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

VKinly Hearing by video link
On 11, 12, 13 May 2021 and
On 29 May 2021 for further panel deliberations

[2020] 4168.EA

BEFORE
Miss Siobhan Goodrich (Judge)
Ms Bridget Graham (Specialist Member)
Miss Rachael Smith (Specialist Member)

B E T W E E N:

MARYAM ISHTIAQ

Appellant

and

CARE QUALITY COMMISSION

Respondent

DECISION AND REASONS

Representation:
The Appellant: Ms Rachael Gourley, counsel, instructed by Markel Law LLP
The Respondent: Ms Michelle Brown, counsel, instructed by Legal Services CQC

The Application

1. This is an appeal brought by Mrs Maryam Ishtiaq ("the Appellant") pursuant to section 32 of the Health and Social Care Act 2008 ('the Act') against the Respondent's decision made on 10 November 2020 to refuse her application to be a Registered Manager (RM) in respect of personal care proposed to be provided by Vista Personnel for Health Card Ltd ("Vista").

Restricted Reporting Order

2. The Tribunal made a restricted reporting order under Rule 14(1)(a) and (b) of the 2020 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the service users in this case, to protect confidentiality and privacy.

The Hearing

3. The hearing took place on 11,12, and 13 May 2021 via CVP. Pursuant to case management directions a direction for a remote hearing had been made in the light of Covid 19 restrictions. The parties did not object. We were provided with the electronic hearing bundle in advance (and as amended) and had read this before the hearing started. We considered whether the issues in this appeal could still be fairly determined in a remote hearing and were satisfied that this was so.

4. There were occasional connectivity issues and, as sometimes occurs, occasional difficulties with external noise/distraction. These were all resolved by practical measures, and to everyone's agreed satisfaction, as and when they arose so that the participation in the proceedings was ensured.

5. At the end of the hearing the judge provided the parties with the opportunity to raise any concerns regarding the fairness of the proceedings in the context of the use of CVP. Each party, by their representatives, stated that they were fully content with the process: the remote hearing had been fairly conducted. Ms Gourley also said that the Appellant had that morning expressly asked her to convey her appreciation for the frequent breaks that had been provided whilst she gave her evidence.

6. The decision was reserved. Panel deliberations were concluded on 29 May 2021.

Attendance

7. The parties were represented by counsel as set out above. The Appellant was in attendance throughout the hearing. Her husband was also with her for the vast bulk of the hearing so as to provide moral support. The following witnesses for the Respondent were present:
    - Mrs Adams, Registration Inspector
    - Mrs Westbrook, Registration Manager

    There were a number of other observers at various points over the course of the public hearing.

Late Evidence

8. The Appellant sought to rely on her third witness statement dated 4 May 2021, with further exhibits. The Respondent did not object. The statement (which contains the Appellant's response to police interview on video on 22 January 2015, disclosed in late March 2021) was obviously relevant. We decided that it was fair to receive this third statement.

9. In cross-examination on 12 May 2021 the Appellant referred to an updated risk assessment from Mr Moyo which was not before us. The next morning, with the agreement of the Respondent, we agreed to receive this document as late evidence, on the basis that the issue of weight was a matter for the panel.

Background

10. The following represents a broad summary of the main chronology:

a) On 25 February 2020, the Appellant submitted an application to the Respondent to be registered as manager in respect of the regulated activity of personal care at Vista [B009-B018]. The Appellant disclosed that she had a conviction in this application form and provided her DBS (Disclosure and Barring Service) number as required. In answer to the question
"Are you or have you been subject to any safeguarding investigation, criminal investigation, or any investigation by a previous employer?"
She wrote *"I have made **one** mistake which shows on my DBS. I used **a blank prescription** to get some medication. (will provide more details upon interview….)"* (our **bold**)

b) The DBS certificate refers to the offence as follows: *"Make false **representation** to make gain for self or another or cause loss to other/expose other to risk on 15 January 2015 Fraud Act 2006 21(2) (A) and S2"* (our **bold**)

c) On 8 June 2020, the Appellant's application was assigned to Mrs Adams.

d) On 17 June 2020, the first 'fit person' interview (the first FPI) took place remotely between the Appellant and Mrs Adams.

e) On 2 July 2020, Mrs Adams identified an article in the Manchester Evening News (MEN) dated 6 May 2015 which included suggestions that the Appellant's conviction concerned her fraudulently obtaining Tramadol on 10 occasions.

f) On 14 July 2020, Mrs Adams conducted a second 'fit person' interview (the second FPI) with the Appellant. The Appellant volunteered to try and provide further paperwork in relation to her conviction as confirmed in an email from Mrs Adams.

g) On 15 July 2020, the Appellant also provided her written consent for the CQC to contact the solicitors who had represented her in 2015, and also her GP.

h) On 21 July 2020, the Appellant wrote to Mrs Adams setting out that her former solicitors were unable to provide any paperwork due to the passage of time. She had spoken to the court and had requested the Memorandum of Conviction and had paid the fee for this to be provided.

i) On 21 July 2020, the Appellant sent Mrs Adams a copy of the Memorandum of Conviction (the "Memorandum") from Stockport Magistrates' Court. This states:

> *"Between July 2014 and 20th January 2015 at Stockport in the County of Greater Manchester, committed fraud in that you dishonestly made a false representation, namely used stolen prescription**s** to obtain tramadol, intending to make a gain, namely medication that you were not entitled to, for yourself. Contrary to sections 1 and 2 of the Fraud Act 2006." (our **bold**)*

- A guilty plea was indicated on 13 April 2015. On 5 May 2015 the Appellant received a sentence of 120 hours' unpaid work under a Community Order [B029].

j) On 17 September 2020, a Notice of the Proposal (NOP) to refuse the Appellant's application to become a Registered Manager was issued [B001-B008].

k) On 14 October 2020, the Appellant submitted representations against the NOP.

l) On 10 November 2020, the Respondent issued the Notice of Decision to refuse the Appellant's application. [B031-B040].

m) On 8 December 2020, the Appellant lodged her appeal against the decision.

n) In support of her application to the Tribunal In Section H the Appellant contended, amongst other matters, that the Respondent's decision was incorrect and unjustified. The circumstances were that the conviction referred to an attempt in respect of "a prescription". She had answered all questions in the interview to the best of her knowledge and belief. Her conviction was disclosed by her. Her recollection was that the circumstances leading to the conviction arose from a single occasion. The Appellant had satisfied the burden of disclosure of the conviction and this should surpass any underlying circumstances. It does not fall within the remit of the Respondent to investigate the circumstances of a conviction. The Appellant has made significant and continuous efforts to be open and transparent by disclosing her conviction and providing the Memorandum and PNC record. As to 2013 there was a misunderstanding which did result in an allegation of theft. She was not asked about it at the first FPI. She had forgotten about the matter. She answered all questions in the second FPI.

o) On or about 29 March 2021 the video of the police interview conducted on 22 January 2015 was provided by the Respondent.

p) The Appellant submitted a third witness statement dated 4 May (and which we agreed to receive – see [7] above).

The Legal Framework

11. The Health and Social Care Act 2008 ("the Act") and the Health and Social Care Act (Regulated Activities) Regulations 2014 ("the Regulations") contain the relevant legal provisions in this appeal.

12. Under Section 3 of the act the CQC's objectives are to protect and promote the health, safety and welfare of people who use health and social care services.

13. Section 14 of the Act requires any person seeking to be registered as a manager in respect of regulated activity to make an application to the Respondent.

14. Section 15 of the Act sets out the criteria for the grant or refusal of such an application and provides that the Respondent may attach conditions to that registration, either at the time of registration or subsequently.

15. Sections 26, 27, and 28 of the Act set out the procedural requirements placed on the Respondent in respect of the notification of its decision.

16. Section 32 provides a right of appeal to the Tribunal if the application for registration is refused. The Tribunal can confirm the decision or direct that it is not to have effect. The Tribunal can also vary, cancel or impose any discretionary condition it thinks should have effect in respect of the regulated activity.

17. Regulation 7 of the Regulations sets out the requirements relating to registration of managers. It provides that:

> *"**Requirements relating to registered managers***
>
> *7.—(1) A person (M) shall not manage the carrying on of a regulated activity as a registered manager unless M is fit to do so.*
>
> *(2) M is not fit to be a registered manager in respect of a regulated activity unless M is—*
>
> *(a) of good character,*
>
> *(b) has the necessary qualifications, skills and experience to manage the carrying on of the regulated activity,*
>
> *(3) In assessing whether an individual's character for the purpose of paragraph 2(a), the matters considered must include those listed in Part 2 of Schedule 4."*

18. Part 2 of Schedule 4 states that the test of good character "**includes"***:*

> *"Whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence." (our **bold**).*

19. 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".*

20. It is agreed that in the case where the appeal is against a 'refusal to register,' the usual burden of proof is reversed: it is for Appellant to satisfy the Tribunal that, in all the circumstances, she should be registered as a manager.

21. The standard of proof in relation to any disputed issues is the civil standard of proof – i.e. on the balance of probabilities.

22. The Tribunal is required to determine the matter de novo (i.e. to stand in the shoes of the Regulator) and to make its own decision on the merits and on the evidence available as of the date of the hearing. Subject to relevance and fairness, the Tribunal can consider new information or material that was not available (or presented) when the decisions under appeal were made.

23. At the outset of the hearing it was agreed that, notwithstanding the reversed burden, it was fair, convenient and appropriate to hear the evidence regarding the Respondent's decision first, and to then hear the Appellant's evidence.

The Issue in our Redetermination

24. The core issue is whether, looking at the matter as at the date of hearing, the Appellant has satisfied us, on the balance of probabilities, that she meets the requirement of "good character" as part of the Fit Person criteria?

25. The Scott Schedule helpfully identified the core factual issues in dispute and the parties' respective cases regarding:

    1. The 2015 fraud Conviction.
    2. The facts underlying the 2015 Fraud conviction.
    3. The 2013 theft allegation.
    4. Further doubts about the Appellant's honesty, trustworthiness and reliability raised by the Appellant's account of the details of her conviction to the CQC, her employer and within the appeal proceedings: the non-disclosure of the 2013 theft allegation and her subsequent account of the alleged theft to the CQC.

The Evidence

26. We considered all the evidence presented in the bundle and at the hearing. Each witness who gave oral evidence adopted their statements as their evidence in chief, albeit with clarifications which we recorded.

27. We will summarise below the main aspects. What is set out below is not a reflection of everything that was said or presented at the hearing, or in the hearing bundle. We will also refer to aspects of the Appellant's evidence at a later stage when considering our reasons.

28. In her statement Mrs Adams provided comprehensive evidence as to the process for registration applications, and her approach to assessment. At the outset she considered this to be a case potentially involving high risk because of the conviction for fraud relating to a prescription: the circumstances needed to be explored. She

located within internal records the Minutes of a Safeguarding Meeting arranged by Stockport Borough Council (SBC) on 5 March 2015.

29. At the first FPI the Appellant had told her that she had taken some blank prescriptions from a GP and had used one of these to attempt to acquire Tramadol due to her having become addicted to this drug. In oral evidence Ms Adams said that in the interviews there had been no mention by the Appellant of having a blurred memory because of the influence of Tramadol. At both interviews the Appellant was adamant that she had attempted to present a false prescription on one occasion.

30. In answer to Ms Gourley Mrs Adams agreed that it was inevitable that she would take steps to verify the information provided by the Appellant in this case, but she could not say what the Appellant's knowledge was as to what verification steps might be undertaken. As to the 2013 incident she agreed that in the second FPI the Appellant told her that this was a misunderstanding and she had forgotten about this. Mrs Adams said she would have expected to be told about this in the application.

31. She agreed that the Appellant had told her that in the RM role she would not be administering medication. However, a registered manager cannot absolve themselves of the need to investigate any medication issues arising. An RM also conducts spot checks at the homes of service users to ensure compliance with the Regulations. She was aware that the Appellant proposed that in any investigation she would be accompanied by a chaperone. She did not consider this a practical or viable as a condition. She agreed that the Appellant had been cooperative to some degree, but she said that the more that came out, the more it seemed that her cooperation was "*quite staged*".

32. In re-examination Mrs Adams said that the purpose of the interviews was to gauge whether the Appellant was being open and honest and whether the information she had provided married up. A decision by the DBS (as had been made) not to bar an applicant is always considered, but a DBS decision does take not precedence. The Respondent has to fulfil its own statutory obligations.

33. In her oral evidence, Mrs Westbrook said that it had appeared to her that the Appellant had given an account that her conviction involved one occasion. The DBS certificate showed a conviction regarding an offence. She was not familiar with the DBS processes regarding their decision-making. The CQC do their own investigation. The CQC process is designed to be fair and robust, the primary objective being the health, safety and welfare of service users. The Appellant's application did not initially appear complicated. It became more complex because there was no one version of events and the CQC did not have corroborating evidence. It is standard practice to "google" applicants because this is information in the public domain. The MEN article showed a different version. The Appellant had reiterated her account. Information from Google or newspaper articles are not taken as fact.

34. She said that the CQC concerns were a combination: had the Appellant been absolutely honest at the beginning (including about the 2013 incident) and explained the circumstances fully, this would have been considered in the context of what the Appellant had learnt. But her view was that the offence of dishonesty in 2015 was compounded by lack of honesty during the process. The Appellant now says in her May 2021 statement that her memory was blurred and she had blocked matters out, but she had not explained that before. She had said that (presentation of a false prescription) had happened once. She had not explained the full context, or why her memory of the circumstances was different to other sources of evidence.

35. She agreed that she was not involved in interviewing the Appellant so her views are inevitably based on the information provided by Mrs Adams, as well as her experience of managing the process in the registration context. A team approach is employed when making decisions as to any further investigatory steps, and any registration decision. It is dynamic process. The Police would not thank the CQC if it went to them with every DBS.

36. The Appellant adopted her witness statements dated 22 February, 12 March and 4 May 2021. In the latter, in the light of the video of police interview provided on 29 March 2021, she now accepted that she had presented 2 fraudulent prescriptions on 16 January 2015 and 5 fraudulent prescriptions but said that she had no independent memory of this. She was doing it under the influence of Tramadol. She had told Mrs Adams everything that she could remember.

37. In brief summary, the main points of her oral evidence were that:
    a) Given her experience and knowledge in health and social care, she had expected that the CQC would already know about the circumstances of the 2015 conviction and would make enquiries.
    b) She strongly denied that when being interviewed by Mrs Adams at either interview she had been “adamant” that the 2015 conviction was a one-off occurrence. Her recollection of events in 2015 was (always) poor because she had been addicted to Tramadol.
    c) She had stopped taking Tramadol when she was arrested. She had visited her GP about a week later with her husband because of symptoms of withdrawal. Her GP advised her to resume taking Tramadol to ease the effects of withdrawal and to gradually reduce the dose. However, she had refused to take this advice. Her fibromyalgia resolved when her daughter was born. She is now very careful and does not take medication that may be addictive.
    d) She had herself volunteered to find documents and had paid the fee for the Memorandum. She had also obtained the PNC record.
    e) If she had not seen the police video, she would not have remembered anything at all about the circumstances of the 2015 conviction. This conviction arose because she had become addicted to Tramadol and needed to take more tablets to cope with the pain caused by Fibromyalgia, than her GP had been willing to prescribe. She was not aware she was getting addicted and did not know the signs of addiction. She needed more Tramadol to be able to cope with her job and look

after her children, and in circumstances where her husband was away working away.

f) She was very distressed in the court and was crying. She did not remember what number they said. If they had said a number of prescriptions she would remember it. Asked if she now accepted 10 prescriptions she did not think 10 was a fair number. It was a one-digit number that she saw on the DBS certificate. 12 looked too big to her which is why she started making inquiries. If she had not watched the video she would have no memory at all.

g) She was never adamant in interview that it was one prescription. She has a really good memory that it was in the second FPI that the number of prescriptions was discussed.

h) In the police interview she had said "*I didn't do it like… 50 or 60 times".* Asked where the 50 or 60 came from she said she remembered someone saying give us a number: she had a *"little bit of a memory"* about that.

i) As to the 2013 incident she had genuinely forgotten about this and, in any event, this was always accepted by the Munifs as a misunderstanding. They had continued to employ her. After the 2013 incident she had refused to withdraw sums at all from the Munif's account and insisted that a separate card was provided so as to protect other staff members. Her character is that she is someone who accepts responsibility when she has done something wrong and takes steps to put it right.

j) The Appellant referred to the need for her to have seen contemporaneous evidence to prove the circumstances of her offending before she could accept it.

38. As we have said we will refer to further aspects of the Appellant's evidence in our consideration and reasons below.

The Tribunal's findings

39. The Tribunal reminded itself that we look 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 and applying the requirements in Regulation 7 as amplified by Schedule 4. We also take into account the Respondent's published policy "Guidance for providers on meeting the Regulations" issued pursuant to Regulation 21 in March 2015 which includes:

- *"Component of the regulation to be of "good character": "It is not possible to outline every character trait an individual should have, but we would expect to see that the processes followed take account of honesty, trustworthiness, reliability and respectfulness."*
- The Duty of Candour includes *"providing truthful information."*
- *"If an offence or other information is disclosed, this does not necessarily mean that a registration will be refused. We will consider each individual case fairly and take into account whether the offence or other information indicates a risk to people using the service."*

40. The question as to whether someone is of "good character" is fact specific and dependent on assessment of past and current circumstances. At the end of the day, in an appeal against refusal, after any findings on key disputed issues of fact have been made, the issue should be considered in the round and risk evaluated. Ultimately a fair and reasonable judgement needs to be made and with appropriate regard to issue of proportionality i.e. the fair and just balance to be struck as between the Appellant's interests and any risk to service users and to the public interest

41. It is clear from that the fact of any conviction is not, in and of itself, fatal to an application to be registered as a manager by the CQC. Much may depend upon: the nature and/or extent of any offending/adverse history; how long ago it had occurred; the circumstances regarding any offending: any mitigation; the relevance of past offending to the role; the applicant's insight and attitude to the offending i.e. what the applicant has learnt from the past offending and/or how this has been put into practice. The above is not exhaustive of the factors relevant to the risk assessment,

42. It is not simply a conviction that is relevant when considering the issue of character. We agree that the word "includes" in schedule 4 clearly permits a wider examination of other reprehensible behaviour. In this case we must consider the evidence regarding an incident in 2013 where the police were called. It is common ground that this was not mentioned by the Appellant in her application form. Her case is that: she had forgotten about this; the incident was a misunderstanding; she did not view it as an "investigation".

43. The main challenges to Ms Adams' evidence relate to what was, or was not, said at the first and second FPIs. Mrs Adams' response to the factual challenges was clear and consistent.

44. The reliability and credibility of the explanations given by the Appellant at various stages regarding the circumstances of her previous offending is plainly relevant to the ultimate issue for the Tribunal, namely whether the Appellant is able to demonstrate, on the balance of probabilities, that she satisfies the 'fit person' criteria.

45. We have considered the Appellant's CV. She obtained a BA and an MA in Arts in Lahore. She has a QCF qualifications (level 5) in Health and Social Care, and also in Leadership and Management. She is part way through Level 7 studies (which equates to studies at Masters' level) in Leadership and Management. We accept that the Appellant has an impressive record regarding the many training courses she has undertaken. It has never been in issue that she satisfies the requirements of Regulation 7 (2) (b): she has the necessary qualifications, skills and experience to perform the role of a registered manager.

46. The Appellant showed in her evidence that she is plainly intelligent. She made reference on occasions to the potential for misunderstanding given that the English language is her second language. She came to live in the UK in 2004 when she joined her husband who had studied in the UK. She was employed by the Lynwood Residential Home ("the Home") from 2007. She became a deputy manager there in

2010. She has been working in social care since 2007 and, in that context, has had some interaction with the CQC. After her dismissal in February 2015 she did not resume work for a few years but she has been employed in some three posts, mainly in managing domiciliary care, since 2018. We took fully into account the difficulties that may be encountered when speaking in a second language when considering all the evidence about what she had apparently said in the past, and in considering her oral evidence before us.

47. Before us the Appellant relies on the character evidence of Laura Cleeve and Mr Moyo which are in letter, rather than in statement, form. She has not taken the opportunity to provide formal statements, or to call live character evidence from either in support of her appeal.

48. Although Mrs Munif was a character referee in the application there is no evidence from her before us. The Appellant told us she has asked Mrs Munif to provide a statement in the appeal but she had said she did not want to be involved because of her personal circumstances.

49. Ms Laura Cleeve had been the Appellant's manager at Cliffemount between May and August 2018. Ms Cleeve also employed her at Surecare between September 2018 and December 2019. Her testimonial is that the Appellant is honest, reliable and trustworthy. We noted that there is no confirmation from Ms Cleeve as to what the Appellant had told her about her conviction.

50. Mr Moyo has provided a character reference. We also have before us the risk assessments he provided to the CQC. He seeks to be registered as the proprietor of Vista and his application is pending. The Appellant is currently working for him in planning the proposed regulated activity in personal care. The circumstances are:

    a. The Appellant provided a Reflective Statement to Mr Moyo dated regarding the DBS certificate.

    b. In the first Cause for Concern Risk Assessment Proforma dated 26 August 2019 it was clear the information provided by the Appellant to Mr Moyo was that she used *"**a** blank prescription to get Tramadol. No pattern disclosed."* He said also: *"Maryam has showed that she realised her **mistake** and she is really remorse (sic) even after 5 years when she talk about it she gets upset and tearful. She is very sorry about **the incident**…"(our **bold**).*

    c. In the second Cause for Concern Risk Assessment Proforma dated 29 March 2021 he stated amongst other matters that the Appellant *"didn't try to hide anything from us"* and that he fully trusted her honesty. He also stated in section 4 that *"there was no pattern of behaviour involved."*

    d. In this second assessment Mr Moyo did acknowledge that there is evidence to suggest: that there was more than one prescription and that the Appellant

had sought to interfere with the pharmacist investigation of the matter the next day. He referred to *"this action being part of the same offence".*

e. He referred also to the CQC's concerns regarding *"an allegation of theft made (£500) issue (no arrest or caution.)"* He states also that he is aware that there are some documents that suggest that this incident was dealt with way of *"restorative justice".*

51. It appears that the difference between a fraud offence concerning the attempted presentation of one prescription on one occasion, and multiple falsified prescriptions being presented and dispensed, and/or an earlier incident regarding a dishonesty allegation, did not provoke any concern on the part of Mr Moyo in his second risk assessment. Indeed, he again made a positive assertion that (in his view) there was "no pattern" involved. This view is difficult to understand regarding the 2015 matter.

52. Mr Moyo states that the 2015 conviction is spent. He addresses the issue of future risk by explaining that he believes that the Appellant has overcome her past and he considers her to be honest and trustworthy. He states that her role will be largely managerial and she will never be in a situation where she will be alone in a service user's home.

53. In essence the Appellant's case before us, as per her 4 May statement, is that she had been so addicted to Tramadol that she was in a "dream-like" state and could not remember much about her offending or about Magistrate Court ("MC" or "court") proceedings and/or had blocked out painful memories. It is said on the Appellant's behalf that her account has been *"piecemeal"* for these reasons. The Appellant said that some memories had been triggered for her by looking at documents during the course of her appeal.

54. Turning to the Appellant's approach to her application we noted that, having referred to a single attempt to present a false prescription, she said the detail would be discussed at interview. On the face of it this suggests that she knew that detail would be required, but she did not take this opportunity to explain in advance that she had little or no memory.

55. We recognise that at the second FPI the Appellant volunteered to search for documents at home, and to make inquiries of her former solicitors. She then obtained the Memorandum herself as well as the PNC. The Appellant contends that in the light of her knowledge of CQC processes it would have been a very high-risk strategy to volunteer to make inquiries or to obtain the Memorandum. In our view the force of this point has to be considered in the context of the many arguments since advanced by the Appellant regarding the limitations and interpretation of "formal" records, as strongly advanced in the representations against the NOP. The reality is that it was only the disclosure of the video of the Police Interview in late March 2021 that resulted in any recognition by the Appellant about the extent of her offending

56. Do we accept that the Appellant had genuinely forgotten about the extent of her 2015 offending? In our view it is notable that the Appellant, if truly unable to remember much at all , had not made inquiries *prior to* making her application. On any basis, there were sources of information available to her if, as she claims, she could not personally remember the extent of the criminality she had admitted by her guilty plea:

- One obvious source of information was her former employer, Mrs Munif. Although the Appellant had been dismissed for gross misconduct in 2015 she has remained in regular contact with her. On her evidence, before lockdown she would visit Mrs Munif and they have always maintained telephone contact. The evidence as a whole suggests that the Appellant's relationship with Mrs Munif was very much closer that might be expected - and even for someone who had worked for the Munifs for about 8 years prior to 2015. For example, the Munifs had lent her £14,000 when the Appellant was in financial difficulties in about 2014 following the purchase of the family home.

- The Appellant has provided the email sent to her by Mrs Munif dated 25 February 2015 which is the notice of the allegations to be relied on in the disciplinary hearing. These included the 2013 allegation. The Appellant has not provided the outcome letter although she accepted she did receive one. Whether it was sent by post or email is unclear. Whatever the mode of delivery, if the Appellant could not find the decision letter, and knew that her own memory of events in early 2015 was poor, she could have asked Mrs Munif for a further copy.

- Another source was for the Appellant to ask her husband what he could remember about the court proceedings. She initially said that he been with her in the court, but she then suggested that he may not have been in the hearing room throughout. She said that he could not remember much. We consider that the Appellant's conviction for the offence of fraud and her sentencing must have been a very significant event in their family life.

- If, when the Appellant was preparing her application, there was any lack of memory or clarity about how many times the Appellant had presented fraudulent prescriptions, a simple google search (which, as we find, was very properly carried out by Mrs Adams) would have revealed the MEN article. The Appellant said that, although she was aware there had been press coverage, she had not read this at the time because she was so ashamed and she had just wanted to move on. We can understand her wish to put her conviction behind her and to move on with her life. However, we consider it very likely that, as an intelligent person, educated to a high level in health and social care, she was aware if she wanted to be registered as a manager this would require complete transparency and disclosure in any application submitted. In her evidence when she said *"I was worried the CQC might refuse the application because of the conviction. I tried to make sure I told them everything."* If her memory was genuinely poor, it was in the interests of transparency and candour in her application that she took steps to refresh it by any means available before she submitted her application.

- In oral evidence the Appellant was asked what she had done to prepare herself for her application given what she said about her memory problems. She said that she contacted Mrs Munif: *"I needed her reference. I didn't want a totally different version. I said to her this is what I remember. She agreed with me."* She asked her *"if the DBS says one, it would be right? Mrs Munif said that it would."*

57. We consider that if the Appellant genuinely did not remember the circumstances because of her addiction, or because she had blocked matters out, she could have explained this in the application form. She did not then say, as she says to us, that she had no memory. Instead, she made a positive assertion that her attempted offence was a one-off event. We accept Ms Adams' evidence that the Appellant did not say in either FPIs that she had a poor or blurred memory or could not remember anything because of her addiction to Tramadol. We find that her representations to the NOP and her early witness statements she strongly relied on the DBS certificate which permitted a construction that there had only one offence in 2015. After the Memorandum was provided (which referred to prescription**s)** she, by her representatives, still maintained that she had provided a single false prescription on one occasion. This persisted until the disclosure of the police interview and the Appellant's third statement.

58. We can understand why the Appellant might not have remembered the exact number or dates, but we do not consider that her story of loss of memory and/ blocking out memory is true. In our view it is more likely than not that the substance of the Offender Summary before us was read out in the MC proceedings on each occasion that the Appellant appeared. We do not consider it likely that the Appellant who had been present at the MC proceedings when her plea was indicated on 13 April 2015, and also when she pleaded guilty and was sentenced on 5 May 2015, had forgotten that her offence was that she had falsely written up prescriptions on number of occasions, and over a period of time.

59. This was a serious offence involving deliberate and repeated acts of deception, over a period of time and in breach of trust. It is reasonable to infer that a custodial sentence was at least a possibility. The Appellant saw a probation officer. We consider it likely that the scope and background to her offences was the subject of discussion between them.

60. In her written evidence the Appellant said that *"the tablets found at my house could only have been from my prescription".* When asked about this by Ms Brown she said that she had said this because *"in court they said they had found some medication in her house but it was not unlawful."* It is notable that the Appellant claims to recall this but little else. When it was put to her by Ms Brown that the Tramadol in her house came from fraudulent prescriptions, she said she could not comment because she has no memory.

61. The Appellant said that about a week after her arrest she had attended her GP with her husband, suffering from the effects of withdrawal. In effect she had gone "cold turkey" on her arrest (i.e. she had stopped taking Tramadol at all). The Appellant, on whom the burden of proof lies to establish she meets the requirements of Regulation 7, has not sought to obtain, or to provide to us, her GP medical records which would show the history of previous prescriptions and/or evidence the consultation on which the Appellant places reliance to substantiate the extent of her addiction.

62. It is right to say that the Appellant gave consent to Mrs Adams to obtain her medical records. (That consent was also necessarily given within the application form). Apart from the fact that the burden of proof lies on the Appellant, her case regarding the extent and effect of her addiction was not "front and centre" in the FPIs because, we find, the Appellant was adamant that her conviction involved a one-off attempt offence, and she had not even received the tablets.

63. The Appellant has not provided any expert medical/psychiatric evidence to explain any likely effects of addiction to/dependence on Tramadol. Expert evidence might have served to illuminate why the Appellant, if suffering from addiction, would have been able to function, apparently successfully, in her role as Deputy Manager, but yet fail to remember at the first part of the police interview that on 16 January 2015 she had presented 2 false prescriptions for Tramadol (as well an "owing" from a previous false prescription successfully presented on 8 December 2015, along with 5 other prescriptions for Tramadol). Moreover, her actions on 16 January 2015 were in circumstances where at the date of arrest she, in fact, had about 700 Tramadol tablets in her home.

64. The Appellant's explanation to us is that she was so addicted to Tramadol that she did even realise/was not aware that she had a very plentiful supply of that drug at home. In the police interview the Appellant said that she kept her Tramadol in the sitting room. She told us that she had presented false prescriptions on 16 January 2015 (when she had several hundred tablets at home) because she did not know what she was doing by reason of her addiction and did not realise that she even had all these tablets at home. However, she also said that, despite her almost "dream-like" memory, the Tramadol was found in different places in her home. It is difficult to see how she knew this given that she said she was not present during the police search.

65. When asked how she was able to function as a deputy manager at the Home despite her claimed addiction she effectively said that the effects of the drug upon her were not constant but wore off. We consider that the duties of a deputy manager require a fairly constant level of organisational skills and attention to detail. We consider it likely that if the effects of Tramadol dependency on the Appellant were that she could not remember what she had or had not done in the recent past, this would probably have apparent in her performance as a deputy manager in some way and/or would have been apparent in the police interview.

66. The interview conducted by the Police on the afternoon of 22 January 2015 is important evidence. It was only this additional evidence that finally resulted in any admission that her offending was not a single (and failed) attempt. We have watched and reviewed the video carefully. We also have a full transcript, the accuracy of which is not in issue. We find as follows. The officer took time to explain the caution. She asked questions to establish that the Appellant understood it, and also understood what was meant by dishonest appropriation. The Appellant was represented by a duty solicitor who intervened at times. He was appropriately careful to seek more time for consultation/disclosure when questions were asked regarding further prescriptions. There is no indication in the interview that the Appellant was unable to understand the questions or was perceived to be at any specific disadvantage, over and above the fact that she was being interviewed by the police - which we agree would be very stressful. The video film does not suggest that she was not medically fit for interview.

67. The interview was in two parts: 13.09 -13.48 hours and 14.13 -14.34 hours. In the first part the Appellant denied that she was addicted to Tramadol. She said that the events on 16 January were a one-off *"moment of madness".* She said her next due repeat prescription was on 6 February 2015. She referred to difficulties/delay submitting her repeat prescription over Christmas.

68. However, her explanation that her attempt was a one-off event was not true as shown by the following. The officer asked the Appellant about other prescriptions. A break was taken to enable instructions to be taken in relation to evidence regarding these. When the interview resumed after 25 minutes the Appellant then admitted she had forged prescriptions on other occasions. She said this was to cope with her pain because her doctor would not prescribe her more than 8 Tramadol tablets per day. She said that she was addicted to Tramadol.

69. Ms Arora was the pharmacist on duty at Boots on 17 January 2015 i.e. the day after the Appellant has presented two prescriptions for Tramadol, as well as an "owing" from a prescription previously dispensed on 8 January 2015. (We are aware from life experience that an "owing" relates to a previous prescription that could not be completely fulfilled because of lack of supplies). As pharmacist manager Ms Arora was responsible for 2 pharmacists and 4 dispensers. The pharmacist on duty on 16 January 2015 had left her a note explaining that she had been presented with 2 prescriptions in the name of service user AN of the Lynwood Resting Home. Upon checking with the surgery, the GP had said had she had no knowledge of these prescriptions, instructed the pharmacist not to supply them, and to return the prescriptions.

70. Ms Arora made a lengthy MG 11 statement on 21 January 2015 in criminal proceedings (i.e. with the usual warning regarding the risk of prosecution if knowingly false etc). Amongst other matters she described her conversations with the Appellant. Ms Arora did not attend to give evidence because she is on maternity leave. The weight we attach to her evidence falls to be assessed in the context that there has been no opportunity to test it.

71. Ms Arora's statement shows an attention to detail one might expect from a registered pharmacist: a role which, by its very nature, requires accuracy. Her statement was made in a professional capacity i.e., for which she is accountable to her regulator. Her factual account regarding the Appellant's attendance at the pharmacy and the Appellant's telephone calls to her is very detailed and was made within four days of her first involvement.

72. The evidence of Ms Arora was that on 17 January 2015 the Appellant came into the pharmacy at about 11.30 am and asked to speak to her in private. After Ms Arora confirmed that she knew about the prescriptions presented the day before, the Appellant said she wanted to explain what happened. She told Mrs Arora that:
    i. She was the care home manager and had conducted her own investigation. Her colleague, who was in the same room as the doctor when she came to visit the patient, had admitted she took blank prescriptions left on the table and wrote them up for Tramadol. She had sacked her.
    ii. She had checked her controlled drug records and everything balanced out okay. From now on she would check every prescription is correct before she brings them in.
    iii. She did not really want this to go any further: her colleague has learnt from her mistake; she did not want to destroy her colleague's career and "*care homes get investigated for the smallest of things."*

73. Ms Arora was suspicious about the story. She stated that:
    1) At 3pm that day she received a call from the Appellant who wanted to know what was going to happen to the two retained prescriptions. When Ms Arora told her that they would be sent back to the doctor the Appellant asked if it was possible not to send them back. When Ms Arora refused the Appellant said *"Oh no, I am going to be in a lot of trouble!".*

    2) On 19 January at about 12.50 pm the Appellant telephoned Mr Arora again who called her back. The Appellant wanted to know if Ms Arora had heard from the surgery regarding the prescriptions. She asked Ms Arora to let her know if the GP contacted her. She said she had tried contacting the GP but she was not available.

    3) When the surgery informed Ms Arora that the GP had not issued the two prescriptions and that SU AN had never been prescribed Tramadol, Ms Arora became concerned there may be more fraudulent prescriptions. She ascertained that in addition to the two prescriptions on 16 January, an "owing" was presented relating to Tramadol in the name of SU AN of Lynwood Care Home (presented and part dispensed on 8 January 2015) and that 5 prescriptions for Tramadol had been dispensed in the names of SUs on 8 January 2015.

74. The Appellant's account in the police interview amounted to a denial that she had spoken to Ms Arora in any detail. In her oral evidence the Appellant did not dispute that she had attended the pharmacy and had spoken to Ms Arora. She said she did not remember any of it because she was not in a right mental state.

75. We consider it very unlikely that Ms Arora would relate matters in her statement that were not accurate and true to the best of her knowledge and belief. We consider that her evidence is reliable. We find that: the Appellant's story about a colleague was dishonest and manipulative; she deliberately attempted to deter an investigation; and she did so for her own benefit. She knew that what she had done was potentially career-ending. We find she told deliberate lies to Ms Arora to try and cover her tracks. This is inconsistent with the Appellant's account that she did not know what she was doing.

76. The Appellant contends that it would have been a very high-risk strategy for her to say to Mrs Adams that the 2015 conviction was for a one-off occurrence if she did not genuinely believe this was true. However, having considered all of the evidence regarding the 2015 conviction in the round we find that the probabilities are that, when submitting her application, the Appellant had hoped to be able to satisfy the CQC at interview that her conviction related to a single incident/attempt. She might have succeeded but for the fact that Mrs Adams conducted a google search which produced the MEN article, and was diligent in her other inquiries which unearthed the SBC safeguarding minutes from an earlier meeting in February 2015, which had some key evidential documents embedded.

77. In closing submissions it was accepted ton the Appellant's behalf that the evidence showed that 10 prescriptions were probably presented by her and that it was possible that it was as many as 12. In evidence when asked by Ms Gourley as to whether she was disputing the suggestion of 10 prescriptions she had said, *"Yes, it might be more, it might be less."* We find that that it is more likely than not that 12 prescriptions were presented by the Appellant because:
    i. By her own admission in her first part of the Police Interview, 2 prescriptions in the same service users name (AN) were written, and presented on 16th January 2015
    ii. By her own admissions in her second part of the Police interview, 5 prescriptions in the service user names (AN, VL, JT, AK and JR) had been written, presented and dispensed on 8th January 2015;
    iii. The unredacted version of Exhibit NA5 details the following 7 prescriptions for Tramadol dispensed on earlier dates: AN (29.12.14), JT (29.12.14), JR (30.6.14), BC 15.12.14, CH (18.12.14), VR (24.11.14) and MT (18.12.14). Ms Arora's statement indicates the CH and MT prescriptions were not fraudulent, leaving 5.
    iv. We consider that the variance between the 12 prescriptions cited in SGM of the SBC on 4 February 2015, and the 10 in the MEN Article and the 10 in the police Case Summary (the MG5) is accounted for by considering the primary source evidence regarding the prescriptions.

v. The number of tablets found in the Appellant's house was about 700. This is supported by the MEN Article, the MG5, and what was put and shown to her in the Police Interview: 4 boxes of 50mg, one with the Appellant's details on, some bearing AN's details, others (from the living room) with the labels taken off; 100 Tramadol in AN's name again from the living room. It is also consistent with the large number of Tramadol tablets obtained by the Appellant on 8 January 2015.

78. We find that:
    a) Over a period of time the Appellant acquired prescriptions forms from a GP who was visiting service users at the home (and without the GP's knowledge).
    b) Presentation of at least 10, and probably 12, forged prescriptions by the Appellant mainly between December 2014 and January 2015, shows a deliberate, systematic and repeated course of conduct.
    c) The fact that the Appellant had removed pharmacy labels from some of the Tramadol boxes found at her home shows that she had taken deliberate steps to conceal that the tablets she had acquired had not been prescribed for her.
    d) She initially gave a false account in the police interview asserting that this was a "*moment of madness"* and "*it was only that one time in 8 years".* Whilst we accept that being in a police interview under caution would be frightening for someone in the Appellant's situation, we noted that that she came across in the video as fluent and entirely plausible when relating her initial false story in the police interview.

79. We consider that the Appellant's evidence shows a pattern of only admitting that which she thinks might be proved and telling stories to hide the truth. Examples include that her account in Police Interview that was one off "moment of madness" and had never happened before - until presented with evidence that showed other prescriptions. In our view the Appellant's approach in her application was to rely on the wording of the DBS certificate and to wait to see what, if anything, the CQC already knew and/or might be able to show. We consider that her approach was followed through in her representations against the NOP with arguments about the interpretation of the wording of the conviction as per the DBS certificate and/or Memorandum, so as to support her case that her criminality involved a one-off attempt. This only changed in early May 2021 i.e., after the police video has been obtained by the CQC. The Appellant's account that she was so addicted to Tramadol that she did not know or understand what she was doing is not consistent with what we find were her deliberate actions. She told lies to try and persuade Ms Arora that an investigation was not needed, so as to try and evade investigation and responsibility. Ms Arora's evidence shows the Appellant's determination to deter investigation.

80. The many internal and external inconsistences in her evidence about her offending in 2015 are such that we have come to the clear view that the Appellant is not a reliable or truthful witness.

81. There is also the issue regarding an alleged incident of theft in 2013 which concerns the Appellant's handling of the sum of £500 withdrawn from the account of her employers. It is common ground these circumstances were not disclosed in the application.

82. The Appellant's evidence is that she did not view this as an investigation and this was all a misunderstanding. She also said she had forgotten about it. In summary, she told us she was asked by Mrs Munif to find and use the debit card of Mr and Mrs Munif to withdraw sums that very day. It was something she had been asked to do before. She said that, on this occasion, after she given monies to the relatives of a SU, she placed the balance of the sum withdrawn, in a (cash) box in the cupboard that also held the safe.

83. It appears that Mr Munif had noticed the withdrawal when he was at the bank and had been advised by the bank to call the police. The Appellant's evidence was that Mr Munif was elderly, and prone to act precipitately, and without communication with others. When the police attended the next morning she was asked questions and she was able to show that the sum withdrawn (less the sum provided to the SU's relatives) had, in fact, always been in the appropriate place. Her only error had been that she had not made an entry in the relevant book because she had been busy dealing with the needs of service users. it was all a misunderstanding. She was not arrested and was not asked to attend the police station.

84. We accept that the Appellant was not arrested in 2013. If the Appellant's core account about the withdrawal of funds is true there was never any unauthorised withdrawal of funds (because she says that Mrs Munif had expressly asked her to withdraw money that very day) and, in any event, the balance, after withdrawal and necessary disbursement to the SU's relatives, had always been in the possession of the Munifs. The Appellant's evidence was that she had placed the balance in the usual place for keeping petty cash for the home and she showed the police where it was.

85. In our view it is very unlikely that there could have any issue regarding theft if events had happened in the way the Appellant claims. If what she says is true there was no appropriation, and still less any evidence of dishonesty.

86. The Appellant appears to now accept that the matter was dealt with by the police by way of restorative justice, albeit she says she had not heard that term until Mrs Adams spoke to her about it. Her case is that she was told by the police that nothing would come of it but they had to be able to write something down in their system, as it was reported and they *"came out for a job".* She maintains the 2013 incident was a misunderstanding that was resolved between herself and the Munifs and the matter was closed. If she had been told that "restorative justice" meant that some kind of harm had been done or established she would not have accepted this.

87. We have not been provided any contemporaneous police documentation about the 2013 incident. It is well known that restorative justice, usually by way of a signed

Community Resolution document that records the terms of acceptance/ acknowledgment/agreement, is a method used by the police to resolve matters without the need for criminal charges, where appropriate. However, it is very difficult to see why the Appellant's account, if accepted, would not have been treated by the police officers attending, and recorded as "no crime committed".

88. The 2013 incident was raised in 2015 as an allegation in the notice of a disciplinary hearing for gross misconduct sent by Mrs Munif 25 February 2015 in the following terms:

*'It is alleged that you **fraudulently** took a Lynwood debit card from the home and withdrew £500 for **your own personal use** on 21st October 2013.' (our **bold**)*

In our view the fact that the 2013 allegation was relied on in 2015 does not sit happily with the Appellant's case that the 2013 incident had been accepted by Mr and Mrs Munif as an innocent misunderstanding.

89. In our view the import of Appellant's account in the police interview was clear:
"JL: Just a brief one, because it's a theft offence, it's very much a similar like offence to, in October 2013 there was an incident at Lynwood, what was that all about?
*MI: **That was about a card, erm but that was about like £400/ £500 but that's been paid back and it was sorted***
JL: Right okay, so you admitted to that?
*MI: **I admitted to that yeah and I've spoken to the owner and sorted it and given everything back." (**our **bold)***

This account is consistent the concept of restorative justice following the investigation by the police of an allegation of theft by card in 2013. It is not consistent with the Appellant's account that the monies withdrawn were for the Home and had always been left by her in the proper place. One does not pay back sums that were withdrawn as an employee at the employer's request (Mrs Munif) and which, whilst not written in the cash book, had been shown to have been placed in the employers' possession/control. The Appellant said in evidence that her use of the phrase "paid back" was due to English being her second language. We do not accept this. What she said in the police interview showed that she had admitted the allegation of theft and had given everything back.

90. The Appellant relies on the fact that the Munifs did not terminate her employment in 2013. We noted that the Appellant's own description of her role in the police interview suggests that she, as deputy manager, was a key figure in the successful running of the home. On any basis to be investigated for theft from an employer is a significant life event. It was a serious allegation where the police were called. We find that the fact that the police had been called regarding her use of her employers' bank card in 2013 should have been declared because it fell within the question posed requiring declaration of a police investigation. (It also fell within the question posed as an

employer investigation.) The need to declare an "investigation" applies irrespective of the applicant's views as to the truth of the allegation or the outcome).

91. We do not accept that the Appellant had forgotten about the 2013 incident when she denied in her application that she had ever been the subject of an investigation. We find that when this was raised at the end of the interview she knew immediately what the officer was referring to. She stated: *"I admitted to that…".* Her response in interview is also inconsistent with the Appellant's evidence regarding her poor memory in January 2015 because of her state of mind.

92. Having considered our findings we summarise the impact of these matters. In our view the facts underpinning the conviction in 2015 were very serious indeed. They involved a repeated pattern of dishonest and deliberate actions to acquire a controlled drug by the falsification and presentation of prescription. Her actions were a repeated abuse of trust by someone in a duty manager role. The Appellant was also dishonest when she told Ms Aurora a false story to try and avoid any further investigation. The Appellant did not tell the truth in the "first" police interview when she denied any addiction and said this was a one-off "moment of madness". She had later admitted the matters put to her regarding further prescriptions – at which point she said she was addicted. We find that in the application process and throughout the appeal she has sought to deny the extent of her offending by hiding behind her claimed lack of memory. She was not a credible witness.

93. We do not accept that the circumstances of the 2013 incident were such that this was accepted by the police and/or the Munifs as a misunderstanding, or that the Appellant had forgotten about the 2013 incident when she made her application. This incident was also very serious, involving dishonesty and breach of trust in a regulated setting.

Our Consideration

94. We carried out a balancing exercise, considering carefully all the positive evidence presented by the Appellant as part of her appeal.

95. We recognise that the 2015 offence took place some years ago and the Appellant completed her community service. The fact that the conviction is spent under the Rehabilitation of Offenders Act 1974, does not mean that the conviction is not relevant in terms of fitness for CQC registration for the role of RM. This role is exempt from the provisions of 1974 Act.

96. The passage of time and any insight shown are always important matters to consider. It is, of course, possible for someone convicted of a dishonesty offence in the past to be considered suitable to be a RM. We take into account all that the Appellant has said regarding her difficult domestic circumstances in 2014 and 2015 when her husband was working away from home, and she was working very hard, as well as looking after two young children. We take into account also that she was in severe pain due to Fibromyalgia. In our view the risk in this appeal is not that the Appellant

would become dependent on medication. The risk which, we judge to be high, is that the Appellant will not be honest and candid in the role of RM.

97. We agree that the RM role is a position of considerable trust and significant responsibility. RMs are pivotal to the overall success of the regulatory framework. We accept that in the regulated activity of personal care via a domiciliary service, a RM would not routinely be involved in the day-to-day visits to service users. However, we accept the evidence of the CQC witnesses that the need to attend the home of a service user will arise in the event of staff shortage or in an emergency, or in the event that a safeguarding incident requiring investigation or notification were to occur. The Appellant, if registered as a RM, would be key in the initial investigation of any untoward incident or issue of concern. It is not feasible for a RM to ensure compliance with the Regulations without spot checks. The RM role carries distinct responsibilities regarding compliance with objective measures that are designed to protect vulnerable service users. The CQC, and any other agencies involved in safeguarding the interests of vulnerable service users, need to be able to rely on a RM's ability to be frank and honest in all circumstances. That is the point of the "fit person" registration criteria for management roles.

98. We accept that the Appellant is passionate about her work in health and social care and that she has worked hard to improve her situation so as to aspire to become a RM. We can fully understand her wish to fulfil her ambition to progress her career in a field to which she is committed and for which she is. in all other respects, qualified. However, we do not consider that the positive aspects in her application outweigh the seriousness of the findings we have made regarding her lack of honesty and candour. Having seen and heard the Appellant give evidence, we consider she is not a person whom we (standing for these purposes in the shoes of the Regulator) can rely on to be open, transparent, and truthful. In our view these qualities are key to registration as a manager of a regulated activity, in order to protect the health, safety and welfare of vulnerable service users, and also to protect public confidence in the regulatory system.

99. We accept that there is no evidence that that the Appellant has ever caused harm to any service user. However, the assessment of future risk does not require proof of past harm. In our view the potential future risk of harm to the interests of service users is inevitably engaged when a person seeking registration as a manager has been shown to be unreliable and dishonest in the past and has not been honest and candid in the application, or in the appeal process, or in her evidence before us. The Appellant has not satisfied us, on a balance of probabilities, that she met, or now meets, the requirements of Regulation 7(2)(a) of the Regulations.

100. In order to make a proportionate decision we must necessarily consider whether any conditions could potentially be imposed on registration that would be sufficient to protect the needs of service users, and also to maintain public confidence in the system of registration in health and social care.

101. Given our findings regarding the Appellant's dishonesty and lack of candour, we have no confidence that any conditions could reasonably be devised that would be practical, effective or workable to avoid or mitigate the risk to the health, safety and welfare of vulnerable service users, or to maintain the confidence of the public, including other bodies who inevitably place trust in the CQC registration system. The Appellant's lack of honesty and candour cannot be met by conditions.

102. In summary:
    1) We recognise the adverse impact of our decision upon the Appellant's private life interests in the progression of her career in health and social care. Although not advanced before us in these terms we are prepared to accept that her private life interests under Article 8 (1) of the ECHR are engaged.
    2) As to Article 8 (2) our decision to refuse registration is in accordance with the law.
    3) Our decision is necessary in a democratic society and justified for the protection of health and also for the protection of the rights and freedoms of others.
    4) Having balanced the impact on the Appellant against the risk posed to health, safety and welfare of service users by the Appellant's lack of honesty and candour, we consider that our decision is fair, reasonable, and wholly proportionate.

103. We would add that we consider that we would have reached this conclusion on the basis of our findings regarding the 2015 conviction alone.

Decision
The appeal is dismissed.
The Respondent's decision to refuse to register Maryam Ishtiaq as a manager is confirmed.

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

Date: 17 June 2021