

## Care Standards

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

[2020] 3956.EA

Heard by Video Link on 5 May 2020  
Panel Deliberation on 15 May 2020

Before

Mr H Khan (Judge)  
Ms B Graham (Specialist Member)  
Ms L Jacobs (Specialist Member)

Olayusnob Entrepreneurial Services Ltd (1)  
Mr Yusuf Noble (2)

Appellants

-v-

Care Quality Commission

Respondent

## DECISION

### The Appeal

1. Olayusnob Entrepreneurial Services Ltd (OES), a proposed Service Provider, and Mr Yusuf Noble, a proposed Registered Manager, (both referred to in this decision as “the Appellant”) appeal pursuant to section 32 of the Health and Social Care Act 2008 (“the Act”), to the Tribunal. The appeals relate to a decision of the Care Quality Commission (“the Respondent”) dated 17 December 2019 to refuse registration of the Appellant.

### The Hearing

2. The hearing took place on 5 May 2020. This was a remote hearing which has not been objected to by the parties. The form of remote hearing was by video. A face to face hearing was not held because it was not

practicable and no-one requested the same and we considered that all issues could be determined in a remote hearing. The documents that we were referred to are in the electronic hearing bundle provided for the hearing.

3. Following the hearing, we concluded that we would direct written submissions as Mr Noble had spent considerable amount of time giving oral evidence and we considered it appropriate to give him the opportunity to consider what submissions he wished to make. Following the hearing, written submissions were provided by both parties and taken into account in reaching this decision.

### **Attendance**

4. The Appellants were represented by Mr Yusuf Noble. There were no witnesses other than Mr Noble.
5. Ms Michelle Brown (Counsel) represented the Respondent. The Respondent's witnesses were Ms Janet Spinks (Inspector), Ms Della Lovell (Inspector) and Ms Rachel Good (Manager).
6. Ms F Shafiq (Solicitor) and Mr Joseph Jackson attended the hearing on behalf of the Respondent.

### **Background**

7. OES was registered as a private limited company at Companies House on 10 December 2018. Mr Yusuf Noble was the sole director, proposed Registered Manager and Nominated Individual for the service.
8. The Respondent received an application to register the proposed service on 28 August 2019. The application was for provision of personal care within a shared care or supported living setting from the location, 57 Tudor Street in Liverpool. Service users at the service would be adults with a sensory impairment and physical disabilities.
9. The Respondent reviewed the application and carried out an interview with the Appellant on 13 September 2019. Having completed the key stages of the registration process, the Respondent was not assured that the Appellant had the required managerial experience and skills to provide the necessary support and oversight for the proposed service of personal care.
10. A further meeting was held with the Appellant to discuss the concerns regarding the application on 13 November 2019. In particular, the inspectors highlighted the fact that the employment history and references had been checked. The Appellant's former employer, L'Arche, confirmed that he had been employed as a care and support worker and did not have any management responsibilities. This was not consistent with Appellant's application which provided that he had worked closely with managers.

11. The Respondent concluded that the Appellant did not have the skills, competence, experience or qualifications required for the position of Registered Manager. There were no other individuals who had been appointed to carry out the management responsibility. These concerns led to the Respondent concluding that that the Appellant did not meet the regulatory requirements for registration.
12. A notice of proposal was sent on 4 December 2019, which confirmed that Respondent had completed assessment for registration but were not satisfied that this met the requirements.
13. The Appellant submitted representations against the proposal which were considered but not upheld.
14. The decision to adopt the proposal to refuse registration was confirmed in the Notice of Decision dated 17 December 2019.

### **The Appellant's position**

15. It is the Appellant's position that he had achieved all the necessary qualifications to become a health care service provider.

### **The Respondent's Position**

16. The position of the Respondent was that the Appellant failed to meet the regulatory requirements. The Respondent maintained that the decision which is subject to appeal is the most proportionate and appropriate response.

### **The Legal Framework**

17. The legal framework was helpfully set out in the skeleton argument prepared by Ms Brown. This was not in dispute and we have therefore adopted the legal framework as set out in the Respondent's skeleton argument.
18. Section 3 of the Health and Social Care Act 2008 ("HSCA 2008") invests in the Respondent registration functions under Chapter 2.
19. By virtue of Section 3(1) of the HSCA 2008, the Respondent's main objective is to protect and promote the health, safety and welfare of the people use the health and social care services.
20. An Application to register as a service provider or registered manager of a regulated activity must be made to the Respondent (as per section 11 and 14 of the HSCA 2008 respectively).
21. The Requirements of an application to register as a service provider are governed by Section 12, which in relevant part states: -

**“s.12 Grant or Refusal of Registration as a Service Provider**

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

22. The Requirements of an application to register as a manager are governed by Section 15(2), replicated in the same terms as above.
23. Under section 20 of the Act the Secretary of State is empowered to make regulations in relation to the regulated activities. 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.
24. Part 3 sets out regulations relating to persons carrying on or managing a regulated activity, which in relevant parts state,

**“Reg.5. – Fit and proper persons: directors,**

(1).....  
(2) Unless the individual satisfies all the requirements set out in paragraph  
(3), a service provider must not appoint or have in place an individual-  
(a) as a director of the service provider  
(b).....  
(3) The requirements referred to in paragraph (2) are that-  
(a).....  
(b) the individual has the *qualifications, competency, skills and experience which are necessary for the relevant office or position or the work for which they are employed...*

**Reg.6.- Requirement where the service provider is a body other than a partnership,**

(1).....  
(2).....  
(3) The registered person must take all reasonable steps to ensure that the nominated individual-  
(a).....  
(b) has the *necessary qualifications, competency, skills and experience to properly supervise the management of the carrying on of the regulated activity,*  
...

**Reg.7.- Requirements relating to registered managers**

(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 registered manager in respect of a regulated activity unless M is-

(a).....

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

25. Part 3 contains various provisions under the heading “Fundamental Standards”. The Fundamental Standards are minimum requirements that any provider/manager must be expected to be conversant and compliant with.

26. Regulation 21 of the 2014 Regulations provides that a registered person must have regard to the guidance issued under section 23 HSCA 2008. The following relevant guidance has been published:

*“Supporting Information and Guidance: Qualifications and continuing professional development requirements for registered managers and for the practitioners they supervise”, (July 2013)*

27. The above document states:

*“When applying to be a new registered manager, applicants should hold, or be working towards, an appropriate qualification as advised by Skills for Care. [...]*

*Skills for Care advise having the Level 5 Diploma in Leadership for Health and Social Care and Children and Young People’s Services, choosing the pathway:*

- *Management of Adult Services, or*
- *Management of Adult Residential Services*

(At page 5)

*“A Level 5 leadership qualification does not guarantee that a manager will become registered with the CQC; it is a qualification that Skills for Care consider to be appropriate for managers in health and social care settings. If a manager does not have this qualification, it does not always mean that they cannot become a registered manager. However, they must be able to demonstrate to CQC in some way that they have the necessary qualifications, skills and experience.”*

(At page 6)

28. The document *“Recommendations for CQC regulated providers: How Skills for Care supports CQC regulated adult social care services”* provides the following assistance on *“Supporting Managers”*:

*“Ultimately CQC approves who becomes a registered manager, but there are some examples of good practice that might support an application.*

(Page 6)

*“We recommend that all new and aspiring registered managers work towards the Level 5 Diploma in Leadership and Management for Adult Care”*

*CQC might also recognise qualifications under previous systems, including*

- *Registered Managers Award,*
- *NVQ Level 4 in Leadership and Management for Care Services*
- *NVQ Level 4 in Health and Social Care*
- *Relevant nursing, physiotherapy, social work or occupational therapy qualification*
- *Degree or masters degree related to social care.”*

(Page 7)

29. The Appellants bear the burden of persuading the Tribunal that registrations should be granted. The Appellants must establish the facts upon which they rely to support satisfaction of the registration requirements on the balance of probabilities.
30. The Tribunal is required to determine the matter de novo and make its own decision on the merits and evidence as of the date of hearing. The panel “stands in the shoes of the Respondent” in carrying out this function and therefore must apply the same statutory framework and policy as the Respondent.
31. The powers of the Tribunal on an appeal are set out in section 32 of HSCA 2008. The Tribunal determines matters afresh and thus may take into account evidence that post-dates the Notices of Refusal (subject to fair notice).
32. It may confirm the decision of the Respondent to refuse registration or direct that the decision has no effect. If the Tribunal decides that it should not have effect, it may grant registration with or without conditions.

### **Evidence**

33. We took into account all the evidence that was presented in the bundle and at the hearing. We have summarised the evidence insofar as it relates to the relevant issues before the Tribunal. We wish to make it clear that what

is set out below is not a reflection of everything that was said or presented at the hearing/hearing bundle.

34. Ms Spinks explained the application forms were dated 1 August 2019 and signed by Mr Yusuf Noble, Company Director. He is also named as the Nominated Individual. A Nominated Individual is a person nominated by their organisation to act as the main point of contact with the Respondent. In order to be nominated, the person must have been appointed, by the provider, to a position of responsibility for supervising the management of the regulated activity.
35. Furthermore, she was concerned that the Appellant was the sole director and the Nominated Individual with responsibility for overseeing the service. He was also applying to be the Registered Manager. Undertaking both roles together in her view was more challenging because it resulted in the same person overseeing their own management. She was therefore not satisfied that there was a suitable person within the organisation to provide effective governance and oversight.
36. Ms Spinks was not satisfied that the Appellant had properly considered the regulation in terms of 'Fit and Proper Persons: Directors' under regulation 5 of the Regulations. This provides that individuals that are sole directors have authority within the organisation are responsible for the overall quality and safety of that care. The individual appointed must satisfy all the requirements and in particular, have the 'qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed'.
37. Ms Spinks did not consider the Appellant's qualifications including his Bachelor of Science Degree in Co-operative and Business Management and his Master of Arts degree in International Relations were related to social care.
38. She explained that Appellant was detailed as the sole director and set out his employment history that he was previously employed as a senior at L'Arche. He had stated in his application that his duties comprised of 'providing services to vulnerable people in their own home including personal care and performing all other healthcare/support work tasks within L'Arche Community as a team leader'. When the Respondent followed up on the reference with a Director of L'Arche, Ms Carol Carney, it found that the Appellant was in fact employed as a care and support worker for adults with learning disabilities. He did not hold any management responsibilities. The Appellant demonstrated a lack of knowledge of the fundamental standards. For example, when asked, he was unable to tell the Respondent how he would ensure the service complied with regulations. This meant that the Respondent was not confident about his ability to ensure the service would comply with regulatory requirements.

39. Ms Spinks accepted that the Appellant had worked in this area for some considerable time but believed that the Appellant's application at this stage was "premature". She considered it would be sensible for him to build up his experience, complete his level 5 in Leadership for Health and Social Care for adults in England and then make a further application, which would be assessed on its merits and in line with the relevant requirements at the time it was made.
40. Ms Lovell confirmed that she accompanied the lead inspector Janet Spink made at the fit person assessment meeting on 13 November 2019.
41. Ms Good set out that the specific concerns for her were the Appellant's lack of qualifications and experience to enable the role to be carried out safely for service users. In the application submitted, he was unclear on exactly what the service would provide with confusion arising around supported living and shared lives services. This raised concern as the provider should be able to describe clearly what service they are intending to provide, and this was not the case. She acknowledged that the Appellant did hold NVQ qualifications in health and social care, however, he did not hold any management qualifications which are required to carry out the role he applied to be registered for. He had no experience working at a managerial level and on receipt of references the Respondent established that he had not worked at a level higher than a care worker. She found that the Appellant was not familiar with the basic documents required to carry the role e.g. Fundamental Standards, Statutory Notification, leading her to be concerned for the safety of any service user in his care.

### **The Appellant's position**

42. Mr Noble submitted that he has the relevant qualifications and experience. He has studied agricultural science, home and hotel management, agricultural extension and rural/urban sociology in his first degree. In his view this related "to the importance of improving humanity and quality of lives as a healthcare provider in the sector by working with families, GPs, social workers, support agencies, other professionals and clients' equipment."
43. He had achieved a Masters Degree in International Relations which he submitted would assist the company in managing conflict. He had achieved a Bachelors Degree in Cooperative and Business Management which would help in the management structure of OES.
44. He had achieved Level 2 and Level 3 Diploma in Health and Social Care for Adults in England and was planning to complete the Level 5 in Leadership for Health and Social Care for adults in England. However, he had not started that as yet. He has also undergone security trainings to ensure security management in client homes and also planned to progress his PhD degree in social care.



45. The Appellant accepted he had not held a formal position as manager, deputy or assistant manager, supervisor or team leader in the healthcare (or any other sector). He had not applied for a more senior role in the health care sector or with his previous employer as they “would not employ me as a manager”.
46. He accepted that working closely with a manager was not the same as undertaking some managerial responsibilities. However, he had helped with some tasks such as staff rotas, organising meetings, cooking soup and taking notes.

### **The Tribunal’s conclusion with reasons**

47. We took into account all the evidence that was included in the hearing bundle and presented at the hearing and the parties closing submissions. We have summarised the evidence insofar as it relates to the issues we determined.
48. We wish to place on record our thanks to the Appellant, Ms Brown and the witnesses for their assistance at the hearing.
49. We found Ms Janet Spinks, Ms Della Lovell, and Ms Rachel Good to be credible and found that the evidence they gave was well supported through the documentation. They recognised the positive aspects of the Appellant’s case including, for example, his passion for working in the sector.
50. We acknowledge that the Appellant had worked in the care sector since 2014 and was passionate about working in the area. We acknowledge that the Appellant was a litigant in person and every effort was made to ensure that he understood what was happening at the video hearing and he was provided with an opportunity to be able to ask questions and give his evidence. It was for that reason that we considered that he should have an opportunity to reflect after giving evidence in order to provide any final written submissions. He agreed that being allowed more time to make his written submissions was his preferred option.
51. The Respondent made it clear in their submission, for the avoidance of any doubt, that it took no issue with the Appellant’s “good character” as defined in (Part 2 Schedule 4 of HSCA 2008 (Regulated Activities) Regulations 2014. It was accepted that he has no criminal convictions or cautions. This was an important issue for the Appellant and we consider it appropriate to record that in our decision.
52. We concluded that we would confirm the decision of the Respondent dated 17 December 2019 to refuse to register OES Ltd as a service provider and Mr Yusef Noble as the Registered Manager. Our reasons for doing so are set out below.

53. We accepted the Respondent's submission that Registered Managers are in a position of considerable trust and significant responsibility. In fairness, the Appellant did not disagree with this assertion. Registered Managers are pivotal to the overall success of the regulatory framework. The Nominated Individual role is also just as crucial, providing oversight of management decisions and compliance, it is the eyes and ears of the Company. Directors play no less of a challenging role - they determine the safety and quality of care provided by the organisation through their decisions, the culture set, and their own technical competence. The person or persons a Company proposes to put forward for these roles can set the Service Provider up for success or failure.

### **Qualifications**

54. We reminded ourselves that the question as to how an individual demonstrates they hold the necessary qualifications, competence, skills and experience will be different in every case. Evidence on each matter should be considered and then the issue ultimately be looked at in the round.

55. We concluded that the Appellant did not hold the "necessary qualifications, competence, skills and experience" to manage and supervise the management of the carrying on of the regulated activity.

56. It was clear to us that at this stage, and taking into account the circumstances of this case, the Appellant does not currently hold a healthcare management or leadership qualification. We acknowledged that the Appellant intended to complete the Level 5 Diploma and has provided evidence of an invoice from 28 June 2019 relating to request for payment for the Level 5 Diploma (payment due August 2019). However, by the time of the hearing he accepted that he has not started it and we were not provided with any evidence that he was unable to start this without holding a leadership position where he can be assessed. Furthermore, we had no reason to doubt the evidence of Ms Spinks that an individual does not already need to be in place as a manager to undertake the Level 5 and that it was very common for deputies of senior level carers to work towards the level 5 prior to registration.

57. We considered the Appellant's other qualifications namely the Level 2 and 3 Diploma in Health and Social Care did not deal with competency elements/assessment for managerial and supervisory responsibilities. We were particularly persuaded by Ms Spink's evidence on this issue. The Appellant was not able to demonstrate otherwise and the module breakdowns did not reflect the Appellant's assertion that it was aimed at leaders.

58. We acknowledge that the Appellant's other qualifications were generally impressive but we were not persuaded overall about their relevance to the management and supervision of the proposed regulated activity. For example, we were not persuaded by the Appellant's submission that his

Bachelor of Science Degree in Co-operative and Business Management and his Master of Arts degree in International Relations were a relevant qualification. The module breakdowns and his oral evidence demonstrated that the qualification was aimed at those looking to manage or establish farms and co-operative businesses.

59. Furthermore, the training certificates produced by the Appellant were not formal qualifications. These were carried out as part of internal training by his employer every two years. We agreed that there was insufficient detail as to what exactly was covered or whether these training sessions included any assessment. The difficulty the Appellant had was that he was unable to demonstrate how those courses/workshops would assist in management duties or supervising management role rather than in a day-to-day operational capacity.

### **Skills and competency**

60. We considered the policy documentation and procedures provided as to how the Appellant company would be run. It was clear that the Appellant had considered and obtained extensive company documentation. However, in our view, the existence of company documentation is not the same as demonstrating there would be compliance with the Fundamental Standards and other legislation. What is required is evidence of a good understanding of policy and procedure and how it was to be applied. For example, whilst we give credit to the Appellant for having policy documentation and procedures, we had concerns as to whether or not the Appellant understood what was in the documentation. For example, the complaints policy referred to processes and systems which were more relevant to a large organisation with different tiers of management. By way of a further example, the Safeguarding Policy only provided details for the Emergency Duty Team for Sefton and Liverpool despite the Appellant confirming in oral evidence that he would be providing the service anywhere in England.
61. At the hearing, the Appellant demonstrated a misunderstanding of the service that it was seeking to provide. The Appellant maintained that he sought to run a Shared Lives service but seemed to understand that term to mean a house shared with others (in the ordinary sense) rather than how the term is used by the regulator and the sector. He did not foresee any problem with this. Furthermore, there was a significant lack of documentation of the type that would ordinarily be expected of someone operating this service. It was notable that there was no reference to Shared Lives Carers, Shared Lives Carer Agreements, or consideration of a Shared Lives Approval Panel within any of his policy and procedure documentation.

### **Experience**

62. The Appellant accepted he has not held a formal position as manager, deputy or assistant manager, supervisor or team leader in the healthcare

(or any other sector). He was asked whether he had ever applied or considered applying for a more senior role in the health care sector but he said he had not and then went on to say that his previous employer “would not employ me as a manager”.

63. The Appellant was unable to provide detail or examples (orally or in writing) to show how his previous experience relates or can be transferred to a management/leadership role. Under questioning he accepted that working closely with a manager is not the same thing as undertaking some managerial responsibilities oneself. The reference from Carol Carney (Director of L'Arch) set out that that the Appellant “was employed as a care and support worker for adults with learning disabilities living in supported living accommodation, he did not have any management responsibility, he worked as part of a team but he also did some lone working...”. It was clear that based on the evidence before us that the Appellant has insufficiently evidenced managerial leadership level type responsibilities undertaken in previous healthcare employment.
64. Furthermore, the only examples the Appellant could provide in oral evidence were in relation to helping with staff rotas, organising meetings, cooking soup, taking notes. In his CV he indicated under the heading ‘Management Skills’ that he had the ability to comply with CQC protocols such as ‘Provider Information Returns’ but accepted that this was not something he had ever done. Furthermore, he had never carried out staff appraisals or had any responsibility previously for recruitment of staff.
65. We were also concerned that the Appellant had not considered the triple roles which were to be carried out by him. In our view he had shown no real reflection on the triple roles to be carried out by one individual and what potential there could be for a conflict of interest. Ms Spink detailed in her oral evidence that in her experience a good applicant would have considered this and the measures that could be put in place to reduce problems of a lack of checks and balances (such as an external consultant to provide audit management action).
66. We acknowledge that the Appellant was committed to working in the sector. However, commitment, enthusiasm and passion for healthcare, whilst providing a good base to start with, are not in themselves enough to plug gaps in the fulfilment of the fit and proper person requirements or a substitute for good working knowledge of the Fundamental Standards and how to manage their implementation
67. We agreed with Ms Spinks that the Appellant’s application at this stage was “premature”. In our view, the Appellant needs to plug the gaps in his qualification, skills and experience before considering making any further application. Clearly, any application would be considered on its merits and in accordance with the relevant requirements at the time it’s made. For the avoidance of doubt, we do not make any observations or otherwise on the merits of any future applications. That is clearly a matter for the

Respondent and of course the Appellant will have a right to appeal against any such decision.

68. We concluded therefore that the refusal to register was a fair, reasonable and proportionate step taking into account all the circumstances of this case.
69. Given the significance of our findings on the above issues, we did not go on to address each and every matter raised by the parties. In the event that the Tribunal had gone on to consider those then we would have determined that the Nominated Individual, Registered Manager, and Service Provider would not have been able to demonstrate that the relevant requirements (including the Fundamental Standards) would be met.
70. We direct that the appeals are dismissed and that the Respondent's decisions dated 17 December 2019 to refuse to register
  - (i) OES Limited as a Service Provider, and
  - (ii) Yusef Noble as the registered managerare confirmed.

**Judge H Khan**  
**Lead Judge Care Standards Tribunal & Primary Health Lists Tribunal**  
**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 12 June 2020**