

First-tier Tribunal Care Standards

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

NCN: [2023] UKFTT 265 (HESC)
[2022] 4615.EY

Heard on 20 and 21 February 2023. Hybrid Hearing. Newton Abbott Magistrates Court

Deliberation hearing (Panel only) 22 February 2022.

BEFORE

Ms Melanie Lewis -Tribunal Judge
Ms Libhin Bromley -Specialist Member
Mr Matthew Turner - Specialist Member

BETWEEN:

Ms Zoe Pollington

Appellant

-v-

Ofsted

Respondent

DECISION

Representation

The Appellant presented her own case.

The Respondent was represented by Ms Wendy Gutteridge Ofsted Legal Services.

Witnesses:

We read/heard evidence from the following witnesses>(* read by agreement of the parties).

Respondent:

1. Michelle Oxley - Ofsted Regulatory Inspection manager
2. Claire Davies - Social Care Regulatory Inspector.
3. Kerry Fell - Social Care Compliance Inspector
4. Dominic Stevens - Senior Ofsted HMI Inspector

Appellant

5. Zoe Pollington
6. Zoe Austin - Manager Woodmere Children's Home
7. Nikki McClements - Regional Manager Cambian Group
8. Patrick Sullivan - Head of Compliance (Care Tech) by video
9. *John Pollington - Character Witness
10. *Leanne Morgan - Character Witness
11. *Jasmine Morgan - Character Witness

Below-read* staff members at Woodmere CH

12. * Debbie Agnew
13. * Kelly Hill-cousins
14. * Scott Howe
15. * Sarah Stevenson
13. * Danielle Johnson
14. * Kerriane Powell
15. * Patrick Sullivan
16. * Andrew Baverstock

Reporting order

1. There shall be a Restricted Reporting Order under Rule 14(1)(b) of the Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('the 2008 Rules') prohibiting the publication (including by electronic means) in a written publication available to the public, or the inclusion in a relevant programme for reception in England and Wales, of any matter likely to lead members of the public to identify any child or its family mentioned in the appeal. For this reason, we have deliberately given only the barest details of children. Additionally at points indicated we have not given detail of private issues relating to the Appellant or other witnesses save as is necessary to explain our decision.

2. This case involves the appeal of Zoe Pollington (the Appellant) against the decision dated 27 May 2022, to refuse her application for registration as manager of a children's home: Woodmere. As a result of the decision, the Appellant became immediately disqualified from working in or being involved in the management of a children's home. Written consent to waive the Appellants disqualification was applied for by her employers, the Cambian group, to continue to employ the Appellant as a Senior Care Worker. This was granted by Ofsted on 21 July 2022.

Procedural Issues:

3. Ms Pollington submitted a further statement from Patrick Sullivan and an Internal Compliance Visit Feedback Form. When preparing she realised, she had submitted the wrong statement. Ms Gutteridge raised no objection and the Tribunal gave time for her witnesses to consider this document which was relevant to the issues under consideration as he is a senior compliance manager at the Cambian Group and supported the Appellant's case.

4. Prior the hearing Ms Pollington had asked for her regional manager Ms Nikki McClements to be her supporter. There was no objection to her having a supporter, but the Tribunal indicated that having read the papers, she could not be a suitable person as she was a key witness being the only witness with involvement over the period in consideration. She moved from having real concerns about the Appellant to supporting her appeal so we anticipated that she would be the subject of close questioning. Similarly, Ms Austin is her current Manager and also had an overview due to her involvement, so she moved to the back of the court. In those circumstances Ms Pollington was content to proceed without a supporter. She had prepared her case well and she had no difficulty putting her points across.

5. The Tribunal was nevertheless mindful that she was a litigant in person. The Judge directed her to the appropriate law, regulations and procedures and indicated areas they wished to know about. Additionally, the Tribunal fully used its specialist knowledge and inquisitorial powers to question areas which it felt were relevant to the issues before it at the date of the hearing. This was important as the evidence from the Appellant, mainly from her employers was that the concerns that lead to this appeal were now historic. In the main she was not denying they had happened but gave reasons for them. In short, she had moved on and been able to make substantial changes to her understanding and practice.

6. The Tribunal had carefully read the bundle in advance and met prior to the hearing to discuss the issues. It indicated that it would be assisted by Ms Gutteridge focussing on the more recent evidence, given the broad acceptance of the history.

Background/ Chronology:

7. The Appellant was registered as the Manager of Carrs Farm Children's Home. She had worked in the care sector for about 8 years by then, including as a deputy manager but this was her first position as a manager. This was a home operated by the Cambian group for 5 children with complex needs, operating with about 13 staff. It is common ground in this appeal that these are children, who are amongst some of the most vulnerable in society and have a complex overlay of needs, such that a number of statutory agencies are involved. As such they are high-cost placements for Local Authorities.

8. Ms Pollington now accepts that she took on too much in accepting the role at Carrs Farm as her first management position.

9. As a result of a member of staff 'whistleblowing', Ms Nikki McClements a Regional Manager in the South West Region 2 group conducted a Management Investigation. This identified multiple concerns and she made a recommendation that the case should be referred to a Disciplinary Panel. Staff had complained that Ms Pollington was not approachable and undermined their decisions. She swore inappropriately at staff who felt bullied. She brought her dog into work despite knowing a member of staff was frightened of dogs, but they did not feel able to tell her. She had failed to investigate reports that a child

was using cannabis and follow that up. Further there was evidence she favoured one child who was a dominant force in the home and on one occasion had injured another child who was frightened of them. She was not sufficiently curious about where Child X was spending their time or money. Child X was allowed to keep money from selling kittens. The sums involved were as much as £1,000. This was of real concern as the child's boyfriend was thought to be involved in selling cannabis. A key concern upheld by the Disciplinary Panel was that she had failed to safeguard Child X.

10. Ms Pollington was suspended on 21 February 2021.

11. On 21 April 2021 there was a Disciplinary Hearing chaired by an out of area Regional Manager. The Appellant give her comments on each allegation and reasons. The Panel found some mitigating factors. The Appellant said she had not meant to upset staff and if they had raised issues with her about her dog, allergies or feeling undermined, she would have addressed them. In the decision, it was acknowledged she could work on these areas. Further, the Appellant had had to manage a changed and new staff group. The established team in place at the time of the last positive Ofsted Inspection had moved on to a different home. Further, it was accepted that the Appellant was suffering stress and felt unsupported. Her supervisions had not raised issues with her. The key concern was that she had failed to protect Child X. If she needed support, she had sufficient experience to know where to seek help from other managers. The outcome was that she was given a Stage 2 final written warning. It was recommended that she move to manage a smaller sole occupancy home that was less complex and work under a Personal Improvement Plan. In her appeal documents she stressed that it was wrong to state that she was removed.

12. The Appellant then raised a 'Grievance' against her previous line manager, that has since been dismissed. In discussing her return to work she did not want to work with that person and wanted a fresh start, hence the move to SW 2 Region where Nikki McClements was the Regional Manager. Ms McClements oversaw the Personal Improvement Plan. For 6 weeks Ms Pollington agreed that she should shadow the manager, Zoe Austin. At that point it is recorded that she was actively considering whether she wanted to take on another management position.

13. On 27 November 2021 Ms Pollington applied to be the Registered Manager of Woodmere.

14. Ms Pollington took on the role of Manager of Woodmere on 1 July 2021 when Zoe Austin moved elsewhere.'

15. On 25 February 2022 the standard "Fit Person" Interview was conducted with the Appellant.

16. On 30 March 2022 a Notice of Proposal to refuse registration was sent to the Appellant. Issues were raised about her integrity and honesty, and that she would swear at staff, fail to support them, and undermine their decisions

with regards to boundaries and consequences. Under the protection of children standard, they relied on the incidents that occurred at Carrs Farm. With regard to Woodmere, when interviewed she had referred to the child being missing for 25 minutes or less, but notifications to Ofsted demonstrated that in fact the child had been missing for 2 to 3 hours. She hadn't sufficiently identified the risks of the child being excluded from school. There were 2 outstanding complaints from members of the child's birth family. It is common ground that there was a negative reference, but this was from the manager she subsequently raised a 'Grievance' against.

17. On 21 April 2022 the Appellant made written representations. She pointed out that she had now been in post at Woodmere since July 2021. She picked up on the concerns raised by Ofsted to challenge her integrity and suitability, which will be addressed in the Tribunal's conclusions. She emphasised that she had had a lot of support and oversight in her new role and was making positive progress. She was more self-aware. She included extracts from the Regulation 44 reports by external visitors which were positive. Her 360-degree appraisal from November 2021 where staff could comment on her performance was also positive.

18. These changes were acknowledged but Ofsted took the view they were not sufficient to discharge the considerable past. On 27 May 2022 a Notice of Decision to refuse registration was sent to the Appellant.

19. On 22 July 2022 Ofsted granted the application for a waiver to allow Ms Pollington to continue to work there as a Senior Care Worker. To date she remains in that role. Zoe Austin returned to the Manager's role when the Appellant's application was refused.

The Legal Framework

20. The grounds for refusing an application for the registration of a children's home manager are set out in section 13 of the Care Standards Act 2000 (the Act). Ofsted **must** refuse an application for registration where the requirements set out in regulations are not met. In respect of a registered manager, the requirements are set out in Regulation 28 of the Children's Homes (England) Regulations 2015:

A person may only manage a children's home if:-

(a) the person is of integrity and good character;

(b) having regard to the size of the home, its statement of purpose, and the number and needs (including any needs arising from any disability) of the children—

(i) the person has the appropriate experience, qualification and skills to manage the home effectively and lead the care of children....

21. Regulation 12 the Protection of Children Standard states that children are to be protected from harm and enabled to keep themselves safe.

22. On appeal against a refusal, the burden is reversed and it is for the Appellant to demonstrate, on a balance of probabilities, that they are able to meet the requirements of registration. The Tribunal effectively stands in the shoes of the Chief Inspector and makes the decision afresh, so may take into account evidence arising since the date of decision.

The respective cases for the parties:

23. In this case, the Respondent says that the Appellant failed to demonstrate that she was able to satisfy the above prescribed requirements for a manager.

24. Additionally, the Respondent's failings in respect of the protection of children standard (regulation 12) at Woodmere demonstrate that she has not adequately learnt from her failures at Carrs Farm

25. The Appellant acknowledges her past failings at Carrs Farm but as stated in her response to the Notice of Proposal, they were not deliberate or wilful but due to her inexperience. She accepts that she should have asked for more support. Whilst she raised issues with the Local Authority, she should have pursued them more. She had found the process of being suspended and a return to work very difficult but felt she had learnt many lessons and grown in confidence as a person. She had taken time to reflect on her practice and improve it. She had taken steps to address her own mental well-being, including consulting her GP, and improved her resilience.

Documentary evidence

25. The documentary evidence, including a skeleton argument from both parties and a Scott Schedule, was provided in a consolidated bundle Section A to I. The Tribunal read this carefully in advance and without limiting the oral evidence, indicated that it would be assisted if the focus was on the more recent evidence and reasons why the Tribunal should not attach weight to it.

26. Key evidence is referred to in more detail if needed to support the Tribunal's. We refer to the key evidence in more detail if needed to support our conclusions and only a summary of the role and areas covered by each witness is set out.

Oral Evidence

27. Michelle Oxley had limited involvement, having attended an inspection at Carrs Farm between 26 and 27 October 2021, which covered the period of the Appellant's tenure. The inspection concluded that children were not safe and that standards had not been maintained under Ms Pollington's management. It was confirmed in questions from Ms Pollington, that her

recommendation to Mr Stevens to refuse Ms Pollington's registration as a Manager at Woodmere was based on those concerns and she had no recent involvement.

28. Clare Davies conducted the Fit Person Interview (FPI), mainly as the note taker as her colleague Janice Hawtin, who has since retired, put the questions. The note was not verbatim. They knew the Appellant had had a medical procedure the day before, but she declined their offer to postpone the interview as she wanted to get on with it. They would have given any breaks requested but none were. It is recorded that the Appellant became tearful at the beginning of the interview when recalling being suspended from Carrs Farm and the reasons for that.

29. The Tribunal clarified that Ms Davies did not make the decision to refuse registration. Overall, her view was that the Fit Person Interview did not demonstrate sufficient learning and reflection. The Tribunal read the Pre Planning notes where they identified the key lines of inquiry, highlighting a concern that moving Ms Pollington to a smaller home with a less complex cohort did not sufficiently take into account concerns about value base and understanding of safeguarding. These key issues were not about the size of the home. Ms Davies' focus was historic events and she had no comment on the more recent evidence.

30. Kerry Fell chaired the case review on 25 March 2022. Her evidence was about the procedures followed. She explained they would only deal with the waiver application, once they knew if the decision to refuse would be appealed.

31. Mr Sullivan of Cambian, who had previously been an Ofsted inspector, had suggested that Ofsted could have inspected Woodmere as there was evidence Ms Pollington was doing well in the period she was in post as the Manager. This in his view could take this case outside the normal inspection schedule. Ms Fell explained that there was no triggers for an inspection. They did not know Ms Pollington was the Manager until she made her application. She explained that their services were under pressure to conduct urgent inspections, as they had not been able to go into any Homes for long periods during the restrictions posed by the Covid 19 pandemic.

32. Mr Stevens was the Decision Maker who ratified the decision to refuse registration. In view of the recent adverse history he believed that the decision was both proportionate and appropriate.

33. When questioned by Ms Pollington and the Tribunal, he acknowledged the potential for change and that she had the support of her employer and line manager. For him it was a matter of time, but he could not say how long that might be.

34. Ms Pollington confirmed to the Tribunal that she prepared her own case using guidance on the Care Standards website and having sought some assistance from the Cambian legal helpline. She was not sure if that service

would have been able to represent her, but she had in fact felt able to do it herself.

35. Whilst she had felt unsupported, she stated that that she wanted to stay away from blaming others for what had happened at Carrs Farm. During her suspension she had sought help from her GP and she is now receiving treatment which has helped her manage her now diagnosed mental health issues. She now feels supported by her Managers, staff and family. The evidence from the staff at Woodmere was that they felt supported by her.

36. Ms Gutteridge's questions went as to why she felt she could now take on a manager's role and whether as a senior care worker she was in fact doing that job. Ms Pollington responded that she is much more self-aware and explained the strategies she uses when faced with challenging work or other situations. She is far more aware of the need to maintain a good work life balance whatever the pressures, rather do extended shifts herself as she had at Carrs Farm. She has used the support available from Ms Austin and Ms McClements. She gave examples of where she might be the senior worker on shift but for example referred the social worker to the manager for a decision on whether the child might be moved to a stepped down placement. There were several reports from Regulation 44 Independent Visitors, which were positive. She might be the senior on duty at the time, but the Manager always saw the reports. She stressed that the staff worked well as a team.

37. The Tribunal clarified that Cambian offered some general FPI training which Ms Pollington was booked on but it was cancelled. She told us she could have sought individual help from that trainer but did not. She accepted she might have put her points better in the Fit Person Interview. She could not really understand why her integrity and honesty were challenged. She thought this related to getting her timings muddled on the length of time the child was missing, referring only to the 25 minutes from the home rather than from school as well and occasions when they had been found on a bridge.

38. Ms Austin said that when Ms Pollington first come to shadow her, she had not known the detail of why she had left Carrs Farm but was aware of the broad reasons. She found the Appellant to be open and reflective when they first started to work together. She had no concerns about anything Ms Pollington had done when she returned to Woodmere as the Manager. Ms Austin praised her support for the child in their care and making sure her voice was heard. She had supported the child to keep contact with their birth family against a complex background. The family and the social worker were positive about her and her high level of communication, as was the school. In the November 2021 Ofsted Inspection she accepted that the 'requires improvement' on safeguarding was down to her not being as aware as she now is of the position of a child with an Education, Health and Care Plan.

39. Patrick Sullivan has been employed by Cambian CareTech since March 2020 as the Head of Compliance and Regulation (Children) and is responsible for managing a team of compliance managers who undertake reviews of children's homes to ensure they are compliant with regulations and guidance.

He is a qualified social worker who worked for over six years at Ofsted as a Regulatory Inspection Manager. He does not have an operational role but had been aware of this case since April 2022. He had carried out an Audit on 3 June 2022, while Ms Pollington was Manager.

40. His overall feedback was that the home was well managed. An area for improvement was appraisal reports but that, in his experience, was not uncommon. There were occasions when the child went missing, usually from school, but these had been responded to by staff in a very proactive manner. In reviewing the documentation, he couldn't identify any additional actions the home could have taken. The complaint from the birth family only remained unresolved as, despite many requests, they had not confirmed they were happy with the investigation. The issue was that the child had contact with a family member which was not supposed to happen. This happened when they were in hospital and the contact was instigated by the hospital, not the Home staff who followed up on it.

41. He commissioned an independent review by Philip Cass also an experienced former Ofsted inspector, who reported on 21 July 2022. Mr Cass concluded that the Appellant had a good level of insight into her past shortfalls as a manager and had managed to move on from this difficult period of her life. He could see no reason why Ms. Pollington would not be suitable to be registered as the Manager, given the significant differences between this home and the previous one. Woodmere had been inspected by Ofsted in June 2021 and was judged to be "good". His view was that Ms. Pollington had been in a job at Carrs Farm which was beyond her but that she had shown she could reflect and improve.

42. Ms McClements is the Southwest Region 2 Regional Manager, managing 7 homes. The Tribunal members read a detailed set of notes for the interviews she carried out. In oral evidence she said that following her investigation, her private view was Ms Pollington might be dismissed because of what she had found. She had now moved to a position where she could support Ms Pollington's wish to be the registered manager. She initially said that she now had '*no doubts*' about her but then modified that to say that of course with anyone, there had to be doubts.

43. Ms McClements carried out a return-to-work meeting on 7 May 2021. By then she had spoken to other senior managers and the chair of the Disciplinary Panel so understood that there could be mitigating factors relating to Ms Pollington's failings. In response to questions from the Tribunal she said at that point she had '*huge concerns*'. Ms Pollington wanted to move to a different area and make a fresh start, particularly as she had not felt supported by her previous line manager. She was however concerned that she had had no opportunity to say good bye to the children and staff at Carrs Farm. The notes record that Ms Pollington was giving active consideration as to whether she should stay employed as a care worker.

44. Ms McClements said that it took about 3 months to form an open and trusting professional relationship with Ms Pollington. Since that time Ms

Pollington demonstrated that she had worked hard to consolidate the staff team, draw on their areas of strength including appointing one as an ‘Education Champion’ as they had relevant experience and the child had a history of failing in mainstream education. Two key areas of development had been around *“demonstrating a curiosity about the child’s presentation, exploring more and being transparent with all stakeholders and then around staff dynamics.”* She believed that during her time in managing Ms Pollington she had been able to consistently demonstrate that she had done this. She had supervised Ms Pollington on a fortnightly basis, and she regularly spent a day working at Woodmere and the other homes she managed. She was positive about Ms Pollington’s willingness to reflect and change her approach to work and to manage her work/life balance. She and the staff supported the child well and the child had made positive progress in their care and referred to Woodmere as their home.

Conclusion and Reasons

45. Before turning to its specific conclusions the Tribunal gives an overview of the witnesses. The witnesses for Ofsted were helpful on the procedure followed but their evidence went as to the historic concerns. Only Mr Stevens as the decision maker was able to acknowledge that change can take place, but it then became a question of time. He did not concede that point had yet been reached but had no timeframe to offer.

46. The burden of proof is on the Appellant. Her written evidence was exemplary, and she conducted her case calmly and took responsibility for things what had gone wrong at Carrs Farm. Her questions were specific and evidence based. She set out in detail evidence that supported her case and did not materially challenge the evidence that led to her being disciplined and put on a final warning. This is to her credit. It demonstrates good skills in submitting written and oral arguments, which are necessary as a manager. It also showed an ability to move forward and take responsibility for her past failings.

47. The only live witnesses for the Appellant were Mr Sullivan, Ms Austin and Ms McClements all of whom are very experienced professionals. We conclude that each has an interest in having an effective Manager in place. These are placements for very vulnerable children with very complex needs, hence the need for single placement children’s homes. The Company needs to avoid reputational damage. Local Authorities will not place children with them if they do not have that confidence that the homes will meet the needs of children. The Tribunal therefore put several questions to each witness as to why they could have confidence in Ms Pollington going forward.

48. The Tribunal’s approach to the evidence was that the role of a Manager in this setting required a high degree of skills, the ability to lead a staff group and to work with other agencies and relatives. It was always mindful that the child in Woodmere had a very high level of complex needs, was vulnerable and had suffered trauma. The Appellant’s consistent evidence was that she is passionate about wanting to work with children but that is not enough. The Tribunal looked for evidence that she had the necessary skills and was

sufficiently robust to take on what each witness agreed was a rewarding role but which could be demanding and stressful.

49. Overall, on all the evidence that the Tribunal read and heard, it accepted that the Appellant was over promoted to her first manager's role at Carrs Farm. She did not have sufficient experience and the necessary capabilities to run this home for 5 high needs children.

50. The Tribunal found that Nikki McClements conducted a very thorough Management Investigation. It found it telling, that this happened due to a 'whistle-blower' as the staff did not feel able to talk to Ms Pollington. She asked the staff open questions and several concerns emerged. They felt they were overridden without being given reasons. Ms Pollington appeared stressed, pre occupied with paperwork and swore when speaking to them. When these points were put to her, she expressed regret and willingness to apologise. As the Disciplinary Committee recognised these issues might be capable of remedy.

51. The Tribunal has no reason not to accept the reasoning of the Disciplinary Committee. There was some evidence through the audits and supervision that the Appellant was making satisfactory progress. As such there were no obvious warnings to her that she needed to improve. However, on its analysis, she herself, should have realised this and sought support earlier.

52. It is accepted that vulnerable children were not safeguarded. There was a hierarchy operating at Carrs Farm with one child dominating others. The previous manager had given notice on this child because their needs were so challenging.

53. It was fundamental to protecting children that the Appellant was aware of where they were at all times, who they were mixing with and how much money they had in their control. She needed to be able to step back from the day-to-day management and see what was happening. She needed to foster an environment where the staff could work together and share concerns openly with her.

54. The Tribunal carefully considered the FPI. It followed a standard form. The key lines of inquiry identified before the interview inevitably centred around what had happened at Carrs Farm. The Appellant said that she had discussed the FPI with Ms McClements but had not undergone any training or mock interview. She was of course familiar with the process, having undergone a FPI to be registered as Manager at Carrs Farm. It is accepted that she could have asked for the interview to be postponed as she had a medical procedure the day before. The Tribunal is satisfied that when she became upset very close to the start of the interview, a break would have been given had she asked.

55. The FPI is a large part of Ofsted's case. The challenge to her integrity and honesty is not obvious. She is a person of good character. There is nothing adverse about her character arising from her private life.

56. The Tribunal find that the grounds relied on In the Scott Schedule go as to her effectiveness as a Manager, more than her integrity and honesty, namely concerns around treating children differently, maintaining professional boundaries with children, bullying staff and safeguarding issues.

57. The case for Ofsted relies on answers in the FPI about the length of time the child at Woodmere had gone missing. The Tribunal do not find this clear evidence that the Appellant was misleading and untruthful. It noted that her answer of '*25 minutes*' was not followed up on. It was not queried what she meant, whether this was at home or school or a combination. The Appellant explained in her appeal letter to the proposal to refuse registration that in the reference to 25 minutes, she was referring to the current missing period is not historic ones.

58. All the other reports from a number of sources support that the Appellant was very aware of the need to be aware that this child could go missing and the need to liaise with the school and the social worker. The evidence overall supports that the staff team took these periods very seriously indeed and made every effort to locate the child. A key strength identified was that the school and home were working very closely together to give the child clear boundaries and consistent support.

59. Similarly, the Notice of Decision refers to the Appellant failing to prevent the child being placed in alternative provision and then placed on fixed term exclusions. (Reason 3.4. p H250). Without knowing more of the background, the Tribunal finds it impossible to draw any conclusions about that. The child has a history of difficulty in school and was subject to a Care Order, so it was then the responsibility of the Local Authority to make sure appropriate educational provision was in place. It was the school who issued the exclusions. The Tribunal do not consider it unusual for this to happen with this profile of child. It weighs in the Appellant's favour, that she appointed an "Education Champion" on the staff and that the Home worked closely with the education provider so that the child had boundaries and consistency. She also worked closely with the Local Authority and family to provide the child with a consistency of care.

60. The current evidence is that the child is now more settled and the incidents of going missing have reduced.

61. The Scott Schedule States that the Appellant has not met the requirement to have the appropriate skills to effectively manage the home. The Appellant's response is that this is based on historic incidents. The Tribunal agrees.

62. The current evidence supports that the Appellant had the necessary skills. An Inspection in November 2022 graded the Home "good overall" which the Tribunal accepts is reflective of at least some of the work done by the Appellant. She produced several Independent Visitor Regulation 44 reports which showed no clear concerns under her leadership. They refer to an improvement on 'missing' episodes and that the child was settled.

63. The current evidence from the witnesses employed by Cambian, supported by the Regulation 44 reports is that the Appellant had developed a good working relationship with the extended family and any mistakes by staff have been picked up on including allowing the child contact with a family member when it had been agreed this would not happen. These are not referred to in the details to provide the child with anonymity.

64. The current evidence supports that when in post as the Manager of Woodmere there were no significant concerns about Ms Pollington's performance. In her current role as a Senior Worker she may quite often be the senior staff member on duty. She was questioned about this, but it was not suggested by Ofsted that she had overstepped that role and was taking decisions that could only be made by the Manager. An example of that was whether the child might be moved to a foster placement. The social worker asked her view, but she referred them to the Manager.

65. The Tribunal withdrew for a short time to formulate a list of its own questions to test the evidence of Ms McClements. She had said she believed there was always a potential for change, so Ms Pollington was fortunate to have a new Manager with such an open mind. Ms Pollington felt very defensive and undermined when she started at Woodmere but formed a very positive relationship with Ms McClements. The Tribunal had in mind that Ms McClement might move on or the staffing group or child could move. At the point she conducted the Management Investigation process Ms McClement found the Appellant's approach to be reactive and somewhat chaotic. That was no longer the case. The Tribunal accepts her answer that on balance she would manage if things changed because she was more methodical in her work and better organised. As stated, she worked well with all stakeholders to the benefit of the child. Whilst she was in post from September 2021 to February 2022 audits and supervisions were positive.

66. Ms McClements sought an outside view and asked for a 360 degree appraisal from the Compliance and Regulation team, so separate from the Operations team. The feedback was very positive on a wide range of issues. She had a positive rapport with a young person, excellent relationships with staff and the young person and had made a positive contribution to review arrangements. She managed an emergency effectively and safeguarding incidents. She was supportive of the emotional wellbeing of staff and child. She was a strong advocate for the child and used a number of systems to allow the child to have their voice heard. There was more clarity in her work and audits.

67. Ms McClements did acknowledge that Ms Pollington still had some shortfalls in that she could get consumed by her work but that she had come a long way.

68. As a result of these answers, the Tribunal was satisfied that the positive steps made by Ms Pollington were due to a substantial improvement on her part and not merely due to having a very supportive manager in Ms. McClements.

69. The Tribunal's only remaining concern was whether Ms Pollington was resilient enough to carry on the role as manager. On balance the Tribunal found that it is more likely than not that she is or that if she feels overwhelmed in the future, she will take responsibility and seek support or step back. She provided examples of her personal growth and learning to manage stress. She has sought medical help. She has the support of her family. She was very open when speaking with Mr Cass that she should have sought help earlier in her previous role as a manager. The Tribunal concluded that she is a person with some vulnerabilities. The Tribunal accept that she has chosen to pursue this appeal because, she genuinely wants a leadership role and to create a staff team to support vulnerable children.

70. The Tribunal has balanced a wide range of factors and find that the decision of Ofsted to refuse to register the Appellant as a Manager at this point in time is neither proportionate or appropriate.

Decision

Appeal allowed

The decision of Ofsted dated 27 May 2022 is not upheld.

Judge Melanie Lewis

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

Date Issued: 07 March 2023