

Neutral Citation number: [2022] UKFTT 430 (HESC)

First-tier Tribunal Care Standards

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

[2022] 4526.EY

Hybrid Hearing at Bradford Tribunal Centre on 7 – 11 & 14 November 2022

BEFORE

Tribunal Judge - Timothy Thorne
Specialist Member - Mr J Hutchinson
Specialist Member - Ms D Rabbetts

BETWEEN

Ms Ebiere Odumah
My Horizon Care Limited
Ms Ebiere Odumah

Appellants

-v-

Ofsted

Respondent

DECISION

Representation

The Appellant: Represented herself

The Respondent: Mr Praveen Saigal, Solicitor/Advocate, Ofsted

The Appeals

1. This case involves 3 joined appeals:
 - a. Appeal 1 [2022] 4526.EY brought by Ebiere Odumah against Ofsted's decision on 2 February 2022 to cancel her registration as a childminder.
 - b. Appeal 2 [2021] 4248.EY brought by My Horizon Care Ltd against Ofsted's decision on 3 March 2021 to refuse to register them as a provider of a children's home. Ebiere Odumah is the sole director of My Horizon Care Ltd.
 - c. Appeal 3 [2021] 4249.EY brought by Ebiere Odumah against Ofsted's decision on 3 March 2021 to refuse to register her as the manager of a children's home.

2. In relation to Appeal 1, Ebiere Odumah has been a registered childminder on the Early Years Register and both parts of the Childcare Register since June 2012, operating from her home address at 324 Oakwood Lane, Leeds LS8 3LF. The Respondent's reasons for cancelling the Appellant's childminding registration are set out fully in the Notice of Decision dated 2 February 2022 at pages H400-414 of the hearing bundle. The reasons for cancellation can be summarised as follows:
 - a. Failure to cooperate with Ofsted including failing to make herself available for inspection and poor attitude to regulation; and/or
 - b. Knowingly providing false/inaccurate information to Ofsted and/or the Student Loans Company Limited (SLC) and/or
 - c. Significant concerns about the Appellant's honesty and integrity. In particular, the Appellant informed Ofsted that she was not providing childcare due to being on sick leave because of stress but was at the same time involved in submitting claims for payment to the SLC.
3. In relation to Appeals 2 & 3, on 5 October 2020, Ebiere Odumah submitted an application to the Respondent to register as a provider of a children's home. The home was to be called '*The Oaks*'. She also applied to be the responsible Individual and registered manager. Fit person interviews and site visits were carried out on 14 and 20 January 2021. A notice of proposal to refuse was sent on 1 February 2021. Both Appellants then sought to withdraw their application for registration, however the Respondent did not consent to such a withdrawal. No written representations were made by either Appellant to the Notice of Proposal. On 3 March 2021, the Respondent sent a notice of decision to refuse registration to both Appellants which appear at pages H180-195 and H196-207. The main reasons for the refusals were that Appellants did not meet the requirements of registration, as they did not have the knowledge, skills, or experience to operate and manage a children's home in line with the Care Standards Act 2000 and the Children's Homes (England) Regulations 2015.

Restricted Reporting Order

4. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the users of the service in this case so as to protect their private lives.

Late Evidence

5. During the hearing Ofsted submitted as new evidence further witness statements from Debbie Wolloshin dated 28/10/22 & 11/11/22 and attached exhibits.
6. 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 (as and when such applications were made) as it had some relevance to the issues in dispute.

The Hearing

Preliminary Matters

7. Ebiere Odumah represented herself. The Panel made every effort to ensure that she had a fair hearing. The Judge explained the procedure at regular intervals during the hearing and ensured that she understood and was given adequate time to prepare and had sufficient and regular breaks. After each witness called by Ofsted finished examination in chief, there was a break and Ms. Odumah was given time to prepare her questions. When she gave evidence, she was assisted by the Judge in adopting her witness statements. The same procedure was adopted for her witnesses.
8. In addition, prior to her giving evidence (in light of the allegations made by the SLC) the Judge reminded Ms. Odumah of the privilege against self-incrimination and warned her of the consequences of her choice to give evidence. She was given time to consider what the Judge had said. In addition, at the end of the hearing the Judge advised the Appellant of the purpose of submissions and gave her what time she requested to prepare her closing remarks to the Panel

Witnesses Attending

9. The following witnesses attended on behalf of the Respondent:
 - a. Aimee Hill, Early Years Regulatory Inspector
 - b. Debbie Wolloshin, 2nd Tier Review Officer (SLC)
 - c. Diane Plewinska, Early Years Senior Officer
 - d. Aaron Mcloughlin, Social Care Regulatory Inspector
 - e. Rachel Holden, Senior HM Inspector, Social Care
10. The following witnesses attended on behalf of the Appellant:
 - a. The Appellant Ebiere Odumah
 - b. Valerie Tulloch, Director, Quality Children's Homes
 - c. Leonard Hird, Consultant
 - d. Nichola Taylor, Company Director
 - e. [Redacted] parent witness

Evidence called on behalf of the Respondent

11. The following is a summary of R's evidence. The Panel first heard oral evidence from **Aimee Hill** an Early Years Regulatory Inspector, in post since January 2020. She adopted her witness statements in which she stated that "I first became aware of the Appellant on the 3 February 2021 when this case was assessed as part of our duty risk assessment process. We received information from Ofsted's regional social care team that the Appellant, had been issued with a Notice of proposal to refuse registration to open a children's home as both the provider and the manager of the home. The Appellant is also a registered childminder on the Early years register and both parts of the General childcare register under the terms of the Childcare Act 2006. The case was referred to the early years team in the region as in the event of having her application to register a children's home refused could result in the Appellant becoming disqualified under the

Disqualification Regulations 2018. This would impact on her registration as a childminder.”

12. She stated that “I telephoned the Appellant on the 15 February 2021. I asked the Appellant if she was currently caring for children. The Appellant stated that she did have children on roll but was not currently caring for any early years children and was only caring for children over the age of 5 years. She explained that due to the ongoing coronavirus pandemic this care was provided as and when parents requested this.”
13. She also explained that “On the 19 February 2021 I completed an unannounced regulatory visit. During the visit the Appellant stated that no minded children were present. Also, the Appellant would not allow me to enter her main home due to her own children being at home.....At the start of the visit the Appellant told me that she did not believe that I should be considering the requirements of the EYFS as she was not caring for any early years children. I confirmed with her that she was registered on all registers, including the Early Years Register to which she agreed. I explained to her that as she was still registered on the early years register that she must still be able to demonstrate that she meets the safeguarding and welfare requirements of the EYFS.”
14. In addition, she stated that “I also told her that I believed she had breached the legal requirements by failing to notify us of the Notice of proposal to refuse registration of a children’s home. This is because under 3.77 of the EYFS it clearly stated that Ofsted should be notified of ‘any significant event which is likely to affect the suitability of the early years provider or any person who cares for, or is in regular contact with, children on the premises to look after children”.
15. The witness also explained, “On the 26 February 2021 I received information from Senior officer, Ms Plewinska, that the Appellant was claiming costs from the student loans company for children in her care.... this showed that the Appellant was caring for early years children. In addition, some of the children that the Appellant was claiming for were not on the registers that had been provided to me during the visit on the 20 February 2021.”
16. In addition, “On 3 March 2021 I was informed by the social care team that a Notice of Decision to refuse the application to register a children’s home had been served. On the 9 April 2021 we became aware that the Appellant was operating a domiciliary service which was registered with the Care Quality Commission (CQC). The Quality Care Commission had informed us that they had completed an inspection on 10 February 2021 of a registered social care provision in the name of ‘My Horizon Care’ of which the Appellant was the registered manager, and that the outcome of the inspection was a judgement of inadequate. We had not been made aware of this by the Appellant despite it having taken place prior to my visit on 20 February 2021.”

17. The witness and a colleague unsuccessfully attempted unannounced visits to the Appellant on 23 April 2021 and 7 May 2021 and on that later date “the Appellant sent me a copy of her sick note which stated that she had been signed off work with stress from 7 May 2021 to the 20 May 2021. On 1 June 2021 I telephoned the Appellant to enquire if she had returned to work. She explained again that she had been signed off by her GP for a further two weeks. I explained to the Appellant that due to a change in health I would be requesting a new updated health declaration booklet to be completed by herself and her GP.” The properly completed updated health declaration booklet has never been provided to Ofsted.
18. The witness unsuccessfully attempted another unannounced visit to the Appellant on 4 August 2021. Also, on 18 August 2021 she received an updated claims list from the Government’s student loans company which showed that, except for two weeks in May, the Appellant had made claims for children in her care up to the 13 August 2021. However, the Appellant was still stating to Ofsted that she was not working.
19. On 22 September the Appellant told Ofsted that her sick note had been extended to October. Ms. Hill explained that “On 13 October 2021 I received updated information from the Government’s student loans company that the Appellant has continued to make claims for children in her care up to 20 September 2021. This may suggest the Appellant is still operating as a childminder and caring for children while telling Ofsted that she is not working and not caring for children or could indicate that she is not working as a childminder but is still making regular misleading claims to student loans. Whichever were the case, this would impact substantially on the Appellant’s ongoing suitability on the basis of concerns around her honesty and integrity.”
20. “On 15 October, following receipt of this information from the SLC, I called the Appellant and tried to arrange a visit with the Appellant. During this call the Appellant adamantly refused to meet with me and said that Ofsted did not have the power to inspect or visit the Appellant when she was off sick. The Appellant also said that she would not make herself available for a visit and told me that ‘I could do what the I like’. I asked the Appellant to confirm that she was refusing to make herself available for a visit. The Appellant said ‘Yes, I am not making myself available, you do not have powers and you are not going to force me to let you visit.’ This is another example of the Appellant’s continuous failure over many months to appropriately engage with Ofsted and seriously questions the Appellants ongoing suitability.”
21. As a result of this telephone call, Ofsted held a case review, and a decision was made to suspend the Appellant’s registration as a childminder. Ms. Hill and a colleague then visited the Appellant on 25 October 2021 and stated that “During the visit the Appellant provided me with registers up to, and including, 10th February 2021. The last two weeks of the registers detailed she was self-isolating and had not cared for children since 25 January 2021. The Appellant also stated that she had not cared for any children since then. During the visit I also asked the Appellant how she was supporting herself

financially. She explained that she had a CQC registered provision that provided care for children and adults with needs in their own homes. I asked her if she had any other further sources of income and she stated that she did not and that if she needed any support, she could get this from family members. I also asked the Appellant if there was anything else that she needed to tell Ofsted about and she stated that there was not. It is of concern to us that the Appellant failed to declare that she had been claiming from the SLC during this time. I gave the Appellant several opportunities to tell us about other sources of income and she adamantly denied this.”

22. Following on from the visit, Ofsted received further information and evidence from SLC that suggested the Appellant had been conducting childcare services while telling Ofsted that she has not done so. This included information to suggest that childcare has been provided while the Appellant has been suspended. On 15 November 2021, Ofsted issued a Notice of Intention to Cancel Registration of the Appellant’s Ofsted registration as a childminder. Ofsted subsequently issued a Notice of Decision to cancel the Appellant’s registration on 2 February 2022.
23. The witness outlined the allegations made by the SLC and the subsequent concerns of Ofsted as follows: “On 8 November 2021 Ofsted received additional information in the form of telephone calls made by the SLC to students using the Appellant’s childcare for their children. This information suggested that the Appellant had potentially been continuing to provide childcare while informing Ofsted that she had not. Two students in particular told the SLC that the Appellant had been continuing to care for their children at her premises. One of the students claimed the Appellant cared for their children up to the 24 October 2021. In addition, a second student claimed the Appellant cared for their children on 1 and 2 November 2021. The Appellant’s registration as a childminder with Ofsted was suspended on the 15 October 2021.....Therefore, based on the information we had from students who accessed the Appellant’s childcare, Ofsted believed that the Appellant may have committed an offence by providing childcare while suspended. In addition....the Appellant told me that she had no children on roll. However, during a telephone call between the Appellant and the SLC on the 2 November 2021 the Appellant told the SLC that she had approximately 14 children on roll. This again brought into question whether the Appellant was being truthful with Ofsted.”
24. The witness added; “The Appellant has continued to tell Ofsted that she is not childminding due to mental health illness and has been adamant about this for several months. The Appellant has also told Ofsted that she has no other source of income. Ofsted believes this not to be true as we are aware that the Appellant has claimed in excess of £59,000 from SLC over a period of 9 months. If the Appellant has not been providing childcare, Ofsted believes the Appellant has been involved in making false claims to the SLC for childcare that she has not provided. Alternatively, if the Appellant has cared for children in accordance with the claims made, then she has deliberately and consistently concealed the childcare from Ofsted, including by not providing attendance registers.”

25. As a result of the concerns about providing childcare whilst suspended, on 16 December 2021, Ms. Hill and colleagues conducted an interview with the Appellant under caution in accordance with the Police and Criminal Evidence Act 1984. The Appellant was questioned about the offence of acting as a childminder without reasonable excuse, while registration is suspended contrary to s.69(9) of the Childcare Act 2006. During the PACE interview the Appellant was made aware of the information received from the Student Loans Company (SLC), Ms. Hill stated that “During this interview, the Appellant answered some initial questions such as confirming the address from which she is registered to provide childcare and the registers she is registered on. When asked about the last date the Appellant provided childcare she began to answer, ‘no comment’. This continued throughout the remainder of the interview apart from the Appellant stating that she had not claimed any monies from SLC while suspended.”
26. In addition, on 20 December 2021, Ms. Hill visited the Appellant’s property again to conduct an unannounced suspension monitoring visit. Ms. Hill stated “During this visit I felt that the Appellant, Ms Odumah, was verbally aggressive towards me while I was undertaking my duties as an inspector. The Appellant also allowed another person who was on a phone call to her to also shout at me. I reported this behaviour to my line manager as I considered this to be unacceptable behaviour. Just as inspectors follow a code of conduct for behaviour the Appellant is also expected to uphold professional conduct at all times as a registered childminder. I believe that the Appellant did not act in the manner I would expect of a suitable and professional childcare provider. As a result of this visit and a subsequent discussion with my Senior Officer I completed an internal Health and Safety form describing the incident.
27. Ms. Hill also gave evidence that “Following an information request to SLC on 16 March 2022 by Ofsted, we were provided with the contact details of three parents who had claimed to have accessed childcare provided by the Appellant during periods of time when the Appellant was either suspended or was telling Ofsted that she was not childminding and had no children on roll. I attempted to arrange visits to these three parents to discuss this in further detail. Of the three parents, only one subsequently agreed to meet with me. I telephoned all three parents. One parent upon hearing the Appellants name immediately put the phone down and I was unable to make further contact with them. This was a parent who had told the SLC that she had accessed childcare while the Appellants registration was suspended and just the day before the phone call made by SLC to them. A second parent initially agreed to meet with me and then telephoned me to cancel the appointment. She stated that if she was not legally obliged to meet with me she did not wish to do so. When asked, she did not give any further reasons.”
28. “During a visit to the parent who did agree to meet with me on 11 April 2022, she told me that she had started accessing childcare with the Appellant on 24 September 2021. This childcare consisted of the Appellant collecting the

parent's children from their own home and taking them to school two to three times per week which would take approximately 20 minutes. A cost of £76.00 per week per child for 3 children was claimed by the Appellant through the SLC. The parent now claims that this childcare ended around the 15 October 2021 when the Appellant informed her of the suspension. The period of time the childcare was provided is during a time when the Appellant was continuing to tell Ofsted that she was not providing childminding services for any children."

29. In oral evidence she was shown a number of blank contracts supplied by the Appellant which purported to be those she used. Ms. Hill stated that Ofsted have never received any signed contracts from her and the blank ones contained a retainer clause which supposedly allowed the Appellant to continue to charge fees even though no child minding was taking place because she was off sick. She had never seen such a clause before and it was not a normal practice within the industry. It was put to Ms. Hill in cross examination that the Appellant had not been aggressive during the visit but Ms. Hill maintained that she was and produced contemporaneous notes to support her recollections of the visit and phone calls with the Appellant.
30. The Panel then heard (via CVP Link) from **Debbie Wolloshin** a 2nd Tier Review Officer within the Customer Compliance (CC) team of The Student Loans Company Ltd (SLC). She adopted her witness statements in which she explained the SLC system by stating that "A person undertaking a higher education course can have their childcare costs paid for by the Student Loans Company. Students can receive 85% of their weekly childcare costs or a fixed maximum amount, whichever is less. This money is a grant, rather than a loan. During the 20/21 Academic Year the fixed maximum amounts were as follows; £174.22 per week for 1 child and £298.69 for 2 or more children. During the 21/22 Academic Year the fixed maximum amounts were as follows; £179.62 per week for 1 child and £307.95 per week for 2 or more children.....A student can only receive childcare costs if they use an Ofsted registered childcare provider.
31. She explained that since August 2019 "Childcare grants are now paid into a Childcare Grant Payment Service (CCGPS) account. The childcare provider will send requests for payment to the CCGPS, which the student will then approve through their account. The provider will be paid directly from the money in the student's account. The childcare provider has an account in their own name. If, for example, they have five students using their service, the childcare provider would log in to their account and request payment for childcare that had been provided to each student's children. If, for example, a childcare provider requested payment for three days of childcare, at a total of £80, the student would then log in to their account, confirm that the childcare costs are correct and authorise the payment to the childcare provider. This is generally done by the childcare provider on a weekly basis, though it does not have to be done weekly. When a childcare provider creates an account with the SLC, they have to provide their bank details, so the payments can be made directly. This would have been the case with Ebiere Odumah."

32. The witness went onto explain the details of their investigation into the Appellant and stated, "One of our investigators attempted to contact Ebiere Odumah on 10th October [2022] to conduct an interview and she advised she was not available until next week. An email was then sent advising of a new date and time for the interview. The interview was attempted again on the 19th and 20th of October and Ebiere Odumah did not answer the call or attempt to return the call. The case was then sent to our 2nd Tier Review officers with the recommendation that Student Loans Company will no longer transact with Ebiere Odumah and that her details will be added to CIFAS. The 2nd Tier Review officer agreed that Ebiere Odumah had made fraudulent claims for childcare payments due to the fact that she had provided Ofsted with evidence that she was unable to work due to illness between May 21 and October 21, however we had received a total of 257 weekly claims for that period totalling £28,600.66."
33. "Furthermore, Ebiere Odumah had advised Ofsted that she did not care for any children under the age of 5, however we received claims for 4 children under the age of 5 in February 2021. Therefore, the recommendation above was upheld and a decision letter was issued to Ebiere Odumah to advise."
34. "Ebiere Odumah provided a blank copy of her contract to Ofsted which confirms that she charges a retainer fee for periods of sickness. Ebiere Odumah had to confirm via the declaration on the Childcare Grant Payment Service that the request for payment did not relate to any period during which the child was not in attendance. Only one of the students namely, Maureen Nneka Anozie, has sent in a copy of their contracts and those contracts do not advise that they would be charged a retainer fee for periods of sickness for the childminder....None of the students have evidenced that they have paid the remaining 15% to Ebiere Odumah."
35. Ms. Wolloshin produced a screenshot of the declarations that the Appellant made when applying for the SLC grants outlined above. She explained that the Appellant would have to "tick a box" on the electronic application form stating that she had read and agreed to the declarations and only then could she be paid. The declaration prior to 27/08/2021 stated *"By raising this request for payment: I/we declare that the request for payment is for sums due in respect of childcare services provided on the specified dates and that the charges are true and complete, and do not include free hours the parent is entitled to. I/we understand that it is an offence to knowingly provide false or inaccurate information. I/we understand that if I am/we are found to be making fraudulent requests for payments, my/our service and personal information, as well as the student's information, may be shared with fraud prevention and/or law enforcement agencies. I understand that information provided will be shared with the Student Loans Company Limited. As such it is subject to their standard privacy policy."*
36. The declaration after 27/08/21 also stated that *"I/we declare that the request for payment is for sums due in respect of childcare services provided on the specified dates and that the charges are true and complete,*

and do not include free hours the parent is entitled to.” In addition, it stated that the childminder declared that the request for payment did not relate to any period during which the child was not in attendance other than a temporary break such as absence for sickness or holidays. In her oral evidence Ms. Wolloshin said that payments were not to be made if the childminder was off long-term sick.

37. Ms. Wolloshin also stated that “From the 9th September 2021, Ebiere Odumah has requested 89 payment amounts covering a 7 week period meaning she would have ticked the declaration at least 7 times to say that it was for a period the children were in attendance.”
38. She also said it was a “red flag” if (as was the case with the Appellant) a provider had a very large proportion of student parents as her clients. She was shown the bank account statements of one of the Appellant’s parent clients and it showed a payment from the Appellant to the client of £580. This was described by the witness as a “huge red flag”.
39. In her questioning of the witness, the Appellant alleged that the one signed contract from her childminding service did not contain the retainer clause because some pages were missing. Ms. Wolloshin said that this was what was provided. She said that she had never seen a childcare contract that had a retainer clause which required parents to pay a childminder if they were off on long term sick leave.
40. The Panel then heard from **Diane Plewinska** an Early Years Senior Officer, Northeast, Yorkshire and Humberside Region who had been in post since October 2009. She adopted her witness statement in which she outlined the Appellant’s regulatory history with Ofsted and the decision-making process which led to the appeals before us. Her evidence effectively repeated much of what Ms. Hill had said.
41. She stated that “On 15 October 2021, following legal advice we served a suspension notice, exhibit DP/1. This was because we believed that children were, or maybe were, at risk of harm. This decision was not taken without due consideration of the impact on the Appellant’s registration. This was because we had received information from the SLC that she had allegedly been providing childcare...We received an appeal to the suspension notice on 2 November 2021 of which we agreed to defend. However, the Appellant then withdrew her appeal.”
42. The witness also stated “The suspension has continued to be extended at the relevant six-weeks periods, to date. This is because we continue to believe that children are, or maybe, at risk of harm due to the ongoing lack of cooperation, denial and inconsistencies in the Appellant’s previous and ongoing accounts with regards to her health and SLC claims. We cannot trust the Appellant to provide truthful information to Ofsted and/or other agencies about whether she is caring for children. The Appellant has not appealed any further periods of suspension.”

43. In response to questions from the Appellant. The witness went through what she knew of the Appellant's registration history. She also exhibited **Ofsted's Code of Conduct** published on 4 March 2020 and last updated on 1 September 2022. Under the heading "Expectations of providers" it states *"Inspection and regulatory activity rely on the integrity and cooperation of providers. We expect providers to be open and transparent, maintain a positive working relationship with inspectors and inspection support staff, and to uphold the highest professional standards. In meeting this expectation, providers should:*

- *be courteous and professional, treating inspectors and inspection support staff with respect*
- *approach the inspection or regulatory activity with integrity and be open, transparent and honest. This includes providing evidence – or access to evidence – that will enable the inspector to report honestly, fairly and reliably about their provision. It means not withholding or concealing evidence, or providing false, misleading, inaccurate, or incomplete information*
- *enable inspectors to observe the normal functioning of the provider, and not make arrangements that might mislead inspectors,*
- *act in the best interests of children and learners, and put their well-being, education and care above the provider's interests or reputation*
- *provide opportunities for inspectors to meet with children and learners and staff*
- *expect that inspectors will usually need to both observe practice and talk to staff or children and learners (and employers where relevant) without a manager or registered person present, and when necessary, facilitate for that to happen*
- *work with inspectors to take all reasonable steps to minimise disruption, stress and bureaucracy*
- *ensure the safety of inspectors while on their premises*
- *maintain purposeful and productive communication with the lead inspector and the inspection team*
- *bring any concerns about the inspection or visit to the attention of the lead inspector promptly and in a suitable manner*
- *make inspectors aware of any CCTV cameras and ensure that there is a private room without CCTV available for inspectors to discuss inspection evidence and hold confidential discussions*

If providers do not act in accordance with these expectations, this may have an impact on the leadership and management judgement and/or affect providers' suitability to remain registered."

44. The Panel then heard from **Aaron Mcloughlin** a Social Care Regulatory Inspector (SCRI), in the North East, Yorkshire and Humber region. He had been in this post since January 2020 and said he had over 18 years' experience working in children's residential care. He adopted his witness statement in which he stated "On 14 January 2021, I was asked to support my colleague, Simon Morley (SCRI), with the registration application of 'The Oaks'..... I arranged with Ebiere Odumah (Appellant two) by phone for the visit to take place on 20 January 2021. I sent an email to Ebiere Odumah on 18 January 2021 to inform her in writing about the details of the visit, the

time of my arrival, and what I needed to occur on the day to ensure that COVID-19 safety measures, such as social distancing, could be followed whilst I was at the home, as well as relevant information I would need to look at.”

45. He continued: “On 20 January 2021, I attended ‘The Oaks’ premises. I arrived at approximately 10:00am. I introduced myself/showed my ID and signed in. I was greeted by [the Appellant] and her colleague Michael Bray. On my arrival I informed both that I would firstly be looking around the property, then I would look at the relevant documentation that I requested in my email. I also requested to see several other policies and documents that were named in the Appellants registration application. I agreed I would look at these once I had inspected the premises.”
46. The witness outlined his findings which included physical defects with the interior of the building and lack of sleeping arrangements for the proposed staff. There was also inadequate paperwork concerning health and safety arrangements and policy documents. There were also deficiencies in staff recruitment policies and reference checking for staff as well as local risk assessments. He stated, “In my view, the building had been insufficiently prepared by the Appellants for the Ofsted registration visit.” He also stated, “I do not believe that the Appellants are able to meet the requirements for registration, as they do not have the knowledge, skills, or experience to operate a children’s home in line with the Children’s Homes (England) Regulations 2015.”
47. The witness also said “I am aware from the Appellants’ appeal that my conduct during the visit has been brought into question. In response, this is the first time someone has called me cold and robotic. The Appellants are entitled to have a view about my physical and verbal presentation. However, this is not in keeping with how I would consider my presentation to be, or has it been described in this way before by anyone else before, professionally or personally. Eye contact was made with the Appellants throughout the visit when I was in the same room.”
48. In response to questions from the Appellant, the witness denied being robotic and cold and not making eye contact during the inspection. He also said that he gave her adequate time to provide the documents he required.
49. The Panel then heard from **Rachel Holden** one of the Senior Her Majesty’s Inspectors, Social Care, North East, Yorkshire, and Humber Region who had been in post since 4 January 2020. She adopted her witness statement in which she said “I was the decision maker in the case review following the registration visit to ‘The Oaks’ and the fit person’s interview of Miss Odumah....On the 28 January 2021 I attended the case review; I listened to the evidence provided and read the evidence to support the proposal to refuse both applications. As part of the case review and my decision making, I considered the notes of Simon Morley’s interview with [Miss Odumah]. Simon Morley has since left Ofsted.”

50. She went onto explain “The overarching reason why I agreed with the proposed decision to refuse registration, was that Miss Odumah did not demonstrate that she had the required knowledge and experience of the practical application of the Children’s Homes (England) Regulations 2015 (the “Regulations”). All applicants must demonstrate a good level of knowledge and understanding before registration is granted and the Appellant’s knowledge and experience was poor, which was my conclusion on reading and hearing the information presented. In addition, Miss Odumah does not have any experience of residential care to meet regulation 28 of the Regulations.”
51. She added “A further concern was the lack of robust staff recruitment practice which means that children could be cared for by adults who were not suitable and therefore putting children at risk of harm. The process to be followed is clearly set out in Schedule 2 of the Regulations and yet there were gaps in the employment history of staff, references not verified and why employees had finished their previous work appointments had not been explored. In addition, there were health and safety issues identified in the home such as no fire evacuation plan, and a poor location risk assessment. Further, the sleeping arrangements for staff were not acceptable as the arrangement of adults sleeping in staff, in a children’s space on a pull-out bed, is not conducive to safe care practice. The statement of purpose that the Appellant supplied to Ofsted with the application form did not meet the requirements covered in Schedule 1 of the Regulations……. The decision to refuse the application of the proposed children’s home was also based upon the pictures of the home’s interior which I viewed and the description given of second-hand furniture, a rusty fridge, cracked tiles and dirty marks on the walls. This is not a nurturing environment for children who are in care.”
52. She further explained that “I therefore made the decision to refuse the home’s application and the Appellant’s application to be the registered manager due to the reasons set out in the notices of proposal, which I exhibit as RH/1. The Appellant then made a request to withdraw her registration application to be the registered manager and the registration of the home on 24 February 2021. I made the decision to continue with the decision to refuse the application as the Appellant did not meet the requirements for the role as registered manager, the home was of a poor standard for children and I believed that this posed a safeguarding concern.”
53. In addition, she explained in a second witness statement further concerns in respect of the skills and experience of Miss Odumah for the purposes of Regulation 28. She stated: “The Department for Education (DfE) ‘guide to the children’s home regulations 2015’ sets out at paragraph 10.21, that ‘any registered manager placed in charge of a children’s home should have substantial relevant experience of working in a children’s home’. Miss Odumah has never worked in a registered children’s home. Miss Odumah stated within the fit person interview she has volunteered and then completed bank staff work for inspire homes, however this is an unregulated setting and not a children’s home and therefore this does not constitute substantial relevant experience.”

54. She added “We have sought further information as to her role at this setting and it was confirmed by her referee Mr Brown, that Miss Odumah volunteered in a 16+ setting from Dec 2018 to Dec 2020. She undertook weekend shifts only (when asked how many weekends, he couldn’t recall the amount of shifts – just said it was most weekends). She was not able to undertake any further work during the week due to other commitments. Initially these shifts involved shadowing other workers, given her inexperience. Mr Brown stated that Miss EO’s role did progress and she offered direct 1-1 support for young people with their independence programmes, and the occasional group work sessions around key skills. She did not have any direct management responsibility, but did shadow managers/staff around the completion of records. Miss Odumah also did not include this pertinent information on her list of work experience on the SC2 application form.”
55. The witness also stated that as a result of the SLC investigation “leads me to conclude that Miss Odumah does not also meet Regulations 26 and 28, in that she is a not a person of integrity and good character. These are fundamental requirements of registration as a provider and are specific requirements of each director, the registered manager and the responsible individual.”
56. In addition, she said that “Within their appeal submissions, the Appellants made a complaint about the conduct and questioning of the social care regulatory inspector Aaron Mcloughlin during the on-site visit. This was not raised following the visit. These concerns have been investigated by a regulatory inspection manager who was not involved in the decision making or in the management of Mr Mcloughlin. The concerns were found not to be substantiated on the evidence provided. Ofsted has not received any similar comments regarding this inspector.”
57. In oral evidence she said that the Appellant had now submitted to Ofsted 3 different statements of purpose for the proposed children’s home. The original one dated 05/10/20 stated that the proposed age range for the children to be cared for was 0-17. The second statement of purpose dated 09/11/20 stated that the proposed age range for the children to be cared for was 5-17. The third statement of purpose dated 07/07/21 stated that the proposed age range for the children to be cared for was 8-17. She said that it was unheard of for babies to be cared for in a children’s home and the change in age ranges was concerning.
58. In response to the Appellant’s questions the witness said that she did not know that the Appellant wanted to make an application for a joint registration with the CQC. No such application had been made to Ofsted. She also explained in more detail why the various documents put to her by the Appellant were inadequate for registration of a children’s home.
59. In addition, the panel read the witness statement of **Paul Traynor**, Customer Compliance Analyst, Student Loans Company (SLC) which

merely repeated the information given by Debbie Wolloshin. We also read the witness statement of **Simon Morley**, Social Care Regulatory Inspector who was unable to attend the Tribunal as his mother was sick. He conducted the “Fit Person Interview” with the Appellant related to her application to run the children’s home. His evidence was essentially covered by the testimony of Rachel Holden. In his witness statement he said that “During the interview the Appellant failed to evidence that they have adequate experience and understanding relating to working with children. For example, the Appellant had a poor knowledge and understanding of her own policies, health and safety assessments and relevant regulations. In addition, the Appellant’s overall knowledge of the children’s homes regulations was poor....In addition, the Appellant was unable to demonstrate her understanding of The Children’s homes regulations, including quality standards. This does not demonstrate that the Appellant has the necessary skills and knowledge to manage and operate a children’s home.”

60. Mr. Morley added that “The overarching lack of residential children’s home experience was evident.” He concluded by stating that “The Appellant failed to evidence that they have adequate experience and understanding relating to working with children. For example, the home environment was not suitable for children. The Appellant had a poor knowledge and understanding of her own policies, health and safety assessments and relevant regulations. In addition, the Appellant’s overall knowledge of the children’s homes regulations was poor (see RH/4 pages 7-12 and page 14). Therefore, I was not satisfied that the application for ‘The Oaks’ was suitable for recommendation.”

61. In her submissions to the Tribunal at the end of the hearing (which are set out more fully later in this judgement) the Appellant said that she thought that Simon Moreley had concluded in the notes of his “Fit Person \interview” that she did have the necessary experience. She referred to the note at page H227 of the bundle which simply reads “EO meets the experience requirements of regulation 28.” However, the Panel takes the view that when looked at in the full context of all the notes made by Mr. Morley (and what he said in his witness statement) it is clear that this is a reference to the claim made by the Appellant during the interview. This is made clear at the end of the interview notes (at page H239) where Mr. Morley records that in relation to the requirement of “Knowledge of Regulations Qualifications, skills & experiences” his judgement is “not met”. Moreover he notes that “...she has no direct work experience in a registered children’s home. This lack of her experience shows in her poor knowledge of the children’s homes regulations, poor policies and the poor state of the home at the point of registration.”

Evidence called on behalf of the Appellant

62. The **Appellant** gave evidence and adopted her three witness statements dated 07/07/21, 28/07/21 and 11/05/22 and associated exhibits. She stated in those witness statements that “I have been an ‘early years’ registered childminder with Ofsted since August 2012. Over that period, I have operated in compliance with the legislation relating to childminders. In terms

of Ofsted inspections, these have been positive, and I have been commended by Ofsted for the manner in which I run my childminding service. At no point has Ofsted ever taken enforcement action against me and, in relation to the last two Ofsted inspections in 2014 and 2017, I was awarded Good ratings on all aspects of the service.”

63. She also stated; “In October 2020, my company applied to register as the provider of The Oaks children’s home. The premises in question would accommodate up to 3 children. The property was fully refurbished by me in preparation for the application. Photographs of the premises are attached to the report of Mr Leonard Hird, a care consultant and an ex-Ofsted inspector, who is advising me in respect of the service.”

64. In addition, she said: “My recollection of the fit person interview was that it went reasonably well. I answered the questions to the best of my ability. In preparation for the fit person interview I did familiarise myself with Ofsted’s statutory framework and supporting guidance and I felt confident in my knowledge of the Children’s Homes Regulations 2015. I believe that I have the skills and experience to supervise and manage the operation of The Oaks, were registration to be granted.”

65. She also stated: “In relation to the inspection of the premises....I did not feel Aaron McLoughlin came with an open mind, rather I felt that he had a fixed opinion of me and my proposed service. There was no eye contact made by him during the visit and I was disturbed by certain comments he made about my age, which I considered inappropriate. My recollection is that he said words to the effect “you look really young, are you really planning to manage this service?”. In actual fact, I have considerable experience in working in childcare services which I feel that he did not give proper regard to. Such was my concern about how I had been treated by him, I subsequently made a complaint to Ofsted, raising issues of discrimination, which unfortunately was not investigated by Ofsted on the grounds that I had submitted it late.”

66. The Appellant also stated “An allegation is made that my staff recruitment processes were poor. However, I believe I followed safer recruitment processes by doing an enhanced child workforce DBS check, as well as ensuring that the applicants completed application forms.....Within this allegation, Ofsted also raises issues about the statement of purpose and the location risk assessment for not meeting regulatory requirements. I have now reflected on the content of those documents and accept that improvement can be made to them. As a result, I have produced a revised statement of purpose and new location risk assessment.”

67. She added “Concerns have been raised by Ofsted about hazards in the home. I do not accept these were hazards; at most they were trivial, cosmetic issues that could be addressed very quickly.” She also outlined her experience of working with children in various settings over the years. She also gave further details of her CPD courses and why the home should be registered with Ofsted.

68. In relation to the investigation by the SLC and the related PACE interview, the Appellant said “I attended the interview with a legal representative and followed their instruction to answer the questions as no comment. Most of the questions were around childminding whilst suspended and monies received from SLC. I never child-minded whilst suspended in exchange for money.”
69. Also, in relation to the investigation by the SLC, she said “I have worked with SLC since 2011. I went by the standard practice in the childcare industry and as stated on my childminding contract which parent agreed to. See Exhibit EO1 (Childminding contract). As a result, the allegation that I made claims to SLC is disputable. With regards to my honesty and integrity in question, in all my dealings with the regulatory bodies, in business I have never conducted myself in a manner that is deemed to be dishonest or lacking of integrity because good character is very fundamental to who I am as a person and this has been demonstrated throughout the duration in my role as a childminder.” Exhibit EO1 is at page 1273-279 and purports to be an example of the Appellant’s childminding contracts but it has not been filled in or signed by anyone.
70. She went on in her witness statement to state: “During the unannounced visit carried out on the 20th December by the inspector alleges that I was aggressive towards her, this was completely untrue. I have always cooperated with Ofsted during these monitoring visits that were carried out unannounced. There were times when the inspector visited and I was not at home, I always gave her full access to my property when I was present. I have always been respectful and given her full access to my property even when it was inconveniencing to me and my children.” She also added that she had had good inspection reports from Ofsted in 2014 and 2017.”
71. She concluded by stating that “My expectation is that the goal of Ofsted is to see childminders succeed and stay in their role but instead what I got was continuous harassment, bullying and punishment which clearly shows that there was no good intention on your [i.e. Ofsted’s] part to allow me to benefit with the guidelines that you provide to other providers that would have been in my situation. I was never given the benefit of a second chance, rather you carried on punishing me, depriving me from earning a living in a field that I love. I have provided a valuable service to my community for 10 years and all of a sudden it is being threatened by Ofsted. Ofsted you need to stop punishing me and do your job in good faith.”
72. In oral evidence the Appellant said that it was never her intention to defraud the SLC she merely followed her fees policy about retainers. She said that parents knew they had to pay her even though she was not providing care for their children when she was off sick. She said, “I know it comes across as bogus.” She was asked why she had not provided any signed contracts with the retainer clause in them and she replied, “My understanding was that these contracts were in the bundle supplied by Ofsted.”

73. It was not disputed that Ms. Hill had visited the Appellant on 25 October 2021 and asked the Appellant how she was supporting herself financially. The Appellant had explained that she had a CQC registered provision and Ms. Hill asked her if she had any other further sources of income and the Appellant stated that she did not and that if she needed any support, she could get this from family members. In cross examination the Appellant was asked why she had not mentioned to Ms. Hill about her payments from the SLC. The Appellant replied, "I applied my contract. I kept the money separately". She further explained later that she did not tell Ms. Hill because "it was not income and I intended to return it and it wasn't for childcare." She also said that all the parents under the SLC scheme had paid her their 15% of the fees even though she had not delivered childminding services to them. She also said that she had returned all this money to the parents.
74. She was asked about the declarations she had made by checking the box on the online application forms for grants from the SLC. She said that she was aware that the declaration had changed and explained "I cant remember what the declaration said and how it was different from what it said before." She later said "I started ticking the boxes in 2019. After a very short while I stopped reading the declaration. I now realise I should always read it. This is a lesson learned."
75. She also said that she had tried to give some of the money back to the SLC on 02/12/22 but was told that there were no systems that allowed her to do so. She was asked why she had never told Ofsted this and she replied, "because Ofsted does not trust me and I don't trust Ofsted." She was asked how much money she was prepared to repay and she said she did not know. She was asked over what period of claims was she intending to return the money to the SLC and she replied, "I wont answer." She also explained that the £580 paid to the parent was to allow the person to take it to Nigeria and buy a remembrance for the Appellant's father who had died in 2000.
76. She said she did not recall the phone call with Ms. Hill on 15/02/21 when it was recorded that she told Ms. Hill that she was not caring for Early Years children. She also denied trying to avoid Ofsted inspections and visits. She also denied being obstructive or aggressive during Ofsted visits. She explained, "I am African. It can seem I'm raising my voice." She later denied raising her voice.
77. She later said that Ofsted was "trying to build a case against me" and explained that "I am a woman of colour. My skin colour does not belong in this sector. There was prejudice and bias. I was continuously disregarded and ignored. They wouldn't trust me, and I felt imprisoned." She accused Ofsted of being racist.
78. The Panel then heard evidence from **Valerie Tulloch** via CVP video link. She adopted her witness statement which stated she was the Director of Children's Homes Quality which she described as "a company with the sole purpose to support those leading children's homes to provide outstanding care." She gave her own qualifications and experience and stated that the

Appellant “maintained contact over the months seeking informal guidance on particular issues relating to establishing The Oaks but a formal contracted service was not provided.” She recommended the services of Leonard Hill. In oral evidence she said that she would be happy to help the Appellant in the future if she ever became a registered provider. She also said that she was not aware of the details of the allegations made against the Appellant by the SLC.

79. Next the Panel heard evidence from **OF** [name redacted] She adopted her witness statement which stated she was a lecturer and a friend of the Appellant who provided childcare services for her in December 2000 when the witness was in hospital. The witness spoke highly of the Appellant and would recommend her services. In oral evidence she said that she was not aware of the details of the allegations made against the Appellant by the SLC.

80. The Panel then heard evidence from **Nichola Taylor** via CVP video link. She adopted her witness statement which stated she was “a director of multiple companies.” She stated that “I have known Miss Odumah since 2012 our sons attended the same school and we become good friends. We met regularly and often had business discussions. I become an advisor and close confidant. I regularly visited Miss Odumah’s home and place of work. Her employees always seemed very happy and helpful.” She added that “In 2016 we was selling a small part of the company which Miss Odumah purchased for a large sum of money. Miss Odumah paid promptly, and we continued to have a great working relationship and friendship. Over the decade I have known Miss Odumah, I have found her to be a very honest hardworking person who as a single mother provides very high standards for her children, family and anyone who is in her care”

81. In oral evidence she said that the Appellant “puts her children first to a very high standard. She works really hard as a businessperson. I’ve never seen anyone work so hard.” She also she said that she was not aware of the details of the allegations made against the Appellant by the SLC.

82. The Panel then heard evidence from **Leonard Hird** via CVP video link. He adopted his witness statement which stated he was “an Independent Consultant currently working with Children’s Homes Quality.” He stated: “I have worked for four regulatory bodies involved in Social Care e.g., Durham County Registration and Inspection Unit, National Care Standards Commission, Commission for Social Care Inspection and Ofsted. I worked as a Manager in three Durham County Council Children’s Homes. I have worked as a Teacher in special education for Durham County Council. I have developed a Social Care Company to advise organisations on social care matters for both young people and adults. As part of my brief with these organisations it has involved me with the preparation of assisting members of staff ready for their Register Manager interviews with CQC.”

83. He stated that “Ms Odumah contacted Children’s Homes Quality to enquire what services they might be able to provide as she was in the process of

setting up a Children's Home". He produced a report to assist her dated 12/06/21. It can be found at page I301-305. In the report Mr. Hird said he disagreed with Ofsted's decision to refuse her application for registration of the children's home. He thought that her safeguarding arrangements were effective and that her experience as a childminder made her a suitable person to run a children's home. His conclusion was that "Ms Odumah, given the opportunity and with the increased knowledge she has started to develop on her Level 5 would be suitable to be a Registered Manager Home provider. A more balanced and proportionate assessment by Ofsted may have indeed identified further support or required additional evidence. However, two independent professional agencies and regulators Ofsted Early Years and the Care Quality Commission have also attested to her fitness. In my professional opinion, as someone who has worked for Ofsted and registered managers and homes, the decision to press for a refusal of registration and the resultant disqualification seems disproportionate and unwarranted."

84. In oral evidence he said that he thought he was giving evidence as an expert but accepted that he had not stated in his report that he understood his duties to the Tribunal. He said that he had been instructed by Vallerie Tulloch but he could not remember the date of his instructions. He said when he prepared his report the Appellant had only provide him with the first statement of purpose. He was aware that there were two subsequent statements of purpose but the Appellant had never shown them to him.
85. In cross examination by Mr. Saigal, the witness agreed that the Appellant's first statement of purpose was "a woeful piece of work". He stated, "if I had still been working for Ofsted I would have told her to withdraw her application and come back later".
86. Mr. Saigal asked the witness which regulations he had relied upon in his report to conclude that the Appellant met the fitness requirements for knowledge and experience. Mr. Hird wrongly stated that they were "regulations 4, 5 & 6 of the Children's Home Regulations 2015." When it was pointed out to him that it was in fact regulations 26 & 28, Mr. Hird said "I may have possibly been looking at the wrong information." He explained that he had left Ofsted in 2013 and "I am lacking in depth and I am not up to date with the information."
87. It also became clear during cross examination that the only evidence from Ofsted that Mr. Hird had seen since he was instructed was the Notice of Refusal. He said the Appellant had only asked him to give evidence at the beginning of October 2022 and he had first seen the bundle of evidence immediately prior to giving evidence.
88. He agreed that at the time of the application the Appellant lacked the necessary experience of working in a children's home required for registration. He also said that the Appellant had not informed him of the SLC allegations of fraud against her.

Submissions

89. The Panel read the skeleton arguments prepared on behalf of the Respondent and Appellant. The skeleton argument submitted by the Appellant was undated and had been prepared some time ago by solicitors who had represented her in relation to Appeals 2&3. The document did not deal with Appeal No. 1. The Panel is satisfied that it has jurisdiction to consider Appeals 2&3 despite arguments to the contrary in the document which (in any event) were not pursued by the Appellant. The document also claimed that the Appellant met all the necessary requirements of the Children's Homes Regulations 2015, namely Regulations 6, 13, 16, 26 (7)(b), 28, 32, 34 and 46. It also claimed in particular that she had sufficient experience to meet the requirements of the Regulations.
90. Mr. Saigal adopted his skeleton argument and developed its contents in oral submissions which it is not necessary to repeat here. The Appellant's hour-long oral submissions to the Panel began by her saying that she thought it unfair that she was not allowed to withdraw her application and "I am not unsafe with children." She then said "I wanted to help parents and children from a similar background to me. Ofsted has not been responsive to my ethnicity." She then said that she had complained about Ofsted inspectors and "Ofsted didn't like that and that's why they have done this to me." She added "I am being punished because I challenged the regulator and I have called for a change." It was at this stage that she began to raise her voice, pointed her finger in an accusatory manner towards Mr. Saigal and also banged the table with her fist. Her voice was raised for the majority of her submissions.
91. She said that "it's all discrimination" and Ofsted have put in documents to discredit me." Later she said "Regardless of what I do they have made up their minds to assassinate me in their actions in continued unnecessary unannounced visits. Why were there these continuous inspections? They were looking for things to discredit me."
92. She added "I am not a liar or lazy. I will never change who I am but I do have faith in the justice system and this court." She explained that she had not provided documents as requested by Ofsted because "Ofsted will just use it to work against me."
93. She criticised the actions of the Ofsted inspectors and that "It was all preconceived. They just wanted to come for me. Their motive was to come and destroy a young black woman who was successful. Why do we have to struggle as black people. I felt trapped and imprisoned." She added later "If I was a white person would it be the same process?" She concluded by saying that "This is a clear act of discrimination at all levels."

Legal Framework

In Relation to Appeal 1

94. The legal framework for the registration and regulation of childminders is to be found in Part 3 of the Childcare Act 2006. The prescribed requirements

in the 2006 Act include matters set out in the Childcare (Early Years Register) Regulations 2008 and the Childcare (General Childcare Register) Regulations 2008. Part 1 Schedule 2 Childcare (Early Years Register) Regulations 2008 state that an applicant must be *'suitable'* to provide early years provision. Part 1 Schedule 2 and Part 1 Schedule 5 of the Childcare (General Childcare Register) Regulations 2008 stipulate that an applicant for registration on part A (compulsory part) of the General Childcare Register and part B (voluntary part) must be *'suitable'* to provide childcare.

95. As set out in the Tribunal decision of *Ofikwu v Ofsted* - 2022 4499 EY; *"A key requirement that underpins the statutory framework is that the provider is "suitable". The concept of suitability embraces an evaluation of matters such as honesty, integrity, reliability, openness, transparency, insight, as well as attitude to the regulator and other agencies. It also embraces the issue of trust and confidence."*
96. Section 68(2) of the 2006 Act states that Ofsted may cancel a person's registration if it appears that the prescribed requirements for registration cannot be satisfied. Section 74(1) of the 2006 Act provides a right to appeal to the Tribunal.
97. In such an appeal Ofsted must prove on the balance of probabilities the facts and matters it relies upon to justify cancellation including the core allegation that the Appellant is unsuitable. It must also demonstrate that the decision to cancel the Appellant's registration is proportionate and necessary. On appeal, the Tribunal is considering matters afresh. The powers of the Tribunal can be found in section 74(4) of the 2006 Act. Essentially the Tribunal may either confirm Ofsted's decision to cancel or direct that it shall not have effect.

In Relation to Appeals 2&3

98. The grounds for refusing the registration of a social care provider are set out in section 13 of the Care Standards Act 2000 which states the following:-
- (1) *Subsections (2) to (4) apply where an application under section 12 has been made with respect to an establishment or agency in accordance with the provisions of this Part.*
 - (2) *If the registration authority is satisfied that—*
 - (a) *the requirements of regulations under section 22; and*
 - (b) *the requirements of any other enactment which appears to the registration authority to be relevant,**are being and will continue to be complied with (so far as applicable) in relation to the establishment or agency, it shall grant the application; otherwise it shall refuse it.*
99. Section 22 of the Care Standards Act 2000 specifies that Regulations may impose requirements on a provider. In the case of children's homes, this would be the Children's Homes (England) Regulations 2015. Regulations 26 and 28 require that a person (i.e. each applicant including the registered manager and the responsible individual) to be of *"integrity and good*

character". Section 21(1) of the Care Standards Act 2000 provides a right of appeal against the decision of the registration authority, i.e. OFSTED.

100. The burden of proof is upon the Appellant to prove on the balance of probabilities that they meet the requirements for registration. This includes demonstrating that they are suitable to be registered and that they will be able to carry on the establishment in accordance with the relevant requirements, including those set out in the Children's Homes (England) Regulations 2015. (*Jones v Commission for Social Care Inspection [2004] EWCA Civ 1713* and *Marshall v Commission for Social Care Inspection [2009] EWHC 1286 (Admin)*).

101. On appeal, the Tribunal is considering matters afresh. The powers of the Tribunal can be found in section 20(3) of the Care Standards Act 2000. Essentially the Tribunal may confirm the decision of the registration authority or direct that it shall not have effect.

Conclusion In Relation to Appeal No. 1

102. For reasons given below the panel concludes that the Respondent has proved on the balance of probabilities that cancellation of the Appellant's registration was entirely lawful and necessary because she did not and does not now satisfy the prescribed requirements for registration, in particular the core requirement of suitability.

103. The Panel is satisfied after considering the evidence as a whole that Ms. Odumah has shown herself in multiple ways to be unsuitable to be a registered childminder. First, she has failed to abide by her duties under Ofsted's Code of Conduct as a provider to be open and transparent, maintain a positive working relationship with inspectors, and to uphold the highest professional standards. In addition, she has failed to meet the standards set out in the Code requiring her to be courteous and professional, treating inspectors with respect and the requirement to approach the inspection or regulatory activity with integrity and be open, transparent and honest.

104. We accept the oral evidence of Aimee Hill an Early Years Regulatory Inspector (which was supported by contemporaneous notes) which established that in a phone conversation with the Appellant, on 15 February 2021 Ms. Odumah claimed that she was not currently caring for any early years children. This was contrary to the claims for monies she was making to the SLC. Moreover, we accept Ms. Hill's evidence that during a phone call on 15 October 2021 the Appellant flatly refused to allow her premises to be inspected by Ofsted. This was evidence of her failure over many months to appropriately engage with Ofsted.

105. In addition, the Panel accepts that during a visit to the Appellant on 25 October 2021, Ms. Hill asked Ms. Odumah if she had any other further sources of income and she stated that she did not and that if she needed any support, she could get this from family members. We also accept that Ms. Hill asked the Appellant if there was anything else that she needed to

tell Ofsted, and she stated that there was not. This exchange clearly shows that the Appellant was not being open and transparent in her dealings with Ofsted by not stating that she was receiving income from the SLC. We do not accept the Appellant's explanation that "it was not income and I intended to return it and it wasn't for childcare." We also do not accept her testimony that all the parents under the SLC scheme had paid her their 15% of the fees even though she had not delivered childminding services to them and that she had returned all this money to the parents. The Appellant has provided no evidence from these parents to support her claims.

106. Moreover, the Panel does not accept the Appellant's claim that she had tried to give some of the money back to the SLC on 02 December 2022 but was told that there were no systems that allowed her to do so. No attempt to obtain evidence of this has been made by the Appellant

107. In addition, the Panel accepts that during a visit to the Appellant on 20 December 2021, Ms Odumah, was verbally aggressive towards Ms. Hill. Such was Ms. Hill's level of concern about the Appellant's behaviour that she completed an internal Health and Safety form describing the incident. We conclude that this constitutes a failure by the Appellant to meet the standards set out in the Code requiring her to be courteous and professional, treating inspectors with respect. This is further evidence of the Appellant's unsuitability. We do not accept the Appellant's explanations that "I am African. It can seem I'm raising my voice."

108. The Panel heard evidence (outlined above) that the SLC have made a finding that Ms. Odumah has made fraudulent claims for childcare payments over a long period. This matter may be referred to the police for prosecution in the criminal courts. Ms. Odumah is of course entitled to the presumption of innocence in relation to any criminal allegations arising. The Panel has not drawn an adverse inference from her failure to answer questions in the PACE interview. In any event, the Panel must decide this appeal on the balance of probabilities and is not conducting a criminal trial.

109. What is clear however, is that on any view the Appellant has not acted in a professional or open and transparent manner in relation to these claims. There was clear evidence that in order to make the claims she would have to "tick a box" on the electronic application form and make declarations that certainly after 27/08/21 stated that "*I/we declare that the request for payment is for sums due in respect of childcare services provided on the specified dates...*"

110. The Panel did not accept the Appellant's explanation that she thought the grants covered periods when she was not working due to illness and was covered by a retainer clause in her contracts of engagement. First the Appellant has not submitted any signed copies of a contract containing that clause. We did see blank contracts containing a retainer clause which supposedly allowed the Appellant to continue to charge fees even though no child minding was taking place because she was off sick. But we accept the evidence of Ms. Wolloshin from the SLC that she had never seen such

a clause in a contract before and it was not a normal practice within the industry. All of this aforesaid evidence calls into question the Appellant's honesty and integrity and renders her unsuitable.

111. Moreover, the Appellant claimed that she did not read the declarations before making the claims. Even if that is true it shows a gross lack of professionalism which also makes her unsuitable to be registered.
112. In addition, there was copious evidence before the Panel that established that the Appellant has no understanding of the need for Ofsted regulation and was now unable to work with Ofsted. There has been a complete breakdown in trust which is a requirement for regulation to work.
113. In her oral evidence and oral submissions, she made it clear that she has a very hostile and suspicious attitude towards Ofsted which effectively renders it impossible for Ofsted to deal with her. This effectively makes her unsuitable because she does not understand the need to maintain an open and cooperative relationship with Ofsted. She explained her lack of transparency and openness towards Ofsted by saying that the reason she had not told Ofsted that she had tried to give some of the money back to the SLC was because "Ofsted does not trust me and I don't trust Ofsted."
114. She also exhibited a complete lack of understanding of the need for Ofsted to carry out inspections saying "Regardless of what I do they have made up their minds to assassinate me in their actions in continued unnecessary unannounced visits. Why were there these continuous inspections? They were looking for things to discredit me." This also renders her unsuitable.
115. In addition, the Appellant has made serious and unsubstantiated allegations against Ofsted inspectors and has alleged that Ofsted as an organisation is racist. In her testimony she said "I am a woman of colour. My skin colour does not belong in this sector. There was prejudice and bias. I was continuously disregarded and ignored. They wouldn't trust me, and I felt imprisoned." She also said of Ofsted that "Their motive was to come and destroy a young black woman who was successful."
116. After considering all the evidence the Panel is satisfied that Ofsted is not a racist organisation and the inspectors who dealt with the Appellant were not racist and behaved at all times in a courteous and professional manner. The nature of the unsubstantiated allegations made against them by the Appellant and her attitude towards Ofsted shown during the hearing confirm in our judgement that she cannot work with the regulator and this also renders her unsuitable.
117. After considering the evidence in the round (including the testimony of the Appellant and her witnesses) the Panel concludes that the Respondent has proved on the balance of probabilities that the Appellant is unsuitable to remain registered.

118. In relation to the question of proportionality the Panel accepts that the Appellant's human rights are engaged in this case. The Respondent has satisfied us that the decision taken was in accordance with the law. We are also satisfied that the decision was objectively justified and necessary in order to protect the public interest which includes the safety, wellbeing, and needs of children accessing childcare provision, as well as the maintenance and promotion of public confidence in the system of regulation.
119. The Panel accepts that cancellation will have a serious impact on the Appellant's life and career and ambitions. The Panel noted the character evidence given on her behalf and the good reports from Ofsted in the past. The decision will also adversely affect the children and families who may rely on the Appellant's services. However, we also note that the suspension of her registration has been in force for a very long time and we infer that parents who used her services in the past have now made alternative arrangements. We heard no evidence from parents who would be affected by the cancellation of the Appellant's registration.
120. In any event we attach very significant weight to the public interest in children being looked after in a way that is compliant with the regulations and in particular that the provider is and remains suitable and is able to deliver care in accordance with the requirements of the regulations. We consider that the public interest outweighs the interests of the Appellant and all those affected. As we have concluded that the Appellant is unsuitable, therefore conditions cannot be imposed.
121. In our judgement the decision to cancel registration was (and remains) lawful, reasonable, necessary and proportionate. The decision to cancel registration on the grounds of suitability is confirmed. The appeal No. 1 is dismissed.

Conclusion In Relation to Appeals No. 2 & 3

122. For reasons given below we conclude that the Appellant has failed to prove on the balance of probabilities that she and My Horizon Care Limited meet the requirements for registration of a children's home.
123. The Panel accepts the testimony of Aaron Mcloughlin a Social Care Regulatory Inspector that when he inspected 'The Oaks' premises on 20 January 2021 he found that there were physical defects with the interior of the building and lack of sleeping arrangements for the proposed staff. We also accept that there was inadequate paperwork concerning health and safety arrangements and policy documents and also deficiencies in staff recruitment policies and reference checking for staff as well as local risk assessments. It was clear from the evidence that the building and necessary paperwork had been insufficiently prepared by the Appellant for the Ofsted registration visit.
124. The Panel agrees with the assessment of Ofsted that the Appellants are not able to meet the requirements for registration, as they do not have the

knowledge, skills, or experience to operate a children's home in line with the Children's Homes (England) Regulations 2015.

125. The Panel does not accept the Appellant's claims that Mr. McGlouglin's findings were wrong or that Mr. Simon Morley concluded that she did have the necessary experience. A proper analysis of his witness statement and his notes of the fitness interview (as outlined above) shows clearly that he concluded that she did not have the necessary experience. In addition we do not accept that the Appellant's allegations against Mr. McGlouglin that his behaviour during the visit was unprofessional or hostile.

126. Moreover, it is also clear from the evidence of Rachel Holden one of the Senior H.M. Inspectors, Social Care, that the Appellant fails to meet the requirements of the regulations in that Miss Odumah does not have any experience of residential care to meet regulation 28 of the Regulations. In addition, the Department for Education (DfE) 'Guide to the children's home regulations 2015' sets out at paragraph 10.21, that 'any registered manager placed in charge of a children's home should have substantial relevant experience of working in a children's home'. Miss Odumah has never worked in a registered children's home.

127. The Panel gives very little weight to the testimony of Leonard Hird who had no involvement in the case after he was instructed at an early stage and has not seen Ofsted's evidence and accepted that he was not aware of the relevant regulations. In any event he agreed with Ofsted's assessment that the Appellant's application for registration was inadequate and agreed that at the time of the application the Appellant lacked the necessary experience of working in a children's home required for registration. He said, "if I had still been working for Ofsted I would have told her to withdraw her application and come back later". He also said that the Appellant had not informed him of the SLC allegations of fraud against her.

128. As well as the matters outlined above the Panel also takes into account its earlier findings concerning Appeal No.1 that the Appellant is not a suitable person to be registered as a childminder and has no understanding of the purpose of regulation by Ofsted. After considering all the evidence in the round the Panel concludes that the Appellant has failed to prove on the balance of probabilities that she and My Horizon Care Limited met the requirements for registration of a children's home at the time of application or do so now.

129. For similar reasons as set out in relation the proportionality assessment in Appeal No. 1, the Panel is satisfied that Ofsted's decision not to allow registration was necessary and proportionate. The appeals No. 2 & 3 are dismissed.

Decision

1. The decision to cancel registration of Ebiere Odumah on the grounds of suitability is confirmed.

- 2. The decision to refuse to register My Horizon Care Ltd as a provider of a children's home is confirmed.**
- 3. The decision to refuse to register Ebiere Odumah as a manager of a children's home is confirmed**

All three Appeals are dismissed

Tribunal Judge Timothy Thorne

Care Standards

First-tier Tribunal (Health Education and Social Care)

Date Issued: 24 November 2022