

## Care Standards Tribunal

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

Heard on 20 April 2016 on papers

Before: Tribunal Judge Ms Melanie Lewis  
Mr James Churchill Specialist Member  
Ms Jennifer Cross Specialist Member

#### BETWEEN:

Jaquelina Olivia Laverick

Appellant

-v-

Ofsted

Respondent

[2015] 2554.EY

### DECISION

#### Reporting Order

1. There shall be a Restricted Reporting Order under Rule 14 (1) (b) of the Tribunal Procedure First-tier Tribunal (Health, Education and Social Care) Rules 2008 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 child or its family mentioned in the appeal.

#### The Appeal

2. This is the appeal of Mrs Laverick against a Notice of Decision dated 8 September 2015 refusing her registration on the compulsory part of the Childcare Register and the voluntary part of the Childcare Register

#### Procedural issues

3. At a Telephone Case Management Hearing on 12 April 2016 the parties agreed to the case being decided without a hearing as Ms Laverick did not wish to question any witnesses for Ofsted, she had not submitted a statement and did she wish to call any witnesses. There being no substantial issues of fact to decide, the Tribunal concluded it was able to decide the matter on the papers as she was no longer challenging the process of how Ofsted made their decision, including the interview with her.

### **The Legal Framework**

4. The legal framework for the registration and regulation of childminders is to be found in Part 3 of the Childcare Act 2006. It is uncontroversial that these new provisions sought to elevate and regularise the standard of childminding and the demands now made on childminders and potential childminders are wide ranging and significant.

5. Sections 54 and 62 of the Childcare Act 2006 deal with the process for registration and the circumstances under which an application for registration should be granted or refused and stipulate that the prescribed requirements may include matters relating to the applicant.

6. The requirements are prescribed by the Childcare (Early Years Register) Regulations 2008 and include that the person registered is 'suitable'. Pursuant to the Childcare (Welfare and Registration Requirements) (Amendments) Regulations 2014 S1 2014/912, in September 2014 the 2008 Regulations were amended to apply a consistent standard across both the Early Years and Later Years registers namely 'suitability to fulfil the requirements of their role'. Prior to this, 'later years providers' were subject to additional specific requirements which required that people must be of good integrity and good character; have skills and experience suitable for the work; and be physically and mentally fit for work, but these are still relevant factors to be taken into account.

7. The powers of the Tribunal can be found in Section 74 (4) of the 2008 Act. Essentially, the Tribunal may either confirm Ofsted's decision to refuse registration or direct that it should not have effect, in which case it may impose conditions on the Appellant's registration.

### **The Issues**

8. Whilst the Appellant has committed serious offences, Ofsted accepts none of the offences are 'disqualifiable' and the issue is her suitability to be registered with the focus on her integrity and character.

### **Background**

9. On 7 November 2014, the Appellant made an application to register as a childminder on the compulsory and voluntary parts of the General Childcare Register. On the application form, the Appellant declared that she had been

convicted of 13 counts of theft. There was no mention of any convictions for money laundering.

10. As part of the application process, Ofsted request the completion of suitability checks, including a Disclosure and Barring Service (“DBS”) check and a Local Authority check.

11. Upon consideration of the Appellant’s DBS check, several offences were listed. Namely, there were ten counts of theft and two counts of money laundering. All offences were committed between 2005-2009 whilst the Appellant was employed as a solicitor and the sentencing date for all offences was 13 January 2011.

12. The Appellant was admitted as a solicitor on 3 November 2003. At the time of the offences she was head of the Tax, Trust and Probate department at Chattertons solicitors. She had also been appointed as a Deputy by the Court of Protection to deal with the affairs of, usually elderly individuals, who were unable to manage their own affairs.

13. The firm became concerned and 15 October 2009, Chattertons contacted the Solicitors Regulation Authority (“SRA”) to report alleged misconduct by the Appellant. A lengthy investigation by the police and firm followed, which of necessity involved going through many files and transactions, some of which the Appellant admitted she had destroyed.

14. On 22 October 2011, the Appellant pleaded guilty to ten counts of theft and two counts of converting criminal property. On 13 January 2011 at Lincoln Crown Court, the Appellant was sentenced to 3 years imprisonment and a Confiscation Order was made for £60,000 under the Proceeds of Crime Act 2002. We have read the sentencing remarks of HHJ Heath. He referred to the breach of trust and a number of aggravating features which Ofsted rely on. The total sum stolen was £214,870 over a period of 3 years and 4 months. A total of £60,000.00 was from client’s accounts and £150,000 from a legacy, the true beneficiary of which should have been the Appellant’s grandmother.

15. We have also read a transcript published by the Solicitors Disciplinary Tribunal, following a hearing which took place on 15 December 2011. The Appellant made no representations and had resigned from the role at that point. The Solicitors Disciplinary Tribunal found that she should be prohibited from having her name restored. They agreed with the sentencing Judge that any personal difficulties at the time could not be an excuse and that there was a number of aggravating features.

16. The Appellant was interviewed by Ms Dave Ofsted Early Years Regulatory Inspector on 25 June 2016.

The Evidence and the respective cases of the parties:

17. We carefully considered the Tribunal bundle all of which we had read in detail even if we do not specifically mention it and kept in mind the need not to identify any child or their family.

**Appellant:**

18. The Appellant has not made a witness statement but the points she wished to make are attached to her appeal with supporting documentation. This included her OASys assessment confirming that there was low risk of offending, a character reference from a charity she has worked with for 3 years and a number of character witnesses from a family who had used her services and neighbours who have got to know her. She is working as an unregistered childminder within she says the limits allowed and has undertaken a number of on line qualifications.

19. She additionally attached information from Nacro about disclosing convictions and correspondence with Ms Davy.

20. She acknowledged the mistakes she has made in the past and states that she is determined to re-build her life. She has gained an insight into why she committed the offences and in future would not bottle things and would seek release from what she describes as addictive behaviour. She has since her release from prison had a number of challenges but has established a stable family unit and is more aware of emotional triggers. She feels she is now a different person to the one who committed the offences. Her confidence has grown through support shown to her. She challenges the assertion by Ofsted that parents and carers would seriously challenge Ofsted's decision if they registered her. Ofsted acknowledge that the information about her convictions would be easy to find out about but she states she would be open with those who use her services.

21. The Appellant's abilities to care for children are not in question. She cared for the children of a close family member when their mother was in prison for drug offences. Social Services would have been prepared for this to be on a voluntary basis but at her request she was granted an interim residence order by the Family Court and now sees the children under a contact order. No issues were raised about her care or ability to manage the family situation and maintain appropriate boundaries.

**Ofsted:**

22. The key points relied on by Ofsted were:

- The Appellant committed very substantial acts of dishonesty
- The offences were carried out over a period of 3 years and 4 months
- The offences only came to light as they were uncovered by her employer, otherwise they may well have continued

- There was a grave breach of trust as the Appellant was in a position of responsibility within her firm (Partner)
- The Appellant stole large sums of money from vulnerable clients
- A duty of care was owed to the Appellant's clients and to the Court of Protection, who appointed her as Deputy for individuals who were incapable of handling their own affairs. The Appellant abused this position by taking advantage of her situation to steal from these individuals
- As a solicitor, the Appellant was required to operate in accordance with the SRA Code of Conduct. The Appellant showed complete disregard for the rules and codes prescribed by her Regulator.
- The breaches of the SRA Code of Conduct were the most fundamental of all – the requirement to act with honesty and integrity
- The Appellant deceived her own elderly grandmother in order to continue her criminal activity
- The Appellant was under no financial pressure and committed these offences out of pure greed
- Files were targeted by the Appellant, presumably because they involved vulnerable individuals unable to handle their own affairs
- Files were destroyed by the Appellant in order to attempt to cover up her criminal activity

22. It was of extreme concern to Ofsted that other members of the Appellant's family became involved in her offending behaviour. This included her father and husband. Both received suspended prison sentences at the Crown Court.

23. On behalf of Ofsted we had witness statements from Ms Kathryn Bell the Senior Officer who made the decision to refuse registration, Christy Davy who conducted the interview and Alison Britten a civil servant responsible for Early Years Policy, who explained the policy reasons behind the change in regulations to apply one standard of 'suitability'.

24. We were assisted by reading the Judges sentencing remarks and the decision of the Solicitors Regulatory Tribunal.

25. After a telephone conversation and the face to face interview a number of other issues concerned Ofsted which were put into the Notice of Intention refuse registration dated 6 August 2015. In particular she choose to commit the last offence to cover past theft. She failed to recognise that her criminal past would call her suitability to be registered as childminder into question. Others faced stresses in life without acting in a criminal way. The fact that she could not stop offending showed a weakness of character. Whilst it was acknowledged by Ofsted that she had cared for her relatives, Social Services were not making a decision about her suitability in the same way as Ofsted was being asked to do so in this application to register. She had shared that she was in dispute with a neighbour over a parking issue but said she had

involved the police. Ofsted were concerned that this ongoing dispute and the possible attendance of family members with known drug issues could be disruptive to a childcare setting.

### **Conclusions with Reasons**

26. In reaching our conclusions we have had regard to all the evidence including the submissions made by each party, even if we have not specifically referred to it. We have kept in mind the need to record only such facts as are necessary to explain our decision and have kept in mind the need not to state facts which may identify a child or their family.

27. We must look at the whole history, what has happened since Ofsted made its decision, and decide the matter afresh. We are not simply reviewing Ofsted's decision not to register the Appellant and whether it is a reasonable one.

28. Ofsted must make out its case on a balance of probabilities. We find that it has discharged the burden. Our reasons follow.

29. By her guilty pleas the Appellant lost not only her good name, but her profession. The ramifications of dishonesty were wide - affecting public confidence in the solicitor's profession in an area of law when she had been appointed to protect vulnerable people, as a partner who had control of client's accounts, deliberately circumventing a system put in place to prevent fraud and bringing the established good name of her firm into disrepute. Members of her family became involved in her offending. The Appellant has paid a heavy price for her dishonesty but as a solicitor she can have been in no doubt of the high standards expected of her and what the consequences would be if she breached them.

30. Weighing heavily against her registration are the points set out at Paragraph 22: the length of time the offences were planned and executed and the large sums involved. We accept that the offences will not be 'spent' until 2024. In any event Form CR1 requires any applicant for registration to disclose whether they have ever been convicted, which will also show up on an enhanced DBS check.

31. The Appellant has advanced some reasons for her offending but it appears on her own explanation she became addicted to taking money and spending it. She herself has acknowledged that there can be no excuses for crime.

32. In her favour she pleaded guilty. She has served her sentence. She has been judged by OASys as at low risk of offending but inevitably the ongoing concerns are around breach of trust. She has sought help to gain an insight into her offending.

33. In her favour the Appellant has worked to rebuild her life. She cannot change what happened and we have some sympathy for the difficulties that

she now faces as she moves on in her life. She has undertaken voluntary work. She has cared for her relatives' children and satisfied Social Services and the Family Court that she was capable of doing so. This decision was based on different assessment criteria and was not about her suitability to provide professional childcare. She has undertaken some relevant courses. She has the confidence of some parents who have written to express satisfaction for the care she gives their children. She has developed relationships in her community whose support has helped her.

34. It may be understandable that the Appellant does not want to dwell on the past but she has applied to be registered in a very regulated area of work where it is inevitable in the light of the history that her record and her trustworthiness will be called into question. Registering her as a childminder would put her back in a position of trust. We acknowledge she would have limited opportunities to handle money but that is only one aspect of trust. .

35. The key point in our decision is that registration by Ofsted is a badge of acceptability, reliability and probity that parents should be entitled to rely on. Parents may reasonably expect that after Ofsted has vetted anyone deemed suitable to be a childminder, they should not themselves then be required to make further complex judgements regarding the fundamental suitability of a person to childmind, beyond the normal range of personal preferences.

36. Having carefully weighed all the evidence we reach the conclusion that it is too early for the Appellant to be registered. Even after weighing the positives in her favour, it is at present too early to conclude she is of good integrity and good character.

37. We have considered whether we could make a condition that the Appellant must disclose her offences to anyone wishing to use her services as a childminder, but that puts the decision on the parents. It would raise issues of what documents needed to be disclosed, because the Criminal Record itself only lists the offences and convictions, such that it does not aid a full understanding of the particular regulations that solicitors must work to and the very high standard expected of them. One character witness has expressed the view that she should be allowed to move on after her 'one past misdemeanour' which in our view exemplifies the problem of understanding the full extent of the offending.

38. In considering whether the decision is proportionate, we have had regard to the possibility of a future registration and that other work in child care is available to the Appellant. She has been careful to check with Ofsted what she can do as an unregistered child minder, so she is able to earn some income and work in way that suits her own family commitments.

## **Decision**

We dismiss the appeal. The decision not to register Mrs Laverick on the Childcare Register is confirmed.

**Tribunal Judge Melanie Lewis  
Primary Health Lists/Care Standards  
First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 21 April 2016**