

Care Standards

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

[2019] 3848.EA VKinly

Hearing held by video link
on 14, 15 and 16 July 2020

Before

Ms S Brownlee (Tribunal Judge)
Mr M Flynn (Specialist Member)
Mrs S Prewett (Specialist Member)

Mr Dean Millar

Appellant

-v-

Care Quality Commission

Respondent

DECISION

The Appeal

1. Mr Dean Millar, a proposed Registered Manager ('the Appellant'), appeals pursuant to section 32 of the Health and Social Care Act 2008 ('the Act'), to the Tribunal. The appeal relates to a decision of the Care Quality Commission ('the Respondent') dated 4 September 2019 to refuse registration of the Appellant as a manager in respect of the regulated activity 'accommodation for persons who require nursing or personal care' at Cowbridge Residential Care Home, Rose Hill, Lostwithiel PL22 0JW.

The Hearing

2. The hearing took place on 14, 15 and 16 July 2020. This was a remote hearing which was not objected to by the parties. The form of remote hearing was by Kinly CVP video. A face to face hearing was not held because it was not practicable and no-one requested the same. The Tribunal noted that the hearing had been listed in April 2020, but did not proceed due to the restrictions in light of Covid-19. We considered that the issues in this appeal could be determined in a remote hearing. The documents that we were referred to are

in the electronic hearing bundle provided in advance of the hearing. Page references follow the pagination on the original bundle for ease of reference, as some participants were working from a hard copy bundle and some from a digital bundle.

3. There were some connectivity issues on the first morning of the hearing, which caused a delayed start time. The hearing commenced at 11.15 am due to the issues, which affected the two specialist members. The issues resolved for Mrs Prewett. However, on the first day of the hearing, Mr Flynn could see and hear everyone, but had to telephone to secure audio if he wished to speak. On the second and third days, Mr Flynn could see and hear everyone and had audio, but could not have his camera on. The parties were aware of this and did not register any objection to the arrangements. The Tribunal was content to continue as Mr Flynn was able to engage fully with the hearing.

Attendance

4. Mr Millar, the Appellant, was supported in presenting his appeal by Ms Sarah Brown. Mr Millar called two witnesses: Ms Emma Clark and Ms Amanda Mould. We also heard evidence from Mr Millar.
5. Mr Alexander West, counsel, instructed by Mr Stephen Graham of Ward Hadaway, represented the CQC. The Respondent called three witnesses: Ms Ursula Godfrey, CQC registration inspector, Ms Jacqueline Dolan, CQC registration manager and Mr Lee Bennett, CQC representations inspector.
6. There were four observers at various points over the course of this public hearing.

Background

7. On 24 December 2018, Mr Millar made an application to the CQC to register as manager of Cowbridge Residential Care Home. That application was rejected due to incomplete and/or wrong information. On 22 January 2019, Mr Millar made a fresh application. On 4 April 2019, a telephone 'fit person' interview took place between Ms Godfrey and Mr Millar. During the phone interview, Mr Millar indicated that he came across better in person. Ms Godfrey and Mr Millar agreed to meet for a face to face interview, which took place on 12 April 2019. On 1 May 2019, Mr Millar left employment at Cowbridge Residential Care Home.
8. Mr Millar had previously registered as a manager with the CQC – on 3 October 2014 – at Fieldview, a care home which is part of Stroud Care Services Limited. Between December 2014 and March 2017, Mr Millar also submitted a number of registration applications, which were not required or not completed.
9. After the face to face interview, Ms Godfrey had not identified any concerns. Ms Dolan reviewed Ms Godfrey's report, in which she recommended acceptance of his registration. Ms Dolan indicated that she was aware there had been concerns about Mr Millar's previous employment. Ms Godfrey carried

out further checks, including an examination of Mr Millar's history of applications to the CQC. Ms Godfrey conducted a cross referencing exercise of the various applications and noted several areas of difference in the applications. As a result of this, Ms Godfrey informed Mr Millar that she would be requesting professional references from his previous employers.

10. A number of concerns came through from the references received about Mr Millar. As a result, Ms Godfrey held a management review meeting with Ms Dolan on 23 April 2019 to discuss the decision for the notice of proposal. On 29 May 2019, Ms Godfrey contacted Mr Millar on the telephone to inform him that the CQC would be issuing a notice of proposal to refuse the application.
11. The notice of proposal was sent to Mr Millar on 3 July 2019. Mr Millar sent written representations to the notice on 26 July 2019. On 4 September 2019, the CQC representations team issued the notice of decision to refuse Mr Millar's application to register as a manager with the CQC.
12. On 3 October 2019, Mr Millar lodged his appeal to the Tribunal.
13. The hearing was previously listed for 14 to 16 April 2020. The Tribunal agreed to postpone the hearing, upon Mr Millar's application, in light of the situation with Covid-19 and the pressing need for Mr Millar to move into the care home at which he was working to ensure the safety of the residents.

Legal Framework

14. Section 3 of the Health and Social Care Act 2008 ('the Act') invests in the Respondent registration functions under Chapter 2.
15. By virtue of section 3(1) of the Act, 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.
16. Section 14 of the Act requires an application to register as a registered manager of a regulated activity to be made to the Respondent.
17. Section 15 sets out the criteria for the grant or refusal of such an application. The requirements of an application to register as a manager are governed by Section 15(2) of the Act:
 - (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.*
18. Under section 20 of the Act, the Secretary of State is empowered to make

regulations in relation to the regulated activities by way of regulations. The Regulations made under this section are the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, SI 2014/2936 ('the Regulations') and The CQC (Registration) Regulations 2009.

19. Sections 26, 27 and 28 of the Act set out the procedural requirements in relation to notification of the Respondent's decision.
20. Section 32 of the Act provides for a right of appeal to this Tribunal if the application for registration is refused. The Tribunal may confirm the decision or direct that it is not to have effect, or to vary, cancel or impose any conditions on the registration that the Tribunal sees fit.
21. Section 37 of the Act makes it an offence to knowingly make a statement which is false or misleading in a material respect in an application for registration.
22. Part 3 of the Regulations concerns regulations relating to persons carrying on or managing regulated activities. Regulation 7 sets out the following requirements:
 - (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 Ms is –*
 - (a) *of good character,*
 - (b) *has the necessary qualifications [competence], 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, he information specified in Schedule 3.*
 - (3) *In assessing an individual's character for the purposes of paragraph (2)(a), the matters considered must include those listed in Part 2, Schedule 4.*
23. Schedule 3 includes the following:
 - (7) *a full employment history, together with a satisfactory written explanation of any gaps in employment.*
24. Part 2 of Schedule 4 requires the CQC to consider certain information relating to the individual's criminal and/or regulatory history.
25. Regulation 20 sets out the duty of candour of registered persons, and provides that registered persons must act in an open and transparent way with relevant

persons in relation to care and treatment provided to service users in carrying on a regulated activity.

26. The Appellant bears the burden of persuading the Tribunal that registration should be granted. The Appellant must establish the facts upon which he relies to support satisfaction of the registration requirements on the balance of probabilities.
27. The Tribunal is required to determine the matter afresh and make its own decision on the merits and evidence as of the date of hearing. The Tribunal applies the same statutory framework as the Respondent.
28. The powers of the Tribunal on an appeal are set out in section 32 of the Act. The Tribunal determines matters afresh and thus may take into account evidence that post-dates the notice of refusal (subject to fair notice).

Late Evidence

29. On 14 July 2020, the Appellant submitted an email dated 31 May 2020 from Dr Andrew Ashworth to Mr Millar. Dr Ashworth is a director at Vivacare Ltd, Mr Millar's current employer. The email confirmed that Dr Ashworth had spoken with an individual at Cornwall Council, who confirmed that there had been a safeguarding matter from 2017, which had not been taken forward against Mr Millar. The Appellant wished to have the email admitted as evidence. The Respondent did not object. The Tribunal decided to admit the email and asked Mr Millar to consider its relevance and address the point in his evidence. In the end, the email was of limited relevance, as the safeguarding outcomes were not in dispute.
30. During the hearing, a point arose in cross examination of Mr Millar. On the second day of the hearing, during his evidence, Mr Millar indicated that he had raised a concern with the CQC in relation to the standard of care at another care home (Pine Lodge Nursing Home) which formed part of Orchard Care (South West) Ltd. Mr Millar considered this of significance as it went to the reasons why he was unhappy by the point of his resignation from Restgarth Care Home, operated by Orchard Acre (South West) Ltd. Mr Millar was so concerned with the standards of care at Pine Lodge Nursing Home that he felt the need to resign and to refer his concerns to the CQC. Mr Jonathan Thrush was the director and nominated individual for Orchard Care (South West) during the time of Mr Millar's employment as the manager at Restgarth Care Home (1 December 2016 to 28 March 2017). Mr Millar, in response to questions from the Tribunal, confirmed that he raised concern with the CQC about Mr Thrush and the practices in Pine Lodge Nursing Home on or shortly after the date of his resignation from Restgarth Care Home.
31. This was new information, which had not previously appeared in Mr Millar's witness statement to the Tribunal or accounts to the Respondent. As a result, the Tribunal asked the Respondent to consider its position overnight.
32. On the third day of the hearing, Mr West submitted a witness statement dated

16 July 2020, from Ms Amy Jupp, Head of Registrations at the CQC, with a number of exhibits. The witness statement covered the chronology of contact the CQC received in relation to Pine Lodge Nursing Home and the incident to which Mr Millar made reference in his evidence. Ms Jupp was available and ready to provide oral evidence at the hearing if required.

33. Ms Brown, on behalf of Mr Millar, objected to the admission of the witness statement, on the basis that it did not concern a matter that was of relevance in the hearing.
34. The Tribunal considered the matter carefully, including consideration of Rule 15 of the First-tier Tribunal (Health, Education and Social Care Chamber) Rules. We concluded that the evidence was of relevance to two issues for consideration by the Tribunal – firstly, whether Mr Millar raised a concern about practices with his employer in 2017 and secondly, to considerations of credibility. We considered that it would be fair to admit the evidence, considering the fact that Ms Jupp was available for questioning. The Tribunal informed Mr Millar and Ms Brown that if the evidence was admitted, they would have an opportunity to challenge it in cross examination of Ms Jupp.

Upon admitting the evidence, we asked Mr Millar if he or Ms Brown had any questions for Ms Jupp. They did not.

Issues

35. The key question for the Tribunal was whether the Appellant was able to demonstrate, on the balance of probabilities, that he is able to satisfy the requirements of Regulation 7 of the Regulations.

The Appellant's position

36. Mr Millar contended that the omission of his period of employment at Orchard Care (South West) Ltd was a genuine mistake. It was also a genuine mistake that it was omitted from both subsequent versions of his CV. He did not think he needed to disclose his role at Orchard Care (South West) Ltd as he was only in the role for a short, probationary period of time before he resigned.
37. He accepted that he was invited to an investigatory meeting by Stroud Care Services Ltd in July 2016. He disputed that it was part of a safeguarding investigation.
38. He considered that the process undertaken by the Respondent was not a satisfactory one, as it failed to take into account the character and history of providers at care homes. He also noted that Ms Godfrey had initially considered that he was suitable for registration.
39. He understood that he has now left employment with Cornwallis Care Ltd (as of 26 April 2019) and so the application which is subject to appeal relates to a position he no longer holds. It is an academic process, but Mr Millar still wished to pursue the appeal as he considered the decision of 4 September 2019 to be

a wrong one as it seemed to place too much weight on the historic references from employers and providers who are not reputable and not enough weight on Mr Millar's professional development.

40. Mr Millar contended that he had been the subject of malicious allegations from his time at Stroud Care Services Ltd and Orchard Care (South West) Ltd.
41. The Appellant placed emphasis on his history and achievements within the care sector, as well as a number of references and the evidence of Ms Mould and Ms Clark to demonstrate that he is of good character and meets the requirements of Regulation 7 of the Regulations. He also placed emphasis on his performance in his current role, questioning why the Respondent did not consider assessing Mr Millar in his current role.

The Respondent's position

42. The Respondent maintained that at the time the decision was made, it could not be satisfied that the Appellant met the requirements of Regulation 7 of the Regulations as he had omitted his previous employment with Orchard Care (South West) Ltd.
43. At the time of the Appellant's departure from Orchard Care (South West) Ltd, he had been made aware of concerns with his management relating to bullying, improper recruitment processes and shredding historic care plans.
44. By omitting his time with Orchard Care (South West) Ltd, the Appellant was able to avoid setting out why he had resigned from his post.
45. When the Respondent requested a copy of the Appellant's full, up-to-date CV, the Appellant provided two documents. Neither document detailed the Appellant's employment with Orchard Care (South West) Ltd.
46. The Appellant failed to disclose the fact that he had been contacted by his employer, Stroud Care Services Ltd, regarding a safeguarding/employer investigation.
47. This was not the first time the Appellant had applied to the Respondent for registration, so he was aware of the duty to act with openness and honesty in outlining his employment history and details of investigations.
48. The Respondent did not accept Mr Millar's explanation that he had omitted details due to a genuine oversight, not least as:
 - (i) it was a repeated mistake, in three different documents;
 - (ii) other gaps in employment were explained; and
 - (iii) the Appellant stood to gain from the omission

Evidence

49. We considered 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 for the Tribunal. What is set out below is not a reflection of everything that was said or presented at the hearing or in the hearing bundle.

50. Ms Godfrey provided comprehensive evidence on the process for registration applications of the kind made by Mr Millar in 2019. Her evidence demonstrated the importance of full disclosure of employment history – in short, it ensures integrity in the process through the integrity of the applicants. In her evidence, she explained that the Respondent operates a robust system designed to apply the Regulations and guidance. The robustness can be seen, at least in part, on the requirement to disclose investigations and a full employment history.
51. In Mr Millar's case, based on what he had set out in his application and the two interviews, Ms Godfrey prepared an initial recommendation to approve Mr Millar's application. She sent her recommendation report to her manager, Ms Dolan. It was only because of Ms Dolan having a wider awareness of Mr Millar's registration history in relation to Stroud Care Services Ltd that she was able to flag the need for further inquiries to be completed and did not accept Ms Godfrey's recommendation. That incident illustrates why full disclosure and openness in the application process is of such importance to the Respondent in fulfilling its regulatory function.
52. In oral evidence, Ms Dolan indicated that in relation to good character and a full employment history, the CQC expects applicants to be open and provide a full history. Applicants are prompted, in the application form, to confirm if they have 'been subject to any safeguarding investigation, criminal investigation or any investigation by a previous employer'. Mr Millar ticked 'no' to that question. Ms Dolan explained that the importance of that full disclosure demonstrates that the applicant has reflected and learnt from past experiences. It is not the outcome as much as it is the fact of being subject to an investigation and what learning came from that process. Ms Dolan emphasised that each application is considered on its own merits and if Mr Millar made a subsequent application for registration, it would be assessed on its own merits at that time.
53. Ms Dolan confirmed that the interview is just one component of the application process. She confirmed the same for the applicant's previous history and career development. The assessment process is a wider ranging one, which requires an informed judgment.
54. Mr Millar ultimately accepted in his evidence that he had not, at any point, including during the hearing, provided a full employment history to the CQC. The reasons he gave for this varied.
55. He indicated that it was an oversight, when he omitted his time with Orchard Care (South West) Ltd. In his evidence, Mr Millar did not initially accept that he had been employed as he did not sign a contract of employment with his employer. However, after questioning, he accepted that he had been paid through the PAYE system and that, even though he was on a probationary period, he had in fact been employed by the company. It seemed that from Mr Millar's perspective, he considered that he did not need to declare this role as

part of his employment history as he had resigned from the post, had been on a probationary period and had not signed a contract of employment.

56. At page C72 (260) of the bundle, a copy of Mr Millar's CV shows that Orchard Care (South West) Ltd was missing from the work experience section. Mr Millar tasked a work colleague with updating his CV. It had to be typed out again from scratch by his work colleague in April 2019. That copy of the CV appears at page C74 (262) of the bundle. Again, the detail on Orchard Care (South West) Ltd was missing. Mr Millar indicated in oral evidence that as soon as his work colleague had typed it up, she sent it through to him as an attachment and he simply forwarded the attachment to Ms Godfrey without checking the details. This was at a point in time when Mr Millar knew that Ms Godfrey was requesting additional information on his application.
57. Mr Millar explained that he made a mistake in not disclosing the investigation instigated by Stroud Care Services Ltd. He also explained that it was not actually a safeguarding investigation as it did not lead to an adverse outcome for him, in terms of his DBS status. Mr Millar did accept, after questioning, that an employer can carry out its own safeguarding investigation.
58. It is not disputed, that at the time of Mr Millar's resignation from Orchard Care (South West) Ltd, he had been confronted by Mr Thrush with a number of allegations relating to his management of Restgarth. Mr Millar resigned, with immediate effect, and left his post. That was on 28 March 2017. Mr Millar explained, in his oral evidence, his reason for resignation was due to the safeguarding concerns he had witnessed at Pine Lodge Nursing Home. He confirmed that he had, at one point, intended to attend the investigation meeting. He confirmed that he had notified Ms Hughes of that intention but decided not to attend as he had left employment and had moved on with his professional life.
59. In his oral evidence, Mr Millar stated that he is proud of his work in the care sector and takes quality of care seriously. He described his reaction to receiving a notification of a safeguarding investigation by another previous employer, Stroud Care Services Ltd. Mr Millar recalled 'feeling sick to my stomach' when he received the letter of 4 July 2016 from Ms Linda Hughes, a director at Stroud Care Services Ltd. As a result of this, he took a period of sickness absence and had to visit the doctor. He also confirmed that he had taken voluntary redundancy from that role.
60. In his oral evidence, Mr Millar disclosed for the first time that on or around the date of his resignation, he had contacted the CQC on the telephone to raise concerns about the alleged practices of Mr Thrush and Pine Lodge Nursing Home. Mr Millar could not explain why he had not set this detail out during the representations stage of the registration process with the CQC or in his witness statement to the Tribunal. Mr Millar initially described this process as a referral, but in later questioning, he described it as a whistleblowing complaint. Mr Millar could not explain why he had not previously disclosed the fact that he had raised safeguarding concerns upon leaving his role with Orchard Care (South West) Ltd, particularly in light of his commitment to his work in the care sector

61. It was the evidence of Ms Jupp, provided overnight between the second and third days of the hearing, from the Respondent's interrogation of its system, it had no record of a concern being raised anonymously or by Mr Millar in relation to Pine Lodges Nursing Home, Orchard Care (South West) Ltd or Mr Jonathan Thrush.
62. In closing submissions, Ms Brown, on behalf of Mr Millar, submitted that the past allegations made against Mr Millar were malicious.

The Tribunal's conclusions with reasons

63. We found Ms Godfrey, Ms Dolan and Mr Bennett to be credible and found that their evidence was supported throughout the documentation. They applied the process they were required to follow in their roles in a professional and diligent manner.
64. It was clear to the Tribunal that Mr Millar is proud of his work in the care sector and takes quality of care seriously. He appears to be passionate about working in the care sector. From his description of his reaction to receiving a notification of a safeguarding investigation by another previous employer, Stroud Care Services Ltd. Mr Millar recalled 'feeling sick to my stomach' when he received the letter of 4 July 2016 from Ms Linda Hughes, a director at Stroud Care Services Ltd. Mr Millar indicated that as a result of this, he took a period of sickness absence and had to visit the doctor. He also confirmed that he had taken voluntary redundancy from that role.
65. The Tribunal considered that this series of events clearly had an effect on Mr Millar and he appeared to recall the incident clearly, not least as he was able to detail the effect it had on him personally. We found it difficult to understand why, when the incident clearly had quite an effect on him and he could recall with clarity how it made him feel, he failed to disclose it in his application for registration.
66. We also considered it significant that Mr Millar could not explain why he had not previously disclosed the fact that he had raised safeguarding concerns upon leaving his role with Orchard Care (South West) Ltd. In our view, if Mr Millar had made such a referral to the CQC, he should have considered his employment at Orchard Care (South West) Ltd to be a required disclosure in his application, not least as he had been so concerned about practices with that employer that he saw fit to raise them with the CQC.
67. We considered it of relevance that the CQC held no record of a referral or a whistleblowing complaint being raised on an anonymous basis or by Mr Millar during March or April 2017 in relation to Mr Thrush, Orchard Care (South West) Ltd or Pine Lodge Nursing Home. We concluded that this account, offered for the first time in oral evidence during the appeal lacked credibility. We concluded, that it was more likely than not that the Appellant did not raise any concerns directly with the CQC.

68. We did not find Mr Millar's explanations for his failure to disclose his period of employment at Orchard Care (South West) Ltd persuasive. We had some concerns with the further account provided by Mr Millar to explain why Orchard Care (South West) Ltd was omitted from two subsequent copies of his CV, which were requested by Ms Godfrey as part of her inquiry into Mr Millar's registration application. Mr Millar explained that he sent both copies by email on 16 April 2019, upon receiving the request from Ms Godfrey.
69. We found this explanation concerning and again, considered it lacked credibility – that Mr Millar would not check the content of the retyped CV, in the knowledge that he had been asked to provide an updated copy.
70. We also took account of the fact that Mr Millar did not disclose his period of employment with Orchard Care (South West) Ltd as part of his application for employment with Cornwallis Care Ltd. We considered that this, taken alongside the omission from his subsequent registration application to the CQC, established a pattern of omission of this role from his employment history.
71. We noted that Mr Millar had always declared his period of employment with Housing & Care 21, even though he was employed in that role for approximately three months. This was of relevance, given that one of the explanations given for the failure to set out Orchard Care (South West) Ltd was the brevity of Mr Millar's time in that post - from 1 December 2016 to 28 March 2017 – a longer period of time than the post with Housing & Care 21 (confirmed as 22 August 2016 to 18 October 2016). He has also always declared his periods of self-employment and roles which were not directly in the care sector.
72. We concluded that Mr Millar, at the time of the application to the Respondent, knew that he should have disclosed his period of employment with Orchard Care (South West) Ltd and chose to omit it as he knew it may have materially affected the application decision. We have concluded that Mr Millar intended to erase that part of his employment history to increase his chances of having his application approved. We consider that this action is demonstrative of a person who is failing to act with integrity during the application process. It was a highly relevant factor in our decision making on this appeal.
73. It was also a decision-making factor that was informed by Mr Millar's oral evidence.
74. We considered it of relevance that Mr Millar's explanations for his actions were inconsistent and lacked credibility. We received new accounts for his actions during his oral evidence, including, but not limited to the following details:
- (i) the whistleblowing complaint raised with the CQC about Mr Thrush and the alleged practices at Orchard Care (South West) Ltd;
 - (ii) the reluctance to accept that he had been employed by Orchard Care (South West) Ltd;
 - (iii) asking a colleague to update his CV in April 2019 and simply forwarding

it to Ms Godfrey without checking it; and

- (iv) that difficulties with comprehension and/or dyslexia may have been the reason for overlooking the need to declare investigations on the application form.

75. The new accounts were, in the Tribunal's view, highly relevant, as they demonstrate inconsistencies in Mr Millar's accounts, after several opportunities to provide a detailed account, not least in his representations on receipt of the Notice of Proposal from the Respondent and in preparing his witness statement for the Tribunal on appeal. The first time the four points listed above were made was during oral evidence.

76. The credibility of Mr Millar is of relevance to the ultimate issue for the Tribunal, namely whether the Appellant is able to demonstrate, on the balance of probabilities, that he is able to satisfy the requirements of Regulation 7 of the Regulations.

77. For the Tribunal, the status of the safeguarding investigation does not actually change the obligation to disclose it. The investigation by Stroud Care Services Ltd was an employer's investigation of, amongst other things, a safeguarding concern which involved him. Mr Millar was aware of it – a point he confirmed in his evidence. In fact, he had, at one point, intended to attend the investigation meeting. He confirmed that he had notified Ms Hughes of that intention but decided not to attend as he had left employment and had moved on with his professional life. We accepted that this investigation did not lead to an adverse outcome for Mr Millar. We also accept that the outcome is not the issue – it is the fact of the investigation.

78. We are unable to accept Mr Millar's explanation for the failure to disclose that he had been the subject of an employer investigation of a safeguarding concern. We concluded that it clearly had an effect on him and stood out in his own memory. We do not consider, on a balance of probabilities, that Mr Millar genuinely believed he did not have to disclose it. We consider that the decision not to disclose it was an intentional one and not simply a mistake. In not disclosing it, it increased the chances that the period of employment with Stroud Care Services Ltd would not be examined further by the CQC. We noted that he had also failed to disclose it in an earlier registration application, in 2017. We concluded that this increased the likelihood of this omission being intentional; we consider that it was more likely than not that Mr Millar omitted the fact that of the investigation in order to conceal it from any interrogation by the Respondent. These actions, in intentionally omitting parts of his employment history, were designed, on a balance of probabilities, to ensure Mr Millar placed himself in the best position to have his registration application approved.

79. Significantly, in his evidence at the appeal hearing, Mr Millar accepted that he had still not provided a full employment history. This fact was of relevance to the Tribunal's decision today, a decision made afresh upon appeal.

80. The Tribunal concluded that it was significant that the allegations, characterised as malicious by Mr Millar, were directly linked to the omissions made in the employment and investigatory history. We do not consider this to be a coincidence – we have concluded that it was more likely than not that Mr Millar had omitted those details as he disagreed with them and did not wish them to reflect negatively on him.
81. We carried out a balancing exercise, considering carefully the positive testimonials presented by Mr Millar as part of his appeal, but we concluded that the positive aspects of his past performance did not outweigh the seriousness of the omissions made during the application and appeal process.
82. The Tribunal reminded itself that we are looking at matters afresh. We do that by taking into account all of the evidence in the bundle and the oral evidence provided during the hearing, as well as applying the requirements in Regulation 7 of the Regulations. We have concluded, on a balance of probabilities, that Mr Millar has not met the requirements of Regulation 7(2)(a) and paragraph 7 of Schedule 3 of the Regulations.

Decision

The appeal is dismissed.

The Respondent's decision of 4 September 2019 to refuse to register Mr Millar is confirmed.

Judge S Brownlee
Care Standards & Primary Health Lists Tribunal
First-tier Tribunal (Health, Education and Social Care)

Date issued: 13 August 2020