asked who had obtained the 19 policies referred to previously, she stated that she had done that. She was further questioned regarding paragraph 119 of her statement in relation to the replacement of the registered manager and referred to that applying if she was off sick. It was put to her that that is not what the paragraph says and she accepted that but could not explain its meaning.

39. In Mrs Jahan's re-examination she was able to describe some of the general principles of the Mental Capacity Act. She was asked about the situation where the care needs of someone may change over time and she referred to carrying out a care assessment every six months. She was asked whether she would take into account information from other service providers when carrying out that assessment and replied 'no – review after six months'. It was concerning that she would not consult other service providers which was fundamental to an assessment.
40. She was asked how she would deal with an assessment of somebody with dementia and referred to the five step assessment process identifying risk, evaluating the risk, decide, record the decision, and review every six months. She referred to the policies and procedures she has in place in relation to audits. She was asked what an audit was and replied that 'keep recording monitor and review identify the issue'. She referred to 'spot checks and quality assurance every six months'.

Dr M D Tanvirul Islam

41. Dr Islam confirmed the contents of his statement dated 2nd November 2023. He confirmed that he had practiced as a doctor in Bangladesh for the last three years and had begun the process towards registration in the UK. He confirmed that he understood the elements that the CQC were considering in dealing with the applications and confirmed that he understood these as being the Appellants capacity to operate a service and provide a quality assured provision of services for personal care for the over 65's. He confirmed that he assisted and supported Mrs Jahan and that he had coached her on most of the policies and procedures, including those in relation to capacity and risk assessment. He was unsure whether he had read the statement of Ms Clarke but confirmed that he had read the statements of Ms Canty. He was asked about his role in drafting Mrs Jahan's statements and denied that he had drafted them and said he simply helped Mrs Jahan to prepare them herself. When referred to particular paragraphs of the statement, including paragraph 119 of her Mrs Jahan's first statement, he confirmed that she had written this and could not explain why she could not understand the paragraph when she gave her evidence. He was asked about his views of Mrs Jahan application after considering her oral evidence and commented that he did not know "why she cannot perform today".
42. Under cross examination Dr Islam stated that, although he tried to make her understand "today I have seen that in most of the policy and procedures she could not demonstrate her competence and needs more work". When asked whether he felt that she was qualified to carry out the regulated activity she had applied for he stated that, although he had helped in relation to the mental

capacity act and risk assessments, that he did not feel that she had reached a sufficient level of competence.

43. When asked about the concerns expressed by Ms Canty in relation to the adequacy of the theoretical capacity and risk assessment, he agreed that those that were produced to the CQC were not adequate and that " she needed more development in most areas".

Ms Louise Clarke

44. Ms Clarke confirmed the contents of her statement dated 13th October 2023 with exhibits.

45. Under cross examination Ms Clarke confirmed that it was not a prerequisite to registration for Mrs Jahan to have worked in a healthcare setting and that there was nothing in her original application which would preclude her from being registered. It was suggested to her that there had been insufficient warnings and allowances made in relation to the use of CVP. Ms Clarke confirmed that she used a standard script which would deal with the problems arising in a CVP interview, including issues if the connection drops, and that she had given a clear account of the issues that would be considered during the interview. She said she had made it clear that there was no expectation that Mrs Jahan should be able to recite the large volume of policies and procedures that had been produced by her and that the point of the interview was to test her understanding and application of the policies. In relation to her previous experience Ms Clarke explained that Mrs Jahan was unable to demonstrate any transferable skills emanating from that experience. She confirmed in re-examination that the five step health and safety process that Mrs Jahan referred to is not relevant to the issues and confirmed again that it was not important to the assessment process that Mrs Jahan should be able to memorise procedures. The expectation was for the applicant to demonstrate how the procedures work in practice. Ms Clarke was clear and consistent in her oral evidence and we considered, on a balance of probabilities that where her account differs to that of this is just her evidence is to be preferred. She relies on her record of her discussion with Mrs Jahan.

Ms Lynsey Canty

46. Ms Canty confirmed the contents of her statements dated 13th and 18th October 2023 with related exhibits.

47. it was put to Ms Canty that, in summary, she had not fully taken into account Mrs Jahan's difficulties with English as her second language, and the limitations of CVP in carrying out her assessment. She was clear in her response that she was aware of the difficulties but felt that Mrs Jahan understood the questions and was given the opportunity to answer them and display her understanding and knowledge.

48. As the accuracy and completeness of the Microsoft Teams transcript of the interview was challenged by Mrs Jahan there was a break for Ms Canty to

obtain and distribute her registration report dated 13 March 2023 which contained her contemporaneous typed account of the questions and answers that were posed during the interview. Time was allowed for Mr Mainwaring to consider the document. He suggested that there were gaps in the recording which were not properly accounted for in the contents of the registration report and several examples of this were put to Ms Canty. She accepted that the Microsoft transcript contained errors and some gaps but maintained that her typed notes in the registration report were a true and accurate reflection of Mrs Jahan's answers.

49. Ms Canty was asked whether she had suggested to Mrs Jahan that she should not refer to her policies and other documentation and she was clear that she did not feel that during the interview she indicated to Mrs Jahan that she was not allowed to do so. She accepted that she had not specifically stated that Mrs Jahan could refer to her notes but did not feel that she had precluded her from doing so. Her main concern was Mrs Jahan's understanding of the purposes of the policies and how they would apply in practice. She stated in re-examination that she felt Mrs Jahan understood the questions and that she would repeat questions and asked them in different ways if she was in doubt. She restated her view that it was not a detailed knowledge of the procedures that was required but an ability to properly apply them.
50. In relation to the software referred to by Mrs Jahan, Ms Canty was clear that she did discuss the software with Mrs Jahan but that her concern was what Mrs Jahan would do with the software and its relevance in practice

Mr Lee Bolland

51. Mr Bolland confirmed the contents of his statement dated 20th September 2023 with exhibits.
52. Mr Bolland confirmed that having heard all of the evidence, and having considered all of the updating information, there was no change to his views and conclusions.
53. He was asked by Mr Mainwaring about the relevance of previous managerial experience and confirmed that this would not be a precondition to registration. He also confirmed that working in the care sector was also not a requirement. He accepted that Mrs Jahan had previously worked as a care worker and that she had some management experience but not in adult social care. It was put to him that there was a 'glass ceiling' in terms of applications and he refuted that but accepted that Mrs Jahan had a 'meaningful' amount of experience but pointed out that some of that occurred some time ago. He accepted that Mrs Jahan should be able to refer to her policies and procedures and that she should not be prevented from doing so. In re-examination he indicated that on assessment he would expect to see Mrs Jahan give a range of examples and apply specific policies and procedures and that she would not have been asked to just recite the policies.
54. Both parties made closing oral submissions, and relied upon their skeleton

arguments. We deal with those submissions in our conclusions that follow.

The Tribunal's conclusions with reasons

55. We determined the applications made by Sun Moon Care Limited and Mrs Jahan de novo and consider the merits of each appeal based upon the evidence available as at the date of the hearing.
56. In the original appeal document the Appellant sets out a number of arguments which are essentially based on procedural irregularities. We accept that it is the Respondent's normal practice not to directly record interviews or take verbatim notes, and it is an acceptable practice for them to rely upon the notes of the interview taken contemporaneously. It appears that these are recorded on forms entitled 'Registration report'.
57. We found all of the Respondents witnesses to be credible and their oral evidence was consistent with that in their witness statements.
58. We accept the evidence of Ms Clarke as to her account of the responses that she obtained in answer to her questions. We accept that she would have given an introduction to the meeting which would have included reference to the difficulties of CVP. We note that that assessment interview resulted in a notice that is not the subject of this appeal.
59. In relation to the interview conducted by Ms Canty on 14 March 2023 we accept that the Microsoft Teams transcription is not a full and accurate account of the interview. It is clear that some of it does not make sense. However, we accept that Ms Canty's entries into the registration report form that was produced during the hearing would have been an accurate recording of the questions and answers that were submitted. It clearly sets out the questions that were asked with very clear statements of the answers that were given. The content of the answers does not display an understanding on the part of the Appellant of the application and implementation of policies and procedures, or a fundamental understanding of the purpose of such policies and procedures.
60. Although Mr Mainwaring was able to identify a number of obvious gaps and inaccuracies in the teams transcript it was clear that he was not able to identify, and indeed Mrs Jahan was not able to identify in her evidence, what answers she says were given that have not been properly recorded. If we compare her answers to those given at the hearing in her oral evidence, the content and length of the answers are entirely consistent. Therefore, on balance, we accept the evidence of Ms Canty in relation to her account of the interview and the answers given on 13 March 2023.
61. It was submitted that the Respondent failed to sufficiently consider the large volume of supporting documentation, policies, procedures and forms that were submitted as part of the application. It is clear that whilst they were relevant, applications for registration cannot be paper exercises and that the questions posed to Mrs Jahan at interview, and during the hearing, were fair and designed to allow Mrs Jahan to show her understanding of the regulations and her ability

to ensure compliance with them. She failed to do so.

62. We carefully considered Mrs Jahan's oral evidence. It was fundamental to both appeals. We note that she was given considerable time to answer each question and both advocates went out of their way to make the questions as clear and simple as possible. We take into account Mrs Jahan's nervousness giving evidence and the fact that she is giving evidence in English as a second language. However, there was not one area of questioning where she was able to demonstrate in her answers that she had a clear understanding of the underlying purpose of policies and procedures that she had produced or that she was able to understand them to the extent that she could apply them to day-to-day situations. Her replies mainly consisted of simple two or three word statements which were not put into any context or demonstrated an understanding of the requirements of the regulations.
63. We also noted that Mrs Jahan's statement of evidence contained paragraphs that Mrs Jahan was not able to understand or explain herself. It was clear to us that these paragraphs were not drafted by her and that she signed statements which she clearly did not fully understand or was able to explain the meaning of parts of them. The degree of knowledge and understanding of the issues reflected in Mrs Jahan's two statements were not reflected to any extent in her oral evidence.
64. We also noted the very specific conclusions of Dr Islam who was portrayed as a consultant to the Appellants and also named as the Designated Safeguarding Lead (DSL) for the Appellants. He stated in his oral evidence that he did not feel, despite his help and support, that Mrs Jahan was not able to demonstrate her competence or qualifications to carry out the regulated activity which was the subject of her application. He had no explanation as to why she was not able to do so.
65. The appellants oral submissions were largely based upon arguments in relation to the inaccuracies in the Microsoft Teams transcript and the failure to properly record the entirety of Mrs Jahan's answers. On balance, having heard oral evidence from Mrs Jahan we find that it is more likely that Ms Canty's very clear and detailed recording of questions and answers represents an accurate summary of the interview and any omissions, the content of which have not been identified by the Appellants, would not have been material to the issues before us. It was also clear from the Respondent's witnesses that there was no expectation on them that Mrs Jahan should be able to recite policies and procedures and the emphasis was clearly on her understanding and application of those procedures. It was suggested that the Respondent should make it clearer to applicants that they are entitled to refer to documents during interview. Although there is some merit in that suggestion, we do not find that Mrs Jahan was discouraged from doing so and that the lack of such instruction would not undermine the answers she gave at interview. Such answers are entirely consistent with the oral evidence given to the tribunal.
66. By way of observation we accept it is not the Respondent's normal approach to record interviews. However, in the case where they decide to do so it would

seem inadvisable to use an inherently unreliable transcription tool. The simple recording of the interview would avoid any dispute.

67. Mrs Jahan's skeleton argument suggested throughout that she had an understanding of systems and processes required to apply policies and procedures and had a thorough understanding of the necessary systems and processes to, for example, ensure the safety of individuals in her care. Although we accept that there is a large volume of appropriate policies and procedures in place, Dr Islam's conclusions as to the performance and degree of understanding and progress displayed in Mrs Jahan's oral evidence are shared by the tribunal. Whilst we accept Mrs Jahan has shown a the level of commitment and persistence, this does not equate to sufficient understanding and competence. Mrs Jahan submitted that the application should be judged on her demonstrating understanding and familiarity of processes which unfortunately she was unable to show.

68. We carefully considered the Scott Schedule and the specific findings sought in relation to both Appellants. For the reasons stated above we find that each and every element of the Respondent's case is made out. Whilst we accept that in some respects there are policies and procedures in place the findings sought referred to such policies being embedded with appropriate systems and processes in place to assess and mitigate risks. For these to be effective they require a level of understanding on the part of Mrs Jahan as registered manager which was not reflected in her evidence as referred to above. The Appellant's responses in the Scott Schedule to each of the items were not supported in her oral evidence to any extent.

Proportionality

69. We considered the proportionality of the decision to refuse the two applications before us. Having regard to, in particular the very clear evidence of the Respondent's witnesses and the oral evidence of Mrs Jahan and Dr Islam, we find that the refusal of registration of Sun Moon Care Limited as a service provider remains reasonable, justified and proportionate on the basis of the evidence and our findings as referred to above. For the same reasons we find that it is proportionate to refuse the application of Mrs Jahan to register as a manager in respect of the service provider of the regulated activity of personal care as we are not satisfied that Mrs Jahan is able to comply with the 2014 regulations. We considered whether there were any conditions that could be put in place that would meet concerns in relation to Sun Moon Care Limited and Mrs Jahan's ability to comply with the 2014 regulations, and find that there are no such conditions that would mitigate against non-compliance.

Decision:

70. The application to register Sun Moon Care Limited as a service provider is dismissed. The decision to refuse registration is confirmed.

71. The application of Mrs Jahan to register as a manager in respect of the service provider for the regulated activity of personal care is dismissed. The decision to refuse registration is confirmed.

Mr L Ford
District Judge. First Tier Tribunal

First-tier Tribunal (Health, Education and Social Care)

Date Issued: 29 February 2024