



First-tier Tribunal Care Standards

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

PEACH RECRUITMENT LIMITED

Appellant

v

CARE QUALITY COMMISSION

Respondent

**2024-01047.EA
[2024] UKFTT 001147 (HESC)**

BEFORE:

**Tribunal Judge Siobhan Goodrich
Specialist Member Libhin Bromley
Specialist Member Lorna Jacobs**

**Heard via CVP Kinley
On 30, 31 October and 1 November 2024
Panel Deliberations on 18 November 2024**

Representation

Ms Aparna Rao for the Respondent
Mr Sani appeared in person on behalf of Peach Recruitment Limited and on his own behalf.

The Appeals

1. This hearing concerns two appeals against separate decisions made by the Respondent on 15 January 2024:
 - (a) to refuse the application of the First Appellant's (Peach Recruitment Limited, ('PRL') for registration as a provider - 2024-01046.EA, and
 - (b) to refuse the Second Appellant's (Mr Bala Sani) application for registration as a registered manager - 2024-01047.EA.
2. Both appeals were consolidated under appeal reference 2024-01047.EA.

The Parties

3. Mr Bala Sani is the sole director of PRL and will be the nominated individual if the company application for registration as a provider of personal care (the regulated activity) is granted. Mr Sani also applied to be registered by the Respondent as a manager of the regulated activity to be provided by PRL by way of domiciliary care. For ease of reference when referring to the First Appellant we will refer to PRL. When referring to Mr Sani we will refer to him by name or as "the Appellant".
4. The Respondent is the statutory body responsible for the registration of those who seek to provide regulated activities i.e. activities connected with the provision of health or social care. The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.

Restricted Reporting Order

5. Neither party applied for a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules and we do not consider that such an order is necessary.

The Chronology regarding the decision under appeal

6. Key dates are as follows:

05.06.2023 The Appellant made an application to register as a service provider and to register as the manager in respect of the regulated activity of personal care

22.09.2023 Mrs Godfrey, Registration Inspector, offered three dates for the provider discussion and fit person interview (FPI) conducted via Microsoft Teams. The Appellant replied confirming attendance for both interviews on 26 October 2023.

26.10.2023 The Appellant did not attend the pre-planned meeting for the provider discussion arranged in the morning but did attend the FPI in the afternoon.

06.11.2023 Mrs Godfrey conducted the re-arranged FPI with the Appellant via Microsoft Teams.

07.11.2023 The Appellant contacted the Respondent thanking them.

11.11.2023 The Respondent held a Management Review Meeting (MRM) with Ms Johnson, Registration Manager, and Mrs Godfrey to make a decision whether the applications should be allowed. A decision was made to issue Notices of Proposal to refuse both applications.

05.01.2024 The Respondent issued Notices of Proposal to refuse the registration as a service provider and registered manager in respect of the Regulated Activity.

08.01.2024 The Respondent received the Appellant's written representations, with appendices.

15.01.2024 Following consideration of the Appellant's representations and supporting documents, the Respondent issued the Notices of Decision.

16.01.2024 The Appellant emailed the Respondent's complaints team to lodge a complaint regarding the conduct of Mrs Godfrey in the interview and also requesting the

recording.

22.01.2024 The Appellant emailed the Respondent's information access team requesting the recordings of the registration interviews under a subject access request.

06.02.2024 The Appellant lodged appeals against the Notice of Decisions.

The Decisions under Appeal

7. We will not set out all the detail of the NoDs. The Respondent's decisions to refuse both applications were essentially made because it was not satisfied that Mr Sani is a fit and proper person to be a director or registered manager or that he will comply with the requirements of regulations 11 (need for consent) and 17 (good governance).

The Appeal

8. Mr Sani submitted his appeals on 6 February 2024. In the reasons for appeal he expressed his appreciation for the assessment conducted by the CQC and he acknowledged the concerns raised. He firmly disagreed with the decision which he felt was based on misunderstanding of certain aspects of the applications and racial discrimination. His detailed reasons for appeal also included the following:
 - 1) Mrs Godfrey displayed perceived bias and unprofessional conduct during the interview: the CQC has consistently refused to release the tapes of interview.
 - 2) As to the application process and discrimination, he wanted to clarify PRL's focus on supporting "voluntary individuals" aged 65 and older and its commitment to "not dealing with service users with mental health issues or medication administration. I mentioned to the Inspector several times that Peach Recruitment Ltd would not be dealing with services users with mental health issues, but she chose to put it in the report as she was desperately looking for grounds to refuse me and Peach Recruitment registration." He considers that the emphasis on mental health issues during the interview process and the apparent bias exhibited by the Inspector had led to CQC's potential refusal of the application.
 - 3) As to his employment history and Sanicam Pty Ltd, he apologized for his oversight in not disclosing his role as sole Director of Sanicam Pty Ltd. The inspector did not specifically ask. He had worked as a contractor providing live-in care. His omission was unintentional.
 - 4) As to work and study balance, he considered there was a negative perception of his commitment to working and studying simultaneously.
 - 5) As to Sun Valley Support and Living (Sun Valley or SSSL), the discrepancies in the applications for SSSL were not intentional. He did not complete the SSSL application. They recruited an agency in Manchester that did, and they even refused to allow him to liaise with the agency: this is one of the reasons he left SSSL. SSSL was a sham company that recruited him and lied to him. "They wanted to use me and get CQC done and doom me later."
 - 6) As to qualifications and continuous learning, he has a BA in Health and Social Care from the Open university and an MSc in Project Management, from the University of Winchester, specialising in Healthcare Management. With a decade of experience in healthcare and social care he is well qualified for the RM role. He is committed to ongoing professional development.

- 7) As to good governance, he “commits to addressing the concerns raised about governance, including a thorough review and update of medication policy.” PRL will focus on medication prompting, not administration. He requests a fair assessment of his commitment to good governance.
- 8) Under the heading “Unjust Refusal and Racism Allegations” he strongly disputes the reasons cited for refusing his application and believes that they are tainted by prejudice. He emphasized the need for a thorough and impartial investigation into “the severe racism allegations.”
- 9) He is open to additional training and guidance to meet the required standards and requests a fair and impartial reconsideration of the applications. The reasons provided by the CQC do not justify the refusal of registration.

The Legal Framework under the HSCA 2008

9. Section 3 of the Act provides that:

“(1) The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.

- (2) The Commission is to perform its functions for the general purpose of encouraging—*
- (a) the improvement of health and social care services,*
 - (b) the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and*
 - (c) the efficient and effective use of resources in the provision of health and social care services...*”

10. The application process and powers of the Respondent to grant or refuse the registration of a service provider are set out in ss.11-12 of the Act and those regarding registration of a registered manager are set out in ss.14-15.

11 Applications for registration as a service provider

- (1) A person seeking to be registered under this Chapter as a service provider must make an application to the Commission.*
- (2) The application must be made in such form, and contain or be accompanied by such information, as the Commission requires.*
- (3) In such cases as the Commission may determine, a person seeking to be registered as a service provider in respect of two or more regulated activities may make a single application in respect of them.*

12 Grant or refusal of registration as a service provider

- (1) Subsections (2) to (4) apply where an application under section 11 has been made in accordance with the provisions of this Chapter with respect to a regulated activity.*
- (2) If the Commission is satisfied that—*
 - (a) the requirements of regulations under section 20, and*
 - (b) the requirements of any other enactment which appears to the Commission to be relevant, are being and will continue to be complied with (so far as applicable) in*

relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit.

(4) On granting the application, the Commission must issue a certificate of registration to the applicant.

(5) The Commission may at any time—

(a) vary or remove any condition for the time being in force in relation to a person's registration as a service provider, or

(b) impose any additional condition.

(6) Subsections (3) and (5) have effect subject to section 13.

14 Applications for registration as a manager

(1) A person seeking to be registered under this Chapter as a manager in respect of a regulated activity in respect of which a registered manager condition has, or is to have, effect must make an application to the Commission.

(2) The application must be made in such form, and contain or be accompanied by such information, as the Commission requires.

(3) In such cases as the Commission may determine, a person seeking to be registered as a manager in respect of two or more regulated activities carried on by a person registered as a service provider may make a single application in respect of them.

15 Grant or refusal of registration as a manager

(1) Subsections (2) to (4) apply where an application under section 14 has been made in accordance with the provisions of this Chapter with respect to a regulated activity in respect of which a person is registered under this Chapter as a service provider and in respect of which a registered manager condition has effect.

(2) If the Commission is satisfied that—

(a) the requirements of regulations under section 20, and

(b) the requirements of any other enactment which appears to the Commission to be relevant, are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit.

(4) On granting the application, the Commission must issue a certificate of registration to the applicant.

(5) The Commission may at any time—

(a) vary or remove any condition for the time being in force in relation to a person's registration as a manager, or

b) impose any additional condition.

11. Relevant requirements include:
 - (a) Conditions imposed by or under Chapter 2 of the Act;
 - (b) Requirements of any other enactments which appear to the Respondent to be relevant, i.e. those made by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ('the 2014 Regulations') or the Care Quality Commission (Registration) Regulations 2009 ('the 2009 Regulations').

The 2014 Regulations

12. The 2014 Regulations, which were made under the powers contained in s.20 of the HSCA 2008, prescribe the kinds of activities that are regulated activities for the purposes of Part 1 of the HSCA 2008 and the requirements that apply in relation to the way in which those activities are carried on. Part 3 Section 1 of the 2014 Regulations sets out the requirements relating to persons carrying on or managing a regulated activity.
13. A key aspect of the Regulations are the requirements set out in regulation 5 (for directors) and 7 (for registered managers), which we set out below.

Fit and proper persons: directors

5.—(1) This regulation applies where a service provider is a health service body.

(2) Unless the individual satisfies all the requirements set out in paragraph (3), the service provider must not appoint or have in place an individual—

- (a) as a director of the service provider, or
- (b) performing the functions of, or functions equivalent or similar to the functions of, such a director.

(3) The requirements referred to in paragraph (2) are that—

- (a) the individual is of good character,
- (b) the individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed,
- (c) the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed,

(d) the individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity, and

(e) none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

Requirements relating to registered managers

7.—(1) A person (M) shall not manage the carrying on of a regulated activity as a registered manager unless M is fit to do so.

(2) M is not fit to be a registered manager in respect of a regulated activity unless M is—

(a) of good character,

(b) has the necessary qualifications, skills and experience to manage the carrying on of the regulated activity,

(c) able by reason of M's health, after reasonable adjustments are made, of doing so, and

(d) able to supply to the Commission, or arrange for the availability of, the information specified in Schedule 3.

The Scott Schedule (SS)

14. The SS sets out the concerns arising from the application made and the FPI to which Mr Sani has provided responses. In summary, the Respondent refers to:

- 10 concerns regarding PRL under regulations 5 (fit and proper person) and 17 (good governance)
- 14 concerns regarding Mr Sani's application to be an RM which relate to:
 - Regulation 5 – fit and proper person (directors)
 - Regulation 7 – fit and proper person requirements in relation to registered managers,
 - Regulation 11 - need for consent
 - Regulation 17 - good governance.

Late Evidence

15. On 24 October 2024 Mr Sani had lodged an application seeking to rely on 13 documents. We noted that nine these documents were already in the electronic bundle. The Respondent did not object to the application because the documents had been provided to the Respondent during the application process. We

considered that the documents were relevant and it was fair to receive them as an additional bundle which was duly lodged.

16. The panel was aware that Mr Sani's position is that a recording must have been made of the FPI, whereas this was/is firmly denied by the Respondent. This issue, amongst others, had been the subject of a TCMH (telephone case management hearing) on 12 July 2024. The panel noted that sections of the decision letters appeared to include information provided by Mr Sani at the FPI as "quotes" which tended to suggest that some form of record must exist. The panel were also aware from experience that a written record of the interview process is usually kept. The panel therefore raised this because we were conscious that Mr Sani might be unaware of any process for a written record. Ms Rao confirmed that there was indeed a written record, (the Registration Report, Planning and Evidence Record (RPER)), which contains notes in preparation for the interview, as well as typed notes regarding the interview itself. The Respondent's position was that the fact that Mr Sani could apply for disclosure of this record had been mentioned in TCM but he did not make an application.
17. The judge explained that the panel's preliminary view was that it appeared to be in the interests of the overriding objective that parts (at least) of the document concerning the interview itself should be disclosed, and that Mr Sani should be given adequate time to consider it. Ms Rao said she would need to take further instructions.
18. In the event the Respondent agreed that the entire RPER be disclosed, albeit that a very small number of names/personal details were redacted due to GDPR issues.
19. The RPER document was received by Mr Sani shortly after midday. The panel considered that it was in the interests of justice and the overriding objective that there should be a short opening by the Respondent at 2pm and that only Mrs Godfrey's evidence in chief would then be given before the panel rose for the day - which was likely to be at an earlier time than usual. This would give Mr Sani time to consider the document, and Mrs Godfrey's evidence in chief about it, overnight. Mr Sani agreed with this approach.
20. In terms of the overall time-table the parties were aware that Ms Johnson, the Registration Manager was not able to give evidence until Day 3. She was on a planned holiday but had made specific arrangements to give evidence that day. The parties had agreed that Mr Sani's evidence be given after that of Mrs Godfrey. The panel considered that to be fair and appropriate.
21. At the beginning of the hearing on 31 October Mr Sani confirmed that he had had sufficient time to consider the RPER and was ready to proceed. Mr Sani then cross-examined Mrs Godfrey. Thereafter Mr Sani gave evidence in chief and was cross examined.

22. After the cross examination of Mr Sani was completed on 1 November Ms Johnson gave evidence and was cross-examined. The panel then heard oral submissions from both parties.

Oral Evidence

23. The statements of witnesses are a matter of record and we directed that these stand as the main evidence in chief. All witnesses answered supplemental questions before being cross examined by the other party. We will not set out all the oral evidence given but will refer to parts as necessary when giving our reasons.

24. The judge explained the options in relation to giving sworn evidence to Mr Sani. He chose to give evidence. The judge offered to help Mr Sani to introduce his evidence in chief and he accepted his.

25. Mr Sani had not made a witness statement. He had made clear at the TCMH on 12 July 2024 that his grounds of appeal were detailed and he had nothing further to add. He had said to Judge Khan he had a copy of the bundle and all the evidence he relies on is contained within the bundle. In his evidence in chief before us he adopted the contents of his Reasons for Appeal and the response to the SS as his evidence in chief and answered supplementary questions by the judge by way of evidence in chief.

The Burden and Standard of Proof

26. In an appeal against the refusal of registration it is for each Appellant to satisfy us that registration should be granted. The standard of proof is the balance of probabilities.

The Parties Closing Submissions

27. We set out the parties' submissions in summary form:

a) Ms Rao relied on her skeleton argument. She submitted that in light of the evidence:

i. The fundamental issue is whether PRL has established it is fit to be a provider and whether Mr Sani has established that he is a fit and proper person. The evidence is that he is not a fit person. His ability to deal with conflict is in doubt, he lacks insight, lacks the qualities of openness, transparency and accountability - all things the public would expect someone looking after vulnerable members of society on the taxpayers' dollar.

ii. Mr Sani has not only failed to demonstrate fit and proper qualities - he has demonstrated the opposite in the way he has spoken to witnesses and the tribunal. He has shown a tendency to shift blame onto others. His evidence regarding Sanicam (which seems to have been an unregistered provider on his evidence when it should have been registered) would, in itself, be an almost overwhelming factor against granting registration. There would need to be a coherent explanation for that obstacle to be overcome. There were also the inconsistencies

regarding Noralynn and the Sun Valley application. Looking at the answers he gave, Mr Sani's account as to his employment history and experience must cause concern. It is no answer to say (as he does) "I was not asked" and (not least) about something the questioner could not have known about. It should not be necessary to explain why that is worrying and it leads to questions about Mr Sani's fitness to be in a trusted position.

- iii. As far as provider's capability to provide the service there is much evidence of policies but the panel may wish to focus on what steps Mr Sani has taken to amend the application and policies so as to satisfy this tribunal he can provide the service. Mr Sani is so convinced of the propriety of his original application and that the fault lies with everyone else, that he has done nothing to make concerns go away. So the panel is faced with a medications policy that allows staff to administer medication when Mr Sani says his company will not be providing that service. It is said by Mr Sani that if a service user (SU) queries it they will be given a modified policy from that generally used by the staff and the company. He said 'we would tailor it.' A policy document needs to be open and transparent for the SU, the public and the regulator. If people are working from different policies, an SU might believe they cannot be assisted with medication and that could lead to steps being taken by an SU that may not be safe. It also places staff in a difficult position where a policy allows medicine administration, but Mr Sani tells them not to. The unsatisfactory governance re policies creates such serious concerns that registration should not be allowed.
 - iv. Other practical matters arise from the variety of answers given about how Mr Sani proposes to conduct the services, and create a number of difficult problems. Employing a nurse (as he has suggested) would put him in a different activity band and would need an amended service provision and another application.
 - v. Mr Sani is not entitled to be registered simply by virtue of his degree - he must satisfy the criteria. He and Peach Recruitment do not meet the regulations.
- b) Mr Sani, whilst thanking the panel for the last three days, said that the sessions have not been smooth "because of the frustrations some of us have in this country regarding institutional discrimination". We set out the main points he made reflecting his choice of words:
- i. The process of the CQC is not fair for people who are black. No one else conducts interviews like the CQC because they practise discrimination. Mr Wes Streeting MP (now the Secretary of State for Health and Social Care) has said the CQC is not fit for purpose because of discrimination.
 - ii. In Reading there are no (CQC registered) agencies run by black people because of CQC practice. Ms Johnson had made her decision based on what her friend told her. A Minister has said that the CQC is run like a

haven for friends of friends. No interview was recorded because the CQC want to cover their tracks on discrimination. No other interview is not recorded. There were no blacks employed on Ms Johnson's team. The CQC organisation is built on discrimination.

- iii. He has done his fair share and had gone to school in difficult circumstances. It was difficult to get a licence - they come up with different things. Many friends do not have a licence.
- iv. He had come to the Tribunal because he wanted to make a case. There is no future for black children in this country.
- v. He has the qualifications. It is no coincidence that Reading agencies are run by white or Asian people. None are black: there should be other criteria. The attitude is that black peoples do not understand policies and procedures, their qualifications do not count, and there is nothing they are capable of doing.

Our Consideration of the evidence

28. It is common ground that, standing in the shoes of the Regulator, we are required to determine the matter afresh and to make our own decision based on the evidence as at the date of the hearing.
29. Subject to fairness, we can consider any new information or material that was not available at the date of decision which is relevant in our "de novo" decision-making. So an appellant may contend that, whatever the position at the time of the decision, that position has changed materially and may bring evidence to support that. This could include bringing evidence to show that the facts and circumstances were not as alleged or as interpreted by the Respondent at the time. They may seek to show that the opinions or conclusions reached were wrong, mistaken or unreasonable. They may contend that the issues have since been addressed or their attitude and insight has developed such that they now meet the requirements of the 2014 Regulations. Similarly, subject to relevance and fairness, it is also open to the Respondent to rely on evidence that has become available since the NoDs were issued.
30. Ultimately, the burden is on Mr Sani as the proposed Nominated Individual to satisfy us, on the balance of probabilities, that the company today meets the requirements under section 12 to be a provider of the regulated activity of personal care, and that he meets the requirements for registration as a manager under section 15.
31. There is an obvious overlap between the cases for Peach Recruitment as a company and that of Mr Sani to be a registered manager. Ms Rao submitted that the application of the company would, in practical terms, stand or fall with that of Mr Sani. In our view this may well be right, but we consider that although the same evidence and issues are common to RPL and Mr Sani, there must, nonetheless, be separate consideration of the appeal of each. This is because, in any given case, it is possible that an application by a company for registration as a provider

could succeed, but that the application by an individual to be the registered manager could fail for different reasons, and vice versa.

32. The redetermination in this appeal includes consideration of the evidence provided by both sides in this appeal as well as the oral evidence which has now been tested in cross-examination. We have considered all the evidence and submissions before us with care. If we do not refer to any particular aspect it should not be assumed that we have not taken all of the evidence or submissions into account.
33. It is appropriate to consider the issues arising in relation to the application of Mr Sani to be a registered manager first.

Regulation 7: The Appellant's alleged failure to declare a full and accurate employment history

34. The matters raised by the Respondent in the SS at paragraphs 1- 6 all relate to the same issue: what weight can be attached to Mr Sani's account of his past employment history and experience? We note that in his response in the SS Mr Sani asserts that he has provided a detailed timeline and corroborative documents to explain and rectify any discrepancies noted by the Respondent. We will return to this assertion in due course.
35. There are two versions of Mr Sani's career are before us: one in a registered manager application regarding Sun Valley Supported Living Ltd (Sun Valley/SSLL) submitted to the CQC in 2020 and the second in the RM application made in 2023, the refusal of which is the subject of this appeal.
36. In his oral evidence in chief Mr Sani said that he had no knowledge of the 2020 application until he was told about it by the CQC in the context of the 2023 application. He said he was contacted by an agency Sun Valley - they saw his CV and they wanted to meet him as they were interested in opening a supported living service and they wanted him to have an interview. He met a lady and they had a discussion. They were in process of acquiring property and would be finalising it in a few weeks. They offered him a huge package. The Manchester office contacted him to make an application so that they had a balanced background. He said to them that if they want him to do an application it must go through a job application. He said that the couple (at Sun Valley) took the information from somewhere and they went to the agency in Manchester. There was never any employment. He did not take the pre-offer because he was not ready to sign anything. He wanted to "complete the application myself". His case is that that there nothing from the CQC to show the application was done by him. It was submitted by a bogus company.
37. In our view Mr Sani sought to distance himself from the 2020 application by saying he was never employed by SSLL but his oral evidence was not consistent with what he had said in his appeal document. He had said in the reasons for appeal that "he left SSLL" and also said SSLL was a sham company that "recruited him."
38. Faced with the inevitable questions regarding how it could be that the company would know the details of his GP unless he provided them, Mr Sani said in evidence that it would have been easy for the owners of Sun Valley to get that information because they are in Reading and are Asian, and the doctors are Asian too. He then

suggested that the GP has a website so “you can choose any of the GPs and put in your application”. He could not satisfactorily explain why the 2020 and 2023 applications had named the same GP. In our view Mr Sani’s attempts to explain why information about his GP would be identical in both applications were far-fetched and implausible.

39. It is also a puzzle to us why an organisation seeking to recruit Mr Sani to be a manager of a supported living service would want to take the employment history provided by him and then alter it so as to submit a false employment history to the CQC. This makes little sense because the aim of the application to the CQC was the grant of registration which, in the ordinary course of events, would involve an interview with the proposed RM.
40. There were some aspects of what was declared in the 2020 application that were consistent with what was declared in the 2023 application but there were other parts that were very different. When asked Mr Sani appeared to adopt some parts of the 2020 employment history, even though these details were inconsistent or divergent with the 2023 application. Overall, his evidence did not satisfy us that there was a coherent or credible explanation for the discrepancies between the information provided in his name in 2020 and 2023. We were also left in a position where Mr Sani’s evidence did not satisfy us as to his actual employment history. Whilst we have no doubt that he has worked as a carer, we are not satisfied that we can place any real weight upon his account that he has experience as a manager in the delivery of care or equivalent or similar transferable management skills.
41. It was always open to Mr Sani to adduce evidence regarding his work experience such as: evidence as to salary and/or terms and conditions and/or confirmation of dates of employment and/or testimonials or references. He did not do so. Mr Sani made the point that he worked at many different locations because he worked for agencies. He said that he had effectively been told on the telephone by a CQC advisor that the detail was not important. Even assuming that was his state of mind when completing the 2023 application, he has had ample opportunity since the NOPs and the NODs to demonstrate his true employment history by the production of documents. He seemed to say that he could not do so because he was employed by agencies but an agency can be asked to confirm work and roles undertaken between given dates and/or can explain why they are unable to do so. Even if documents are not available an appellant can set out and explain their employment history in a narrative statement. We noted that in a different context Mr Sani told us that he could not write a witness statement because he is not a lawyer. In our view Mr Sani, who is educated to Masters’ level, had in his reasons for appeal demonstrated his ability to write a statement.
42. As set out above Mr Sani asserted in his response to the SS that he has provided a detailed timeline and corroborative documents to explain and rectify any discrepancies noted by the Respondent. This shows that Mr Sani understood the burden on him to provide evidence to establish the assertions made about his employment history in his application. A detailed timeline and/or corroborative documents have not been provided. In our view the discrepancies and inconsistencies in Mr Sani’s evidence are such that we are unable to place any real weight on his account of his work experience.

43. We have considered the evidence in the round. In terms of regulation 7 there has never been any issue regarding Mr Sani's qualifications. Mr Sani has not, however, satisfied us on the balance of probabilities that he has the skills and experience to manage the carrying on of the regulated activity of personal care.

Regulation 11- Need for Consent

44. The matters raised by the Respondent were set out at paras 7 to 9 of the SS. In essence the Respondent considers that Mr Sani:

- did not demonstrate appropriate understanding of the PRL policy regarding the Mental Capacity Act (MCA) 2005 or Deprivation of Liberty (DoLs).
- failed to demonstrate sufficient understanding of responsibilities under the MCA 2005
- there was lack of evidence to show appropriate action taken to address the issues raised above.

45. Mr Sani's response in the SS and in his oral evidence was to refute the points above. He maintains that he has provided evidence of extensive training and internal policy reviews that demonstrate a thorough understanding of the Mental Capacity Act 2005 and related policies. He maintains that he made clear on several occasions in interview that PRL "*will not be dealing with patients who have mental health issues.*" This assertion had indeed been made by Mr Sani in the reasons for his appeal and was repeated many times in his response to the SS.

46. In her evidence Mrs Godfrey said that part of the assessment is to ensure the proposed service can assess and meet the needs of service users. Part of that involves capacity. Anyone's capacity can change at any time. She said she was trying to gain an understanding that the business knew how to deal with the MCA, which is very different from the Mental Health Act (MHA). She had wanted to understand the applicant's knowledge of the legal ramifications.

47. Mr Sani put to Mrs Godfrey "I made it known to you that all supported would be people who had the capacity to understand what is being done to them - not anyone who does not have capacity or has MH issues."

48. Mrs Godfrey explained that her concern was how the service would manage care if the needs of a service user changed. A service user may have capacity today but may get a urinary tract infection tomorrow and capacity may fluctuate. Her perspective was that an Applicant must be able to identify and put appropriate processes in place to maintain the health and wellbeing of service users in their own homes. This involves being able to identify if there is a health change or change in needs and/or capacity.

49. In our view Mr Sani's responses in the FPI, in the reasons for appeal, and in the SS, to the effect that PRL will not be dealing with people with mental health issues, tend to suggest that his approach is based in the belief that capacity issues only arise when someone is suffering from a mental illness or disorder under the MHA. This is incorrect. We listened very carefully to Mr Sani's oral evidence. We have real concerns that he does not have a full understanding of how capacity can fluctuate and how carers might deal with this in the context of provision of personal

care. The issue of capacity and consent are, of course, linked. Mr Sani said that PRL will not take on service users who lack capacity. We listened carefully to what Mr Sani said about obtaining consent from those with capacity. He told us that before a service user is accepted the package provides a contract by which the service user gives consent for information to be provided to the family. He said that PRL will not take someone who will not allow information to be shared with the family. When asked what would happen if a SU changes their mind about information being shared with the family, he said there would be a discussion. Faced with a scenario where a SU had decided that they did not want information to be shared and wanted their dignity and privacy respected, Mr Sani said the service would go to the family because "all have to be involved". When asked if he recognised that this would involve a direct refusal to afford the SU dignity, privacy and confidentiality, he said that there was a "tripartite alliance in all matters regarding Health and Social Care: the family, SU and Provider: stick to the service agreement, all three parties must agree."

50. In our view this evidence shows that Mr Sani has a poor understanding of what consent really means, and of proper practice in gaining consent.
51. Further in our view Mr Sani has not thought through the implications of the particular model of service he seeks to provide. He has described this as a "white glove service" where the basic needs of clients regarding the basic activities of daily living i.e. washing, dressing, eating and drinking are met. In his oral evidence, Mr Sani was very clear that the service would only cater for service users who have capacity, and who do not have mental illness. In our view he did not show any understanding of the reasons why a service user's capacity to consent to treatment might fluctuate, and which can include common and remediable causes such as confusion due to infection and/or dehydration.
52. Mr Sani was insistent that staff would only prompt a service user to take medication, but staff would not administer it. This begs the question as to what would happen if a service user were to ask for help to open a bottle of tablets or a blister pack etc. Mr Sani said that this would mean the service user would need to be referred back to the commissioning Council and/or the GP for reassessment because the care needs would have changed. Mr Sani did not demonstrate any understanding of the implications involved regarding referral in such circumstances, including the likely delay involved, the burden on other health and social care services, and the risk to which a service user might be exposed pending re-assessment.
53. In his evidence Mr Sani came across as very dismissive that Mrs Godfrey would even raise this as a concern potentially affecting the safety and well-being of service users. Amongst other matters he suggested that she had no authority to express a view because she did not have a degree or the same qualifications as he has. We noted, however, that Mrs Godfrey's background was that, prior to becoming an inspector with the CQC in 2012, she had worked as a community care worker where her role was to assess and review the needs of individuals in the community. She had also worked as a senior officer in a local authority managing a team of six in adult social care. We consider that her background and long experience in adult social care is such as to command respect. We were entirely satisfied that her approach to this application was guided by her deep experience and knowledge about the needs of vulnerable people.

54. We noted that the Appellant's medication policy does, in fact, refer to the administration of medication. Mr Sani said this was only included in the policy for when the service later developed. In our view this provides scope for confusion and obvious risk to service users. This is also a governance issue because the medications policy does not reflect the service that it is said will be provided.

Regulation 17 – Good Governance

55. The matters raised by the Respondent in the SS concerned:

- failure to demonstrate an appropriate understanding of the requirement to suitably assess the care requirements of service users prior to the delivery of care.
- the medication policy not reflecting the information given in the FPI
- failure to demonstrate a suitable understanding of the information contained in the medication policy.
- No evidence of a clear policy in place which reflects the representations made
- No evidence which reliably demonstrates appropriate action taken to address the concerns detailed in the NOP.

56. Throughout the appeal process Mr Sani has had the opportunity to demonstrate that whatever the past concerns held by the CQC he now understands the 2014 regulations and to demonstrate how he will comply with those requirements. Mr Sani has not satisfied us that he has any real understanding of the regulations, or the governance involved in ensuring that care is provided in a manner that is compliant with the regulations. In our view the concerns raised by Mrs Godfrey and adopted by Ms Johnson as the decision maker were evidence based, rational, genuinely held and were not the result of any racial prejudice or discrimination. We will return to this issue of discrimination below.

The application of PRL to register as a service provider.

57. The key matter relied on in the SS regarding Regulation 5 is the failure to demonstrate a suitable understanding of, or the ability to govern and oversee, the practice of gaining consent to provide care to service users.

58. So far as Regulation 17 is concerned the Respondent highlighted a large number of matters. We focus upon the following:

- lack of organisational experience
- a failure to provide assurance that the NI possesses the relevant skills, knowledge and experience to oversee delivery of a safe service
- a failure to demonstrate an appropriate understanding of the legal responsibilities of a service provider in the context of the MCA 2005
- a failure to demonstrate a suitable understanding of the regulated activity you have applied to carry on.

59. We refer to our findings in respect of Mr Sani above. Mr Sani has not satisfied us

that he is a fit and proper person to be the nominated individual for PRL or that PRL will comply with the requirements of the regulations regarding governance. He has not satisfied us that PRL (through Mr Sani) will comply with the Regulations.

The Allegation of Racial Discrimination

60. As set out above the allegation of racial prejudice and/or discrimination was made by Mr Sani against Mrs Godfrey in the reasons for his appeal, albeit that Mr Sani had actually not set out what he said had occurred. The burden of proof is upon him to prove the allegation. The standard of proof is the balance of probabilities.

61. We find the following:

- a) Just after the FPI Mr Sani sent an email to Mrs Godfrey on 7 November 2023 expressing his “heartfelt gratitude”. He said it was a pleasure to meet her. He said that he was truly impressed by the comprehensive nature of the interview process.
- b) Mr Sani did not raise any allegation of racism until he received the NODs.
- c) In the reasons for the appeal he did not state what he alleged Mrs Godfrey had said or done that was racist.
- d) When asked by the panel judge to do so he put his case to Mrs Godfrey which was that she had repeatedly said “you people are applying for CQC because of COS”. He put that she kept referring to “you people”.
- e) Mrs Godfrey denied that she had said anything to this effect. She said that she would never use that term. She was visibly upset by the allegation.
- f) When asked by the judge she said that she did not know what a “COS” is.
- g) The judge asked Mr Sani to explain what a COS was. He said it was a certificate of sponsorship that entitles foreign workers to enter the UK to work.

62. We have considered all the evidence in the round. It might be considered sufficient to simply state our conclusion that the allegation of racism made by Mr Sani has not been proved by him. In our view when such a serious allegation is made against an individual, fairness requires that we should be explicit if our assessment of the evidence enables this. We find that Mr Sani’s account of what Mrs Godfrey said is not credible. His account is inconsistent with the fulsome thanks to her in the email sent after the interview. Mrs Godfrey was a very straightforward and credible witness. We prefer her evidence to that of Mr Sani. It was very obvious to us that Mrs Godfrey had no idea what a COS is.

63. Mr Sani also alleges that the CQC is institutionally racist. He referred to comments that he says have been made by politicians to this effect. His assertion that anyone has concluded that the CQC is not fit for purpose because of institutional racism/discrimination has not been substantiated. In any event we have to decide

what evidence we prefer in relation to the evidence before us. His approach to the evidence of Ms Johnson was that she made the decisions under appeal because he was a black African. She said that she had no knowledge of his racial identity when she made the decision. We found her to be a wholly credible witness. In our view there were ample evidence-based reasons that justified the decisions that were made to refuse registration. Put simply, Mr Sani has not demonstrated that he meets the “fit and proper person” requirements under regulation 5 or regulation 7, or that he will comply with regulations 11 or 17.

64. The Appellant has not established on the balance of probabilities that registration as a provider should have been granted to PRL and/or that his application to be a registered manager should have been granted.

65. Having reviewed all the evidence we find that the decisions made by the Respondent to refuse registration were in accordance with the law and were justified, necessary and proportionate to the public interest in the protection of the health safety and well-being of potential service users.

66. We recognise that we have the power to impose conditions. We do not consider that the imposition of conditions would be appropriate. Mr Sani has not satisfied us that he meets the “fit and proper person” requirements of Regulation 5 or 7. In these circumstances that are no conditions could conceivably be devised that would be effective to protect the public interest engaged.

Decision

The consolidated appeals are dismissed

Judge Goodrich
First-tier Tribunal (Health, Education and Social Care)
Date Issued: 23 December 2024

