

Care Standards

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

Miss Karla Louise Crooks

Appellant

v

Ofsted

Respondent

[2017] 2984.EY

Before

**Miss Maureen Roberts, Tribunal Judge
Mrs Denise Rabbetts, Specialist Member
Ms Maxine Harris, Specialist Member**

DECISION

Heard on 8, 9, and 10 August 2017 at the HM Courts and Tribunals, Leicester.

Representation: The Appellant represented herself and gave evidence. Ms Blackwell attended to support Ms Crooks. Mrs Sumner (grandmother of three children who attended the preschool and of the child currently being minded by the appellant) attended on Thursday and gave evidence for the Appellant.

The Respondent, was represented by Mr Reed, Solicitor. The tribunal heard evidence from Mrs Brouder, Ms Sanders and Mr Good, Inspectors and Ms Bell Senior Inspector, for the respondent and Mrs Moolla Improvement Advisor for Leicestershire County Council Early Years service and her manager Ms Price.

The appeal

1. On 2 February 2017 the Respondent served on the Appellant a notice of its intention to refuse registration of her application to be a childminder. The Appellant filed a response to this notice and an objections meeting took place on 10 March 2017. On 22 March 2017 the Respondent served a Notice of Decision to Refuse Registration of the Appellant as a childminder. The appellant appeals against the decision under S74 (1) (a) of the Childcare Act 2006 (the Act).

Reporting order

2. There shall be a Restricted Reporting Order under rule 14(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Health Education and Social Care) Chamber 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 the public to identify any child or its family mentioned in the appeal.

Background

3. The Appellant is a young woman in her late 20s who has qualifications in early years provision: a BA degree in Early Childhood Studies, EYPS, and has completed courses in Paediatric First Aid and Child Protection. In 2011 she started a preschool playgroup provision in Battram, Ellistown Leicestershire and had a Ofsted judgement of satisfactory in November 2011 and good in December 2014. In September 2015 she relocated her preschool playgroup to a church hall in Coalville in Leicestershire; this is 2 or 3 miles from the first premises. She went to that provision with four of the older children in her preschool playgroup and her deputy manager who had been with her for four years. The provision recruited additional children at younger ages. Her deputy manager left at the end of November 2015, and the Appellant appointed a new deputy.
4. Because of the change of premises, Ofsted did a post registration inspection on 12 January 2016. The Inspector had phoned the previous afternoon to inform the Appellant of the proposed inspection. She arrived at 9-00am and left at 16-10pm. The Inspector had access to the previous history but had never visited or had previous contact with the Appellant. As a result of her visit she decided the Ofsted judgement for the provision was now inadequate. An Ofsted report, was published, recording inadequate for the preschool playgroup and inadequate on all four areas of the EYFS.
5. When the provision moved, Leicestershire County Council were informed and their Early Learning and Childcare Service allocated an improvement adviser (IA) to the setting. She made contact in September 2015 and after the inadequate judgement she made a number of visits throughout March (3) and May (2) 2016. She gave advice and, with agreement from the Appellant, focused on the behaviour of the children.
6. The LA was also concerned about the absence of a qualified deputy. The deputy appointed by the Appellant in December 2015 was dismissed after the January 2016 inspection. Safeguarding concerns regarding this person had been correctly reported to the LADO (local authority designated officer).
7. The Respondent conducted two unannounced monitoring inspections with a different Inspector. The first was on 18 May 2016 (the Inspector arrived at 9-17 and left at 12-18) which found that the setting was still inadequate and which resulted in the issuing of two notices.
8. The notice, 'Action Following Inspection' required that the Appellant, under, Requirement – Learning and Development, 'improve the quality of teaching so

that activities engage and challenge children and help them move forward in their learning'. Under Qualifications, 'ensure there is a named deputy who in their judgement is capable and qualified to take charge in the manager's absence'. The actions were to be completed by 10 June 2016.

9. The Welfare Requirements Notice stated, under Managing Behaviour, 'make sure that all staff understand and put into practice strategies to manage children's behaviour in an appropriate and consistent way'. Secondly under Supervision, 'ensure that staffing arrangements meet the needs of all children and ensure their safety through vigilant supervision'. The actions were to be completed by 10 June 2016.
10. We have set out the requirements in full, as they were the only written information given to the Appellant of the Respondent's concern. Both of those notices were dated 23 May 2016 (the May 2016 notices).
11. On 15 June 2016 the Respondent's Inspector conducted another inspection (arrived at 9-25 and left at 11-51) at the end of which she concluded that the setting was still inadequate mainly because of teaching and behavioural issues and certain incidents that she had observed.
12. The Inspector then had a review meeting with her senior manager Ms Bell and, on 17 June 2016, it was decided to issue a Notice of Intention to Cancel the Appellant's registration of the setting.
13. The Inspector spoke to the Appellant and warned her that this was being proposed. She also informed her that if she were cancelled she would be automatically disqualified under the Act and explained the consequences of this. The Appellant and her deputy, Ms Blackwell made a number of calls to the Respondent to seek clarification of the grounds on which they were being cancelled and the procedure by which they should either resign their registration and /or obtain a copy of the Notice of Intention to Cancel.
14. In the event the Appellant decided, on 21 June 2016, to resign her registration. At that stage she asked for full written reasons of why she was being cancelled. Ofsted stated that it was not their policy to give reasons where somebody had resigned and therefore no written reasons were given to her.
15. On or about 20 September 2016 the Appellant applied to the Respondent to be registered as a childminder. In November 2016 the Respondent allocated an Inspector, Mr Good, to conduct the registration visit. He had seen the previous history regarding the Appellant and he conducted his registration visit on 16 January 2017. At the end of the record of the interview Mr Good recommended, 'refuse application'.
16. Following a case review between Ms Bell and Mr Good, Mr Good spoke to the Appellant and explained to her the consequences of the issue of the Notice of Intention to Refuse to Register in that it would lead to an automatic disqualification of the Appellant under the Act.

17. The Respondent issued the Notice of Intention to Refuse Registration on 22 February 2017. The tribunal noted that once that notice had been issued the Appellant could not withdraw from the proceedings and that if she failed in her appeal she would be automatically disqualified. The panel accepted that this is not an issue for the tribunal but we note the timescale for her to make that decision and what was said to her about the issue of disqualification.
18. The Appellant objected to the notice and an objections meeting was held with the Appellant who took Mrs Sumner to support her. The meeting took place on the 10 March 2017 with Mr Good and Ms White, a senior Inspector from Manchester. We have quoted some extracts from that meeting below as part of the Appellant's evidence because, the notes of that meeting, were agreed by both the Respondent and the Appellant, to be a correct record of the meeting. Ms White as the senior officer decided to uphold the decision of Ofsted and that was communicated to the Appellant. The Notice of Decision to Refuse Registration was issued on 22 March 2017. It is against this decision that the Appellant appeals.

The Law

19. Section 34 (1) (b) of the Childcare Act 2006 provides that persons may not provide early years provision on domestic premises in England unless they are registered in the early years register in respect of those premises. Schedule 2 Part 1 of the Childcare (Early Years Register) Regulations 2008 sets out the prescribed requirements for registration. This requires that the Applicant is suitable to provide early years provision.
20. Section 74 (1) of the 2006 Act provides a right to appeal to the tribunal. The legal burden remains with Ofsted which must establish the facts upon which it relies to support refusal to register on the balance of probabilities. It must also demonstrate that the decision to refuse the Appellant's registration is proportionate and necessary. The panel must make its decision on the basis of all the evidence available to us at the date of the hearing and we are not restricted to matters available to Ofsted when the refusal to register decision was taken. 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.
21. Since the appeal has been submitted there have been two main changes in that the Appellant has completed some on line training on behaviour management and learning for EFYS (6 Courses) and she has been in contact with, and regularly met with, another childminder near to where she lives and they spend on average one day a fortnight together.

The issues

22. The primary issue before the panel was whether the Appellant was suitable to be registered as a childminder. The Respondent submitted that they were entitled to take into account their concerns about her preschool setting and

conclude that her practice had not changed. The Respondent said that whilst the Appellant was well-qualified on paper and was able to produce policies and had theoretical knowledge, she was not able to put that knowledge into practice.

23. The issues of concern for the Respondent are summarised in the May 2016 notices recited above. The panel accepts that the Respondent can take into account the Appellant's previous history when making its decision.
24. The Appellant acknowledged that after the move of her preschool playgroup to Coalville, behavioural issues, in particular, had become difficult for the setting. After her long term deputy had left she had struggled to recruit an appropriate deputy. She said that once she realised that the preschool setting was about to be cancelled she had resigned registration to avoid disqualification.
25. She had then thought about her position and decided to apply to be a childminder so that she could provide that service in her own premises without the issue of managing staff and that she intended to start with a small number of children. It was the Appellant's submission that in such a setting she could comply with the EYFS standards.
26. The panel noted that the Appellant had decided to mind two children on a voluntary unpaid basis from September 2016 and had collated her evidence of her practice with those two children as evidence for the Respondents.

Evidence

27. The tribunal had the benefit of reading the bundles before the hearing. The panel had skeleton arguments from both sides with a chronology and history of what had happened in the past. We had the Respondent's Inspectors contemporaneous notes from the inspections in January, May and June, the notes from the L.A.'s IA from March and May, the witness statements from the Respondent's witnesses, the notices served on the Appellant in respect of the preschool and the childminding application, the objection meeting notes and case review notes.
28. For the Appellant we had a number of statements and submissions from her, a statement from Mrs Sumner, a statement from Ms McAllister the childminder who has been providing help to the Appellant, documentation about the activities and progress of the children that the Appellant is currently looking after on a voluntary basis, and letters and Facebook entries from the parents supporting the Appellant.
29. Each witness confirmed the truth of their written statement and then answered questions on specific points.
30. Both sides agreed that the behaviour of the children had been an issue from January 2016 onwards and that there had not been a suitably qualified deputy in place after the January inspection. The Appellant considered that the

children's behaviour had improved slightly. Inspectors had remained concerned about teaching and learning not being adequate. The Appellant considered that it had been satisfactory and suitable for the children. Finally the Inspectors had been concerned about a number of risk and safety incidents, some of which the Appellant disputed.

31. We have therefore set out briefly the parties' main evidence. On the six incidents which were cited by the Respondent as examples of bad behaviour or poor teaching we have recorded the Inspectors and LA's IA officer's evidence on the matters, the Appellant's response and our findings.
32. Mrs Brouder stated that she had been an Inspector with various agencies and the respondent for 20 years. She confirmed the contents of her statement and of the inspection that she made on 16 January 2016 when she visited the preschool playgroup because it was in newly registered premises. Mrs Brouder's concern was that the children seemed undirected and were not participating in the activities being offered in an appropriate way.
33. Mrs Brouder also considered that one of the children at the setting was using very little language, very short words and not forming words. She said that the Appellant had assessed the child at 22 to 36 months but she considered that the child's language was not at that stage.
34. Mrs Brouder said that she spoke to one parent and to all the children who could speak to her. She had concluded that the provision was inadequate and had spoken, on her mobile phone, to the duty team about her decision. She had verbally fed back to the Appellant her findings and her decision to make an inadequate judgement regarding the provision.
35. Mrs Brouder was asked about the judgement of inadequate being made by her, compared to a possible judgement of requiring improvement. She said that she had linked her findings to the criteria in the handbook and that all her findings were linked to the criteria of an inadequate finding in every area of the preschool. She accepted that going, even on an announced inspection, is a snapshot of the provision on that day.
36. Mrs Moolla the IA from Leicestershire County Council visited the provision. She said she had attended on a number of occasions and endeavoured to address issues about the behaviour of the children. She said she had given advice about website links, resources and modelled behaviour supporting children with difficult behaviour. Mrs Moolla had also raised concerns about the lack of a qualified deputy at the setting. Her last visit was on 26 May 2016 and she did not return to the setting.
37. Mrs Moolla accepted that the children seemed happy in the setting, were actively engaged and approached staff.
38. Mrs Moolla said that the Appellant had been signposted to resources such training and that she had endeavoured to give comprehensive support and

advice to the Appellant. She also acknowledged that the setting had always been amenable, friendly and welcoming to her and her support.

39. Ms Price confirmed that she had had no direct involvement with the Appellant. She observed that the Appellant had not accepted the two day childminder pathway training provided for applicants wanting to child mind. She gave a perspective of the number of childminders in the county area as approximately 600 with 5% receiving assistance from the Intervention Team.
40. Ms Saunders conducted two unannounced inspections, one on 18 May and one on 16 June 2016. She recorded that children were badly behaved, they were distracted and bored and there was a lot of poor behaviour which was not tackled or addressed by staff.
41. Following the May inspection the May 2016 notices were issued. As noted above these addressed issues of teaching, the appointment of a deputy, behaviour management and the safety of the children.
42. For example, Ms Sanders was concerned about the learning objectives in a Father's Day card activity. She said that the children had put their hands into paint and put them onto a card but nothing had been explained to them about what they were doing, there was no context of why they were doing this or what they could do.
43. She said that children were often upset and crying at various points during her visit and she did not see concrete evidence of behaviour management and ways of dealing with the children. She confirmed that she had not spoken to the parents.
44. After the June inspection she said that she was significantly concerned about what she had seen and the lack of capacity to improve. She spoke to her senior manager on 17 June 2016 and the decision was made to cancel the Appellant's registration.
45. Ms Sanders described, in her witness statement, a phone call that she had with the Appellant when it was explained that if the Notice of the Intention to Cancel Registration was issued then the Appellant would be automatically disqualified from caring for children under the Act.
46. Ms Bell confirmed that the decision to cancel was made on 17 June 2016. It was Ofsted's policy to review and decide on a case by case basis, whether the provider should be warned about the disqualification implications of the issue of the Notice of Intention to Cancel.
47. The Appellant said that she and Miss Blackwell had phoned on numerous occasions on and after 17 June 2016 requesting further information and details about why they were being cancelled. She said that she had asked to speak to Ms Bell. Ms Bell said she was sorry that the Appellant had not got through to her but it was her policy to get the appropriate Inspector to respond to any enquiries in the first instance.

48. Ms Bell said that a provider could apply under the Data Protection Act for further information about what was being recorded about their setting. The panel noted that the detailed notes of the Inspectors were not given to the Appellant. She had a verbal feedback with the Inspectors. She saw the Inspectors' notes and the case review minutes when she received the appeal bundle.
49. The Appellant was sent the notes following each visit from the IA Mrs Moolla.
50. The 'only' written information the Appellant had about her shortcomings was the May 2016 notices.
51. When the Appellant applied for registration to be a childminder Mr Good was assigned as her registration officer and attended at her home on 16 January 2017 to conduct the registration interview, which took three hours. He went through a lengthy interview and checklist of the Appellants history and abilities including her health, her finances and her knowledge of the EYFS.
52. At the conclusion of each of the sections Mr Good had recorded that the Appellant had an adequate understanding of the provisions and what was required of her. However in his conclusion he recorded, 'Refuse application'.
53. He recorded, ' KC has appropriate knowledge, the AOL and how to plan activities. However there were concerns from KC's previous registration about children being bored due to the activities provided and lack of interactions from staff including KC, which suggests KC is not able to implement this knowledge in practice. KC also believes that there was not issues with their practice previously so the activities provided as likely to be the same as seen at their preschool registration.' He also considered that the Appellant had not reflected on the concerns raised by Inspectors and should consider further training and experience of working in childcare.
54. Mr Good recorded in one of his internal records that he had spoken to the Appellant to explain to her the consequences of the recommendation that he was making, to refuse registration, in that it would lead to an automatic disqualification. The Appellant was informed that once the Notice of Intention to Refuse Registration was issued she would be disqualified subject to her appeal rights. She was told the notice would be issued within 14 days. The Notice of intention to Refuse Registration was issued on 22 February 2017.
55. When asked about the differences between preschool playgroups and childminding, Mr Good confirmed that there would be slightly different ratios of children and carers between preschool playgroups and childminders. He said that the childminder could look after up to 6 children: three aged 1-3, 1 child under one years old and 2 under eight years old. He also confirmed that no formal academic qualifications are required of childminders but they would be required to know the EYFS framework and the rules and regulations about childminding.

56. Ms Bell, as the senior officer, confirmed the decision to refuse registration. She said that the Respondent was seriously concerned about the state of affairs in the preschool playgroup particularly in respect of behaviour which the Respondent considered was linked to poor teaching and interaction with the children. Ms Bell noted that the Appellant did not have many children on the roll and had enough staff but that the poor behaviour continued and was not being identified or appropriately dealt with.
57. Ms Bell considered the Appellant was trying to blame other people for the failings and not accepting her own responsibility. She said that the Appellant had good academic qualifications and had done some training, but that she should seek some further face-to-face training and practical training with children. She confirmed that there were no specific qualifications required for a person to be registered as childminder, and there were no issues about the Appellant's paperwork.
58. Ms Bell was asked about whether Ofsted had considered imposing conditions as part of the Appellant's registration to be a childminder. Whilst the Act gives Ofsted power to impose conditions, the Ofsted handbook on registration states, 'as a policy Ofsted do not impose conditions of registration routinely but in exceptional circumstances retain the power to do so'. She said that in her view either a person was suitable to be registered or not and that Ofsted was very reluctant to use conditions.

The incidents in dispute

59. The snowflake incident and the use of glue. The Inspector at the January 2016 inspection said she was concerned about this activity. She said that all the children were invited to make a snowflake. She said that this activity was not differentiated between the youngest child who was 18 months old and the older children who were four years old.
60. She said she had observed that the youngest child had put scissors in her mouth. She said that no member of staff had noticed this and that she went over and removed them from the child's mouth.
61. She said children were eating glitter and putting glue on other children. She also noted that the youngest child had had a hook from a game in her mouth and an older child had grabbed it and pulled it out. She said that the younger child's mouth bled and she, the Inspector, got a tissue to help the child. She said the child who had been acting inappropriately was not reprimanded.
62. The Appellant said that she had realised what was happening with the scissors and that she and the Inspector had walked towards the child who had herself taken the scissors out of her mouth. She also said that the scissors were child friendly scissors in that they had rounded ends.
63. The Appellant said that with respect to the glue and glitter she was not aware that glue had been deliberately put on to one child by another.

64. It is agreed that the young child had scissors in its mouth. We accept that both the Appellant and the Inspector moved towards the child to remove the scissors. The Appellant was asked about this incident on more than one occasion and repeated her evidence. We accept that the child removed the scissors as the adults approached her.
65. The plastic bag incident. Mrs Moolla had recorded an incident where she said that she had seen a child with a plastic bag over its head and was concerned that no member of staff or the manager had responded to this. She said she brought it to the attention of the manager who then removed the bag.
66. In her oral evidence Mrs Moolla said that the plastic bag was the kind of bag that an audio tape or library books would be put in. She said that she had alerted the Appellant about the situation and that the Appellant got up and dealt with it. Mrs Moolla said that the student sitting next to the child should have noticed and that the child's safety was at risk. On further questioning she acknowledged that the bag was quite a thick plastic bag about A4 size that would be used for library books and that the child had it over her head 'like a hat'.
67. The Appellant said that the student had removed the bag. It was also established in further questioning that the bag was not a supermarket plastic bag but a library type thick plastic bag with poppers on the top, which had been used to contain a jigsaw puzzle. We accept that the child should not put a bag over her head but it was safely removed and there was no risk to the child.
68. The sunflower planting activity. The Inspector during the May inspection described an activity of sunflower planting where children had to wait a long time. She said one child knelt onto the table and she gave evidence that she intervened to stop him falling over.
69. The Appellant said that the child had been told to sit down on one occasion. She said that if he had knelt on the table he would not have been in any danger of falling. The panel concluded that the child did kneel on the table and that the Inspector put him back on the chair. It is not possible to establish whether he was in danger of falling.
70. The fish tank trailing wire. The Inspector also noted at the May inspection that there was a fish tank on a shelf about 4 feet off the floor, which had a trailing wire to a pump in the tank, which she considered was a potential danger to the children. She pointed this out to the Appellant.
71. The Appellant said that following the inspection the wire was routinely unplugged when the playgroup was present and put behind the tank and only plugged back in when the play group left. She said that the children liked the fish tank and understood why the wire was there so as to power the oxygenation unit for the fish. She said that when the Inspector came in June 2016, and saw the wire still plugged in, it was because she arrived just as the staff were opening the premises and they had not had time to unplug the wire

to the fish tank. We accept that the fish tank was normally unplugged at the beginning of the morning when the children arrived.

72. The handstand issue. The Inspector, on the May inspection, recorded an incident when she said that a child did a handstand. She rolled over and went into a bookcase. Then another child imitated her. She said that she was concerned that no member of staff had intervened in this. She said that as the session progressed behaviour got worse and that staff were struggling to cope with children calling each other names and shouting at each other.
73. The Appellant said that she had not seen the child doing a handstand but she doubted whether a child of that age could perform such a feat and had probably just rolled over his or her head. The panel accepts that the Appellant should have been aware of a child trying to do a handstand. We accept on the evidence that the child in fact rolled over on her head. No harm came to her.
74. Children jumping off a low shelf. The Inspector also noted an incident where one child started jumping off a low shelf beside the Appellant. Another child joined her. She was concerned that this was dangerous because the child was in socks going on to a wooden floor and she could have injured herself. When the child was told to stop doing it, by the Appellant, she said 'no' and was led away. She then laid down on the floor and began to shout and scream.
75. The Appellant said that she was aware what they were doing. She also accepted that the child who had been jumping had said 'no' to her when challenged about her behaviour and had also been allowed to just go off and lie down. The Appellant said that if she tried to challenge the child at that point she would have become more distressed and that is why she allowed the child to go away from the situation to calm down. She addressed the behaviour when the child had calmed down. The children jumping off a low shelf were behaving badly but were not in danger of hurting themselves.
76. The panel accept that all the incidents recorded above took place but they were not always as described by the Respondents' witnesses. When the panel explored the circumstances of the incidents with the witnesses and the Appellant they were often not as described in the Respondents records. They were often less serious than implied or characteristic of childrens' behaviour.

The appellant's evidence

77. The Appellant confirmed the contents of the registration meeting with Mr Good and the minutes of the objections meeting with Ms White. She also confirmed that the records concerning her care of one minded child from September onwards had been available to Mr Good when he had attended her home but that he had chosen not to look at them.
78. The Appellant confirmed, in evidence, that the deputy that she had appointed after January 2016 had stopped work after two days saying that she had decided it was too hard getting her own children to and from school. She said

she did not think it was anything to do with the setting, and if it had been, that the person would have said so.

79. The Appellant also said that she had advertised on a number of occasions, and had CV's from people in response to becoming a deputy, but that they had not been suitable and that it had proved very difficult to find a suitable applicant to take the job of deputy manager in the preschool playgroup.
80. The Appellant said she had worked with her original deputy for four years, just the two of them, and that they had worked successfully and had a good number of pupils. The preschool had had a satisfactory and good judgement in the first four years. She said that she had moved premises because she needed to be in a more central position so that children and families could access the setting more easily.
81. The Appellant said that when she moved premises, the preschool was in a much more open room and that children were inclined to run around it because of the open space. She said that she had rearranged the setting so that children did not run around in the space so much.
82. The Appellant had stated that she considered that the presence of Inspectors and Local Authority Improvement Advisers had distracted the children and made their behaviour more difficult. It was put to her that the Inspectors and Local Authority Advisers were very adept in responding to children and being careful in their presence.
83. In response the Appellant said that the older children would have noticed that people were present with clipboards and laptops. If the older children misbehaved, often the younger children mimicked them.
84. The Appellant said that she realised that the behaviour management issues had increased particularly after the regular deputy had left at the end of November 2015. She said that this issue had got worse after Christmas 2015. The Appellant said that she considered from January onwards the behaviour of the children had slightly improved and that she had been seeking advice and help, particularly about behaviour management issues.
85. The Appellant described the strategies that she had attempted when in the preschool with difficult behaviour from the children in terms of providing a calming area and talking to children. She acknowledged incidents of behaviour difficulties were 'pretty much daily'. She said that there were some days when there were no incidents and that might be dependent on the activities or the weather. She said that she would welcome further training on this issue.
86. The Appellant said that she had been offered some additional training but it was difficult for her to take it during working time as potentially she would have to close the preschool playgroup and let children and their parents down. She acknowledged she had had some help from the LA adviser, for example, modelling on how to deal with difficult behaviour but that she had not been

able to find courses. She said that she had since been on a number of online courses, the certificates for which she had filed.

87. She said that her plan, at the time, was to cooperate with the inspecting authorities, to try and get more experience and training and help particularly with behaviour management and to appoint a full-time deputy to start in September 2016. She also noted, that at that stage, the 4 older children would have left the setting to go to school and she would have had a new cohort of younger children. It was her intention to make a new start September 2016.
88. The Appellant said that since the preschool playgroup had stopped she had decided to proceed with the childminding application. She had started working with her niece and another child in September 2016. She said that she was working with Ms McAllister, who had given a supportive statement to the tribunal. She said that on average she shares a day with her every fortnight and that Ms McAllister has four children so that the six children share a day together. The Appellant and Ms McAllister discuss good practice and the way forward.
89. The Appellant had said in the objections meeting, 'KC said that clearly her management skills were not as good as they could be, she is not blaming staff as clearly KC's management often added to this. KC felt she struggled telling people what to do, when she had a settled team it was fine when she had students KC found this difficult'. The Appellant also explained at the meeting what she said in evidence to the panel about difficulties in the premises and recruitment.
90. The objections meeting recorded, 'with regards to poor quality teaching KC has accounted this to weaknesses in leadership, difficulties with staffing and KC has visited preschools to get ideas for better practice. KC explained that she is meeting up with an outstanding childminder currently, with L.' (the child she minds).
91. The meeting also recorded that KC said that things would be different for her as a childminder because, 'she will have low levels of children, no staff to manage, KC can provide more learning experiences as she will have more time with them, the children will attend more regularly and she will get to know them better'.
92. The Appellant said that Stephenson College Coalville had sent the student to the setting and that it had inspected the premises and conducted a safety review. A tutor from the college conducted observations on the student's practice and weekly attendance. The Appellant said that the student had not completed the course and had left to work in a different type of work.
93. Mrs Sumner, the grandmother of three of the children who attended the Appellant's preschool playgroup came to give evidence on her behalf. She confirmed that she was the mother of the Appellant's step brother's wife (Ms Blackwell). She said that she had seen no change in the children's behaviour between the two settings from Ellistown to Colville.

94. Mrs Sumner said that she and other parents and grandparents had always found the Appellant very welcoming and very prepared to discuss the children. She had attended a number of special events including Christmas, Easter, Father's Day, Mother's Day and sports day at the preschool. She had also been on trips outside the setting, to a panto in the theatre and the zoo. She said all of these events had gone very successfully and without incident.

Conclusions

95. We carefully considered the written evidence submitted to the Tribunal in advance and the evidence given to us at the Hearing. We also took account of the legal provisions under the Childcare Act 2006, the Regulations and relevant Case Law.

96. The Appellant has good and relevant qualifications in early learning foundation stage. She ran a preschool playgroup from 2011 until June 2015 which had a satisfactory Ofsted judgement in 2011 and a good Ofsted judgement in 2014. The panel concludes that the Appellant ran a satisfactory/good preschool playgroup for four years from 2011 to 2015.

97. The Appellant moved premises and opened a new setting in September 2015 in Coalville. Her deputy manager left at the end of November 2015. The Appellant struggled to appoint a suitable deputy manager. The first manager appointed in December 2015 was dismissed after the inspection of 16 January 2016. The next deputy manager who came stayed only two days.

98. It was agreed by the parties that the children's behaviour had declined from Christmas 2015 onwards. It was the Respondent's evidence that there had been no improvement after January 2016 whereas the Appellant said that there had been some improvement. The panel find that with the input from the Inspectors and the local authority there had been probably some improvement in the children's behaviour but it continued to be of concern. We also note that Ms Sumner did not notice any problems or increases in behaviour difficulties when the preschool playgroup moved to its new location. We acknowledge that she saw the children mainly in organised events but these were events involving trips to a pantomime and zoo.

99. The panel find that the only written notification that the Appellant received of the requirements and expectations of the Respondent were in the May 2016 notices.

100. The panel notes that the Respondent's have a policy that where a registered person has resigned their registration they give no further information. However in this case both the Appellant and her then deputy Ms Blackwell had phoned repeatedly on and after 17 July 2016 asking to speak to the Inspector and to speak to her senior officer Ms Bell to clarify the reasons and concerns that had led to the decision to cancel the registration.

101. We accept that they were told verbally what the concerns were but no written details were given to them. They did not see the Inspector's

contemporaneous notes until they had the appeal bundle. We accept that they have the Ofsted report which is in the public domain.

102. The panel notes that the Inspector made a finding of inadequate in respect of the premises in January 2016. We have looked at the criteria for making that evaluation and accept that she is a very long serving Inspector with considerable experience. We do not dispute her judgement.
103. However we view it in the context of a preschool setting, which had functioned without any major issue and with satisfactory and good judgements for four years.
104. The panel concludes that the Respondent has placed too much reliance on the past history and failings of the Appellant's preschool from January 2016 until June 2016. They have not given sufficient weight to the successful running of the preschool from 2011 to 2015, the Appellant's registration interview in January 2017 and what she said at the objection panel hearing in March 2017. As noted she accepts her responsibility for what went wrong in the past and gives very clear reasons why this would not be repeated if she were granted registration as a childminder.
105. The panel also find that there are significant differences between running a preschool playgroup and being a childminder. As the Appellant points out in her objections interview on a number of occasions, she acknowledges her failings, she says she was bad at her management of staff. She acknowledges that she needed more training to deal with the behaviour of the children, which had deteriorated.
106. She then goes on to say that she has decided to be a childminder because she can operate from her own premises, she does not have to pack away equipment every day, she can have a small number of children, she does not have to have a deputy manager or manage staff and that she will get to know the children better and be better able to monitor their progress.
107. She has the qualifications and she has taken the step of looking after two children since October 2016, on an unpaid basis and producing evidence of her work with them to the Respondent.
108. The Appellant has not given up on her work with children but has decided to change the way that she works with children and she continues to be happy for people to come in and view her work and to judge what she is doing. She invited the respondent to observe her voluntary minding.
109. She also provided for the Inspector, on his registration visit in January 2017, a folder of observations and learning journey charts for the child she was looking after. He did not look at those documents. She took those to the objections meeting where they were examined.
110. We conclude that the Appellant has acknowledged her responsibility of what has happened in the past. The Respondent complains that she has not really

reflected about it and that she has not really changed her practice. The very fact that she has decided to change the kind of childcare that she wants to do reflects her acknowledgement of her weaknesses in the preschool setting and that for reasons given above she feels that it would be a more controlled and manageable setting to work as a childminder.

111. In respect of the issues raised by the May 2016 notices, clearly the Appellant will not need a deputy in a small childminding provision. The panel concludes that the documentation in respect of the child she currently minds demonstrates a high quality of teaching and activities for the child. With respect to the welfare notice the Appellant will not have staff to manage, and with a small number of children, we accept she will be able to manage children's behaviour and ensure their safety through supervision.

112. The panel observes that all the Respondent's Inspectors started their inspections between 9 AM and 9:30 AM. This is the time when staff, parents and children are arriving and before they have had an opportunity to settle into the activities of the day. Perhaps Ofsted should give some consideration to the timing of visits.

113. With respect to the issue of automatic disqualification, Ofsted stated that it considered each case on an individual basis. We suggest that the legislation is quite complex and the consequence for providers very serious. It should only be in exceptional cases that persons are not informed of their position in respect of the automatic disqualification provisions of the Act.

Decision

114. For all these reasons the panel have decided that the Appellant is a suitable person to be registered as a childminder and we are allowing her appeal.

We allow the Appellant's appeal
Our decision is unanimous

Judge M Roberts
Tribunal Judge
Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 17 August 2017