

Care Standards Tribunal

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

BETWEEN:

Ms Evelyn Ofosuhemma Adjei

Appellant

-v-

Ofsted

Respondent

[2017] 3005.EY

**Before: Mrs Jane McConnell Tribunal Judge
Ms Jennifer Cross Specialist Member
Mrs Patricia McLoughlin Specialist Member**

DECISION

Heard on the 11 October 2017 at the Magistrates Court Colchester, Essex

Attendance

Ms Adjei attended the hearing, gave evidence and represented herself.

Mr D. Toole, Solicitor, represented Ofsted he was supported by Ms A. Curtis, paralegal. The Tribunal heard evidence from their witnesses Ms S. Conaty, Ofsted Early Years Inspector, Ms S. Haylett, Ofsted Supervisory Officer and Ms C. Langley, Ofsted Supervisory Officer and PC T.J. Coe, Essex Police.

Appeal

1. This is the appeal of Ms Adjei against a Notice of Decision dated 28 April 2017 refusing her registration as a home childcarer on the voluntary part of the Childcare Register.

Reporting Order

2. 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.

Procedural issues

3. At the start of the hearing the evidence bundle was checked. Mr Toole handed to the Tribunal additional documents which Ofsted accept that Ms Adjei had sent to them and the Tribunal as part of the appeal process but which had not been included in the evidence bundle. It was established that an application for late evidence was not required and all documents were added to the evidence bundle at G21 to G112.
4. During the hearing, Ms Adjei made an application for a one page print out from Wivenhoe GP Surgery dated the 2 October 2017 to be accepted as late evidence. Mr Toole did not oppose the including of the document into the evidence bundle and we considered that it would be fair and just to do so. It is added as page G113 to the evidence bundle.

The Legal Framework

5. The legal framework for the registration and regulation of childminders is to be found in Part 3 of the Childcare Act 2006. Section 34(1)(b) provides that persons may not provide early years provision on a domestic premises in England unless they are registered in the early years register in respect of those premises.
6. It is uncontroversial that these provisions seek to elevate and regularise the standard of childminding and the demands made on childminders and potential childminders are wide ranging and significant.
7. 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.
8. 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.

9. 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

10. The primary issue before the Tribunal was whether the Appellant was suitable to be registered as home childcarer.
11. Whilst the Appellant has committed two criminal offences and has a history of depression, Ofsted accepts none of these facts make her 'disqualifiable' for voluntary registration. The issue is her suitability to be registered with the focus on her integrity and character.

Background

12. On 1 April 2016, the Appellant made an application on-line to register as a home child-carer on the voluntary part of the General Childcare Register. It was returned by Ofsted the same day as it contained inaccuracies as Ms Adjei had failed to record a previous address on her form. The address was already known to Ofsted as she had been registered as a childminder there when she was previously registered.
13. Data from the Ofsted on-line record system recorded that the form was viewed on the 7, 12, 28 and 29 April 2016. Ms Adjei resubmitted the application on-line on the 29 April 2016 with amended address.
14. As part of the application process, Ofsted request the completion of suitability checks, including a Disclosure and Barring Service ("DBS") check and Health Declaration Check.
15. The Appellant was assessed by Ms Conaty, Early Years Regulatory Inspector during a visit to her at home on 2 September 2016.

The Evidence and the respective cases of the parties:

16. We carefully considered the Tribunal bundle all of which we had read in detail even if we do not specifically mention it.

Appellant:

17. The Appellant made a witness statement dated 10 September 2017. In it Ms Adjei outlines the history of her involvement with Ofsted beginning in 2007 when she registered as a childminder and the parallel development of her family life including birth of her children, her relationship with her now ex-husband, changes of address, death of her grandmother and

employment. She details processes that she has followed in obtaining medical assessment to support her current application to be a home carer including her two medical assessment visits and gives further details concerning her two criminal convictions. Ms Adjei gave oral evidence at the hearing on the key issues.

18. Concerning her conviction for drink driving, Ms Adjei still disputed the evidence of the police that she was driving the car when stopped by them. It remains her evidence that she was sitting in the car, cooling down by having the ignition on to be able to use the air conditioning. She does not consider that she was uncooperative when asked to carry out a breathalyser test, and is clear that she had only drunk one bottle of Nigerian Guinness. Ms Adjei repeated to the Tribunal that she was still of the view that she was not drunk at the time of the incident and that a breathalyser reading of 40 mg/100ml was low. She described how when she arrived at court for the hearing of her first conviction that she had to return home to get her driving license as she had forgotten to bring it with her. She was advised by the duty solicitor to plead guilty which she did. Ms Adjei was then convicted, told that she was disqualified from driving for 12 months and had to pay a fine. Afterwards she told the Tribunal that she had wanted to appeal the decision as she did not accept that she was guilty. When resubmitting the Ofsted application form on the 28 April 2016 Ms Adjei did not amend it to record the conviction she had received on the 12 April 2016 as she did not see how to amend her application and did not realise that it was criminal conviction. She did not subsequently inform Ofsted but had discussed it with Ms Conaty both in the phone call with her in August, and at the registration interview in September 2016.
19. Ms Adjei gave oral evidence on the circumstances of her conviction for driving whilst disqualified. She explained how a friend who was a law student had told her that she could drive whilst disqualified if she had an international licence. The day that she was stopped by PC Coe was the only time she had driven since being disqualified and then she had only done so as she needed to go to the hospital for a dental appointment and had not been able to arrange a lift or get a taxi to take her in time. It was only following her conviction on the 2 June 2016 that she realised that she had committed a criminal offence when it was explained to her in a subsequent letter by the duty solicitor at the court. She could not recall when that was sent to her. Ms Adjei explained that when she was interviewed by Ms Conaty in September 2016 she did not realise that she had two separate criminal convictions. That is the reason why she had not voluntarily declared this second conviction to Ofsted before that meeting, was unclear in her discussion then and in a subsequent phone conversation in October 2016. At the representation hearing with Ms Haylett in April 2017 she was still of the view that these two convictions were the same and so did not deal with them as separate issue. When questioned she said despite the fact that she had been to court on two separate occasions at least three months apart and had received two separate fines and on the second occasion a suspended prison sentence, it remained unclear to her that she had committed two offences that

needed to be declared to Ofsted. Whilst giving oral evidence Ms Adjei told the Tribunal that subsequently she had been to court for the third time for failing to pay her court fine.

20. Ms Adjei described to the Tribunal the occasions where she had sought help from her GP following the birth of her fourth child, her separation from her husband and the death of her Grandmother in 2014. It was only after this last event in 2014 that the GP had diagnosed her as being depressed, as far as she was aware, and prescribed medication Fluoxetine. Whilst she had taken the it for a while, since becoming involved with her church, Ms Adjei realised, following guidance from the Pastor, that she did not need to rely on medication any longer to treat the symptoms of her depression. As a consequence she had stopped taking the Fluoxetine and had told her GP that she had done so. Ms Adjei was not able to say when this had happened.
21. When asked about her filling in the Ofsted application form, Ms Adjei said that she had not realised until pointed out by the Tribunal at the hearing that it required her to disclose any medication that she had taken in the past five years. That she admitted was a mistake. She had been of the view that as she was not taking it then it was not necessary to fill in the details. When questioned about the information given by her GP on their response to the Health Declaration Form, Ms Adjei told the Tribunal that he had lied, that she had seen another GP at the practice who had failed to record that she was no longer taking Fluoxetine and that she had picked up the prescriptions on occasions in error when they were given to her by the surgery. Whilst she had ticked the box on the repeat prescription to receive the Fluoxetine she had done so without thinking as the prescription was just one of a number that she regularly picked up for herself and her children. She assured the Tribunal that she had not taken the medication "for some time". A copy of a repeat prescription contained in the evidence bundle dated March 2017 still included a prescription of Fluoxetine but Ms Adjei explained that this had now been amended. A print out of a consultation note on the 17 March 2017 from Wivenhoe GP Surgery dated the 2 October 2017 records that Ms Adjei had not been taking her Fluoxetine for mild depression as prescribed with the comment it was "*up to her whether she takes it but shouldn't request if not taking ... wants a note as Ofsted report last year says she is taking fluoxetine which she denies*". It goes on to say that the GP can't see the value of a note saying "*she was requesting repeat prescription but says that she didn't take the tablets*". Ms Adjei confirmed that it was her signature on the Health Declaration Form but could not recall whether she had read the fully when she signed the final declaration.
22. It remained Ms Adjei's evidence that at the Medical Screening Assessment with Dr Coker in June 2016 that he had told her that it was not necessary to have a blood test. She had decided not to have the blood test as she hated needles and it was usually hard for medical practitioners to take blood from her. In fact he had said that the assessment could have been carried out over the phone. When asked by Ms Conaty at the registration

meeting in September 2016, Ms Adjei had detailed her medical history and volunteered to take the test again. The outcome of the test had been she was found medically fit to be registered. When questioned about when she had stopped taking the medication for depression Ms Adjei still could not recall when that was. When asked if she was taking the medication at the time of the first medical assessment she said no but that she was of the view that the medication was still in her blood. When asked about the second medical assessment she said that it was the same.

23. In Ms Adjei's own opinion she is a character of good standing who holds position of responsibility in her church. Whilst she is aware that she can be a nanny to children without being registered with Ofsted she wants to be registered as part of a national organisation with the support and regulation it can bring. If registered with OFSTED then families employing her can also claim tax credits from the Inland Revenue. Currently she is walking a child to and from school with her own daughter and has not got any further nanny jobs lined up but is sure that she can pick up more work especially if registered.

Ofsted:

24. The key points relied on by Ofsted in refusing registration were:

- Failure to disclose and provide consistent accounts of two criminal convictions for "drink driving" made on the 12 April 2016 and "driving whilst disqualified" made on the 2 June 2016.
- Failure to disclose and provide consistent medical information specifically a diagnosis of depression and any medication being taken.
- Past record of registration as childminder with Ofsted.

Convictions for drink driving and driving whilst disqualified

25. A copy of the resubmitted application form to be a home childcarer records that in answer to question F3 "*Have you ever received a reprimand, final warning or been given a caution for, or conviction of, any criminal offence?*" that Ms Adjei answers "*no*". Ms Adjei did tick the boxes CR10 and CR 12 confirming that she will inform Ofsted of changes of circumstances as soon as possible and no later than 14 days after the change occurs and will inform them of any significant event which is likely to affect suitability such as offences or orders that may disqualify her.

26. Oral evidence from PC Coe supported and expanded on written evidence contained in his witness statement dated 20 July 2017 covering his involvement with Ms Adjei's first conviction for drink driving and second conviction of driving whilst disqualified. Contemporaneous written evidence of the circumstances of Ms Adjei's first conviction were contained in a police report, copies of the booking-in forms (MGDD/A) completed at the police station and witness statements of Sgt. 42 2335 and PC 4 2573

all dated 27 March 2016. They provide a consistent story that Ms Adjei was seen driving her car as she pulled away from the kerb and was subsequently stopped because she had only her side lights on. Having smelt intoxicating liquor on her breath she was asked by the two PC's to take a breathalyser test which she did and failed with a reading of 47mg/100ml. Mrs Adjei was then arrested and taken to Clacton police station. Two hours later she repeated the breathalyser test and again had excess alcohol in her body of 45 mg/100ml. PC Coe gave evidence to the Tribunal that a reading of over 35 mg/100ml was considered to be evidence of excess alcohol in the blood. The "manner of the subject" in the police report form describes Mrs Adjei as smelling of intoxicating liquor. Her eyes are described as being bloodshot and glazed. Her demeanor is of someone intoxicated by alcohol as her speech and reactions seem delayed. In oral evidence PC Coe confirmed that Ms Adjei was pulling away from the kerb when she was stopped and not stationary. He estimated that she had been traveling for 5/10 seconds and was traveling at a slow speed of what he estimated was 10 mph. He remembered that Ms Adjei's manner had been argumentative and obstructive when stopped and that she had not easily cooperative when asked to take the breathalyser test. Despite being given clear and simple instructions she had failed to blow into the device appropriately and instead blew over, under and around the tube. He referred to his witness statement made at the time where he had described Ms Adjei as being "deliberately unhelpful" and "had failed to accept responsibility for her actions". When questioned by Ms Adjei, PC Coe confirmed that if she had not been driving the vehicle but instead been just sitting in the car then the charge brought against her would not have been drink driving but drunk in charge of a motor vehicle.

27. Written evidence of the circumstances of Ms Adjei's second conviction for driving whilst disqualified were a copy of the police report and a witness statement from Sgt. 42 2335 dated 2 June 2016. PC Coe gave oral evidence that Ms Adjei had been stopped by himself and a colleague after they had seen her driving in Colchester and he recognised her as already being disqualified for driving. On arrest Ms Adjei stated that it was the first time that she had driven since being disqualified; she was on the way to the bank and was stressed as she had a sore tooth. She also stated that she had recently applied for an International Driving Licence which she believed she could use despite being disqualified on her UK licence. At that time she recalled that she had attended Colchester Magistrates Court on the 12 April 2016 and that she had been disqualified from driving. When questioned in interview, Ms Adjei accepted that was disqualified from driving and that she had driven whilst disqualified. PC Coe commented in his witness statement that he was "unsurprised" to find that Ms Adjei had disregarded her disqualification from driving. When questioned he expanded on this by saying that based on his previous experience with Ms Adjei when arresting her for drink driving, in his opinion she "failed to take responsibility for her actions" and her attitude was that "rules did not apply to her". When challenged by Ms Adjei that she had not behaved badly during the drink drive arrest process, PC Coe described

her as being awkward, obstructive and uncooperative.

28. North Essex Magistrates Court Records dated 12 April 2016 confirmed that Ms Adjei had pleaded guilty to driving whilst having 45 micrograms of alcohol in her breath and that she was fined and disqualified from driving for 12 months. A further Court Record dated 2 June 2016 records that Ms Adjei pleaded guilty to a charge of driving whilst disqualified. For this she received a provision sentence of 2 years suspended for 12 months, a further fine and further disqualification from driving.
29. Ms Conaty gave oral evidence supporting her witness statement dated August 2017. She referred to her call notes dated 26 August 2016 when she contacted Ms Adjei to arrange to conduct a registration interview. It records that Ms Adjei had told her early in the conversation that she had not been drink driving, she had been sitting in her car with the air conditioning on, that her alcohol levels were very low and her solicitor had said she was not drink driving. Ms Conaty confirmed that in her opinion Ms Adjei had been agitated on the phone during their conversation and had talked-over her on a number of occasions. The note of the conversation records that the appellant was very defensive.
30. In oral evidence Ms Conaty confirmed that during the registration visit on the 2 September 2016 she discussed the conviction for drink driving with Ms Adjei. Contemporaneous notes of the visit record that when asked why she did not declare the drink driving conviction on her resubmitted application form to Ofsted Ms Adjei replied *"Is it criminal, no, did I kill some-one, no"*. When showed a copy of the completed form, specifically the section stating convictions, she told Ms Conaty that when she went back into the computer to save a copy of the updated document with her DBS number and revised past address that she did not check the document as she did not think it was necessary. Recalling the drink drive incident, she stated that she had not been driving the car at the time but was instead stationary. She had come out of the party for fresh air and had just turned the ignition on. When directly asked by Ms Conaty during the visit whether she had any police involvement or been to court since the conviction in April 2016, Ms Adjei replied *"yes I think I had a caution, they asked me to bring my drink driving licence to the station ... on the day of the case I drove my driving licence back to court and they told me I didn't know that being disqualified meant you cannot drive"*. When asked why she had not disclosed the drink driving conviction in April 2016 on the application form resubmitted to Ofsted Ms Adjei replied *"It would not be right, they took my car off of me, they charged me for driving"*. In response to a question concerning the second conviction for driving whilst disqualified Ms Adjei states *"no you do not understand, no I just had a fine"*. Later when asked why she has not disclosed the information of the driving whilst disqualified conviction to Ofsted or Ms Conaty previously on the telephone, Ms Adjei describes the two offences as *"the same issue, it is not different, that is why, you did not tell me it was about the same issues"*. The evaluation notes of the meeting record that despite Ms Adjei admitting to a second offence for driving whilst disqualified this is

inconsistent with the information provided by Essex Police. Ms Adjei states that this second offence occurred on the day of her conviction of the first offence in April 2016 whilst the police information is that it happened in June 2016. This was not disclosed by Ms Adjei during the Registration visit. Ms Conaty's view was that at the time of the registration visit that Ms Adjei still disputed the facts of the first conviction and was not accepting that she had received a second conviction.

31. The content of a telephone conversation between Ms Conaty and Ms Adjei on the 21 October 2016 was recorded in an Investigation Toolkit report. Ms Conaty had explained to Ms Adjei that two things were holding up the decision making process concerning her registration, the health clearance and the information on her DBS regarding her convictions. In seeking to clarify that there have been two separate convictions Ms Conaty asks Ms Adjei when the disqualification for driving happened and she is unable to recall when the incident happened. Having called a friend, she confirms it was the day that she went to court for the first offence. When asked if she had driven at any other time after she had been to court, Ms Adjei replied *"I took my friend to hospital"*. The written evidence records in the CIE Case Comments that Ms Conaty *"terminated the call because EA was shouting and screaming at me on the phone, I was unable to respond to her"*.
32. Ms Conaty stated in oral evidence that it remain a real concern to her and Ofsted that they had not been able to establish accurate facts concerning Mrs Adjei's convictions despite her being given a number of different occasions to do so. In addition, her reaction to being asked about the incident had been aggressive despite efforts to keep the situation calm and explain carefully what information was required. Ms Conaty explained that at the registration interview she knew of the second conviction but was not allowed to disclose her knowledge. When challenged by Ms Adjei at the hearing that she had disclosed the second conviction during the interview, it remained Ms Conaty's view that whilst reference had been made to a second driving incident that the answers that were given kept reflecting back to the first conviction. This she described as an attempt to deflect attention from this second conviction. At that time Ms Adjei had already been to court twice, had been fined twice and received a suspended prison sentence. Ms Conaty did not understand how she could not recall the second conviction.
33. Giving oral evidence, Ms Haylett confirmed that she had chaired the objection hearing on the 4 April 2016 that followed Ofsted issuing a notice of intent to refuse registration and evidence in her witness statement dated July 2017. She describe the account that Ms Adjei gave at the objections hearing of the driving convictions she had obtained, as confusing and contradictory to the information that had previously been given to Ms Conaty. When questioned at the objection hearing, Ms Adjei said that she did not know at the time she filled in the Ofsted application form that a conviction for drink driving was a criminal record but that she now accepted that it was. It was Ms Haylett's evidence that every time that a question was asking in an attempt to clarify what had happened that

further information was added that made it even more difficult to be clear. In the decision issued following the objection hearing on the 28 April 2017, Ms Haylett sets out that she was not persuaded that a reasonable explanation had been given of the varying accounts as to the convictions or why information was not disclosed. She had concluded that Ms Adjei had not been honest with Ofsted and could not be relied on to be so in the future. Ms Haylett confirmed to the Tribunal that this remained her view.

Medical Information

34. Written evidence included a copy of the Health Declaration Booklet completed by Ms Adjei dated 1 April 2016. Question B3 specifically asks about health conditions, their affect, treatment currently being received and recently received in the past five years. In response, Ms Adjei at box E ticked “no” to “... depression ...” The statement of declaration that she signed was that her answers were “*full and correct*”.
35. Dr P.J. Carr, GP at Wivenhoe Surgery, in his practitioners response to the Health Declaration Booklet dated 8 April 2016 confirms that Ms Adjei has had a past history of depression, has been on anti-depressants since 2014 presently 20mg daily reduced from 40mg daily. He describes her as having “*good compliance generally*” with taking medication. Dr Carr records her previous history of depression as being mild in 2005, 2007 post-natal and from 2011 depression after marriage broke down.
36. A Medical Screening Outcome Report completed by Dr. Coker dated 21 June 2016 recorded as its outcome that Ms Adjei had not co-operated with the process and he had not received enough information to make a recommendation as to whether she was medically suitable to be registered. In his notes Dr. Coker states that he was told that Ms Adjei is no longer taking depression medication regularly as symptoms are much improved, that she is appealing her drink driving conviction and he states that “available evidence” does not suggest that her alcohol intake is of concern. At the face to face assessment, Ms Adjei “did not feel a blood test was necessary” and she hates needles. No objective confirmation of her fitness can therefore be recorded because she declined the blood test.
37. Ms Conaty confirmed in oral evidence that she made initial contact with Ms Adjei by telephone on 26 August 2016 following the non-disclosure of her depression and medication. Cross referencing to her call notes, Ms Conaty described how during the call, Ms Adjei had told her that she had not had a blood test during the medical examination with Dr. Coker as he had told her that it was not compulsory and that she was afraid of needles. If she had known that it would affect her application that she would have had the blood test to prove that she is not an alcoholic. Ms Adjei had clarified that she had previously had depression but that she was not taking medication to support her at this time.
38. During the registration interview in September 2016 Ms Adjei explained her history of depression and confirmed that she had not disclose her

diagnosis on the Health Declaration Form because she has not been taking any medication for over a year. She said that the drug was still in her system and that it was still recorded on a repeat prescription which she collected as it also included a skin cream she still required. It was agreed that a second health management assessment would take place.

39. A second Medical Screening Outcome Report completed by Dr P. Steinberg date 14 December 2016 concludes that there are no issues indicating that Ms Adjei would not be medically suitable to be registered as a childcare provider from the medical assessment or the blood test taken. He records that she *“takes medication for a reactive medical condition that is expected to remain stable and well-controlled as long as she complies with the medication. However, if medication would be stopped, a relapse could occur. If that would happen, I would expect Ms Adjei to notify Ofsted accordingly”*.
40. Ms Haylett confirmed in her oral evidence that at the objection hearing on the 4 April 2016 Ms Adjei explained her history of depression and had brought along a number of unused boxes of her depression medication as proof that she was not taking it. She stated that she did not realise that depression was an illness in the past and she therefore had not told Ofsted. That she had informed her GP that she no longer needed the prescription of medication for depression, that she had not been taking them and that she understood that unused medication could be taken back to the pharmacy. In the decision issue following the objection hearing on the 28 April 2017, Ms Haylett sets out that she was concerned that Ms Adjei had ceased to take her medication without medical guidance and that the Medical Screening Outcome Report completed by Dr P. Steinberg is reliant on the understanding that she is taking medication and is following medical advice. The inconsistencies in the information provided by Ofsted means that they were not satisfied that they could rely on Ms Adjei's account of when she stopped taking medication. Ms Haylett confirmed that her original opinion had not changed, she was still not clear about the time periods over which Ms Adjei was taking prescribed medication and that she still considered that registration with Ofsted should be refused.

Previous registration with Ofsted

41. Ms Langley gave oral evidence to support her witness statement covering the period of Ms Adjei's previous registration as a childminder with Ofsted between 2007 and 2013 and the recent decision not to register her on the voluntary register as a home childcarer. She recounted the history of Ms Adjei's history as a childminder and the fact that she had not regularly had children in her care. On a number of occasions monitoring calls to Ms Adjei had found that she was not currently minding children and therefore inspection visits had not been made to her home. An unannounced inspection visit made on 8 May 2013 found that Ms Adjei's practice was poor and she was not able to meet the requirements of being a childminder. Her registration was suspended. A number of actions were

identified for Ms Adjei to take to bring her up to standard. She had also failed to notify Ofsted of a change of circumstances within the required time period when her husband left the home. A further inspection took place on the 10 July 2013 and Ms Langley, as the inspector responsible, found that very little had been done to meet the actions raised. Ms Adjei was told that her practice was inadequate and that the suspension would remain in place. As a result she decided to resign her registration.

42. In September 2016 Ms Langley had become aware of Ms Adjei's application to register on the voluntary home childcare register. Following discussions with Ms Conaty it was agreed that further information and clarification was required concerning her health declaration and two criminal convictions. On 27 January 2017 a recommendation from Ms Conaty was made that the application to register be refused, the decision was taken by Ms Langley to follow that recommendation and a Notice of Intention to refuse registration was issued on the 7 February 2017. It remained Ms Langley's view that Ms Adjei has demonstrated a lack of respect and regard for Ofsted as the regulatory body. She had failed to understand or acknowledge the significance of her failing to disclose or subsequently make clear to Ms Conaty, her history of depression or driving convictions even when questioned. Whilst now less concerned about her medical fitness, it remained an issue that the contradictory information given meant it still was not clear if she was taking anti-depression medication or not. It had been hard to get to the bottom of the story or to be able to rely on the information that Ms Adjei had given Ofsted during their investigations. As a result she had concluded that Ofsted could not trust her to be open and honest in her dealings with them as a regulator.

Conclusions with Reasons

43. In reaching our conclusions we have had regard to all the evidence including the written and oral 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 the need not to state facts which may identify a child or their family.

44. 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.

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

46. Ofsted has been very clear in presenting their case that it was not the fact that Ms Adjei had two criminal convictions, or was diagnosed or being prescribed medication for depression that meant that her application to register had been declined. What has been of ongoing concern to them was the fact that Ms Adjei had not been able to give them clear and

consistent answers to the questions that they have raised with her concerning her convictions and medical history on a number of different occasions most notably at the registration interview with Ms Conaty, during telephone discussions with her in August and October 2016 and then at the representations hearing in April 2017. The evidence that we considered clearly recorded the changes in Ms Adjei's explanation of events on the different occasions she was asked to explain them. Following the hearing we still remained unclear on a number of issues including why she;

- a. disputed the police evidence that she had been driving her car and then pleaded guilty to the charge of drink driving;
- b. disputed the breathalyser evidence that she had excess alcohol in her blood when stopped by the police;
- c. had not declare this first conviction to Ofsted at the time of resubmitting her application to be registered;
- d. had not realised that her first conviction for drink driving was a criminal offence;
- e. had not realised that her second conviction for driving whilst disqualified was not a criminal offence despite receiving a suspended prison sentence;
- f. drove whilst disqualified based on the advice of a friend;
- g. considered both convictions to be the same incident despite them being months apart and having separate penalties;
- h. was picking up a repeat prescription for medication which she was then not taking;

47. Ofsted also raised a concern about Ms Adjei's defensive and angry reaction on two specific occasions when asked to explain differences in her accounts to them concerning her convictions and medical history. At the hearing Ms Adjei apologised to Ms Conaty for her reactions. An ability to be able to control your reactions, particularly anger, is a quality which we considered is important when dealing with children. It was a further concern to us that the evidence showed that this was something that Ms Adjei found difficult to manage.

48. Whilst the evidence concerning Ms Adjei's previous Ofsted registration was supportive background to the case put forward by them that she had failed to take measures asked of her, we did not find that alone it would have prevented her registration as a home- child-carer. Based on her evidence, Ms Adjei has also sought to establish herself as a person of responsibility within her church and its community. She has kept her skills up to date by taking on-going training courses in first aid.

49. The Appellant has applied to be registered in a very regulated area of work where her trustworthiness will be relied upon. Registering her as a home childcarer puts her in a position of trust. 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 home childcarer, they should not themselves then be required to make further complex judgements regarding the fundamental suitability of a person to provide childcare, beyond the normal range of personal preferences.
50. Having carefully weighed all the evidence we reach the conclusion that the Appellant should not be registered at this time. Even after weighing the positives in her favor, the current evidence is too unclear to conclude she is of good integrity and good character and we are concerned that Ms Adjei has not taken responsibility for the issues around her driving convictions or medical records.
51. 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. Ms Adjei 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 at this time.

Decision

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

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

Date Issued: 27 October 2017