NCN: [2021] UKFTT 386 (HESC)

First-tier Tribunal Care Standards

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

[2021] 4220.EY

Hearing held : Royal Courts of Justice
on 19, 20 and 21 October 2021 V Kinly Hybrid hearing

BEFORE
Ms Melanie Lewis (Tribunal Judge)
Ms Josephine Heggie (Specialist Member)
Ms Sallie Prewett (Specialist Member)

BETWEEN

Maria Amuwa

Appellant

-v-

Ofsted

Respondent

DECISION

The Application

1. The Appellant appeals the Respondent Ofsted's decision dated 21 January 2021 refusing to waive her disqualification from providing childcare which requires registration.

Attendance

2. The Appellant attended and presented her own case. Her witness was her friend Ms. Janet John.

3. Ofsted were represented by Ms Sukhveer Kandola Barrister. Ofsted's witnesses were: –

i. Seema Parma (V) Early Years Regulatory Inspector
ii. Linda du Preez (V) Early Years Senior Officer
iii. Natalia Moroz (V) Early Years Regulatory Inspector
iv. Joanne Wildman (In person. Early Years Senior Officer. Decision maker

Preliminary Issues

4. It was clarified to the parties on the afternoon of 18 October 2021 that the expectation was that this was a hybrid hearing and that the Appellant and Respondent would attend and the witnesses could attend remotely. The Appellant raised no issues in relation to that.

5. At 10:09 am on 19 October 2021 the Appellant rang the administration to say she was too ill to attend. She was asked to put this in an email which she did. She said she had a cold and stomach problems but *'would attend tomorrow.'* At the request of the Tribunal Ms Kandola telephoned the Appellant and she joined a video hearing at 11.09 am on her mobile phone.

6. In response to questions from the Tribunal, Ms Amuwa agreed that she was calling from her car. She said she was in *'south east London'*, so not in her home area of Hackney East London. When asked about this, she said she was travelling to her doctor's surgery but did not give an address and was very vague about where she was. In response to a specific question from the Tribunal she said she could not get out of the car and give a street name. She then changed her earlier statement and said she might not attend tomorrow.

7. Ms Kandola made an application for the hearing to proceed in the absence of the Appellant stating that she had known the date for months, that only the previous afternoon she said she would attend virtually on Days One and Two but attend in person on Day Three and there was a history of non-compliance. The Appellant has withdrawn two previous applications to waiver the discharge so there was a history of not seeing things through.

8. In the event the Tribunal did not need to decide the application. The Tribunal were aware from reading the papers that the Appellant was not always easy to understand due to a strong accent and a stammer. This proved to be the case. A way through was found. The case was put back to 2 pm for the Appellant to attend in person, which she did. She has been told by the Tribunal and Ms Kandola that assistance could be offered in helping her find the venue and that any reasonable adjustments would be made. The Appellant raised no issues in relation to her health during the hearing and the Tribunal noted none.

9. The Tribunal concluded that this case required the Appellant to attend in person in order to fully participate and put her case, so that they could be sure that they were understanding what she was saying. The clerk was available to assist her finding the right place in the bundle. The Tribunal was better able to slow the Appellant down and bring her back to the question as she frequently did not answer the question asked. Breaks were given as appropriate.

Late Evidence

10. On Day Two when she was giving evidence the Appellant mentioned that she had made a new statement. Her appeal statement was mostly "cut and paste" from the previous proceedings, so did not explain what changes she has made. She brought the statement on day three and it was agreed that this should be admitted in order to allow the Appellant to fully present her case. In essence, it was essentially her closing statement.

11. A key issue in the case was that the Appellant had not shown that she had upgraded her knowledge since being disqualified. She had referred at points when being interviewed to training courses but provided no evidence of them. When giving oral evidence she said she had the documentation at home which she brought on Day Three. Again, there was no objection to the Tribunal admitting this. Ofsted's case remained that even if she had done training, she couldn't demonstrate any real understanding of what she had learnt, particularly around safeguarding. We allowed the Appellant to submit this late evidence in order to fully present her case and because it was relevant.

Background

12. The Appellant was registered as a childminder with Ofsted in July 2013. An inspection followed when her service was judged 'inadequate'.

13. On 11 September 2014 the Appellant served with a Notice of Intention to cancel registration. On 14 November 2014, the Appellant was served with a Notice of Decision to cancel the registration as she was no longer meeting the prescribed requirement for registration.

14. She lodged an appeal, and the matter was listed for an oral hearing between 20 to 24 April 2015. The Appellant was represented by a barrister. During the oral evidence additional concerns emerged, including the Appellant's understanding of English and issues around her honesty and integrity. Her barrister was granted leave to withdraw the proceedings. The Appellant feels she was pressured to withdraw and has at points said threats were made to her barrister by Ofsted. The Tribunal explained that they could not go behind that withdrawal which was made with legal advice.

15.The Appellant has applied for registration as a childminder but that is premature because unless there is a waiver of the disqualification, she is prevented from applying for registration. This is her third application for a waiver since disqualification. The other two applications for the waiver to be lifted were made in December 2016 and February 2018, which were withdrawn by the Appellant after she was interviewed.

Legal Framework

16. Section 75 (2) Childcare Act 2006 states that Regulations may prescribe for a person to be disqualified from registration.

17. The relevant regulations are Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.

18. In this appeal the burden of proof is on the Appellant. She must establish the facts upon which she wishes to support a waiver on the balance of probabilities.

19. The Tribunal must make their decision on the basis of all the evidence available at the date of the hearing. The powers of the Tribunal can be found in section 74(4) of the 2006 act. Essentially Tribunal may either confirm Ofsted's decision to refuse or grant a waiver.

Summary of Parties cases

20. Ofsted put forward the following factors from paragraph 379 of the Early Years Compliance Handbook updated March 2019 as being relevant to whether the disqualification should be waived:-

i. The risk to children
ii. Nature and severity of past compliance
iii. The age of any past compliance
iv. The notes of any interviews with the Appellant, including her explanation of and attitude to the disqualifying event.

21. Their case is that the Appellant has :

i) Shown no insight or reflection on failings which lead to her disqualification.
ii) Has not taken any or sufficient steps to address the concerns
iii) Has demonstrated little or no interest in the proceedings.
iv) Provided no written or other evidence of change such as training records
v) Evidence has arisen that shows or causes suspicion that she does not act honestly.
vi) Concerns that she would not co-operate in future with Ofsted.

22. The Appellant's case taken from her limited Grounds of Appeal and her written final statement is that :-

i) She is passionate about working with children
ii) She had made efforts to improve and clean her home setting. Eg: Put in a stairgate and medicine cabinet.
iii) She had undergone training for which as stated she provided certificates.
iv) Her answers in interview around safeguarding and child protection were satisfactory BUT
v) She had a speech impediment which sometimes made it hard for her to express herself and lead to her feeling victimised and upset.

vi) The Appellant had been taken on as a volunteer at the Ann Tayler Centre Children's Centre. She said that she had been told by an Ofsted Officer (whom she named) in the previous case that she could work as a volunteer. The issue for Ofsted was that she has put false information on the form saying she was not dis-qualified and further information that together with other information suggested she had been looking after children.

Evidence

23. The Tribunal read the bundle in advance. For each witness called by Ofsted their detailed statements was cross referenced to appendices and the Tribunal agreed this should stand as their evidence in chief.

24. At all times the Tribunal recognised that the Appellant was presenting her own case. She found it difficult to ask questions and said she had none, even though she did not accept Ofsted's conclusions about her. The Tribunal established the points that she wished to put and asked each witness some open questions. It also asked additional questions about matters that were relevant, to make sure that it understood all the evidence.

25. In the event the Tribunal had no reason to doubt the evidence of the factual issues that arose during Ofsted's very detailed investigation of this case. The issue for the Tribunal is what weight could be attached to them, having regard to the issues that we had to decide. We summarise the role of each professional witness and the response of the Appellant and her witness Ms Johns.

26. Ms Seema Parma was the lead officer on the case between February 2018 when the first waiver application was made and again in September 2019. Ms Du Preez took over in November 2020.

27. In her detailed witness statement, she set out that she discovered that the Appellant had made an application to become a foster parent in 2017 even though she was disqualified from providing childcare. The application did not proceed as she was not prepared to allow information about her personal circumstances to be checked.

28. In a number of documents, the Appellant has stated she was working with children even when disqualified. At interview on 27 September 2018 she was shown the online application where she said she had looked after the children of two families both at home and with after-school pick up from May 2015 to May 2018. She said this was a mistake and said she had worked from 2013 to 2014.

29. The Appellant volunteered that she had been working with a registered childminder as an assistant in a voluntary capacity. When the childminder was approached, she was shocked and said that while she knew the Appellant she had never worked with her as an assistant. The local Authority Early Years Advisor was contacted who knew this childminder well and supported her

version of events.

30. The application form for the Appellant to work as a volunteer at the Ann Tayler Centre was produced. The detailed form was clearly intended as a vetting and recruitment process. The Appellant had said she was not disqualified to work with children, which she again said was a mistake. However, on the same form she had also filled in details of when she had been working with children on , dates after she had been disqualified. She said that was a mistake

31. The Appellant pointed out this was that she was not actually working with children at the Ann Tayler Centre . Ms Wilson the head of the centre confirmed that she had been working in a toy library. Also, the DBS check and section 142 barring lists had not shown up concerns. However, when she learnt that the Appellant was disqualified, Ms Wilson referred the case to the Local Authority Designated Officer (LADO).

32. At this point Ms Parmar was making unannounced visits to the Appellant's flat to see if childcare was taking place but could not gain access.

33. On 14 March 2019 she was unexpectedly contacted by Mr Joe Round from the Local Authority housing fraud investigation team who was involved from 2018 to 2020 as the Appellant had sought to exercise the 'right to buy'. He had visited the premises and also believed for different reasons that the Appellant was operating a childcare business, because the flat was set up for that. In particular there was a poster stating "welcome to Glorious Children's Centre", which other enquiries showed was a name registered at Companies House in 2018 with the Appellant owning 75% shares. She was previously the director of the Holy Mary Glorious Childcare registered at the same address. The photographs to support his conclusions, were in the bundle.

34. Mr Round's investigations also showed up that the Appellant was insuring her car from her friend Janet John's address in Kent. He queried if she was living in Hackney but she said that she did that as the premiums were cheaper. When she gave evidence Ms John said that the Appellant had never actually lived at her address, only parked there occasionally if she was working in that part of South East London/Kent. When it was pointed out to her that this was dishonest, she said the insurance company had said it was alright.

35. Ms. Linda Du Preez came into the case in December 2019 and was allocated three cases; one for the waiver application, another for the application concerns and the other for an unregistered care case. She interviewed the Appellant on 22 January 2020 at the flat in Hackney. Both at interview and since the Appellant has stressed that she had made physical improvements to her premises. Ms Du Preez was concerned that she did not understand that she disqualified, was not familiar with the requirements of the Early Years Regulations and did not understand the role of Ofsted.

36. Ms Du Preez also thought that Appellant's flat was set up to care for children. She denied that she had actually been caring for children. She said

that she had left it this way for three years because it *"made her happy"* and that *"she had a passion for children".* Ms Du Preez gained entry to the flats on 19 February 2021 but the door at 48 Scotney House , Mead Place, Hackney E9 6SN was not opened. The case was closed as they had no evidence of the Appellant providing unregistered care.

37. The Appellant has also applied to be a foster parent but did not pursue this as she did not want to give personal details.

38. As we were told was standard in these interviews, a number of practical scenarios were put to the Appellant and she was asked what issues it raised. Her answers caused Ms Du Preez to conclude she had not demonstrated that she had updated her knowledge of safeguarding and understanding of how to support children's learning and development.

39. Ms Du Preez raised what additional training the Appellant had done. The Appellant did not produce her certificates then.

40. Ms. Natalia Moroz became involved in the case on 17 September 2020 when she was allocated the waiver application case with the linked registration. She interviewed the Appellant for a total of 11.5 hours, once at the flat and twice over a video. She said that this was at least double what she would normally expect.

41. As part of her preparation she spoke to Mr. Joe Round the anti-fraud investigation officer at Hackney LA. He investigated the Appellant between 2018 and 2020, so during the previous waiver applications. The focus of his concerns were suspected fraud. The Appellant was trying to exercise her right to buy. What the investigation did throw up however was that he believed that the Appellant was caring for children as the flat was set up for that purpose. He provided detailed photographs which were in our bundle.

42. The Appellant said that she had not been able to contact the LA for updating training. On 16 October 2020 Ms Moroz spoke to the childminding team manager at Hackney who said she had not contacted the team for any help, support or advice. The team had last had contact with Appellant two years ago when she booked on a literary assessment course but was late by two hours so could not complete it.

43. Like Ms Du Preez, they found that the Appellant was not clear that she was disqualified. She first of all said *"at the moment to my knowledge –I'm not disqualified"*. She said she hadn't done anything to harm children. Even when it was explained to her, she remained confused. It appears she thought she wasn't disqualified because she'd made improvements to the premises.

44. Like evidence for the Tribunal when she essentially resubmitted the statement from 2014, she simply resubmitted the waiver applications that she put in in 2016, 2018 and 2020. She was unable to give a straightforward explanation to Ms Moroz of what changes she had made or how her knowledge had improved .

45. Ms Moroz went to the flat twice and what she saw suggested that the Appellant was not living there. The place was set up as a Children's Centre but on both occasions the bed in the room the Appellant said she slept in was not made. The bathroom and kitchen did not look like they were in regular use.

46. Her answers, for which examples were given didn't demonstrate that she had a good understanding of the EYFS regulations or of child development. She couldn't demonstrate that she knew and understood how to assess children's individual needs and monitor their progress, provide a healthy diet and do so safely, especially when her kitchen was on a different level.

47. Ms Joanna Wildman was the decision maker. Unusually she had direct contact with the Appellant during a series of 4 phone calls from 1 to 3 March 2021, as she was concerned that the Appellant did not have a clear understanding of the waiver decision and appeal process. The appeal application seemed to be agreeing with the reasons for the decision. She was surprised that when she made a prearranged call on 2 March 2021, the Appellant said that she was asleep as she had been working a night shift. Ms Wildman therefore said she would call later 4 pm, but when she did the call was answered by a female with much improved English language skills, speaking very clearly. Ms Wildman terminated the call when she could not answer some security questions to confirm that this was the Appellant.

48. Ms Wildman explained that Ofsted always have to register on intent and test out the childminder's suitability at the first inspection. In her view was luck that no child had actually been harmed whilst in the care of the Appellant. She had not completed the training she had promised to do at the time of registration. This was also of concern to the local authority who had contacted Ofsted to enquire why this childminder was registered without completing the relevant courses that were mandatory in Hackney.

49. The Appellant put in very limited written evidence. She stated on the grounds of appeal that she was now fully aware of the areas where she needed to develop and that she wanted to come into partnership with the Learning Trust and develop her skills. She said that she wanted to make a difference to the lives of children.

50. The Appellant's statement dated 20 June 2021 fails to adequately address Ofsted's response to this current waiver application. The statement appears to be a repeat of her comments on the concerns raised in 2014. In a few added paragraphs at the end she said she made great efforts to improve and clean her home setting. She had put in a new stairgate, medical cabinet, completed her health and safety training, food hygiene safeguarding and first aid paediatric training. These were the courses for which she ultimately provided certificates.

51. The Appellant suggested during the hearing that Ofsted had deliberately changed the application she made to the Ann Tayler Centre stating she had been working with children 2014-2018. When she was under oath, the

Tribunal asked her if she repeated those allegations. She kept avoiding the question which required a 'yes' or 'no' answer. Eventually she said 'no' and suggested the dates were an error and that the keyboard had got stuck or that she had not read it carefully. In response to questions from the Tribunal she could not say what the detailed application form was trying to protect against.

52. The Appellant stated that she felt Ofsted had always been against her since she was registered. During the hearing, the Appellant made her point that if Ofsted considered her suitable to be registered initially, why then was her provision deemed inadequate by the first inspection.

53. She denied that she had worked with children since her disqualification and said that she had worked as a carer for adults. She said she had not made the application to register the Glorious Children's Centre and said possibly her accountant did it.

54. Ms Janet John is a friend of the Appellant. Her daughter had enjoyed being in her care. She clarified that her undated witness statement was prepared for the 2014 proceedings. The reference to Ms Amuwa being her 'formal' childminder should have read 'former childminder'.

55. When cross examined she was asked one question. She said that Ms Amuwa had never lived in her home but parked there occasionally. She knew that she was using her address for car insurance as the premium was cheaper than at her home address in Hackney. She told the Tribunal when they asked why she had allowed this to happen when it was false, she said the Insurance Company had said it was okay.

The Tribunal's conclusions with reasons

56. We have considered all the evidence both written and oral. At all times we were mindful that the Appellant was presenting her own case and took particular care to explain the procedure and relevant laws and regulations to her. We had no difficulty in understanding the Appellant unless she got angry and spoke fast which she did when she felt her good character was under attack.

57. We set out our broad assessment of the witnesses who appeared before us.

58. We find that the professional witnesses called by Ofsted provided honest evidence, supported by detailed notes written and photographs taken at the relevant time or soon thereafter. We were struck by how detailed their case was and how thorough their investigations were. It underpinned how wide Ofsted's investigations can be and in this case were, including working and sharing information with other agencies.

59. We were also struck by the amount of time at Ofsted had spent interviewing and communicating with the Appellant. There was a theme of each witness raising concerns that the Appellant did not seem to understand the processes and the role of Ofsted. Each witness was aware that she had

a stammer and we accept took care to keep communication open with her and explain processes to her with additional care. Overall, taking into account both the written and oral evidence we concluded that the Appellant was not able to grasp what was required of her and what the concerns were that she needed to address.

60. Unfortunately, we must find that there are clear instances where the Appellant has not told the truth. Her witness did not assist her as she came to speak positively of her friend, but she had not read the whole bundle and did not know the whole picture. She allowed her address to be used so that the Appellant could get cheaper car insurance, even though she did not live there. Her explanation that the insurance company had approved this was wholly unconvincing. We attach little weight to her evidence.

61. The burden of proof is on the Appellant and to apply for a waiver it would be reasonable to expect her to have developed some insight and reflection on her past failings which led to the cancellation.

62. Overall, we find a risk to children remains. The risk is illuminated by her inadequate understanding and acceptance of the importance of safeguarding procedures in a childcare setting.

63. The Appellant does not accept responsibility for the fact that she withdrew her appeal against cancellation in 2014. She acknowledges no failings on her part at that that time. She used these proceedings to try and re argue some points. In these proceedings she has focussed on improvements in her property and not acknowledged that her care and understanding of the EYFS Regulations was missing.

64. She has not demonstrated in the six years that have passed that she reflected on those failings and taken steps to remedy them. It would have been reasonable to expect her even acting on her own, to clearly set out the training that she had done and produce certificates at an early stage. In fact, she has done some relevant training which she did mention in interview. This included Pacey online Safeguarding training on 15 February 2017. However, when interviewed on three occasions by three different officers she could not apply this knowledge to practical situations and did not show that she had a secure understanding.

65. The Appellant fell back on saying that she had been registered in 2013 but her first inspection was graded ‘unsatisfactory’. Further, we accept that the requirements for childminders are now more stringent, and they must now have more knowledge especially around safeguarding. When asked an open question by the Tribunal the Appellant did not understand what the Ann Tayler Centre were trying to achieve by asking applicants to submit a very detailed application form. It was concerning that she had no understanding that they were trying to protect vulnerable service users, who might be children, or they might be adults.

66. The Appellant’s lack of knowledge of the EFYS was striking. She was

registered in in 2013 on the second attempt. By the time she was being interviewed by Ms Moroz, this was her third set of interviews so it might reasonably be thought she would improve but her knowledge and ability to apply it, was no better.

67. There were many examples in the detailed recording of the interviews. We pick out some examples. From Ms Du Preez's account the Appellant could name basic symptoms of sex abuse but when presented with a scenario, she said she would tell the child she is safe and ask if she told her parents. Her answers were against good practice as they suggested that the outcome would be child led. Childminders are now expected to help children develop in the wider world but when questions were put about religion and other freedoms, she struggled to understand both the questions and the context.

68. Similarly in the 3 very detailed interviews with Ms Moroz she demonstrated poor knowledge and understanding of the learning and development requirements of the EYFS, even when they should have allowed her to show her practical knowledge of working with children. She was not able to give examples of activities that she would engage the children in need to stretch their knowledge. She showed poor knowledge of child development, for example not being able to provide examples of activities to support a two-year-old in developing their maths skills.

69. She couldn't give examples of how she would effectively teach children or assess their individual needs and starting points. This was a concern specifically cited in the 2014 cancellation decision and the evidence doesn't support that she has improved since then.

70. The Appellant's case is based only on intention and in her closing statement she said that she will work with Ofsted. From 2014 the concerns about her ability, to remain compliant and a lack of cooperation and engagement with other professionals/agencies remain. Concerns about her ability to communicate remain. She gets agitated if she feels that her good name is challenged. A childminder must expect to be challenged and to have to explain themselves with documentation if appropriate.

71. Those concerns we find are much wider than just her oral communication. She does not understand what is required of her and as these proceedings have shown, she cannot put her case across. We make every allowance for the fact that she has presented her case herself, but she has not been able to set out even in simple form what she has learnt and what she can now do to keep children safe. She was not even clear about how many children she intended to mind and what ages they would be. This is important given that there were concerns about how she managed the children in a two-level property in 2014.

72. Can the Appellant be trusted to keep children safe? On the evidence overall, she cannot. There is evidence from a number of sources that there is reason to doubt her honesty and integrity. Trust is critical for someone who works in childcare particularly in a domestic setting when she would be

working alone.

73. We find that the Appellant's attitude to disqualification is critical. She has failed to disclose the disqualification to the Ann Tayler Centre. She has failed to disclose it to her employers. She initially said on her application form that she was not disqualified.

74. Has she worked with children in clear breach of that disqualification? On her application to the Ann Tayler Centre she not only put 'no' in the box that asked if she was disqualified but she set out dates in her writing on another sheet that she was working with children. She set out at the top of the sheet that this was her work history 2011 to 2018. Five voluntary and paid works were listed and in two of them she said that she worked with children after 2014.

75. Further, there is credible evidence based on what the Local Authority Officer and the Ofsted inspector saw in the flat which suggests that it had been set up to run a childcare centre there. We have seen the photographs and it is not credible that the Appellant's home would be set up like that for 6 years unless that was the intention. Toys were set up on a stacking system with a bookshelf. There was a board with notices on. There was a first-aid kit and fire extinguisher. Two such companies were registered at Companies House. The Glorious Children's Centre was registered in 2018. There was a handwritten sign with that name displayed prominently in the flat.

76. There is no hard evidence that she was actually caring for children, that is, no children were seen. However, we infer from the fact that the Local Authority Officer Fraud Office who had held the case for 2 years had sufficient concerns that he contacted Ofsted, that this was a real possibility. The Ofsted Inspectors who saw how the flat was set up, agreed.

77. Both she and her witness Ms Jones were prepared to allow an address she does not live it to be put forward in order to get cheaper car insurance. That situation continued until she needed to show her car insurance to prove her address. She had to show the care agency that she currently works for she had current car insurance and they have queried why the certificate did not show the home address in Hackney. Mr Round from Hackney LA did the same.

78. We reject that the Appellant as she claims tried to be in contact with Hackney Learning Trust. Ofsted were easily able to get in touch with them and their records showed that the Appellant had been out of contact for 2 years. A childminder can undertake their own study in a way that suits them. Each Local Authority will set different requirements and Ms Moroz explained that in Hackney they are more stringent. They require childminders applying for registration to undertake certain of their courses, in particular safeguarding. The Tribunal clarified that being disqualified is not a bar. Hackney set a literacy assessment as a first step and the Appellant was late, so could not take it on that occasion.

79. We remain concerned that any training the Appellant has undertaken in

the last six years hasn't led to an embedded and improved knowledge.

80. In summary the Appellant has not discharged the burden of proof to show that the reasons that led to the cancellation have been sufficiently addressed and remedied by her.

81. The decision is both proportionate and necessary. The risk to children and the need to protect them is key and the reason for the EYFS Regulations. The Appellant has put forward no particular factors other than her wish to work with children and that she believes she is competent. We have found she is not. For the last 6 years she has earnt her living outside childcare.

Decision:

The decision dated 21 January 2021 to refuse to waive the disqualification of Maria Amuwa from providing childcare which requires registration is UPHELD.

Judge Melanie Lewis

First-tier Tribunal (Health, Education and Social Care)

Date Issued: 03 November 2021