

Care Standards

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

Appeal No [2019] 3841.EA (VKinly)

Hearing held via Video link on 11,12,13,14 and 15 May 2020
Panel Deliberation on 26 May 2020

BEFORE

Monica Daley (Tribunal Judge)
Ms Libhin Bromley (Specialist Member)
Ms Caroline Joffe (Specialist Member)

BETWEEN:

Angel Solutions (UK) Limited

Appellant

-v-

Care-Quality Commission

Respondent

DECISION

The Application

1. This appeal is against the Respondent's Notice of Decision ("NOD") dated 2 August 2019 (made on 3.9.2019) which adopted the Respondent's Notice of Proposal dated 23 May 2019 to vary a condition of the Appellant's registration, as a provider of personal care, from the registered address at Unit 125, Challenge House, 616 Mitcham Road, Croydon Surrey, CR0 3AA. The effect of the NOD is that the Appellant would be prevented from providing services from that location.
2. The Appellant provides domiciliary personal care to people in their own home. This care was given to older and younger adults with physical disabilities, people with mental health needs and children. At the time of the notice the Appellant had eight service users.
3. On the 23 May 2019 the Care Quality Commission (CQC) served a Notice

of Proposal to vary the condition for the regulated activity(s) Personal care. The Appellant made written representations which were received on 22 June 2019. The NOD, which referenced the representations decided to adopt the CQC's proposal, set out in the Notice of Proposal.

4. The NOD stated that in reaching its decision it had considered the following evidence:
 - a. The Notice of Proposal dated 23 May 2019 and appended evidence
 - b. Representations received by the Commission on 22 June 2019
 - c. CQC inspection report published 21 August 2019
 - d. Factual accuracy Log dated 13 August 2019
 - e. CQC inspection reports March 2016, March 2018 and April 2019.

5. The NOD stated that:- "The Commission carried out a comprehensive inspection at your service on 7th and 13 March 2019. You were found to be in breach of three regulations of the Health and Social Care Act 2008. Namely, Regulation 19 (1) (2) Fit and proper persons employed, Regulation 12 (1) Safe Care and Treatment and Regulation 17(1) Good Governance. The body of your representations primarily agreed with the findings cited in the proposal. However, some aspects of the proposal have been disputed. Your representations did not demonstrate that sufficient improvements have been made to address the concerns identified by the Commission. Furthermore, the Commission found on the most recent inspection of 15th July 2019 that some of the improvements you referred to had not materialised in practice."

6. The Regulations that the Appellant was said to have breached were:
 - a. Regulation 19(1) and (2) of the Health and Social Care Act 2008 (Regulated Activities) Regulation 2014 Fit and Proper Persons Employed.
 - b. Regulation 12(1) of the Health and Social Care Act 2008 (Regulated Activities) Regulation 2014 Safe Care and Treatment
 - c. Regulation 18(2) of the Health and Social Care Act 2008 (Regulated Activities) Regulation 2014 Staffing
 - d. Regulation 17(1) of the Health and Social Care Act 2008 (Regulated Activities) Regulation 2014 Good Governance

7. In the penultimate paragraph on the letter, the NOD stated:- "There remains convincing evidence at this date that the reasons given within the Notice of Proposal remain valid. That is the above cited regulated activity is being, or has at any time been carried on otherwise than in accordance with the relevant requirements. The Commission's proposed condition is therefore reasonable in the light of these findings."

8. The NOD concluded that the issue of the Notice of Proposal was "appropriate and proportionate" and the decision was to adopt the CQC's Notice of Proposal.

The Parties

9. The parties to this appeal are Angel Solutions (UK) Ltd, the Appellant. Angel Solutions (UK) Ltd is a company offering domiciliary care, from two locations Mitcham road, which is the setting which is the subject of the appeal, and a setting in Southend. The nominated individual is Ms Blessing Jakpor, who is also the director of the company. The Registered Manager for the setting in issue is Raymond Akabi-Davis.
10. The Respondent is the CQC), the independent regulator of all health and social care services in England. Under section 3 of the Health and Social Care Act 2008 (HSCA 2008) the Respondent's objectives are to protect and promote the health safety and welfare of people who use health and social care services. Under Regulation 8 of the Health and Social Care Act 2018 (Regulated Activities Regulation the respondent is under a statutory duty to ensure that the provider complies with the fundamental standards of care (The Standards).

Reporting Restrictions

11. There shall be a Restricted Reporting Order under Rule 14(1) (b) of the Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('the 2008 Rules') prohibiting the publication (including by electronic means) in a written publication available to the public, or the inclusion in a relevant programme for reception in England and Wales, of any matter likely to lead members of the public to identify any service user or their family member mentioned in the appeal.

Attendance

12. In attendance on behalf of the Appellant Angel Solutions Ltd (UK) were Counsel Ms. Wright, Ms. Blessing Jakpor the Nominated individual, and Mr. Raymond Akabi- Davis on all of the days of the hearing and Ms. Triumph Efe-Ogidi on Thursday 14 May and Friday 15 May and Mr. Nelson Kasozi on Friday 15 May 2020.
13. And Mr. Greany Counsel for the CQC, Mr. Paul Grant Lead Inspector, Mrs. Alison Murray Head of inspections, Observers: Georgia Deacon Paralegal CQC (Day 1), Helen Wells Inspection Manager Sabine Radi Legal Admin (days 2, 3, 4 and 5).

Late Evidence

14. Prior to the start of the hearing, Solicitors for the CQC made an application, dated 6 May 2020 for additional evidence to be admitted in the form of a second supplementary statement from Paul Grant, the statement dated 5 May 2020, together with exhibits numbered C,860 to C886.
15. The Tribunal also received an Application dated 7 May 2020 from the Appellant's legal representatives seeking an order for Ms Triumph Efe-

Odigi to be permitted to give evidence on behalf of the Appellant. The application included a copy of her witness statement, together with a request to admit two further statements from the nominated individual Ms Blessing Jakpor. The additional witness statements together with exhibits were numbered D 275 to D294.

16. In relation to all of this new material, the Tribunal applied rule 15 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008 and took into account the overriding objective as set out in rule 2 and admitted the late evidence, on the grounds that the late evidence provided information on the up to date position at the location, and also enabled us to hear from the administrator Ms Triumph Efe-Odigi. The late evidence was relevant to the issues in dispute.

Background

17. Angel Solutions (UK) Ltd was registered by the CQC on 01.10.2010, to provide domiciliary and personal care services. The nominated individual named in the certificate was Blessing Jakpor; she was registered to carry out services from two locations Unit 125 Challenge House 616 Mitcham Road (“the subject location”) and Princess Caroline House, Southend. Both premises have a Registered Manager. The Manager for the subject premises is Mr Raymond Akabi Davis.
18. The business was set up in 2009 and in her witness statement, Ms Jakpor set out that the client pool of the business had ranged from 39 to 90 clients.
19. The recent inspection history of the subject location premises is as follows:-
20. The premises were inspected on 24 January 2018 and an announced comprehensive inspection was carried out. The lead inspector was Paul Grant, the inspection was rated Requires Improvement Overall as well as Requires Improvement in the domains of Effective and Well-Led. Two regulatory breaches were found, Regulation 17 Good Governance and Regulation 18 Staffing. Whilst the domains of Safe, Caring and Responsive were rated good.
21. A further inspection was carried out on 7 and 13 March 2019, this was also a comprehensive inspection. The subject location was rated Inadequate overall and in the domains of safe and Well-Led. In the domains of Effective, Caring and Responsive the subject Location was rated Requires Improvement and placed in special measures. The following breaches were identified Regulation 12- Safe Care and Treatment, Regulation 17- Good Governance, Regulation 18- Staffing.
22. On 23 May 2019, the CQC issued a Notice of Proposal; this notice was to vary the registration so that services could no longer be provided from the Mitcham Road Location. On 22 June 2019 the appellant made representations against the NOP.

23. On 15 July 2019, a further inspection was carried out by Mr Paul Grant, the location was found to be Inadequate in the domains of safe and well-led.
24. On 3 September 2019, following a review by Ros Sanderson, the Notice of Decision (dated 2 August) was issued, the date on this notice was acknowledged by the CQC to contain an error in that the wrong month was included in the notice.
25. On 26 September 2019, the Appellant issued an appeal. On 25 October, by agreement between the parties the proceedings were stayed until 22 November 2019. A further inspection was carried out between 28 October and 4 November 2019. On 8 November 2019, the CQC confirmed that further breaches were found in relation to Regulation 13 Safeguarding people from abuse and proper treatment and Regulation 20 in relation to the Duty of Candour and as a result the CQC continued to oppose the appeal.
26. The Tribunal gave directions which included that this matter to be set down for hearing (on 11 May 2020) listed for 5 days.
27. The Tribunal was provided with a Scott Schedule which set out the parties responses on each of the alleged breaches of the care standards.

The Issues

We identified the following issues-:

- a. Whether there were breaches of the domains as set out in the NOD
- b. Whether the CQC had acted proportionately in serving the NOD
- c. Whether the circumstances at the date of the hearing had changed so that the decision reached to serve the NOD was no longer proportionate and the appeal ought to be allowed.

The hearing

28. The hearing was conducted remotely by video (Vkinly) over 5 days, all of those who attended were present by video link. There were some issues with the video link in that there were occasions when for a short period of time, the technology failed. Where this happened to parties or tribunal members this resulted in small delays. Where this resulted in portions of the evidence such as questions or answers from witnesses being missed then a summary of the questions and answers was provided by counsel or alternatively the question and answer had to be repeated.
29. As this was an appeal of the decision dated 3 September (dated 2 August) 2019, we heard this matter a fresh, with the CQC taking the tribunal through the inspection process, the findings and the decision-making process used by the CQC in reaching its decision to issue the Notice of Proposal. We also heard about the process which was followed to issue the NOD, and the information that the CQC had obtained either by way of inspections or as a result of information from the local authorities (in whose

area services were provided) concerning the Appellant's location following the NOD.

30. We heard from Mr Paul Grant lead CQC inspector, and Ms Alison Murray Decision maker for the CQC. We then heard from Ms Jakpor nominated individual, Ms Triumph Efe-Ogidi, administrator for the Appellant, Mr Raymond Akabi- Davis, the Registered Manager, and Mr Nelson Kasozi consultant. We were also invited by the Appellant with the consent of the CQC to take the witness statement of Amos Mojueh (who had been employed by the Appellant Company) into account. In doing so we considered the weight to be attached to the statement which we have set out below.

Legal Framework

The Health and Social Care Act 2008

Section 3 sets out the objectives of the CQC:

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

(2) The Commission is to perform its functions for the general purpose of encouraging- the improvement of health and social care services

the provision of health and social care services in a way that

focuses on the needs and experiences of people who use those services, and

(c) the efficient and effective use of resources in the provision of health and social care services

Section 32 provides for Appeals to the Tribunal:

An appeal against-

any decision of the Commission under this Chapter, other than a

decision to give a warning notice under section 29 or 29A, or

an order made by a justice of the peace under section 30,

lies to the First-tier tribunal

No appeal against a decision or order may be brought by a person more than 28 days after service on the person of notice of the decision or order.

On an appeal against a decision of the Commission, other than a decision to which a notice under section 31 relates, the First-tier Tribunal may confirm the decision or direct that it is not to have effect

On an appeal against an order made by a justice of the peace the First-tier Tribunal may confirm the order or direct that it is to cease to have effect.

On an appeal against a decision to which a notice under section 31 relates, the First-tier Tribunal may confirm the decision or direct that it is to cease to have effect

On an appeal against a decision or order, the First-tier Tribunal also has power- to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates, to direct that any such discretionary condition is to cease to have effect,

to direct that any such discretionary condition as the First-tier

Tribunal thinks fit shall have effect in respect of the regulated activity, or to vary the period of any suspension

Evidence

31. We took into account all the evidence that was presented in the bundle and at the hearing. We have summarised the evidence insofar as it relates to the relevant issues before the Tribunal. We have not set out to repeat the evidence verbatim.

Mr Paul Grant CQC lead inspector

We heard from Mr Paul Grant the CQC lead inspector, who was present at all of the inspections. Mr Grant had provided a statement dated 29 January 2019 (dated in error) and two supplementary statements. In his statement he provided information about the CQC as a regulator and how the inspection regime had changed as a result of changes in legislation. He also informed us that he used Key Lines of Enquiry (KLOEs). These KLOE asked the same questions of every service that was inspected which was in summary; Are they safe? Are they effective? Are they responsive to people's needs? Are they well led? This had made the inspection more robust.

32. Mr Grant, joined the CQC as an inspector in June 2015, his responsibilities are for inspection of adult care services, and producing the reports detailing the findings for publication. Mr Grant's professional background prior to becoming a CQC was that he was a qualified social worker employed within a London authority. Between 1999 and 2006 he was a Registered Manager for a number of care homes within adult social care.

33. We heard that Mr Grant had first inspected the premises on 24 January 2018, this was a comprehensive inspection. Following the inspection, the premises were rated as Requires Improvement overall as well as Requires Improvement in the domains of Effective and Well-Led. The Safe Caring and Responsive domains were rated Good. Two regulatory breaches were found -:

Regulation 17 Good Governance-

34. This finding was made on the basis that the provider did not maintain accurate complete and contemporaneous records in respect of each service user. Care plans were considered inadequate as they did not provide sufficient information to inform staff, of service users care needs.

Regulation 18 Staffing –

35. This finding was made on the basis that people were receiving care and support from staff who did not receive appropriate support, training, supervision and had not been appraised, as staff were not receiving an annual appraisal, the report found that the Registered Manager did not assess the skills of individual staff or identify their training needs. Staff had received training in only two areas during 2017. Although the staff supported people with mental health issues, they had not received training to help them understand people's mental health needs. The Appellant did

not challenge the factual accuracy of the findings in their action plan sent to the CQC following the January 2018 inspection.

36. On 7 and 13 March 2019, a comprehensive inspection was carried out. Mr Paul Grant was again the lead inspector and has been involved in all of the relevant inspections prior to and after the NOD. The Location was rated *Inadequate* overall, as well as Inadequate in the domains of Safe and Well-Led. In the domains of Effective, Caring and Responsive the Location was rated Requires Improvement. The service was placed into special measures. Breaches were found in relation to: Regulation 12 Safe care and treatment, Regulation 17 Good Governance, Regulation 18, Staffing, Regulation 19 Fit and proper persons employed

Regulation 19 Fit and proper persons employed-

37. We heard that at the inspection Mr Grant asked to see the Staff file in relation to an employee Staff member 1 (SM/1) We heard that SM/1's files contained the certificate for enhanced check undertaken by the Disclosure and Barring services (DBS). The check stated that SM/1 was barred from delivering the regulated activity the Appellant was registered to provide. The check stated that SM/1 was barred from engaging in regulated activity in relation to vulnerable adults under section 3 of Vulnerable Adults List and disqualified from working with vulnerable adults in a care position under section 89 of the Care Standards Act 2000. This was as a result of SM/1 receiving a caution for "Assault ill treatment/neglect/abandon a child/young person to cause unnecessary suffering".
38. We were informed that Mr Grant asked the Registered Manager, and the administrator whether SM/1 had delivered care contrary to the barring order. Although this was denied, Mr Grant's inspection of the staff roster for the period 14-17 February 2019 showed that there were 18 occasions upon which SM/1 had been deployed to service users' homes.

Regulation 12-Safe care and treatment

39. Mr Grant found that in relation to a service user (A), SU/A's care plan stated that A could be aggressive, and the assessment described behaviours such as hitting, kicking and property destruction, as being highly likely. He considered the guidance given to staff to deal with the behaviour identified inadequate.
40. Mr Grant asked the Registered Manager whether any behaviour incidents of the type identified in the care plan had occurred. He was advised that there was no record of any incidents in the accident and incident book, as A's behaviour was well controlled. However, an inspection of SU/A's daily log, revealed that on 9 July 2018, SU/A had an incident where they had scattered the contents of a relative's room, broken a mirror and taken some sweets.
41. The incident culminated in the SM caring for SU/A being kicked in the stomach. Mr Grant found that this incident had not been properly recorded

as it should have been in the accident and incident book. There was no evidence of a review of risk or an update to the care record or a further referral to a healthcare professional for advice and support following this incident.

42. Mr Grant in his evidence stated that the accident book had not been completed for 4 months. In answer to questions, Mr Grant stated that he would have expected a debriefing with the member of staff who had been assaulted following the incident. He stated there was no evidence that the daily log had been reviewed by the manager, or that action had been taken as a result of the incident.
43. There was also no updated guidance to staff, or any record that the staff member who had been assaulted was debriefed or supported in any way.

Regulation 18 Staffing Health and Social Care Act 2018

44. Mr Grant found that at this inspection (in March) which followed the action plan which was submitted after the January 2018 inspection, this domain continued to be an issue. He stated that he was assured by the Registered Manager that the location was now compliant and provided training to staff. Mr Grant was provided with a training matrix to support this assertion. As part of his review he contacted SM/2 who was shown as having undertaken a number of courses. These courses were wide ranging and included personal development, infection prevention, moving and handling and safeguarding along with other courses. The courses were listed as all having been carried out in 2018.
45. Mr Grant spoke to SM/2 about the courses, he was informed by SM/2 that she had been on long term leave throughout 2018 and had not received the training listed in the training matrix.
46. Mr Grant then spoke with the Registered Manager, Mr Akabi Davis, about his training. He was concerned that the Training Matrix showed that he had completed 21 training courses in a single day. He asked who had provided the training and was informed that it had been carried out by the nominated individual, Ms Jakpor. Mr Grant stated that he had asked to see evidence to support the training such as the nominated individual's qualifications for delivering training on first aid, manual handling, risk, medicine administration and fire safety.
47. He also asked to see the materials used to train staff and the training session plans and evidence of staff attendance such as office sign in books, training sessions and lecture notes, etc.
48. Mr Grant stated that despite the Registered Manager and Administrator making a search of the office, he was unable to provide any evidence of practical equipment such as beds, hoist, first aid or dummies. Neither was he provided with lecture notes or any record of staff attendance at the training.

49. Following the inspection, the Registered Manager sent an email with an undated training certificate for a course entitled 'Training the Trainer' for Blessing Jakpor.
50. Mr Grant was not satisfied that her training gave her the knowledge, expertise or that she had the necessary materials to deliver effective training in all areas. He was concerned about the competence of Ms Jakpor to carry out the training course. In answer to a question from Ms Wright, counsel for the Appellant, he stated that he did not disregard the training certificate from Ms Jakpor; in his view this course would not have given her the knowledge and skills to teach specialist courses such as moving and handling or first aid.
51. In paragraph 36, of his witness statement, Mr Grant stated that in his judgement the Appellant failed to provide staff with appropriate training which would enable them to carry out their duties. This was because of the range and number of courses completed in one day and inaccuracy of the training matrix, such as the fact that a staff member, SM/2 denied received training.
52. Mr Grant referred to the response received from the Appellant, he stated that the response had stated that the dates for the courses which were on the training matrix were said to have been the dates when the training certificates had been issued. Whereas he had been told by Ms Efi-Ogedi that the course had been short courses so it was possible to complete a number on the same day.

Regulation 17 Good governance, Health and Social Care Act 2014

53. At the inspection, Mr Grant found that the systems for monitoring and improving the quality of the service were ineffective and were not carried out robustly. He asked the Registered Manager to show him the quality assurance checks they undertook, and the action plans that resulted from them. In his judgement the Appellant's systems for monitoring and improving the quality were insufficient. He also found that the concerns from the previous inspection (January 2018) had not been addressed.
54. He stated that the Nominated Individual was only present for a brief period during the March inspection.
55. As a result of his findings and the concerns that this raised, he attended an internal management review meeting to discuss the findings. This meeting was attended by the Inspectors, Inspection Managers, Emma MacFarlane and Natalie Gourgaurd. The purpose was to review the evidence and the seriousness of the regulatory concerns in order to recommend a response in line with the Enforcement Handbook.
56. It was decided that the regulatory concerns were too serious for serving Warning Notices, and that a more proportionate enforcement action was required. The proportionate responses that were agreed was for a Notice of

Proposal to vary a condition and remove the location from the registration because of the continued breaches of Regulation 17(Good Governance), 18(Staffing) and regulation 12 (Safe, care and treatment) and regulation 19 (Fit and proper persons employed).

57. In his statement, Mr Grant set out the regulatory notice and detailed the response that was received from the Appellant, and the decision made by the CQC Head of Inspection Ros Sanderson to proceed to issue a NOP.
58. We heard that after the inspection in March 2019, on 26 June 2019, a Regulation 28 Report of the Inquest of a service user, identified as CK, was received from the Coroner. A copy of the report was included in the hearing bundle.
59. Amongst the Coroner's concerns listed was the fact that "(i) Angel Solutions (UK) Ltd "...omissions contributed to the development of the pressure sores and to (CK's) death; they did not always provide {CK}, with two Carers, (ii) despite his care plan requiring two Carers to be present in order to move him and effectively care for him. (iii)Angel Solutions (UK) Ltd failed to provide the court with a full set of {CK's} records and (iv) Angel Solutions (UK) Ltd failed to supply the court with the full name and contact details of the main Carer, and that her surname had been redacted from the records which were left at {CK's} flat.."
60. As a result of the Coroner's concerns, Mr Grant attended a Management Review meeting held on 2 July 2019 with Manager Helen Wells to review the Coroner's report and to plan the regulatory response. Mr Grant wrote to the Registered Manager pointing out the serious nature of the concerns and asking for a response more urgently than the 56 days provided for by the Coroner for the regulation 28 response.
61. In his witness statement at paragraph 47, Mr Grant stated "I was concerned that the Appellant did not understand the gravity of a service user's death or the concerns regarding the Appellant." Mr Grant stated that the Appellant requested an extension of time to provide a response, which did not come until 21 November 2019.
62. As a result, the CQC carried out an urgent focused inspection on 15 July 2019, Mr Grant was the lead inspector. He stated that four breaches were identified: in relation to Regulation 12-Safe care and treatment, Regulation 17- Good governance, Regulation 19- Fit and proper persons employed and Regulation 20 Duty of Candour.

Regulation 19- Fit and proper persons employed

63. Mr Grant noted that prior to this inspection, the Appellant had stated in their response to the NOP that the company had employed a recruitment manager who would be in charge of staff recruitment and administration.
64. However, he found that there was no recruitment manager in place, and

that recruitment remained the responsibility of the Registered Manager and the administrator. He found that Service Users continued to be exposed to the risk of inadequately vetted staff. He found that one member of staff, SM/5 had been working without references, and this remained the case at the July inspection; 4 months after this failing had been brought to the Appellant's attention.

65. There was a staff member SM/6 who also did not have any references in their staff file, although the administrator told him that the staff member would not be deployed until they had satisfactory references. On checking the staff rosters, his colleague Inspector Satchel discovered that SM/6 had been deployed by the Appellant and deployed alone and unsupervised to deliver care, to service users over a 28-day period. At the hearing, Mr Grant stated that Inspector Satchel also noted that the staff file for SM/6 had a disciplinary warning written to SM/6 concerning their conduct and punctuality. Mr Grant was concerned that despite the lack of references, both staff members continued to be employed.
66. Mr Grant stated that he reviewed a staff member's file and although the employment history revealed two employers, there was no address for either employer. He noted that the reference that was provided was not from either employer.
67. He also reviewed another staff member's file, SM/ who also had a reference from the same employer, Global House. He noted that there was also a gap in their employment history and a discrepancy between the dates given in one of their references and the date in their employment history.
68. Inspector Satchell also noted that SM/7 had a conviction from 1984. Although there was a risk assessment for SM/7, this pre-dated the DBS check by 16 months, and therefore did not adequately take the information contained in the DBS check into account.
69. Mr Grant further noted that the disclosure and barring check for SM/2 revealed a conviction for assault occasioning actual bodily harm. Despite this, there was no sign that the Appellant had carried out a risk assessment in relation to SM/2's employment.
70. He stated that because of these failings in his judgement people continued to be at risk in receiving the regulated activity of personal care.

Regulation 12 Safe care and treatment

71. At this inspection, Mr Grant re-checked the care plans of service user A, which had been found to be inadequate at the inspection in March. He noted that despite this issue having been brought to the attention of the Appellant at the previous inspection, no improvements had been made. He stated that the guidance to deal with A's behaviour remained inadequate as there were no strategies to prevent A's behaviour or to successfully de-escalate should problems arise. Mr Grant stated that in his judgement the

Appellant did not take sufficient steps to ensure people were safe from risks.

Regulation 20 Duty of Candour

72. Mr Grant stated that he had reviewed the concerns of the Coroner, particularly in relation to the Appellant's failure to provide information to the Coroner concerning the details of the member of staff who had been caring for CK. He stated that he had received information from a social worker who had attended the inquest, who informed him that the Registered Manager, Mr Akabi Davis, had stated that he was "unable to recall the staff member's name".
73. Mr Grant stated that he was not provided with the name at the inspection. He asked to see the staff file with detail of the staff member's application, records of their interview, references, DBS checks, appraisal records, spot checks and observations of the staff undertaken by a manager. He also expected to see, training records for the staff member and daily logs which had been completed by them and rotas containing the staff member's name in paper form.
74. He stated that he was informed by the administrator Ms Efe-Ogdi that as the staff member was no longer working for the Appellant, they had shredded her records, in accordance with their policy. As a result of this, Mr Grant reviewed the Appellant's Data Policy; this stated that files should be retained for 40 years. When he queried why the files had been shredded, he was informed that this had occurred accidentally.
75. Mr Grant's judgement was that the Appellant did not act in an open and transparent way with regards to the carrying out of regulated activity.
76. Part of the process of the inspection involved an expert by experience contacting relatives and service users, as a result of this, reports were received that the Appellant had not been forthcoming about their inadequate performance assessment rating.
77. The CQC found, that the CQC rating was not displayed on the Appellant's website. Searches of the websites carried out by the CQC's National Customer Centre Co-ordinator, Lucy Gilroy, found that the rating was not displayed. (We were provided with a summary of findings as a result of Ms Gilroy's search, and details of the steps that had been taken to carry out these searches). On 29 October 2019, a fixed penalty notice was served as a result of the failure of the Appellant to display the performance assessment.
78. The Appellant denied this breach and asked for the Fixed Penalty notice to be removed.

Regulation 17 Good governance

79. Mr Grant stated in his witness statement that there were failings in relation to staffing and care planning, and the lack of robust monitoring systems, in

his view amounted to a breach of the regulations in relation to Good governance as did the failure to display the CQC rating.

80. Following this inspection an internal management review meeting was held on 17 July 2019. At this review the meeting considered whether to escalate enforcement. Although it was decided that the regulatory concerns remained, and there was a clear pattern of breaches since the March 2019 inspection, it was decided that the evidential threshold had not been reached to escalate to an Urgent Notice of Decision. The decision was that the NOP should not be withdrawn.

Inspection of 28 October, 30 October and 4 November 2019

81. On 28 October, Mr Grant together with a second inspector, Inspector Michele Stacey, attended the location whilst an Expert by Experience (EBE) made telephone calls to service users and their relatives. Mr Grant also spoke with the Appellant's administrator Ms Efe-Ogidi and manager, Mr Moijueh. The Registered Manager was not present on any of the three days of the inspection. The inspection team looked at six care records which included assessments, care plans, medicine administration records and daily notes. Mr Grant reviewed 8 staff files along with the staff rosters, training records and supervision notes. He also reviewed the complaints file and the records of quality monitoring.
82. The inspectors found breaches in relation to five care standard domains Regulation 13- Safeguarding service users from abuse and improper treatment, Regulation 17- Good Governance, Regulation 18- Staffing, Regulation 19 -Fit and proper persons employed and Regulation 20- Duty of Candour.

Regulation 13 Safeguarding service users from abuse and improper treatment

83. Service user G ("SU/G") told the EBE that they had been informed by the nominated individual that the CQC inspector would be calling and that they were not to speak with them. During the conversation G informed the EBE that a staff member had stolen items from him including a coin worth £1000.
84. The EBE was informed that he had complained about the matter to the Appellant and was threatened by the Nominated Individual that if he reported the matter to the police care staff would stop visiting him.
85. The Appellant had logged the matter as a complaint but had not raised the concern as a safeguarding alert with the Local Authority. In the factual accuracy comments to the report the Appellant stated that when asked about this on multiple occasions by different staff he denied the allegation.
86. Mr Grant considered that this was a breach of the Appellant's safeguarding policy in the manner in which the complaint had been handled.

Regulation 17 Good governance

87. At the inspection, the inspectors requested to see two months of staff rosters. Mr Grant stated that the two staff members present objected to this request and reacted angrily when his colleague attempted to look at the roster on the desk. The administrator spent almost half an hour altering the roster which meant that the roster for 9 September to 3 November was not a contemporaneous record.
88. On viewing the roster Paul Grant found that there was a pattern of a number of staff being recorded as being in two places at once. One example of this was on 6 October SM/9 was scheduled to provide 5 hours care and support for SU/C. SM/9 was also scheduled to provide 9 hours of support to SU/G, who lived 14 miles away in Reigate. Paul Grant found numerous similar examples across the rota.
89. There had been an entry in the log on 27 October 2019 when SM/9 was scheduled to provide care and support to SU/C whilst simultaneously providing care to SU/F.
90. On 4 November 2019 Paul Grant met with SU/C (C) who confirmed that SM/9 attended at the times scheduled. He also met with SU/F (F). F said various Carers were sent to support him. Paul Grant also reviewed the roster for Staff member 10. He noted that SM/10 used two names and two signatures on 5 days between 9 September and 3 November. S/M10 was also listed to provide care for two service users in a way that overlapped.
91. There was also an example of a discrepancy between the numbers of staff who were listed on the staffing list, nine staff were on the list, and 14 staff had completed a staff survey. When Paul Grant asked about the reason for this, he was told that it was “too complicated to explain”. Paul Grant was of the opinion that the Appellant had redacted the staff roster to conceal the deployment of some staff that may have been unsuitable or not appropriately vetted.

Regulation 18 Staffing of the Health and Social Care

92. Mr Grant stated that as he was unable to verify the staff employed by the Appellant and he could not check if they were in receipt of adequate training. As no staff were made available to speak with the inspectors at the inspection.
93. Mr Grant inspected the training matrix and noted that SM/9 completed training in nutrition, falls prevention, equality, safeguarding, and bed rails, safety of people and premises and risk assessments. All of this training had been listed as having taken place on one day. Mr Grant noted that minutes of a meeting held by the LB of Croydon dated 27 September 2019, a month before, specifically looked at training and noted that not a lot of staff training had occurred. This contrasted with the Matrix shown to Mr Grant, where all of the staff training had been completed.
94. Mr Grant was not satisfied that the information was correct and was concerned that the Appellant failed to ensure that service users received

support from appropriately trained staff.

Regulation 20 Duty of Candour

95. Mr Grant considered that the Appellant had not acted openly and with transparency, it did not send a complete list of those whom it employed and the rosters also did not reflect the full complement of staff. The Appellant did not provide a full list of service users who received personal care as requested by Mr Grant. He was given a list of 6 people. There was one service user who was not listed as receiving personal care, however when he inspected the record of one of the service users, he came to the conclusion that he was receiving personal care. This was confirmed when he carried out a joint visit with a social worker and spoke to the service user. He stated that information later provided by the Appellant was that the actual number was 8 people.
96. Mr Grant in his statement stated that service users were not aware of the rating given by the CQC, as the Appellant had not been forthcoming with the results of the inspection.
97. At paragraph 101, of his witness statement, Mr Grant stated that the EBE had been informed by service users and their relatives that they had been instructed not to speak to the CQC should they receive a call during the inspection.
98. Mr Grant stated that in his view the Appellant's failure to assess, monitor and improve the quality and safety of the service meant that the concerns remained ongoing.
99. Mr Grant stated, that the staff that he encountered, were not knowledgeable about the regulatory process, he was told by the administrator and the compliance manager that the CQC could not inspect in the absence of the Registered Manager. Mr Grant noted that although the Appellant had made representations to the NOP and stated that a Quality Control and Compliance Officer would be in office by 30 June 2019 this officer was not in place at the time of his visit.
100. Following the inspection Mr Grant attended a CQC Management Review on 18 November 2019, along with Inspection Managers Helen Wells and Valerie McKenzie, Head of Inspection Alison Murray and Sarah Vince, Senior Associate for Mills & Reeve LLP. This meeting was to review the evidence of on-going regulatory breach. The meeting concluded that the NOD remained proportionate.
101. On 15 January 2020 the CQC received an application from Mr Amos Moijueh, to become the Registered Manager for the Location. The application was dated 14 November 2019. Mr Moijueh had not provided a full and complete employment history. One of the questions in the application asked "Have you ever been disqualified from practice, or required to be subject to practice limitations following a fitness to practice investigation by a regulatory body in the UK or another county? Mr Moijueh

had asked 'No.'

102. Checks undertaken by the CQC Registration Team revealed that Mr Moijueh had been struck off by the Nursing and Midwifery council at a hearing of the Conduct and Competency Committee in February 2015.
103. Mr Grant also produced two supplementary statements which confirmed that the breaches found to have existed were still occurring and that the Appellant had not responded to the Coronavirus pandemic appropriately. A district nurse reported that staff members for the Appellant had attended service users' homes on 7 April 2020, without Personal Protective Equipment. Mr Grant stated that he had been informed that when asked about their PPE, the staff members stated that they had not been provided with any by the Appellant Company.
104. Mr Grant stated that a senior manager at the Reigate and Banstead social work team in April 2019 wrote to the CQC setting out that the Registered Manager was obstructive in giving information about Local Authorities who had clients with the Appellant. Mr Grant stated in his statement dated 5 May 2020, that one year after that concern a similar concern was raised by a senior social worker in Merton who complained that he had had difficulty getting hold of the Appellant's staff in relation to a safeguarding concern.
105. In his statement Mr Grant further set out that the Appellant had provided inaccurate information to the London Borough of Merton concerning the number of service users they were providing care for. He was informed by LB of Merton that they did not provide information about service users from another borough or service users who were paying privately for care. Mr Grant concluded his evidence by asking that the decision made by the CQC in their NOD be upheld.

Mrs Murray CQC

106. We next heard from Mrs Murray. Mrs Alison Murray is the Head of Inspection for Adult Social Care for the London Region. She had been the decision maker in relation to the service of the NOP. She provided a witness statement dated 24 January 2020. Ms Murray had worked with the CQC for 17 years, and prior to that she had qualified in 1983, as a Registered General Nurse. Mrs Murray holds an MSc in Inter-professional Studies (Quality Assurance).
107. In her statement she set out the details of the new methodology used by CQC.
108. In her statement she set out that since April 2014, the CQC had implemented a new inspection methodology and provides rating for all regulated services. This methodology involves an assessment of services against five domains: Safe, effective, caring responsive and well led. Each domain is assessed using key lines of enquiry (KLOE) and evidence is assessed against set "characteristics" to determine the rating for each domain and the overall service. She noted that the inspection process was

more robust.

109. She referred to the decision-making tree, a tool which was used by the CQC. This involved an assessment of the evidence which was provided to support that a breach had occurred and how this was reviewed. She informed us of the stage 3 assessment, and how stage 4 involved a management review.
110. She noted that the inspection of the setting revealed that there had been breaches in 5 domains. She set out the process used by the CQC, which meant that as the decision maker she was not present at any of the inspections.
111. Mrs Murray referred to the Management Review Meeting on 15 March 2019. She stated that the full range of responses had been considered at the meeting including civil enforcement and criminal proceedings. She stated that the extent of the breaches and the seriousness of those breaches were considered. In answer to questions from Mr Greany, she stated that she had used the "Table of seriousness".
112. She stated that no information provided by the Appellant had mitigated the seriousness of the concerns and that as a result of the continued breaches concerns had grown about the fitness of the provider. Although all the concerns were considered serious, the most serious concern involving M/S 1, and the DBS check had been ameliorated by SM/1 being dismissed. It was considered that a NOP to vary the registration was the appropriate and proportionate response.
113. At the time the decision had been made, the CQC had not had access to the Coroner's regulation 28 Notice. As a result of the Appellant's representations following the service of the NOP, the decision was reviewed by her colleague Ms Ros Sanderson; this was an independent review by a manager who had not been involved in the original decision. Ms Sanderson confirmed the decision and issued the Notice of Decision.
114. Although Ros Sanderson's letter was dated 3 August, Mrs Murray's subsequent enquiries led her to conclude that this date was written in error and that the correct date for the NOD was 3 September, as reference was made in the letter to matters that occurred in August 2019, and email records show that the letter had been emailed in September.
115. Mrs Murray stated that as a result of the appeal, a further inspection was carried out in October 2019. She was informed by Mr Grant that he had been subjected to a tirade of abuse at that inspection; this matter was referred to the safety team. Mrs Murray had written to the Appellant putting a marker on the premises, although the Appellant had made representations concerning this. The allegations were denied by the Appellant Company. However, her decision to put a marker on the premises had been upheld on review.

Blessing Jakpor- The Nominated Individual

116. We heard from the Nominated Individual and director of the company, Blessing Jakpor. Ms Jakpor was asked about her role as the Nominated Individual and also about her response to the allegations. She had prepared a witness statement and three supplementary statements.
117. In her oral evidence, Ms Jakpor stated that her background was that she had started working with a company called Ollies who provided domiciliary care, as a Carer. She had then progressed to act as care co-ordinator, and then Registered Manager and finally she had then decided to open her own company.
118. Ms Jakpor stated that she had set up the business in 2009. In her statement Ms Jakpor set out that she employed about 15 staff who over the years serviced clients mainly in the Mitcham and Croydon area. She said that her client pool had ranged from between 39 to 90. Sometime between 2016 and 2017, she decided to grow her business by opening in other parts of the UK. As a result, she stated that she had brought in other people to assist her in running the business this included Mr Akabi Davis.
119. In her statement, Ms Jakpor set out that following the July 2019 CQC inspection, she had decided that she needed to focus on the business to bring it up to its previous Good rating. Ms Jakpor had engaged Nelson Kasozi as a consultant to assist her with this.
120. Ms Jakpor accepted that there had been some breaches of regulations. However, she did not accept that the breaches were on-going. In her replies to questions from Mr Greany, she stated that although the responses to the CQC had accepted certain breaches, she had not written the responses. As such, she did not accept all of the admissions that had been made on behalf of the company.
121. In the Grounds of Appeal, the Appellant's position was that sufficient improvements had been made, since the inspection report in March. Ms Jakpor stated that she had been concerned that the inspection in July had been carried out too soon. This had not allowed the Appellant to show that the new systems had been embedded. She stated that she completely disagreed with the conclusion reached by the Respondent in the NOD. In the grounds of appeal.

Fit and Proper person Regulation 19

122. Ms Jakpor accepted that there had been issues regarding the DBS checks concerning SM/1. However, she stated that this had been a 'one off error' on the part of the Registered Manager, and that the recruitment practices had been changed, and the process was now much more rigorous. Given this, she did not accept that there was a pattern of breaches in respect of this domain.
123. In her statement, Ms Jakpor set out that she had decided to recruit a new manager to deal with compliance issues and to work with Mr Akabi-Davis. She stated that the job had been advertised on the job search website.

However, she had not been able to recruit someone with the right experience. Mr Moijueh had been recommended to her by someone who knew him.

124. She stated that he had been well qualified as he had a BSc in Leadership and Management and had a level 5 in social care. He had been DBS checked and had provided proofs of identity. He had also been upfront about the fact that he had problems with his regulator, the Nurses and Midwifery Council (“NMC”). However, he told her that he would be getting his PIN back. She did not ask for any additional details.
125. She was aware that he was a former mental health nurse with experience. The role that she had asked him to carry out did not involve regulated activities, and he would be able to utilise his management and administrative experience.
126. Ms Jakpor stated that Amos Moijueh had been brought in to work with Mr Akabi Davis, with the aim of bringing the business forward; complying with the Regulations that had been breached and assisting in bringing the business up to a Good Rating.
127. She did not think at the time that the issues with the NMC would prevent him from working in the office, or setting up systems, which was what his role would involve. Nevertheless, she had employed him subject to a probationary period of a year.
128. In August 2019, Mr Nelson Kasozi who was a Consultant Compliance Specialist was engaged. He came in once a week to work alongside Mr Moijueh. Together they completely overhauled the employment process by introducing a new application form and competencies. There was a requirement for the Carer to have a higher standard of English and their level of Maths was also tested. The training records, the policies and procedures and the care plans and risk assessment documents had been updated. Ms Jakpor had included copies of the new forms as part of her case, in the bundle.
129. Ms Jakpor stated that Mr Moijueh had been good on systems, she had hoped that he would take over the registration, as Mr Akabi Davis was living in Southend and was working as area manager for her company, supporting the manager in Southend. Mr Akabi Davis was also undertaking further training to support him in his role. Ms Jakpor stated that she was not aware that Mr Moijueh had faced findings of dishonesty in respect of his disciplinary case. She was also unaware until informed by the CQC, that he had represented himself as the Registered Manager. She stated that she had told him from the outset, not to refer to himself as the Registered Manager. When she had found out from Paul Grant’s supplementary statements about the NMC charges and the misrepresentation of his role his contract was terminated on 24 April 2020. However, she explained that he remained in her employment until the end of April or the beginning of May to help out due to the Coronavirus pandemic. Ms Jakpor informed us

that 5 May 2020 was his last day.

130. Ms Wright asked her about the Coroner's Section 28 Notice. Ms Jakpor stated that they had been invited to attend the inquest; however, they did not understand the full implications of the Coroner's inquest. She was in the process of making representations/ appealing the findings. She stated that firstly the Coroner had asked them to send documents, and after that they were invited to attend the inquest. A week later, when Mr Akabi Davis attended, he found that the other organisations that were involved in CK's care who had attended were represented by lawyers and he was expected to give evidence, something for which he was ill prepared.
131. She stated that the service user had not been cared for by Angel Solutions for over a year at the time of the inquest. CK had gone into hospital before he died (As he was not at home his Carer had been let go as each Carer was on a zero hour's contract).
132. She was asked why the Registered Manager had not provided the name of the Carer at the inquest. Ms Jakpor stated that she had asked Mr Akabi Davis the same question, as she had not understood why he had not provided this information.
133. Ms Jakpor stated that they wanted to appeal the findings as CK had not been looked after by them before he died. In cross-examination, Ms Jakpor provided the tribunal with the name of the Carer and stated that Mr Akabi Davis had also cared for CK, occasionally, as the second Carer. CK had died in hospital before he returned to their care.

Regulation 13 Safeguarding service users from abuse and improper treatment

134. Ms Jakpor was asked about the allegations concerning the breach of regulation 13 which involved the service user's missing coin.
135. Ms Jakpor denied that it was a breach of safeguarding. She denied that SU/ G's complaint had been dealt with inappropriately. Ms Jakpor stated that she had known SU/G prior to setting up Angel Solutions and he had transferred his care to the Appellant Company when she set up her own business. She stated that SU/G was known to seek attention by making things up; this was also known by his social worker.
136. Ms Jakpor stated that she had known the service user for some considerable time so she had contacted him and asked him about the allegation. He had informed her, that he wanted to think about his complaint as he stated that he could have given the coin to his son, and possibly forgotten about it. He had telephoned to withdraw the allegation, before she could report it to the police. As a result, she had taken no further action.
137. Ms Jakpor stated that SU/G's social worker went through his file, and had noted that he made a lot of allegations which had been proven to be false.

Ms Jakpor stated that in respect of the telephone call from the Expert by Experience, SU/G had complained to her afterwards that he had been asked too many questions by the CQC. He had also told her that he had been complimentary about the Carers and had said how caring they were.

Regulation 17 Good Governance

138. In paragraph 27 of her third witness statement, Ms Jakpor accepted that there had been problems with the staff rosters. Ms Jakpor had admitted in her Position Statement, and in the Scott Schedule that the records were not always complete and contemporaneous. However, she stated that she had purchased Careline Software and that it now kept track of Carers, so for example if a Carer was late you could tell where the Carer was and what was happening. She was asked whether there were, or had been problems with the system in July onwards. She denied that there were any problems. Ms Jakpor stated that she was not aware of the problems with the system which had prevented the CQC being provided with a copy of the roster at the October/November inspections.
139. Ms Jakpor did not accept that at the October/ November inspection, the CQC was provided with information concerning the total number of service users which was incorrect. She stated that the information provided by Paul Grant concerning 7 service users, was incorrect, as at the time of the inspection, two of the service users had stopped using the service. However, she accepted that there was a genuine error, in her fourth witness statement; she said that one of the service users had been left off the list accidentally by her staff

Regulation 12 Safe and effective care

140. In respect of Regulation 12, Ms Jakpor responded to the issues raised in April of this year concerning the alleged failure of staff to wear Personal Protective Equipment (“PPE”) in response to the Coronavirus pandemic. She stated that all of the Carers had received Covid 19 awareness training, via distance learning, and that they had been provided with PPE which comprised masks, gloves, aprons and hand sanitizers. This was left at the homes of the service users.
141. Ms Jakpor explained that the Carers would then take off the PPE, and change into fresh PPE before they went into a client’s home. She denied that they had not been provided with PPE and stated that they were “grown-ups” and ought to know that they needed to wear it; however, she did not think that the report of the district nurse was correct. She stated that the process used was that they did not come to the property with their PPE on, but changed before they went into the property or when they went in. They had been between changes of PPE when the District Nurse had seen them as they changed at the service user’s home. In her evidence in chief, Ms Jakpor dealt with the later inspections, and the changes that she had implemented. In cross-examination, Mr Greany asked her about earlier breaches.
142. She was asked about her employment of Mr Akabi Davis, the Registered

Manager. She stated that she had known him as the administrator and also care assistant at Ollies, the care and recruitment agency. By the time she left in 2006, he had already left and was doing other things. She had employed him in 2015. He subsequently applied to the CQC to become the Registered Manager and this was granted.

143. Ms Jakpor stated that he was willing to do the job and understood the clients. She explained that he reported directly to her. In answer to questions about her supervision of him, she stated that she supervised him 4 times a year, on a quarterly basis. She denied that she had any business or personal relationship with Mr Akabi Davis or that he was a director of the business. However, she refused to answer whether he had any other directorship in common with her as she did not consider this to be relevant to these proceedings.
144. She was asked about who had been responsible for recruitment at the time of the July inspection. Ms Jakpor stated that Mr Akabi Davis, and Amos Moijueh had undertaken recruitment assisted by Triumph her administrator, Ms Jakpor had not been directly involved in recruitment.
145. Mr Greany referred to the representations made following the service of the NOP in which the Appellant had stated that it was admitted that there was a breach in respect of the Domain concerning Fit and Person under Regulation 19. Ms Jakpor stated that the response had been written by Mr Akabi Davis and Mr Moijueh, although it had been shown to her; however, she may have written it differently.
146. She did not accept that the company had failed to employ a Recruitment Officer by 30 June 2019, contrary to what was said in the representations, which implied that the officer was already in place. She stated that Ole Obama had been employed in this role and had not worked out during a trial period. She had not taken steps to employ another recruitment manager. She clarified that Mr Moijueh had been employed to assist in managing and dealing with recruitment as Raymond Akabi-Davis had moved to Southend, and she had wanted a manager to take over in Mitcham Road office.
147. Ms Jakpor was asked about the DBS and Risk assessment in respect of SM/2 who had a conviction for assault, where the risk assessment undertaken had predated the DBS. Ms Jakpor denied that this was evidence of systematic failures; she spoke about giving someone like SM/2 a second chance. She also did not agree that staff references looked at by Mr Grant had been inadequate or lacking in detail. Further, she denied that she had any personal knowledge of Global House which had provided two of the staff references.
148. Ms Jakpor stated in respect of the Coroner's concerns that she did not know why the Registered Manager had not supplied the details. she stated that the Carer who worked on a zero hour's contract had not been working with them at the time as there was no work. She did not accept that the

failure to provide the details amounted to a lack of transparency. Ms Jakpor stated that the files were in the client's home and she did not know why the name had been redacted. She stated that she did not take full responsibility for this as she had people working for her and the Registered Manager was in charge.

149. Ms Jakpor was asked about the meeting which had taken place on Friday September 2019 at London Borough of Croydon to discuss the Section 28 Coroner's concerns. Ms Jakpor stated that she had not attended; however, the meeting had been attended by the Registered Manager and also Mr Moijueh. She stated that she had not read the minutes as she had relied on Mr Akabi Davis in his role as Registered Manager to deal with the matter. Ms Jakpor denied that the shredding of staff member files had been in accordance with Appellant's policies, she stated that there was no staffing policy requiring the shredding of files.
150. Of Mr Moijueh, she stated that she did not know that there was an issue in relation to dishonesty, Ms Jakpor stated that she had not known of this or that Mr Moijueh had represented himself as the Registered Manager, she stated that he had been wrong to do so, and that when he had started she had specifically asked him not to. This was why his contract had been terminated on 24 April 2020. She admitted that he remained employed until a later date, as Mr Moijueh had been asked to stay on because she needed someone because of the Covid 19 issues.
151. In respect of the training matrix, Ms Jakpor stated that she had undertaken some of the training as trainer up until 2018. Since then training had been carried out by Zoologist Training. This was a company which operated from the same building as the Appellant Company. She stated that training was also provided by a company which offered on line training. She did not accept that SM/2 had not had training; she noted that although SM/2 was not in the office in 2018, she had had opportunities to complete on line training. She also stated that the Administrator would be able to explain how this mix up with the dates on the certificate had occurred.
152. Ms Jakpor was asked about the rosters, and whether they were accurate. She stated that the new Care Line System provided care plans, risk assessments and that as far as she was aware of some problems; however, the system was fully operational by August 2019.
153. Ms Jakpor did not accept that there were problems in relation to service user A (SU/A) and that there was inappropriate behaviour management plans or risk assessments. She stated that SU/A was a child, and the plan was adequate for what was involved, which was to escort the service user from home to the bus stop. She denied that the records in respect of the logs had not been properly reviewed. She stated that he was no longer being cared for by the Appellant Company, and this was why his records had not been updated. In respect of the allegations concerning the incomplete MAR chart, Ms Jakpor did not agree that the MAR chart had been completed incorrectly by the Carers. She stated that the Carers did

not give medication, the service user was able to take his medication, and the Carers merely encouraged him to take it and recorded when they witnessed this. Ms Jakpor stated that when his mother witnessed him taking his medication she did not sign; as did the Carers and this may have been the reason for the gaps.

154. Although Ms Jakpor had not prepared the representations in response to the NOP, she stated that she had decided that she would be more involved in the business, working side by side with Registered Manager. In answer to a question from Ms Wright, she indicated that it was still her intention to grow her business, however, it was her position that positive improvements had been made, and steps taken to ensure that all the domains would be complied with. Given this the appeal should be allowed.

Ms Triumph Efe-Ogidi- Administrator

155. We heard from Triumph Efe-Ogidi the administrator for Angel Solutions, in her witness statement she set out that she had been present during the last three CQC inspections. Ms Efe-Ogidi stated that she had originally been considering a role as a Carer with the Appellant; however, Ms Jakpor considered that she would be better suited for the role of Administrator. Ms Efe-Ogidi had completed some A Levels and was considering going to university and was also undertaking additional studies.
156. Ms Efe-Ogidi stated that her duties were quite diverse as it was a small agency; she was responsible for answering the telephone and dealing with correspondence, outstanding payments and payroll. She also spent time liaising with Carers. Although she stated that she was not directly responsible for recruitment of staff, Ms Efe-Ogidi dealt with the administrative side and was responsible for copying the documents such as proofs of identity and taking details such as employment history dealing with reference requests; she also visited new service users at home and completed the paper work.
157. In her statement. she set out that she was at the March 2019 inspection when Mr Paul Grant discovered that the SM/1 DBS check stated that they were barred from working with children and vulnerable adults.
158. She accepted that this had occurred and admitted that it was an oversight. Ms Efe-Ogidi stated that the staff member concerned had worked as the second Carer for older service user, which they had mistakenly thought was okay. However, they had not worked with service users as the sole Carer. Ms Efe-Ogidi stated that as soon as the Appellant Company became aware of the error which was brought to their attention by the CQC, the staff member was dismissed. Although she was not responsible for the mistake Ms Efe- Ogidi thought that she should have acted as a second pair of eyes.
159. Ms Efe-Ogidi also accepted that there were staff members including SM/1 who was barred by the DBS and did not have a reference on file at the date

of the inspection. She stated that she had seen the references, she thought that the most likely explanation was that it had been accidentally shredded, although this was not realised until the date of the inspection.

160. She stated that prior to the inspection, the Appellant; company had moved offices and in the clearing up some staff records were accidentally shredded. Ms Efe-Ogidi stated that the reference to the second staff member who did not have a reference could not be identified as unfortunately, Mr Grant after telling them about this, had been unable to identify it to them at the time.
161. Ms Efe-Ogidi was asked about staff training, she stated that the trainers who had carried out the training were a few doors down in the same building and this was why when they said training was carried out in the office. Once they had moved floors, they were on a different floor. She stated that Mr Grant may have believed them to have said they had carried out the training. Ms Efe-Ogidi stated that she had been assisting with the uploading of the data in relation to the training, which was being input by the Registered Manager. She did not notice that the date had not been changed each time it was inputted this was in error.
162. In relation to the two staff that provided references from Global House, Ms Efe-Ogidi stated that she had been in the office when the two candidates were being interviewed. She stated that they had been asked why Global House had not been included in their application form under employment history, and they had stated that there was insufficient space on the application form. She stated that she was unaware of who had tippexed and written Global House over the tippex on the forms, although she stated that it was not her handwriting.
163. In relation to the report from the Coroner, she denied that they did not provide the name of the Carer for CK, when asked by Paul Grant at the July inspection. She stated that they did mention the name to Paul Grant. She stated that she had seen the staff records as she remembered this when they were moving office, however she could not find the file. As she was aware that she had previously seen the file and could not now find it she presumed that this file must have been shredded accidentally. Ms Efe-Ogidi denied that the CQC inspector was told that it was the Appellant's policy for files of ex-employees to be shredded.
164. In reference to the October/November inspection, Ms Efe-Ogidi was critical of Mr Grant's approach. She stated that he did not look at all of the records that they had produced, which would have demonstrated how far the Appellant had come, and the changes that had been implemented. She stated that although they had offered to show him these records, he did not want to see them. Ms Efe-Ogidi stated that Mr Grant did not maintain a dialogue with the staff at the inspection and appeared to have an agenda. Ms Efe-Ogidi denied that the staff had been hostile and threatening to Mr Grant.

165. In respect of the roster and the potential use of agency staff Mr Grant had reported he was told at each inspection that there were no agency staff. He always asks at inspections whether they use bank or agency staff as this changed the focus of his inspections., However, at the hearing in answer to questions, Ms Efe- Ogidi stated that she did not record agency staff on the roster, her practice was to record it elsewhere. She also stated that some of the discrepancies on the rota could be explained by the fact that some of the Carers although rostered to carry out visits at a given time, sometimes started their shift earlier and carried out these visits earlier. This was known to the senior Carer who would inform her of the changes; however, the roster would not always be updated. Ms Efe-Ogidi stated that she had now adopted a clear system which included the names of all those who provided care.
166. Ms Efe-Ogidi also denied that there had been a lack of transparency, in that she stated all of the staff members' names had been provided.
167. She also stated that she gave a full list of those who were being provided personal care. She stated that one of the files omitted did not involve personal care, as what was involved was for the Carer to prompt the service user to carry out his own care; this was the reason why this service users name had been admitted. In respect of the second service user whose name was alleged to have been omitted Ms Efe-Ogidi stated that they were unaware of the service user who was referred to.
168. Ms Efe-Ogidi stated that in respect of the October inspection a lot of the training had been provided by E-Cert, as this was an on-line training service, this meant that a lot of training could be undertaken in one day. Ms Efe Ogidi stated that Mr Grant had asked for information about who had carried out the Manual Handling training.
169. She stated that Mr Grant was informed who had carried out the training, however he had not believed them.
170. Ms Efe-Ogidi stated that the Appellant had now put a new system in place using software referred to as Careline; it had been in place during both the July and October inspections.
171. Ms Efe-Ogidi was asked by Mr Greany about the staffing in the office in 2019. She stated that Mr Akabi Davis, Ms Jakpor and Amos Moijueh, and latterly in August 2019 Nelson. She stated that Mr Akabi Davis had some problems with his health this meant that he had come into the office less frequently during July and August. This was because he was travelling from Southend. She stated that he had been assisting the Registered Manager at the Southend location. However, this was about two days a week for the majority of the time he was in London.
172. Ms Efe- Ogidi denied that Mr Moijueh ever went to Carers homes. She was asked about her attitude to Mr Grant; Ms Efe-Ogidi denied that she had been anything other than professional.

173. Ms Efe-Ogidi was asked how she was able to complete the payroll, given the inaccuracies of the roster. She stated that she got updating information from the senior Carer. Ms Efe-Ogidi stated that the careline system made such changes easier to track.
174. In relation to questions about her current role, Ms Efe-Ogidi stated that she worked part-time and that she continued to do the payroll for the south end office and one other company operated by Ms Jakpor in Manchester which was an employment agency.

Mr Raymond Akabi Davis- Registered Manager

175. We heard from Mr Raymond Akabi Davis the Registered Manager. He was asked about his qualification and experience he stated that he had GCSEs and had recently started a level 5 Leadership and Management course; he had also undertaken some short courses. He stated that he had a background in Journalism; he also worked as a Carer and had met Ms Jakpor when he was working in a recruitment agency. He had started by doing admin work prior to becoming the Registered Manager. In his statement he set out his understanding of his role and his duties. He stated that it had taken him sometime to properly integrate into the position of Registered Manager.
176. His role had involved him in introducing care plans and introducing policies and procedures. In his evidence, he dealt with the CQC inspections. He stated that he had been present at the inspection which took place in January 2018. He was asked about the failings that had been identified by the CQC. He stated that he accepted that the “buck stopped with him” as the Registered Manager. He stated that at the inspection in January 2018 it was apparent that the Appellant had slipped and faults were found. He admitted that his style of management had been one of firefighting. He accepted that he should have checked all areas as a matter of course.
177. He stated that Mr Grant had humiliated him, during his first inspection. He reported that Mr Grant had stated that the Appellant would not have been given their previous *Good* rating if he had carried out the inspection.
178. Mr Akabi Davis accepted that there was an issue with the DBS checks and how the information had been used in respect of SM/1. He stated that he had not checked both sides of the document, and as a result he had wrongly thought that SM/1 could be employed as long as they were not the sole Carer, once he had found out that he was wrong SM/1’s contract had been terminating.
179. He stated that although Mr Grant stated that there were 8 gaps in the MAR charts. Mr Akabi Davis could not verify these errors as they were not pointed out at the time.
180. He noted that on each occasion, when there had been an inspection, Mr

Grant appeared to look at a different area and point out something new. Mr Akabi Davis found this frustrating as they had focused on fixing the complaints from the last inspection.

181. He was asked about the training matrix and the inaccuracies in relation to SM/2. Mr Akabi Davis denied that there was a member of staff who had been recorded as having training who had not attended training. He stated that as the training was online, and SM/2 was able to complete the training without attending face to face training.
182. Mr Akabi Davis was asked about the role of Mr Amos Moijueh. He stated that he had been employed in 2019 as compliance manager. He noted that Mr Moijueh was good with systems. He had also been employed during a period when Mr Akabi Davis had been unwell, as he had a period of illness in 2019 when his feet had been swelling up and as a result following the CQC inspection in March, Mr Moijueh had been brought in as the compliance manager.
183. Mr Akabi Davis was asked about the Duty of Candour and the fact that he was met by another CQC inspector in the Southend location and introduced himself as the area manager, something which had not been disclosed to the inspectors at the Mitcham Road Office. He stated that there was no conflict as he did not need to be at the office every day. He also stated that he did not need to be in the 'Mitcham area address every day of the week'. He accepted that he had not been at the inspection in October/ November 2019. Mr Akabi Davis stated that he had been trying to get to the office, however his feet were swollen and as a result he had had to go home. He was asked why he had not revealed that he was the Appellant's area manager; he stated that this was more of an internal title. In answer to the question of where he lived. Mr Akabi Davis stated that he lived in Croydon and had always lived in Croydon. He denied that he lived in Southend.
184. He was asked about why he had not revealed the details of who had cared for CK, Mr Akabi Davis stated that he had provided the Coroner with part of the name that he could remember, and it was just that he was unable to remember the surname of the principal Carer. Of his own role as Carer for CK, he stated that he had acted as second Carer when a Carer was off sick. As the manager he had occasionally covered shifts when no one else was available and he had acted as Carer for CK on about 4 occasions in a 3 months period before CK died.
185. Mr Akabi Davis was asked about the training schedule, and the training he had undertaken. he said that he had undertaken a lot of training in 2016, which included leadership, mental health and manual handling. He stated that he had updated his training and had also undertaken training with E-Cert two weeks ago. Mr Akabi Davis was asked about his safeguarding training. He said that he was also the lead in safeguarding. He was asked about how the safeguarding incident involving the SU/G's coin and how it was dealt with. Mr Akabi Davis stated that he would carry out an

investigation before reporting it, he referred to a form which he would use to interview everyone involved. He stated that he had not attended Safeguarding Training from the London Borough of Croydon.

186. Mr Akabi Davis was asked about the failings that had led to the NOP and his current role in the organisation given that serious failings had been accepted as having occurred; he stated that if necessary, he would review his situation. He accepted that if he was considered as having failings as the Registered Manager, the nominated individual would have to get a new manager.

Mr Nelson Kasoze consultant

187. We heard from Nelson Kasoze, who had been engaged as an expert in Quality Assurance and Compliance. He was asked about his qualifications, and how he had acquired his expertise and the companies he had assisted. He stated that he had a number of relevant academic qualifications including, an MSc in Business information Technology, Registered Managers' Award Level 4 in Health and Social Care of Chartered Institute of Management. He had dealt with other organisations which had been rated as inadequate, which he had assisted to upgrade its rating to Good. He stated that when he met the staff of the Appellant the company had ineffective systems and the paper trail was not effective in capturing the data or in meeting the CQCs five domains. He described the process where an improvement plan had been drawn up with a deadline for bring about the improvement by December 2019.
188. He had initially attended the office twice a week which had then dropped down to once a week, he had mainly worked with Amos Moijueh to implement the changes. However, he had less dealing with Mr Akabi Davis, he stated that he had met with him by appointment. He stated that he had recommended that Mr Akabi Davis undertake level 5 in Leadership and Management
189. His role had involved implementing changes in the recruitment and record keeping. Staff and client files had been redesigned. He had set up new quality assurance systems. In his assessment he had considered that the Appellant needed 3 more months in order to implement the systems. He stated that they were not fit for purpose when he first started his role, but in his view, they were now fit for purpose. In relation to the inspections Mr Kasoze, was not critical of Mr Grant's approach. He stated that he had come across Mr Grant before in relation to his other work, and he considered that that his assessment had been fair. However, he referred to the paper work and the systems that he set up he stated that the paper work was now superb.
190. He accepted that Mr Grant had carried out his inspection appropriately; however, he stated that whilst the KLOE had been followed, and had revealed failings, the improvements that had been put into place would take time. He noted that the service users were supportive of the service which in his view demonstrated that it was a caring service. He expressed

confidence in the systems. However, he said that the respondent needed 3 more months in order to be able to show that the changes were fully implemented. Mr Kasoze stressed that it was important for the CQC to give the Appellant sufficient time for to demonstrate that sustained improvements had been made.

Witness Statement of Mr Amos Moijueh

191. We also considered the written statement of Mr Amos Moijueh; in his statement he described himself as a manager at the Appellant's business. In paragraph (k) of his statement he stated that he had introduced new things including, Quality Assurance and Quality of Care Check, Getting feedback from Service Users, Regular visits to client's homes, Regular spot checks, Regular reviews every months and Regular training for the staff.
192. In his statement he set out details of a robust regime which had been put in place in relation to staff recruitment. He accepted that agency staff were used to cover shifts and stated that there were no staff who worked for the Appellant who were not disclosed to the CQC.
193. He stated that Mr Grant came with an idea and attitude that the provider was not going to move away from the inadequate rating. In the statement he set out that Paul Grant had made enquires of whether a service user had personal care and despite visiting the service user and being told that he did not receive personal care, he did not change his report. He denied that Paul Grant had been told that a staff file had been shredded.
194. Mr Moijueh provided exhibits of some of the pro forma documents that had been introduced into the Appellant's business. Mr Moijueh's statement did not deal with the issues concerning his referral to the NMC, or with his description of himself as the Registered Manager.
195. We heard from Mr Greany on behalf of the CQC and Ms Wright on behalf of the Appellant who both addressed us in closing, and spoke to their skeleton arguments. Both Counsel were asked whether they were satisfied with the means by which the hearing had been conducted. Both counsel on behalf of their client acknowledged that although the video system had on occasion frozen, they were satisfied with the system and considered that they had had an opportunity to present their case.

The Tribunal's conclusions with reasons

196. We bore in mind in making our decision that the burden of proof rests with the CQC as the decision maker to demonstrate that there are grounds for making the decision set out in the NOD.
197. If we considered that the grounds were made out, we have reminded ourselves that this was not the end of the matter, as we were required to look at this matter afresh, and in doing so, we put ourselves in the CQC shoes and ask ourselves, what is the position at the date of the hearing? Can it be said that notwithstanding the decision of the CQC in September

2019 (dated 3 August,) that the position has changed and those grounds upon which the NOD was served are no longer made out.

198. The standard that we must apply is on the balance of probability. (i) The questions for the Tribunal are whether the breaches occurred (ii) If so, was the decision to issue the NOD correct?, and (iii) whether those circumstances exist today or whether new information undermined the decision made by the CQC.

The witnesses and our assessment of their credibility

199. We considered all the written evidence and the evidence of the witnesses including the oral evidence. We considered each witness in turn. We found the evidence of Paul Grant to be credible; we noted that he was an experienced CQC inspector who provided documentary evidence. We noted that he used Key Lines of Enquiry, and that he triangulated or attempted to triangulate his findings. We did not consider that he had a personal agenda in relation to the findings in respect of the Appellant Company. However, what he had found had caused him serious concerns.
200. However, we noted with concern, as reported to us by Mr Greany, counsel for the CQC, that he had attempted to contact him after day one of the hearing, part way through giving his evidence to find out how things were going. We have noted that there was no discussion between Mr Grant and Mr Greany. Although we consider that this was an unfortunate lapse of judgement on Mr Grant's part, we find that it did not undermine the credibility of his evidence.
201. In respect of Alison Murray, we noted that her role as decision maker was to bring objectivity to the decision that was being made. We heard that in this way, it was not her role to have first-hand experience of the Appellant Company, as she had not carried out any inspections there. Her role was to consider the inspection reports, the findings that had been made, and the factual accuracy that had been provided by the Appellant. She spoke about the factors that had been taken into account and how she had also used the Decision-Making Tree in respect of her decision. We found her to be a credible and balanced witness.
202. We heard from Ms Jakpor. We noted that although she was the nominated individual and a director of the Appellant Company, which she had started from the beginning and built up herself, (something which was rightly a naturally a source of pride for her). From the tone of her evidence she appeared to have a very 'hands off' approach to the Mitcham Road branch of the business which is the subject of this appeal.
203. Ms Jakpor had only been present for what was reported to be a very short period of time during the March 2019 inspection. We noted that despite the outcome of that inspection, she had not been present at the inspections in July and October/November even after the NOD had been served. She claimed not to have provided any input to the factual accuracy reports

produced by the Appellant Company after the inspections although she had seen them; neither had she drafted the Representations about the NOP.

204. We noted that although the circumstances which led to a Coroner's inquest are of themselves highly unusual and very serious, Ms Jakpor, as Nominated Individual, had not attended the inquest. Neither had she pursued vigorous enquiries concerning the missing staff file. We noted in respect of her evidence that she was at times, not able to provide first-hand information about many of the alleged breaches as she had not been present.
205. We also found her at times to be evasive. We noted that Ms Jakpor questioned the findings of the Coroner and indicated that she was appealing those findings. However, nothing in the 'Proactive Response to the Coroner's findings' dated 21.11.2019, set out that the Appellant took issue with any of the Coroner's findings, or that she considered the findings to be inaccurate. We found her to be evasive in relation to the use of Agency staff, the details of the agency used were not provided. We noted that she did not disclose her involvement and interest in any other business in Manchester.
206. In answer to questions concerning staffing, Ms Jakpor repeatedly referred to Mr Akabi Davies as being responsible for certain failings. We heard her evidence that Mr Akabi Davis was living in Southend and finding it difficult to get to London. She stated that this was why Mr Amos Mojueh was asked to apply to be the Registered Manager. Mr Akabi Davis denied moving to Southend and informed us that he lived in Croydon. Although this issue was not material to our findings; this, together with the fact that we found her to be evasive undermined Ms Jakpor's credibility as a witness.
207. In relation to Mr Akabi Davis, we noted that he accepted some of the findings of the CQC; however, he was not forthcoming in relation to the Coroner's Inquest, as until this hearing there was no record that he disclosed his role as a (casual) second Carer for CK to the Coroner or the CQC.

We heard his evidence concerning the training that he had undertaken and noted that there were different explanations put forward concerning why the dates recorded on the training matrix for the training he had completed were all the same. In the Appellant's 'Factual Accuracy Response' it was said that this was the date the certificates were issued and that was why the dates were the same. In his evidence, Mr Akabi Davis also stated that they were short courses, carried out by e-learning, thus opening up the possibility that the courses could have been completed on the same day.

208. We noted, and it is to his credit, that he was willing to accept the blame for many of the failings, stating that as the Registered Manager "the buck stopped with him" Accordingly we found that he demonstrated some insight in saying that if the nominated individual needed to appoint a new

Registered Manager, if the business was to move forward he was willing to step aside. However, failings in the domains were only admitted when the evidence was incontrovertible.

209. We considered the evidence of Ms Triumph Efi-Ogidi; we considered that her evidence was in the main reliable. However, there were times when Ms Efi-Ogidi's explanation for what had occurred had not been advanced in written submissions by the Appellant. Ms Efi-Ogidi set out that the information in the rosters was updated by the senior Carer, and that the information concerning the training matrix had been entered in error by populating the same date for all of the courses. We noted that this was not set out by the Appellant in their written case.
210. We heard from Mr Nelson Kasozie, we found him to be a straightforward witness who readily answered the questions which he was asked. We noted that his evidence concerned the systems that he had helped to put in place together with Mr Moijueh, he stated that he knew of Paul Grant as an inspector and he accepted the accuracy of his inspection reports and the failings he had found. We found this to be helpful, as considered that his evidence concerned the current position, and it is in this regard that we felt it appropriate to consider this evidence.
211. We considered the witness statement of Amos Moijueh, which we took into account. We noted that we did not have the benefit of testing his evidence, and this affected the weight to be attached to it as did his failure to disclose the disciplinary action taken by his regulator the NMC.

Whether the domains under The Health and Social Care Act 2008 had been breached

Regulation 12- Safe Care and Treatment of the Health and Social Care Act 2008

Inspection March 2019

212. Regulation 12(2) (a) requires the provider of services to assess the risk to the health and safety of the service user and mitigate any such risk. We heard from Mr Paul Grant concerning SU/A, who is a child. Mr Grant stated that in his view the care plan was inadequate as it did not provide staff with guidance concerning how to manage the risks associated with SU/A's behaviour. We considered the care plan which was included in the bundle. The plan stated that SU/A "could be aggressive". We noted that there was nothing in SU/A's plan about how his aggression should be managed. He also noted that SU/A's care log revealed an incident in which SU/A had acted aggressively and had hit a member of staff.
213. We accepted Mr Grant's evidence that this was not reflected in the care plan and had not resulted in a review being carried out. Regulation 12(2) (c) requires the Appellant to ensure that the persons providing care or treatment have the qualifications, competence skills and experience to do so safely.

214. We were told that SU/A was a child who exhibited challenging behaviour. We consider that it was important in order to provide safe and effective care for staff to be knowledgeable concerning behaviour management of such a child. We were referred to the training matrix for 2018/19. We noted that although a variety of courses were set out as having been completed, no training was provided by the Appellant to deal with behaviour Management or challenging behaviour.
215. We also noted in the Scott Schedule, the Appellant in their case accepted that there were shortcomings in this area. The Appellant case was that they tried to resolve this by putting relevant measures in place.
216. We find on the evidence before us, that, the care plan did not provide a proper assessment of risk. It failed to provide strategies for dealing with SU/A's challenging behaviour, and how if such behaviour was experienced, it was to be reported. We find that the lack of effective care planning presented a risk of harm to SU/A.
217. We further find that there was no training provided to deal with the risks including strategies for managing and de-escalating SU/A's behaviour. We find that the failure to ensure that staff who cared for SU/A were effectively trained put the service user at risk of harm. We accordingly find that this standard was breached at the inspection in March 2019.

The July 2019 Inspection

218. We heard evidence from Mr Paul Grant, that at the July inspection, four months after the risks had been identified in relation to SU/A. He again inspected the Care Plan. He found that no substantial changes had been made. We heard that Mr Grant noted that there were three reactive strategies, which Mr Grant considered inadequate. These strategies were that the staff to avoid confrontation, and reduce heat, and also that coping with two other children usurps mother's time with SU/A.
219. We heard from Ms Jakpor, she told us that the service provided for SU/A involved escorting him to the bus stop and that the plan had not been up dated as service user was no longer being cared for at the time of inspection. However, even if SU/A was no longer being cared for at the time of the second inspection we noted that this was not recorded in the plan. We find that the plan had not been updated to reflect the potential for assaults on members of staff, if SU/A's behaviour was not well managed.

We find that there was nothing in the records which suggest that SU/ A was no longer being cared for as there was no note to this effect on the care plan. Accordingly, we find that a breach of the regulation in relation to Good governance occurred in that there was a failure to update the records by providing a risk assessment (this was identified as being necessary in the March CQC inspection). Further, there was a failure to provide training for staff involved in SU/A's care. We find that these failings amounted to a

breach of Regulation 12 in that the Appellant failed to provide safe care and treatment. This places SUA at risk of harm.

Regulation 17 – Good Governance

220. Regulation 17 (1) provides that system or processes must be established to ensure compliance with the requirements. The system must enable the registered person to 17(2) a assess, monitor and improve the quality and safety of the services(b) assess monitor and mitigate the risks relating to the health, safety and welfare of service users and to maintain securely an accurate, complete and contemporaneous record in respect of each service user.

Inspection March 2019

221. Mr Grant, in his statement, referred to the January 2018 inspection, The Appellant had been found to be in breach of two domains Regulation 17 Good Governance and Regulation 18 in relation to Staffing. The Appellant had provided an action plan in which it was acknowledged that there had been failings in the domain of Good Governance, in relation to the service user records.
222. The Appellant following the January 2018, inspection, submitted an action plan to the CQC. In their action plan the Appellant acknowledged that failings had occurred. The Appellant stated that the issue had concerned outdated, and scanty records, and that this had been addressed.
223. At the March inspection, Mr Grant considered the effectiveness of the systems for monitoring and improving the quality and safety of the services. He considered the service user records for A. He considered that the records did not demonstrate that robust action had been taken in accordance with the action plan. He asked to see evidence of quality assurance checks, such as risk assessments, and the action plans that were put in place as a result. He was told by Mr Akabi Davis that shortfalls were addressed immediately and given this there was no action plans. However, we heard from Mr Grant that A's care records and risk assessment were inadequate. We find that there was no record of the Appellant carrying out risk assessments and taking action on their findings.
224. Mr Grant stated that he also found that staff files demonstrated inadequate recruitment practices. Staff members were employed without adequate references and although a DBS check had been carried out information in the form had not been acted on.
225. We accepted the evidence of Paul Grant and find that there were poor practices in relation to recruitment of staff. We found that in relation to Good Governance that the Appellant failed to demonstrate that they had robust systems in place to assess, monitor and improve the quality and safety of the service users.
226. We found that there was a pattern which meant that documents that related to care of service users, and staff documents were not rigorously

examined, this was evident in the failure to review the records in service users' daily logs and to consider how this should be followed up, it was further illustrated in the failure to effectively review the DBS form. We find that assessing and monitoring of information at the very least means taking time to consider the information and deciding what action if any needs to be taken.

227. We consider that if there had been a review of the documents received from the DBS it would have been apparent that SM/1 was not suitable. This suggest that obtaining this information from the DBS was little more than a tick box exercise with very little understanding of the significances of the document and the central role that it played in service users' safety. We found that this amounted to a breach of the standard in relation to Good Governance.
228. In relation to SU/ A's daily logs, we consider that if the Appellant had adopted the procedure set out in the action plan to review the daily logs, this would have led the Registered Manager to recognise that further action was needed as the care plan was ineffective.
229. A review of the log should have raised concerns about the ability of the staff member caring for SU/ A to manage SU/A's behaviour, and prompted questions about the effectiveness of the plan, the risk assessment, and the competency and training of the member of staff who provided care. It should have also raised concerns about the staff member's safety, and the support that they may have needed.
230. We find that there was, a lack of systems in place to deal with these issues, and that the Appellant breached the standards in respect of Good Governance and placed both service users and staff members at risk of harm.

15 July 2019 inspection

231. Following the inspection in March 2019, the Appellant in their response stated that they would "Ensure that Care Plans document efficient and reliable courses of action such as assessing, planning, responding or reviewing incidents..." One of the actions, that the Appellant stated would be implemented was, that two senior managers would review the daily logs.
232. Paul Grant asked to see evidence that such reviews were carried out. However, this information was not provided. Paul Grant was told that service records had been archived and that it was not possible to retrieve them. We heard from Ms Jakpor that the Appellant had started the process of making changes; however, the inspection had taken place too soon for these changes to be evident. However, this was not what Mr Grant was told at the inspection.
233. We accepted Paul Grant's evidence that he was not provided with the records. Accordingly, we were not satisfied that systems had been put in

place for monitoring the daily logs. We consider that such systems for monitoring were vital as this would, had it been implemented, have supported the Appellant in identifying issues that had occurred and allowed them to make changes to improve practice. Accordingly, we consider that the lack of monitoring was a breach of the regulation.

234. Paul Grant referred to the MAR Chart and gaps in the records that he found. This was disputed by the Appellant in their response to the NOP. The Appellant stated that only one record appeared to have a gap. We were provided with a copy of the relevant MAR chart. We noted that this supported the evidence of Mr Grant in that there were a number of days where no signatures appear in the MAR chart. We find that there were gaps in the chart as set out in Mr Grant's evidence. Regulation 12 (2) (g) requires the proper and safe management of medicine. We accepted that without a proper record of when the medicine was administered and by whom, and a record of occasions when the medicine was refused, the record could not be relied upon. We find that partially or incomplete records could not be relied upon as providing a record of care. We find that this placed service users at risk of harm.
235. Regulation 12 (2) (c) provides that persons providing care or treatment to service users should have the qualifications competence, skills and experience to do so safely. We heard from Paul Grant concerning the problems with the training matrix for the period of 2018/19. We accepted Mr Grant's evidence that he spoke with SM/2. We noted that she was recorded as having undertaken training in Communication, Duty of Care, Dementia Care & Cognition, Personal development and First Aid training amongst other courses. SM/2 stated that she had been on long term leave in 2018 and had not attended any training.
236. We heard explanations from both Ms Jakpor and Mr Akabi Davis that on-line training was provided, and given this, the staff member could have undertaken this training remotely. We preferred the evidence of Paul Grant who had spoken directly with SM/2. We noted that the training provided specific dates when the courses were undertaken. However, this did not accord with the evidence that was provided to Paul Grant when he attempted to verify the training undertaken by SM/2. We find that SM/2 had not received the training set out in the Matrix.
237. We find that the recording of information concerning training of staff in the training matrix was not accurate and that it was misleading. This in our view amounted to a breach of the domain in relation to Good Governance as it gives the impression that staff members have the knowledge and skills to undertake their role when this is not the case as they have not been provided with up to date training.
238. We find that the lack of accurate and up to date training records had the potential to put service users at risk of harm. The failure to have accurate training records meant that, we were not satisfied that the training had been carried out as stated not only in relation to SM/2, but also meant that we

could place no reliance upon the training records in relation to other members of staff.

239. We find that taken in its entirety, the matters found proved in relation to Good Governance, placed service users at risk of harm. We are satisfied that without effective monitoring of systems and quality checks the Appellant was in breach of the standard in relation to Good Governance in relation to the failings found in relation to service users records, medicines management and maintaining accurate records in relation to staff training.

Regulation 18 Staffing of the Health and Social Care

240. The CQC inspection report of 24 January 2018, found that the Appellant had failed to provide staff with appropriate training and supervision. We noted that the Appellant in their action plan stated that “training is now being undertaken by our in-house trainer plus external trainers when the need arises.”
241. We noted that following the inspection the Appellant accepted that training was not carried out in accordance with Regulation 18 which requires the service provider to deploy sufficient numbers of suitably qualified competent skilled and experienced persons.
242. In order to ensure this, standard is met Regulation 18(2) requires that staff employed by the service provider must receive such “appropriate support, training professional develop, supervision and appraisal as is necessary to enable them to carry out the duties they are employed to perform.”
243. During the March 2019 inspection, Mr Grant as part of his KLOE looked at the training matrix. We found in relation to Good Governance that this record was inaccurate and could not be relied on. Further we heard conflicting evidence from the Appellant’s witnesses as to who had provided the training. We heard from Mr Grant that on enquiring from the Registered Manager he was informed that the training was delivered by the Nominated Individual (NI) Ms Jakpor. Mr Grant requested details of the NI’s qualifications to offer such training. In his evidence he stated that the certificate provided by the NI did not satisfy him that Ms Jakpor had the necessary competence to offer the range of training which was included in the training matrix.
244. We heard that on the day of the inspection, when Mr Grant asked for evidence of the training that had been undertaken, the Registered Manager, Mr Akabi Davis and the Administrator Ms Efi-Ogdi searched the office to find evidence of the training. Ms Jakpor in her oral evidence stated that she had not carried out any training of staff since 2018 and had only carried out a limited amount of training before. She also stated that training was also carried out by Zoologist training who were located in the same office building.
245. We find that the explanation of who provided training was not supported by any evidence. We heard contradictory accounts from the Appellant’s

witnesses of who provided the training. We heard about both online training and training by a provider who was located in the same building. No evidence from the external provider or of the online courses was provided by the Appellant. We could be satisfied of the standard or range of training if any, that had been undertaken by staff in 2018/19.

We saw no certificates, or details of contracts with any service providers, further we had no evidence of staff appraisals. We noted that although staff may have skills and experience, we were not satisfied that without suitable training staff members' competency and skills had been maintained. We find that without appropriate training or support via appraisal we could not be satisfied that the staff deployed were suitably qualified and that they had the necessary skills and competency to carry out their roles effectively. We find that the Appellant was in breach of Regulation 18

October/November 2019 Inspection

246. We heard that at the inspection in October/November 2019, although Mr Grant asked to speak with members of staff in order to discuss their training and appraisal, the Registered Manager did not ensure that member of staff were made available to him to enable him to make his enquires.
247. We heard that Mr Grant again inspected the training matrix. He noted that SM/9 completed training in nutrition, falls prevention, equality, safeguarding, and bed rails, safety of people and premises and risk assessments. This training was carried out in one day.
248. We heard from Ms Jakpor and Mr Akabi Davis that the explanation for this was that the training was carried out on line. We noted the range of course that SM/9 had been recorded to have completed, we noted that although some were theoretic others were practical, and could not in our view be carried out effectively by an on-line course. Further we do not accept that they could be carried out in one day.
249. We noted the date upon which training was completed in the training matrix, even if this training had been carried out, and was wrongly recorded as having taken place on one day, we were provided with no details of the content of the training courses or training certificates. Further we were concerned that Mr Grant was not afforded the opportunity to speak with staff. We find that there was no opportunity provided to test whether staff considered their training and appraisals assisted them in effectively carrying out their duties. We were not satisfied that appropriate training had been undertaken by staff.
250. We have noted that the information provided by the Appellant was not reliable. Accordingly, we could not be satisfied that appropriate training was provided to staff members as required by Regulation 18.
251. We heard from Mr Akabi Davis that he was provided with regular appraisals, however, we were not provided with any notes of these

sessions. Mr Akabi Davis did not give a convincing account concerning his appraisal conducted by Ms Jakpor. We found that if appraisals were carried out, it appeared to be little more than a tick box exercise. There was no evidence that they had given Mr Akabi Davis the necessary skills, or identified his strengths and weakness to enable him to be supported to carry out his role.

252. We also noted that although staff members were reported as having regular appraisals there was no evidence of staff appraisals. We heard that staff had received online training concerning Covid 19 since the outbreak of the pandemic. However, we heard that members of staff attended a service users' home without PPE. Accordingly, we find that a lack of appropriate training meant that staff did not always have the necessary skills in order to carry out their roles, we find that they lacked relevant training, and support by way of appraisals.
253. We find that members of staff did not display that they had the necessary knowledge and skills to carry out their roles effectively. This placed service users at direct risk of harm.

March 2019 CQC Inspection

Regulation 19 fit and proper persons employed

254. At the inspection which took place in March 2019, Mr Grant inspected the staffing file for SM/1. We were provided with the DBS Certificate for SM/1. The Certificate sets out that SM/1 was barred from working with vulnerable adults in a care position, this included working in care homes, and in a position that would enable employment in domiciliary care agencies.
255. We heard that Mr Akabi Davis has worked in recruitment before, notwithstanding this; Mr Akabi Davis stated that the failure to spot this was an oversight. We find that the standard was not met in relation to regulation 19. Mr Akabi Davis was an experienced, Registered Manager who was charged with dealing with recruitment. The barring order was recorded in the body of the DBS and would have been immediately noticeable had it been read. Mr Akabi Davis did not read it, and we find that this failure put service users at direct use of risk of harm, something that DBS checks were designed to prevent.

July 2019 CQC Inspection

256. Following the inspection on 15 July 2019 the CQC report, stated "The report includes the following observations and findings: *Our inspection identified a number of concerns at the service. The provider sent staff into people's homes before confirming they were safe and suitable to provide care and support. This was because recruitment processes were inadequate. Staff job applications were not fully completed. References from previous employers were not asked for and when staff had a criminal record the provider did not make sure they were safe to care for people.*
257. We heard about and were provided with the staff application forms, we

found that they were incomplete and lacked the staff member's full employment history. Mr Grant referred to two staff files which did not provide details of employment history at Global House. We also heard that gaps in employment history did not lead to checks being carried out. Additionally we heard that there was a member of staff who had a conviction, and that there was no risk assessment, which detailed this conviction and how the risk that this presented was to be managed. We accepted Mr Grant's evidence. We found that there were poor practices in recruitment which were evidenced at this inspection. Given this we could not be confident that the staff were suitable, the lack of suitable staff put service users at risk of harm.

258. We noted that in July 2019, Ms Jakpor employed Mr Moiujah we heard that he had been struck off the NMC register for allegations which included dishonesty. We find that Ms Jakpor did not make adequate checks, even when she had information which suggested that further enquires ought to be made, she failed to make them. She did not stand back and consider the overall suitability of Mr Moijueh. We heard that she knew that he had disciplinary concerns prior to his submitting an application to the CQC, nevertheless she failed to make further enquires prior to his application to be appointed as Registered Manager.

259. At the October/November Inspection, the inspectors found *"The provider's planning for delivery of care was unsafe. Staff rotas revealed that people were at risk of not receiving appropriate care because managers had scheduled staff to deliver care to different people in different locations at the same time. In order for people to receive their care as planned the provider was deploying individuals who were not disclosed as staff to CQC during the inspection. This meant people continued to be at risk from potentially untrained, unvetted and unsafe staff."*

October/November 2019 CQC Inspection

260. We accepted findings of the CQC made following the October/November inspection, that the Appellant was deploying individuals who were not disclosed. We noted that although we had heard that agency staff were used by the administrator, no information had been provided to the CQC at inspections about the agency, the staff used and how the Appellant monitored the suitability of the staff.

261. We find that the failure to provide detailed information, about the names, and experience of the Carers amounts to a breach of Regulation 19. We were not satisfied that care was being provided by staff who, in accordance with regulation 19, were 'fit and proper persons'.

262. We find that the standard in respect of the employment of fit and proper person is an important safeguard, which goes to the heart of domiciliary care. We find that the lack of proper recording of the names of staff on the roster was a significant failing. We noted that there was evidence of breaches of the standard in the past. We find that without transparency we could not be satisfied that fit and proper persons were employed at the date

of the inspection. We find that the failure in this domain put service users at risk of harm.

263. We noted that the Appellant had accepted that they had made a very serious error with SM/1's DBS. Given this, the Appellant Company should have made immediate, rigorous, and urgent changes to their recruitment procedures. We find that the Appellant continued to be in breach of this regulation.

October/November CQC Inspection

Regulation 13 Safeguarding

264. We heard from Mr Grant that at the inspection in October/November that a potential safeguarding issue was raised, this involved the alleged theft of a coin. Mr Grant stated in his witness statement that he was informed that the service user had been told not to speak to the CQC, and that the NI had indicated that if the matter was reported to the police, staff would stop visiting him. We were not required to make any findings concerning the factual basis of this allegation; accordingly we made no findings on this, having not heard directly from the EBE.-However, we noted in Ms Jakpor's evidence and that of Mr Akabi Davis that the service user was directly approached on more than one occasion by staff from the Appellant Company, including the NI. This is confirmed by the factual accuracy comments, which stated that he (the service user) "...denied that the theft had occurred on many occasions..."
265. We find that such an approach is contrary to good safeguarding practices. In her evidence Ms Jakpor disclosed a long relationship in terms of provision of service with the service user, she failed to consider that such a relationship meant that she could not objectively and independently investigate such a report and that whether or not threats were made the service user would see such a complaint as threatening the relationship
266. We find that the manner in which the investigation was carried out was not in accordance with Regulation 13 (3), that there were systems and processes that must be established and operated effectively to investigate immediately upon becoming aware of any allegation or evidence of such abuse. Accordingly, we find that the standard in respect of Regulation 13 was not met by the Appellant.

July 2019 CQC inspection

Regulation 20 Duty of Candour

267. The intention of the Duty of Candour is that providers are open and transparent with people who use their services and other relevant persons. (People acting lawfully on their behalf).
268. We heard that following the inspection in March 2019, on 26 June 2019 the CQC was notified of concerns by the Coroner in respect of service user CK. A Regulation 28 Report of the Inquest of a service user, identified as

CK, was received from the Coroner. A copy of the report was included in the hearing bundle.

269. Amongst the Coroner's concerns listed was the fact that (i) Angel Solutions (UK) Ltd did not always provide CK, with two Carers, (ii) despite his care plan requiring two Carers to be present in order to move him and effectively care for him. (iii) Angel Solutions (UK) Ltd failed to provide the court with a full set of CK's records and (iv) Angel Solutions (UK) Ltd failed to supply the court with the full name and contact details of the main Carer, and that her surname had been redacted from the records which were left at CK's flat.
270. The Coroner, Anna Crawford, in her report in the "Circumstances of the Death" referred to the following:- "CK lived alone at his home address and was in receipt of a package of care which was funded by Surrey County Council and provided by Angel Solutions UK Limited. On 1 December 2017 CK was found to have two necrotic pressure sores, which had developed primarily as a result of sitting in his wheelchair and contributed to by an omission on the part of his Carers to maintain his personal hygiene and to regularly reposition him. They also omitted to seek medical attention for the pressure sores. On 12 December 2017 Mr Knapp was admitted to East Surrey Hospital as a place of safety due to concerns about the care he was receiving at home. On 24 February 2018, whilst at the hospital, he developed Aspiration Pneumonia to which he succumbed later that day."
271. The Coroner found that the pain caused by the pressure sores led to CK eating and drinking in a non-upright position, which contributed to the development of Aspiration Pneumonia. Although Mr Grant did not attend the inquest, he spoke to a social worker who had attended the inquest. He was informed that the Registered Manager, when giving evidence, stated that he was unable to recall the name of the member of staff who cared for CK. Further, Mr Grant was not provided with the details requested of the Registered Manager when he inspected the premises.
272. The Duty of Candour requires the service provider to
(1)...*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.*
273. We noted that the Coroner raised specific concerns that the care that CK received may have contributed to his death. We noted that the Appellant did not follow the guidance of the CQC in the manner in which this matter was dealt with in relation to the Duty of Candour.
274. We find that the Appellant Company, failed to understand the seriousness of the incident, and to report the matter to the CQC and to the LA safeguarding teams. Until the hearing of this matter in the Care Standards Tribunal, the name of the Carer had not been disclosed to the Coroner or the CQC. There was no information provided to the Coroner of the role that Mr Akabi Davis carried out as the occasional second Carer of CK.

275. On 7 February 2018. Shani Mathew wrote to Mr Akabi Davis asking four highly pertinent questions (1) why the Carers did not report the pressure sores to GP/DN's? (2) Why the Carers did not raise a safeguarding? (3) What do you have in place to ensure this is not happening again? (4) What is the situation with the Carer in question?
276. There is no record of the response from the Appellant.
277. Nevertheless, when Mr Grant wrote to the Registered Manager on 3 July 2019, following the Coroner's Regulation 28 notice, asking why the Appellant had not notified the CQC of CK's death. Mr Akabi Davis stated that CK was no longer a service user at the time of his death. He referred to Shani Mathew's letter in support of this as the letter had stated that "if support for CK was reinstated with Angel solutions, CK should be supported by another Carer."
278. We find that Mr Akabi Davis knew, or ought to have known that the obligation to inform the CQC and to cooperate with any inquires, in an open and transparent manner did not end when funding was withdrawn. We find that the failure to provide information concerning CK's Carers was a direct breach of the Duty of Candour as was the failure to notify of the outcome of the coroner's inquest. We find that the Appellant failed to recognise that there was a Duty of Candour which arose when the care that CK received had been called into question. In not reporting this matter as required the Appellant breached the Duty of Candour.
279. We find that the rating was not displayed, neither were the service users or their relatives made aware of the rating of inadequate. We find that in not providing this information as required the Appellant was in breach of the Health and Social Care Act 2008 (Regulated Activities) Regulation 2014 Regulation 20A as the Appellant failed to display the CQC performance assessment. We also heard and accepted the evidence of Mr Grant, that the Appellant's nominated individual had spoken with service users and had told them not to talk to the CQC, although we do not know if similar instructions were provided to members of staff, we note that no members of staff were made available so that Mr Grant could speak to them as part of his inspection.
280. We also find that the Appellant was not open and transparent about who was providing care to the service users, as evidenced by the failure to provide detail lists of Carers and service users, and the failings identified in the rosters, in that it did not provide accurate details of all of those, including any agency staff that provided care. We find that the Appellant breached the Duty of Candour in relation to the conduct of the NI and the Registered Manager.
281. We consider that this failure to act with openness and transparency is a matter than needs to be considered when assessing whether the decision

in the NOD was proportionate and the extent if any that the Appellant can say that the matters referred to in the breaches have been remedied.

Was the decision to issue an N O D proportionate?

282. We then considered the CQC enforcement policy in respect of the appropriate enforcement action. We noted that the decision maker was required to consider the seriousness of the concerns and evidence of multiple and /or persistent breaches. The policy suggests that stage 3A “looks at the seriousness of the concern and the facts that gave rise to that specific concern. It does not take account of other incidents that may have taken place.

It is an assessment of the likelihood of the concern happening again, and if so, the impact it would have on the people using the service,”

We noted that the decision to vary Condition 2 was made following the March 2019 inspection, and was reviewed following the Coroner’s concerns. We consider that at the time there were multiple and serious breaches of the domain. We noted that this decision was subsequently confirmed on review, we are satisfied that the decision maker acted appropriately and proportionately.

283. Having found that the breaches occurred, we then went on to ask ourselves what the position was at the date of the hearing and whether there was evidence from the Appellant which undermined the decision. We took into account the evidence provided by the Appellant together with their skeleton argument. In their skeleton argument the Appellant stated that-: “...*The Appellant admits that over the past years it has had a fair share of difficulties at the location and is alive to the concerns of the Respondent. The Appellant however asserts that the Respondent is mistaken in relation to some of the breaches.*

Further, the Appellant asserts that following the inspection by officers of the Respondent in July 2019, they re-organized their internal organizational structures to address the issues raised by the Respondent. Also, the Appellant will say that they hired an external consultant to conduct an audit of its systems to ensure it becomes CQC compliant.

It is the Appellant’s case that the inspection in October/November was conducted at a time when the results of the measures it had put in place to correct the defects identified by the Respondent were at the early stages, and could not have been evident.

It is the Appellant’s case that to uphold the decision of the Respondent – notwithstanding the fact that they have acknowledged and understood the severity of the issues raised by the Respondent, and having put measures in place to correct these issues would be a wholly disproportionate outcome...”

284. We heard from Mr Nelson Kasoze about the systems that he had implemented at the Appellant’s premises. We also saw copies of the documents which had been put in place in relation to, staff recruitment;

DBS checks and service users care records. We noted that these were systems that had been implemented by him on the Appellants behalf. Although they were impressive, we noted that in order for the systems to work, they had to be owned and put into practice by the NI and the Registered Manager.

285. We consider that this required a level of insight from Ms Jakpor, which required her to be open and transparent in standing back and looking at what went wrong, accepting the part that she played and then taking steps to remedy this. In September 2019 service users had not been informed of the CQC rating. We heard that at the inspection in October/November 2019, service users had been asked not to talk to the CQC. We find that without a level of openness and acceptance of what had happened and a willingness to share this with the service users and those who protect their interests and who could then hold the Appellant accountable there was a risk of reoccurrence of the breaches which occurred. We found that should the breaches reoccur there was a risk that service users would suffer harm.
286. In respect of the changes that Mr Kasoze had tried to implement we saw no evidence that the documents that were provided were owned and had been implemented by the Appellant. We find that she failed to recognise her responsibility as NI to ensure that the changes that needed to be made were implemented. We heard nothing that suggested that she had taken a more hands on approach since the inspection in October 2019.
287. Ms Jakpor had built her business and had in the past met the required standards and enjoyed the loyalty of her small team of staff. She had repaid that loyalty by advancing those staff. However, there is evidence that this may have been to the cost of the service in that they did not necessarily have the skills and competence to fulfil those roles.
288. We found that Ms Jakpor had not taken effective action when this became apparent. In her evidence she appeared to lack the insight needed to stand back, consider what had gone wrong and to accept the part that she had played in the failings of the Appellant company and sacrifice her ambitions of growing her business by taking the time needed to put things right.
289. At the inspection which took place in October/November there were still breaches of the regulations. In April 2020 there was still evidence that the Appellant was not being open about the numbers of service users who used their services. We were told about the failure of members of her staff to use PPE.
290. Ms Jakpor stated that they had been provided with training and PPE; however, one of her comments demonstrated a lack of insight, in that when she stated that they were “Adults”, she seemed to be saying that they were responsible for their own safety. In so doing she failed to consider that their failure to wear PPE put service users at direct risk of harm in relation to contracting the Coronavirus.

291. We have noted the history of the Mitcham Road premises, and the fact that there is a pattern of continued breaches of the Regulations, a pattern that had started in January 2018, and has continued throughout 2019. We find that the Appellant has failed to demonstrate a capacity to implement and sustain changes to bring the provision up to a good rating.
292. We considered whether there was any other enforcement action which could be taken which would deal with the matters found proved. We considered that although the CQC considered the effectiveness of a Warning Notice which could have been served by them concerning past failures to meet legal requirements. This was not considered to be a proportionate response. We reminded ourselves that breaches of the regulations had been in existence since 2018. We found that those breaches had the potential to put service users at risk of harm, and we noted that the Coroner, Anna Crawford, had recorded direct harm as a result of failings in the care provided by the Appellant, to CK.
293. Given this, we consider that the action proposed in the NOD of varying of the registration is the appropriate and proportionate order.
294. Accordingly, we uphold the decision of the CQC to vary the Appellant's registration so it is no longer authorised to carry on the regulated activity of Personal Care from Unit 125 Challenge House, 616 Mitcham Road, CR0 3AA.

Decision:

(i)The Appeal against the Notice of Decision dated 3 August 2019 is dismissed.

Judge M Daley
Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 19 June 2020