Neutral Citation Number: [2024] EWHC 1644 (Admin)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/06/2024

Before :

MARGARET OBI (sitting as a Deputy Judge of the High Court)

- -

Between :

THE KING **(on the application of One Trees Estates Limited)**	**Claimant**
- and -	
Secretary of State for the Home Department	**Defendant**

- -

Zane Malik KC and **Arif Rehman** (instructed by Law and Lawyers Solicitors) for the **Claimant**
Matthew Howarth (instructed by Government Legal Department) for the **Defendant**

Hearing dates: 8 May 2024 and 10 May 2024

- -

Approved Judgment

This judgment was handed down remotely at 2pm on 26 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Margaret Obi :

Introduction

1. This is a claim for judicial review and my judgment of the substantive hearing in the claim that came before me on 8 May 2024. I had hoped to deliver my judgment orally on 10 May 2024 but events, unrelated to this case, conspired against me. At the virtual hearing on 10 May 2024, I raised with the parties whether there would be any merit in deferring my decision pending the outcome of an application for permission to appeal in a very similar case. That case is discussed below. I was persuaded by both parties that that would not be an appropriate course of action. Therefore, on 10 May 2024, I reserved judgment in this case.

2. The Immigration Rules provide that foreign nationals can gain entry clearance as workers, in occupations where there is a shortage, through sponsorship from an employer. It is common knowledge that businesses within the care home sector have found it difficult to recruit care workers from within the UK's existing workforce and as a consequence, such roles are on the shortage occupation list. The Secretary of State for the Home Department is responsible for registering sponsors and approving licences. The sponsor system is set out in the Home Office Guidance - "*Workers and Temporary Workers: guidance for sponsors"* (version 03/23) ("the Guidance"). Licence holders are required to assign a Certificate of Sponsorship (CoS) to each worker. A CoS confirms that the non-EEA worker has been offered employment within an eligible category and includes a summary job description. The benefits include fast-track visa processing for leave to enter the UK or leave to remain.

3. The Claimant – One Trees Estates Limited is a nursing care provider. The Claimant was granted a licence by the Secretary of State to sponsor skilled migrants. However, that licence was revoked on 26 July 2023 ("the revocation decision"). It is that decision which is the subject of these proceedings. The Claimant issued a judicial review claim on 25 October 2023 and sought to challenge the revocation decision on four grounds. On 24 November 2024, the application for permission was considered on the papers by Upper Tribunal Judge Elizabeth Cooke (sitting as a Deputy High Court Judge). Permission was refused on all four grounds. The application for permission was renewed and the oral renewal hearing took place before His Honour Judge Milwyn Jarman KC (sitting as a Deputy High Court Judge) on 15 February 2024. He granted permission to proceed to a substantive judicial review hearing on a single ground only. Therefore, the central issue in this claim is a narrow one:

> *Did the Secretary of State make a material public law error in failing to conduct an adequately reasoned global assessment of all relevant considerations in deciding how to exercise his discretion?*

Background

4. The background circumstances can be summarised as follows.

5. The Claimant is a family-run business that provides nursing care for up to 70 service users. These service users are vulnerable and elderly individuals with differing levels of dependency. It has a workforce of 116 employees, including nurses, care workers, and senior care workers.

6. The Secretary of State's Compliance Team visited the Claimant on 26 April 2023 to assess its adherence to the Guidance. The Claimant has sponsored 34 skilled migrants to work as care workers since March 2021 including Ronika Manishkumar Patel, Sonia Augustine, Iqbal Ali Mohammed, Smita Elizabeth Jino, Jithin Jose, and Bibi Prince ("the named workers"). These named workers were recruited by the Claimant as senior care workers and were interviewed during the compliance visit. Ms Kaur, the Home Manager, was also interviewed.

7. The Claimant's licence was suspended on 6 June 2023 ("the suspension decision") on the grounds of alleged compliance failures. The Claimant was given 20 working days from the date of the suspension decision to make written representations and provide any further evidence. Following receipt of representations dated 30 June 2023 and supporting documents, the Secretary of State issued the revocation decision on 26 July 2024 with immediate effect. The Secretary of State had raised a number of issues in his suspension decision. However, the revocation decision was based solely on the issue of "*genuine vacancy*." The revocation decision runs to 12 pages. It includes: (i) extracts from the suspension decision; (ii) highlights key aspects of the interviews with the named individuals and Ms Kaur; and (iii) summarises the supporting documents and representations provided by the Claimant. The Secretary of State concluded that the named workers were carrying out the duties of a carer rather than a senior care worker. It was determined that their roles did not represent a genuine vacancy and was therefore a breach of one of the mandatory grounds for revocation as set out in the Guidance. Under the heading "Decision", the revocation decision includes the following paragraphs:

> *"68. We always take into consideration the potential impact revocation may have on a sponsor and consideration is always given to re-rating a sponsor licence to allow a sponsor to demonstrate full compliance with their sponsor duties if appropriate.*
>
> *69. We have considered the possibility of downgrading your licence and issuing you with an action plan. However, we will only downgrade a licence and issue an action plan where there is scope to rectify shortcomings or omissions in systems or retained documents.*
>
> *70….Downgrading your licence is not appropriate due to the seriousness of your non-compliance with your sponsor duties.*

8. There is no right to appeal the revocation decision. As a consequence, of the revocation of the Claimant's licence, all the skilled workers it employs (not just the named workers) will be required to seek an alternative sponsor or leave the UK (unless they qualify on some

other basis) within 60 days of notice from the Secretary of State. The revocation decision does not prevent the Claimant from continuing to run its residential care home business. Although the Claimant can no longer recruit sponsored workers under the work routes of the Points Based System, it can continue to recruit UK nationals, in addition to EEA and non-EEA nationals that have the right to work in the UK. However, Mr Rajesh Patel – the Claimant's director stated in his witness statement, dated 24 April 2024, that the "*deportation or voluntary departure*" of the existing migrant workers is likely to significantly undermine the services the Claimant provides. He suggested that the revocation of the Claimant's licence may disrupt the continuity and quality of care its vulnerable residents receive. He also stated that the revocation decision will cause reputational damage, potential financial loss, and may result in legal challenges.

9. Before I turn to the Guidance and the key legal principles, I will address a preliminary matter.

Preliminary Matter

10. The Secretary of State made an application to rely on the witness statement of Mr James Turner - the Head of Work Services in the Home Office. The application notice, dated 3 May 2024, states (amongst other things) as follows:

> *"*[Mr Turner] *is in a key position to explain the processes UKVI considers before revoking a sponsor who operates within the Human Health & Social Care sector.* [His] *evidence is therefore directly relevant to the issues in the proceedings.*
>
> *...grant of permission would assist the court in reaching it's* (sic) *final determination."*

11. The application to admit the witness statement of Mr Turner was opposed. Mr Malik KC's primary submission was that the evidence of Mr Turner had been served late and no justification for an extension had been provided. His secondary submission was that, in any event, the witness statement consists of general observations; not the exercise of discretion based on the circumstances and facts relating to this particular case.

12. The Order made by HHJ Milwyn Jarman KC, on 15 February 2024, included several case management directions including a requirement that the Secretary of State serve any evidence upon which he wished to rely within 35 days. The deadline expired on 25 March 2024. An application to vary the case management directions was made by the Secretary of State on 27 March 2024. Jonathan Glasson KC (sitting as a Deputy High Court Judge) granted the application and directed the Secretary of State to serve any written evidence to be relied on by 10 April 2024. The Secretary of State served the witness statement of Mr Turner on 3 May 2024.

13. CPR 54.16 states in clear terms that no written evidence may be relied on unless it has been served in accordance with any rule, or direction of the court, or the court gives permission. However, the Administrative Court retains the power within the framework of the rules to

manage cases flexibly and in accordance with the overriding objective of ensuring that the proceedings are fair. Exclusion of evidence for failure to comply with an order of the court would be a procedural sanction, which brings CPR 3.8 and 3.9 and the relevant caselaw into play. In particular, I have considered the *Denton* criteria (see *Denton v TH White Ltd* [2014] 1 WLR 3926, CA): (i) how serious and significant is the failure?; (ii) is there a good explanation for the failure?; and (iii) having evaluated "*all the circumstances*" is it in the interests of justice to allow the disputed evidence to be admitted?

14. First, the failure to comply with the Order made on 27 March 2024 was serious, as Mr Howarth rightly conceded. A specific order had been made in relation to the filing of evidence on 27 March 2024; yet the witness statement of Mr Turner was not sent to the court and the Claimant until 3 May 2024. This was two working days before the substantive hearing and well outside the extended time limit by some 3 weeks. The service of witness statements is an important part of the litigation process, and its importance is supported by the provision in the rules of an automatic sanction for breach. The breach was significant. This was not a case, for instance, of a failure to comply for a very short period. However, it was not at the upper end of the scale of seriousness for breaches of this kind, not least because it did not have an adverse effect on the hearing date, or otherwise disrupt the conduct of these proceedings. That assessment was carried through into the balancing required at the third stage.

15. Secondly, there was no good explanation for this failure. No formal application was made, and no evidence was filed to support a request for more time. Mr Howarth submitted that the witness statement of Mr Turner is relevant as it refers to the steps taken beyond the sponsorship process and its admission would not cause any prejudice to the Claimant. When pressed for an explanation for the delay Mr Howarth apologised for the late service, stating that it took some time to identify the appropriate person to provide a witness statement with regard to the "*global assessment*" of the Claimant's breach of its sponsor licence. It was not submitted, on behalf of the Secretary of State, that this new evidence had to be obtained due to an unforeseen turn of events or for some other reason outside of his control. Therefore, although there was a specific reason for the late service, it was not meritorious. And it did not amount to a good explanation for the delay in filing a witness statement in opposition to the judicial review claim.

16. Thirdly, it was necessary to consider all of the circumstances including the procedural history of this case and the content of Mr Turner's witness statement which I read *de bene esse*. Mr Turner sets out the steps taken, beyond the usual process, to protect the continuity of care provided by those who are employed under the sponsorship regime. This includes notifying key stakeholders of action taken against sponsors within the health and social care sector. The content of Mr Turner's statement is expressed in general terms rather than on the specific circumstances of this case. In my judgment, the statement would not alter the outcome of the substantive case. As a consequence, neither admitting nor excluding this witness statement would have a fundamental effect on the Court's ability to do justice in the case. For this reason, the decision to admit or exclude the statement is of less importance than it otherwise would have been. I bore in mind the matters referred to in CPR 3.9, namely the need for litigation to be conducted efficiently and at proportionate cost, and enforcement

of rules, practice directions, and orders. It was relevant that the breach did not affect the efficient conduct of this litigation and did not significantly increase costs. It did not imperil the hearing date or otherwise impact the timetable. However, as stated above, there was no good reason for the delay. The Secretary of State was represented by experienced solicitors and counsel, and it would appear that there was a failure to prioritise compliance with the court's directions. However, it could not be said that there was a history of non-compliance. The failure to serve the witness statement by the original deadline of 25 March 2024 was part of the same problem, in that, the Secretary of State had not made sufficient arrangements to ensure compliance with the terms of the Order. I also considered the impact of not granting relief. As I have already stated, neither admitting nor excluding the witness statement would have a material impact on the outcome of this case.

17. Standing back and weighing all the circumstances, I was satisfied there was no good reason to grant an extension of time. As a consequence, I determined that the witness statement of Mr Turner should not be admitted.

The Legal Framework

The Guidance

18. The Guidance is a long document. Part 3 of the Guidance runs to 70 pages and covers the sponsorship duties and the action that may be taken in the event of a breach of these duties or behaviour that is not compatible with being a license holder. Part 3, Section C7.1 is titled "*Compliance checks*" and under the sub-heading "*Guiding principles*" it states as follows:

"*The ability to sponsor workers to work in the UK is a **privilege that must be earned**. When a sponsor is granted a licence, **significant trust is placed in them**. With that trust comes a **responsibility** for sponsors to act in accordance with our immigration law, all parts of the Worker and Temporary Worker sponsor guidance, wider UK law (such as employment law) and the wider public good. UKVI has a duty to ensure all sponsors discharge these responsibilities, and that a sponsor's actions (or omissions) do not create a risk to immigration control or are not conducive to the public good*." [emphasis added]

19. Part 3, C1 - "*Your Sponsor duties*" at paragraph C1.38 under the heading "*Complying with our immigration laws*", provides:

"You must comply with our immigration laws and all parts of the Worker and Temporary Worker sponsor guidance. To do this, you must:

…

- *not assign a CoS where there is no genuine vacancy or role which meets the Worker or Temporary Worker criteria – if you assign a CoS and we do not consider it is for a genuine vacancy, we reserve the right to suspend your licence, pending further investigation which **may** result in your licence being revoked …"* [emphasis added].

20. Paragraph C1.44 of Part 3 defines a genuine vacancy and paragraph C1.46 provides examples of when this definition may be met:

"[C1.44] *A genuine vacancy is one which:*

- *requires the jobholder to perform the specific duties and responsibilities for the job and meets all of the requirements of the relevant route*
- *does not include dissimilar and/or predominantly lower skilled duties*
- *is appropriate to the business in light of its business model, business plan and scale"*

"[C1.46] *Examples of vacancies that are not considered to be genuine include, but are not limited to:*

- *a role that does not actually exist*
- *one which contains an exaggerated or incorrect job description to deliberately make it appear to meet the requirements of the route when it does not, or is otherwise a sham*
- *a job or role that was created primarily to enable an overseas national to come to, or stay in, the UK*
- *advertisements with requirements that are inappropriate for the job on offer (for example, language skills which are not relevant to the job) or incompatible with the business offering the employment, and have been tailored to exclude settled workers from being recruited"*

21. Part 3, Annex C1 - "*Circumstances in which we **will** revoke your licence*", [emphasis added] provides as follows:

"…

(s) The role undertaken by a worker you have sponsored does not match one or both of the following:

- *the occupation code stated on the CoS you assigned to them*
- *the job description on the CoS you assigned to them*

…

(z) We have reasonable grounds to believe the role for which you have assigned a CoS is not genuine – for example, because it:

- *does not exist*

- *is a sham (including but not limited to where the CoS contains an exaggerated or incorrect job description to deliberately make it appear to meet the requirements of the*
  route you assigned it under when it does not); or
- *has been created mainly so the worker can apply for entry*
- *clearance or permission to stay"*

22. Part 3, C7.25 makes it clear that downgrading of licences and issuing action plans is only suitable for relatively minor breaches where the sponsor is able and willing to make corrections.

Key Legal Principles

23. There was no dispute between the parties with regard to the key legal principles. In *R (on the application of St Andrew's College) v Secretary of State for the Home Department* [2018] EWCA Civ 2496 Haddon-Cave LJ stated at [§ 29-30]:

"29. I summarised the legal principles applicable to Tier 2 and Tier 4 sponsorship cases in R (Raj & Knoll) v SSHD [2015] EWHC 1329 (Admin) and my summary was cited by Tomlinson LJ in R (Raj & Knoll) v SSHD [2016] EWCA Civ 770 in the Court of Appeal at [23]:

> *"(1) The essence of the system is that the Secretary of State imposes "a high degree of trust" in sponsors granted ('Tier 2' or 'Tier 4') licences in implementing and policing immigration policy in respect of migrants to whom it grants Certificate of Sponsorship ("CoS") or Confirmation of Acceptance ("CAS") (per McGowan J in London St Andrews College v Secretary of State for the Home Department (supra) (2014) EWHC 4328 (Admin) at [12]) (and see Silber J in R (Westech College) v Secretary of State for the Home Department (2011) EWHC 1484 (Admin)).*
>
> *(2) The authority to grant a certificate (CoS or CAS) is a privilege which carries great responsibility: the sponsor is expected to carry out its responsibilities "with all the rigour and vigilance of the 363 23 immigration control authorities" (per McGowan J in London St Andrews College v Secretary of State for the Home Department (supra) at [13]).*
>
> *(3) The Sponsor "must maintain its own records with assiduity" (per McGowan J in London St Andrews College v Secretary of State for the Home Department (supra) at [13]).*
>
> *(4) The introduction of the Points-Based System has created a system of immigration control in which the emphasis is on "certainty in place of*

discretion, on detail rather than broad guidance" (per Lord Hope in R (Alvi) v Secretary of State for the Home Department [2012] UKSC 33 , reported at [2012] 1 WLR 2208 at [42]). ...

(7) The primary judgment about the appropriate response to breaches by licence holders is that of the Secretary of State. The role of the Court is simply supervisory. The Secretary of State is entitled to maintain a fairly high index of suspicion and a 'light trigger' in deciding when and with what level of firmness she should act (R (The London Reading College Ltd) v Secretary of State for the Home Department (2010) EWHC 2561 Admin per Neil Garnham QC.

(8) The courts should respect the experience and expertise of UKBA when reaching conclusions as to a sponsor's compliance with the Guidance, which is vitally necessary to ensure that there is effective immigration control ((per Silber J in R (Westech College) v Secretary of State for the Home Department (2011) EWHC 1484 (Admin) at [29(d)])."

30. I would endorse the following further principles to be derived from the judgment of Silber J in R (Westech College) v Secretary of State for the Home Department [2011] EWHC 1484 (Admin) (supra):

(1) The SSHD has stringent powers to suspend or revoke a sponsor's licence if the SSHD becomes concerned that a sponsor is not complying with its obligations and must be sensitive to any factors which might suggest the possibility of any breaches of immigration control having occurred or being about to occur because of lapses or omissions committed by a Sponsor (per Silber J in Westech , supra , at [17]).

(2) There is a clear need in some circumstances for the SSHD to invoke the SSHD's powers where there is a risk that the sponsor might not be complying with its duties provided of course that UKBA complies with its public law duties (per Silber J in Westech , supra , at [18]).

(3) The expertise and experience of the SSHD (and UK Border Authority ("UKBA")) in being able to detect the possibility that a sponsor might not be or be at risk of not complying with its duties is something that the courts must and does respect because, unlike the SSHD, courts do not have this critically important experience or expertise (per Silber J in Westech , supra , at [18]).

(4) An entity which holds a sponsor licence has substantial duties to ensure that the rules relating to immigration control are adhered to strictly and properly, such that if the SSHD were concerned that a sponsor is not complying with those duties, it would entitle, if not oblige, UKBA to prevent

that sponsor from either granting more CAS or revoking its licence (per Silber J in Westech , supra , at [19]).”

Submissions

On behalf of the Claimant

24. Mr Malik KC informed the Court that the Claimant accepted that, based on the findings of the Secretary of State, it had breached paragraph C1.38 of the Guidance. It was acknowledged that, in principle, as a consequence of that finding the Claimant's licence falls for revocation under Annex C1 (“*Circumstances in which we **will** revoke your licence*” [emphasis added]). However, Mr Malik emphasised that notwithstanding the mandatory wording of Annex C1, the Secretary of State has a residual discretion. He submitted that it is a well-established principle of public law, that a policy should not be so rigid as to amount to a fetter on the discretion of the decision maker (see, for example - *Lumba v Secretary of State for the Home Department* [2011] UKSC 12 [2011] 2 WLR 671, at [§ 21].

25. Mr Malik KC submitted that the Secretary of State recognised the need to exercise its inherent discretion in the concluding paragraphs of the revocation decision (as quoted in paragraph 7 above) but relied on a generic template and adopted a “*copy and paste”* approach. Mr Malik KC placed significant reliance on the case of *Supporting Care Ltd v Secretary of State for the Home Department* [2024] EWHC 68 (Admin) (“SCL”), where the wording in the concluding paragraphs of the decision letter was identical to the wording in the concluding paragraphs of this case. Mr Malik KC submitted that the revocation decision in this case is indistinguishable from the decision in *SCL* which was quashed by His Honour Judge Siddique (sitting as a Deputy Judge of the High Court). The revocation decision was quashed because the Secretary of State had failed to conduct an adequately reasoned “*global assessment*” of all relevant considerations in deciding whether to revoke or downgrade the sponsor licence. He had not properly engaged with the impact of revocation on the workers, their families, the vulnerable service users receiving care, or the adverse impact of revocation on the business and the wider care home sector. Mr Malik KC submitted that this applies to the present case with equal cogency. Although *SCL* is not binding on me, Mr Malik KC submitted that I am required to follow it unless satisfied that it was “*plainly wrong*”. He suggested that it would not be appropriate for me to, in effect, exercise an “*appeal court*” function over the *SCL* decision.

26. Mr Malik KC submitted that the Secretary of State, did not engage with the facts of this particular case and explain with adequate reasons why it is proportionate for all the migrant workers employed by the Claimant and their families to lose their immigration status given that the concern is limited to six workers. Mr Malik KC submitted that there is no indication that in making the revocation decision, the Secretary of State conducted a “*global assessment*” of all relevant circumstances, including the size of the Claimant's workforce. He drew to the Court's attention that there is no allegation of dishonesty or any suggestion that the vacancies were a sham; nor is there any allegation of bad faith. The concern relates

to a discrete issue based on the duties carried out by the named individuals and the senior care worker role as described in their CoS.

27. Mr Malik KC submitted that the case of *R (Prestwick Care Ltd) v Secretary of State for the Home Department* [2023] EWHC 3193 is of no assistance as it relates to "*quite a different case*" and was not about the exercise of the Secretary of State's discretion. He further submitted that this case is not about the duty to make sufficient enquiries before making a decision ('the Tameside duty'); the Secretary of State had enough information to make a decision and failed to consider the impact on the Claimant, migrant workers, vulnerable residents, and the wider industry.

28. Mr Malik KC invited the Court to conclude that the Secretary of State made a public law error in not considering the alternatives (e.g. issuing a warning or an action plan, downgrading the licence, or directing remedial steps) or conducting a "*global assessment*" of all relevant circumstances.

On behalf of the Secretary of State

29. Mr Howarth submitted that the revocation decision itself is lawful given that grounds one to three were dismissed. He invited the court to consider the revocation decision and the issue of a "*global assessmen*t", within the context of the decision as a whole. He acknowledged that the Secretary of State has a residual discretion. However, he submitted that, even where there are discretionary grounds for revocation of a licence, revocation can be expected in all but "*exceptional circumstances*." He further submitted that the Claimant had failed to establish that there are any exceptional circumstances which would justify a departure from the mandatory grounds for revocation as set out in Annex C1.

30. Mr Howarth submitted that the impact of revocation on the business, employees, service users, and the wider industry was irrelevant. He relied on the judgments in *Prestwick* and *Raj & Knoll* which have held that where a mandatory ground for revocation is made out, the Secretary of State is not required to inform himself or address the impact of revocation on the sponsor's business and/or wider industry. Therefore, the Secretary of State had no obligation to consider or provide reasons addressing the alleged potential impact of the revocation. In any event, no evidence of impact was provided following the suspension decision and any submissions or evidence now raised is speculative at best.

31. Mr Howarth further submitted that, even if the Secretary of State had considered in detail the commercial effects upon the Claimant, the decision itself would not be any different. (see Section 31(2A) of Senior Courts Act 1981 which provides that "*the High Court must refuse to grant relief on an application for judicial review (…) if it appears to the Court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred*").

Analysis

32. *SCL* and *Prestwick* are conflicting authorities. The Secretary of State's position is that the determination in *SCL* is wrong as a matter of law and has made an application to the Court

of Appeal for permission to appeal that decision. Following circulation of a draft version of this judgment I was informed that permission had been granted.

33. In *SCL* the claimant argued that the Secretary of State had failed to conduct an adequately reasoned "*global assessment*" of all relevant considerations in deciding whether to revoke or downgrade the sponsor licence. It was submitted by the claimant that its 68 migrant workers and their families would be required to leave the UK, that this would result in distress for them and the vulnerable individuals under their care. There was also likely to be an adverse impact on services and the claimant's ability to fulfil its contracts. It was submitted that these factors were not adequately considered by the Secretary of State before deciding to revoke its sponsor licence. In other words, the arguments put forward by the care home in *SCL* were the same arguments put forward by the Claimant in this case. Mr Howarth, on behalf of the Secretary of State, submitted that *SCL* can be distinguished from this case, at least in part, because it related to a finding of dishonesty in respect of a single employee whereas the Claimant's licence was revoked due to concerns relating to six employees. I do not accept that submission. All revocation cases will be fact specific. However, given the "*fairly high index of suspicion"* and the *"light trigger"* for intervention (see - *London Reading College,* supra*),* I am not persuaded that within the context of mandatory grounds for revocation, the number of employees or the precise nature of the concern raised is a difference worthy of distinction. In these circumstances, I concluded that *SCL* is not properly distinguishable from this case.

34. The stronger argument put forward by Mr Howarth was that the *SCL* judgment does not take into account the decision in *Prestwick*. There were multiple grounds for revocation in *Prestwick* including the mandatory grounds for providing an incorrect job description (Annex C1(s)) and paying a sponsored worker less than stated in the CoS (Annex C1(aa)). The Tameside duty was a feature of the *Prestwich* case; the Claimant argued that the Secretary of State was under a duty to be acquainted with the relevant information, in deciding what to do, in the light of the conclusion that the claimant had not adhered to the Guidance. That was rejected by HHJ Kramer (sitting as a Deputy High Court Judge) and the parties in this case are in agreement that no Tameside duty exists. Nonetheless, the commercial assessment issue raised in *Prestwick* is analogous to the "*global assessment*" point taken in this case and in *SCL* and is highly relevant. It was argued in *Prestwick* that the Secretary of State had failed to demonstrate that the impact on the business and on those to whom it provided care services had been taken into account. This argument was considered and rejected. The judge concluded that there was no requirement to take these factors into account when deciding whether the claimant had complied with the Guidance. In addition, he stated that there are good reasons why the Secretary of State should not be drawn into taking into account the commercial impact on the business and the effect on local care and health services. In particular, he stated at §§92-3 of his judgment as follows:

> *"As regards the commercial impact, there is the evidential difficulty which Nicol J identified in Birds Hill Nursing Home at [40] where he pointed out that "it is remarkable how often dire predictions prove ill founded once put to the test, and that the evidence about the impact on the business will not come from an independent source. Nor is it likely to reveal if another provider may come forward to take on the*

business. A more fundamental reason for not requiring the commercial impact to be considered by the defendant is that her expertise is in immigration control. It is unrealistic to expect her to evaluate the economic viability of the many and disparate businesses which rely upon the use of sponsored labour.

Similar observations apply to the issue of the impact on care and health. The defendant can never be confident that she has the whole picture. As was pointed out in Birds Hill there may be some other provider who would come forward to take over. They may not announce their interest until they know there has been a revocation so that they can take the benefit of what would, in effect, be a forced sale. It may be that the existing sponsor has, through control of other companies in possession of a licence, either by way of subsidiaries, other parts of the group or through a common controlling shareholder, the ability to take over the running of the care homes. The defendant is highly unlikely to be aware of any of this until the revocation decision has been taken. Ultimately, neither the commercial viability or healthcare provision issues should need addressing because they are not relevant to the central question, namely, can I trust this sponsor to comply with the Guidance?

35. The *Prestwick* decision was handed down on 14 November 2023. The following day, His Honour Judge Siddique (sitting as a Deputy Judge of the High Court) heard oral arguments in the *SCL* case. After the circulation of my draft judgment, Mr Malik KC provided me with email confirmation that *Prestwick* was not made available publicly on BAILLI until 14 December 2023 (i.e. a month after the hearing in *SCL*) and was not circulated by The National Archives until 12 December 2023. Therefore, it is unsurprising that there is no reference to the *Prestwick* decision in the *SCL* judgment; it was not available when HHJ Siddique heard *SCL,* and those representing the parties before him were not aware of it. However, it is likely that the outcome of *SCL* would have been different if the judge had been made aware of the *Prestwick* judgment. Unless, of course, the judge concluded that it was irrelevant (as suggested by Mr Malik KC), "*plainly wrong*" or there was a powerful reason for not following that decision by reference to the approach in *R v Greater Manchester Coroner ex p Tal* [1985] 1 QB 67 (at § 81A-B) and *Willers v Joyce (No2)* [2016] UKSC 44, [2018] AC 843 at [§ 9].

36. Furthermore, although the Secretary of State has a residual discretion, I accepted the submission made by Mr Howarth that in the absence of a particular reason to exercise it (for a reason that is not already factored into or provided for in the Guidance), there is no obligation to address or provide reasons for not exercising this residual discretion in individual cases. No such reason was provided in the Claimant's written representations dated 30 June 2023. In any event, assuming the information provided by Mr Patel in his witness statement is accurate, it does not provide any detail with regard to the wide-ranging adverse impact he suggests will arise as a consequence of the revocation. The Secretary of State was required to focus on the impact on the integrity of immigration control and the Sponsorship regime; not the consequences for the Claimant. The revocation decision, and the "*global assessment*" issue, must be considered in the context of the decision as a whole. The Secretary of State has a responsibility to ensure that registered sponsors comply with the Guidance, and stringent use of its powers is important to its overall effectiveness.

Therefore, the Secretary of State, having decided that downgrading the Claimant's licence as an alternative to revocation would not be appropriate, was not required to assess the impact of revocation on the Claimant's business, employees, service users, and the wider social care sector.

37. On 10 June 2024, counsel provided me with the judgment in the case of *R (on the application of New Hope Care Limited) v Secretary of State for the Home Department* [2024] EWHC 1270 (Admin) which was handed down on 24 May 2024. My view of this case was reinforced by noting that in *New Hope Care* David Pievsky KC (sitting as a Deputy High Court Judge) came to the same conclusions. Amongst other things, he concluded that the *Prestwick* case was a complete answer to the Claimant's complaint that the Secretary of State had failed to undertake a "*global assessment*" insofar as it related to the relevant circumstances. I agree. He could not see a powerful reason for not following the decision in *Prestwick*. Neither could I. He also took the view that the *SCL* decision is likely to have been different if *Prestwick* had been considered for the same reasons, I have set out in paragraph 26 above.

38. This Court in its supervisory role is required to give due respect to the experience and expertise of the Secretary of State when determining the level and extent of the sponsor's compliance with the Guidance. In my judgment, there was no proper basis for an exercise of residual discretion in favour of the Claimant given the Secretary of State's conclusion (a conclusion he was entitled to reach) that the breach of the Guidance was serious.

39. It will be apparent based on what I have already said that I have not found in favour of the Claimant. However, for completeness, I will address the "*cut and paste*" issue. The revocation decision has to considered fairly and as a whole bearing in mind the context in which the revocation decision was made. It is also important to recognise that it was almost certainly drafted by a non-lawyer tasked with the responsibility of conveying the outcome of the compliance assessment succinctly and in accessible language. It is inconceivable that the decision-maker was unaware of the size of the Claimant's business and the obvious commercial and non-commercial consequences that would flow from a revocation of its licence. These consequences were not peculiar to the Claimant; they would apply to virtually all care home providers. The revocation decision clearly states that consideration is "*always*" given to the potential impact revocation may have on a sponsor, and in the context of the mandatory nature of Annex C1 and the obvious implications of the revocation, I have no reason to doubt that such consideration was applied in this case albeit not to the level or extent that the Claimant suggests it should have been.

Section 31(2A) of the Senior Courts Act 1981

40. Mr Howarth submitted that in the event that I conclude that the Secretary of State's "*global assessment*" did not go far enough, relief should be refused on the basis that it is "*highly likely*" that the Secretary of State would have come to the same conclusion.
41. I accepted Mr Howarth's submission. The Claimant was entitled to a lawful decision and that is what it received. The breach of the Guidance was found to be serious and fell into mandatory grounds for revocation. Furthermore, there were no exceptional circumstances in this case. However, even if I had found in the Claimant's favour there is no realistic

possibility that a "*global assessment*" of the impact of revocation on the Claimant's commercial interests, the migrant workers, service users and the wider care sector would have made any difference. As stated in paragraph 38 of this judgment, these factors would be common to almost all care home providers and to require a "*global assessment*" over and above the considerations set out in the Guidance would serve to undermine rather than uphold the Secretary of State's primary purpose of maintaining proper immigration control. Exceptions for the reasons suggested by the Claimant would potentially lead to the abuse of the sponsor route and extensive consideration of the impact on service users etc would be too remote and indirect to be material to the decision.

42. I concluded that it is "*highly likely*" that the outcome would have been the same even if the criticism of the revocation decision had not occurred.

Conclusion

43. For the reasons set out above, the judicial review claim is dismissed.

44. The parties are directed to seek to agree the terms of an order that reflects my judgment and deals with the consequential matter of costs.