

Care Standards

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

Heard on 13 and 14 December 2017 at Royal Courts of Justice, London

Before

Debra Shaw (Tribunal Judge)
Marilyn Adolphe (Specialist Member)
Sallie Prewett (Specialist Member)

[2017] 3082.EY

BETWEEN

Miss Abimbola Adams

Appellant

v

Ofsted

Respondent

DECISION

Appeal

1. Miss Adams appeals to the First-tier Tribunal (“the Tribunal”) pursuant to Regulation 11 of the Childcare (Disqualification) Regulations 2009 and Section 74 of the Childcare Act 2006 against the refusal by Ofsted to grant a waiver from disqualification for caring for children under Regulation 10 of Schedule I of the Childcare (Disqualification) Regulations 2009.

Reporting Order

2. There shall be a Restricted Reporting Order under Rule 14(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 (as amended) (“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.

Attendance and Representation

3. The Appellant attended the hearing. She was not legally represented. A parent of children she had previously looked after attended as her witness (Witness 1) and Mr Reuben Omi (husband) attended as an observer. The Respondent was represented by Mr Duncan Toole (Ofsted Legal Services),

who was accompanied by Ms Amelia Curtis (Paralegal, Ofsted). Ms Julia Crowley (Ofsted Regulatory Officer) and Ms Elizabeth Coffey (Ofsted Senior Officer) attended as witnesses on behalf of Ofsted. Mr Mark Jackson (Ofsted Social Care Compliance Officer) and Ms Chloe Williams (Ofsted Legal Services) attended as observers.

The Law, Regulations and Practice

4. The legal framework for the disqualification of childminders from registration is to be found in sections 75 and 76 of the Children Act 2006 (“2006 Act”) and section 74 provides a right of appeal to this Tribunal.
5. The relevant requirements are contained in regulations 4 and 10 of the Childcare (Disqualification) Regulations 2009 (“2009 Regulations”) and regulation 11 grants a right of appeal to a person who has been disqualified from registration.
6. Ofsted’s Early Years Compliance Handbook (March 2017) sets out the factors which it should consider before making a waiver decision, including:
 - the risk to children.
 - the nature and severity of any offences, cautions or orders.
 - the age of any offences or orders.
 - repetition of any offences or orders or any particular pattern of offending.
 - the notes of any interviews with the disqualified person, applicant for registration or registered person, including their explanation of and attitude to the disqualifying event.
 - any other information available from other authorities, such as the police or local authority children’s services department in relation to the offences.
 - any mitigating circumstances given.
7. The burden of proof is on the Appellant to establish the facts upon which she relies to support a waiver of her disqualification on the balance of probabilities. The decision must be made on the basis of all of the evidence available to the Tribunal at the date of the hearing and is not restricted to the matters available to Ofsted when the disqualification decision was taken. The Tribunal may either confirm Ofsted’s decision to refuse or grant a waiver. If the Appellant’s appeal is successful, she will be allowed to re-apply to Ofsted for registration as a childcare provider.

Background

8. On 23 November 2015 the first-tier Tribunal (“Cancellation Tribunal”) upheld Ofsted’s decision to cancel Ms Adams’ registration as a childminder. Ms Adams’ application for this decision to be set aside was refused on 30 December 2015, as was her application to the Upper Tribunal for permission for leave to appeal on 8 April 2016.

9. Two months later, on 10 June 2016, Ms Adams submitted a disqualification waiver application to Ofsted. Following a waiver interview on 23 May 2017, Ofsted issued its decision to refuse to waive Ms Adam's disqualification from registering as a childminder on the Early Years and General Childcare Registers on 27 June 2017.
10. On 25 July 2017 Ofsted received Ms Adams' appeal against its refusal to waive her disqualification. Ofsted invited Ms Adams to a second interview on 4 August 2017, so that it could fully understand what she accepted as true and what she believed to be untrue. Ms Adams continued to dispute the Cancellation Tribunal's findings and, at times, disputed matters she had accepted in those initial proceedings.
11. On 17 August 2017 Ofsted submitted a strike-out application to the Tribunal pursuant to rule 8(4)(c) of the 2008 Rules, on the ground that the appeal has no reasonable prospect of success. This application was refused by Judge Khan on 4 October 2017 following an oral hearing on 3 October 2017.
12. On 31 October 2017 Ofsted applied for permission to appeal the 4 October decision on three grounds:
 - (i) that the judge erred in his approach to consideration of the "passage of time", failing to take into account a material consideration and placing disproportionate weight on the passage of time as a factor without properly considering how that factor was relevant to the case.
 - (ii) that insufficient reasons are given for concluding that the appeal had a reasonable prospect of success
 - (iii) that the decision was not one which was reasonably open to the Judge to make.
13. On 8 November 2017 Judge Tudur refused this application on the basis the substantive issue for determination by the Tribunal is whether the decision not to waive was correct in all the circumstances of the case. Her reasons in relation to the three grounds were as follows:
 - (i) At this stage, the parties had not produced their evidence in advance of a final hearing. She pointed out that there is no requirement for a set time to pass before an application can be made for waiver of the disqualification and, by the time the appeal would be heard, two years would have passed since the date of the Cancellation Tribunal's decision upholding the decision to cancel the Appellant's registration and it would be legitimate to consider evidence of what had changed during that period. As the unrepresented Appellant had made her appeal on the basis that she was "sorry, she has undertaken courses and has learned her lesson", it is incumbent on the Tribunal to allow her the opportunity to adduce evidence or give oral evidence in support of those submissions and to explain what has changed over time. These are substantive issues for consideration in the appeal and the Tribunal should not consider that issue as a preliminary issue in a strike out application, which would amount to an error of law, because it prevents

consideration of the appeal against the decision and it would not be fair and just nor in compliance with the overriding objective of dealing with appeals fairly.

(ii) Consideration of the Appellant's credibility is a matter for consideration at the substantive hearing and there is further evidence to be heard about her acceptance of fault, the courses undertaken and the lessons she has learned. These are all matters which explain why there may be a realistic, as opposed to fanciful, prospect of success and the reasons, whilst concise, are sufficient and no error of law has been demonstrated under this ground.

(iii) The ground that the decision was not one which was reasonably open to the Judge to make is without merit for the same reasons as in (i) above. Since a review may only take place where the Tribunal is satisfied that there is an error of law and that is not present here, Judge Tudur refused to review the decision or to grant permission to appeal to the Upper Tribunal.

Preliminary Issues and late evidence admitted at the hearing

14. Although this is Ms Adams' appeal she preferred Ofsted to present its case first and Ofsted did so at the direction of the Tribunal.
15. The Tribunal also directed that evidence should be given on oath pursuant to Rule 15(3) of the 2008 Rules.
16. The Tribunal admitted the following late evidence from Ms Adams at the start of the hearing:
 - Full Paediatric First Aid Course Certificate dated 4 November 2017
 - Hackney Learning Trust (HLT) Procedure for Allegations (drop-down menu of what steps to take when an allegation is made against a childminder and others)
17. Following oral evidence from Ms Adams on the first day and a Tribunal request for documentary evidence in support, the following late evidence was admitted on the second day:
 - Comfortcare Partnership (CCP) job application form dated 18 May 2017 completed by Ms Adams
 - E-mail dated 14 December 2017 from Dayo Olunowo (Manager at CCP)

Written and oral evidence

18. The Tribunal has had careful regard to all of the documentary evidence and to the parties' written and oral submissions. We would emphasise that simply because we have not specifically referred to all of the evidence does not mean that we did not carefully consider it, but only that we have

restricted our summary of the evidence and the submissions herein to that which we consider most relevant to our conclusions.

19. Ofsted's decision letter dated 27 June 2017 refused to waive Ms Adams' disqualification due to the extent to which she previously attempted to mislead Ofsted and the Cancellation Tribunal and Ofsted's belief that she could do so in the future. Ofsted believed it was unlikely she would achieve working openly and honestly with it in the future and children might be put at risk. Notwithstanding the comprehensive training courses Ms Adams completed, Ofsted did not consider her knowledge and understanding of safeguarding to be complete or sufficiently robust to ensure children would be safe and protected from risk of harm in her care and considered documentation she presented as examples of how she would meet EYFS requirements was out of date and no longer applicable and that she was unaware of the current statutory framework of the EYFS. Ofsted felt Ms Adams had neither learnt from, nor taken sufficient notice of, the reasons why her registration was cancelled, and she minimised and failed to recognise the gravity of her actions. During interview she had confirmed that following disqualification, she applied as a Director with another adult to register childcare services on non-domestic premises, having failed to disclose her disqualification and registration history to her co-director. This raised serious concerns about Ms Adams' honesty, integrity and understanding.
20. Ms Adams relied on the following grounds in her letter accompanying her appeal application received by Ofsted on 24 July 2017:
 - (i) She admits her guilt and again apologizes. She has learnt from her mistakes and is asking for another chance, having had 2 years 7 months to reflect on her past actions. She now understands the importance of integrity and trust and is a changed person.
 - (ii) She has completed the following courses:
 - three safeguarding courses (Level 1 and 2 Advanced Child Safeguarding and a HLT Child Protection and Safeguarding course)
 - 'Demystifying the EYFS' through the HLT
 - BTEC and Diploma NVQ in Leadership and Management Level 5 with Newham College.
 - (iii) She purchased the EYFS Package of 6 books (and was informed of updates at the 'Demystifying the EYFS' training).
 - (iv) She cannot change the past, but she can change the future by abiding by the Ofsted rules and regulations and being a good role model.
 - (v) Her failure to disclose her disqualification and registration history to her co-director was unintentional. They started the application process before she was disqualified. She accepts she should have informed her co-director, but did not want her to give up on her dream of working in

the child care section and she had also lodged subsequent appeals with Ofsted. She was her co-director's inspiration and she was so disappointed in herself she couldn't bring herself to confess, because it was her co-director's dream job and she would be devastated, although Ms Adams was looking for the right time to tell her before Ofsted did (but she failed to do so).

Julia Crowley's (JC) evidence

21. JC's evidence in chief is contained in her witness statement dated 6 October 2017. At the Tribunal she gave oral evidence that, on her first announced visit to Ms Adam's home on 15 December 2014, despite having received information to the contrary, Ms Adams presented as a competent and able childminder, very organised and plausible. She gave a very detailed account of only having one child on roll on an infrequent basis and had the relevant documents ready.
22. By the time of the Cancellation Tribunal JC's view was that she had never met anyone who was prepared to present so much misleading and inaccurate information; it was the level of deception to cover up what she was doing, which placed children at risk and breached regulations.
23. Ms Adams was found to have lied in her witness statement for the Cancellation Tribunal and has since claimed she had to make her statement in haste and she had not checked it.
24. JC confirmed the comment in her own witness statement that the reasons for cancellation were some of the most serious matters that she had dealt with as an Inspector.
25. JC went on to give her overall impression of Ms Adams at the waiver interview on 24 May 2017. Whereas applicants usually come prepared with reflection on how to make improvements on each of the reasons for which they have been cancelled, Ms Adams came with very wide, open statements of regret and apology, but with no real substance as to what she intended to do to make any improvements and reassure Ofsted. Applicants usually go through each point in their Cancellation Notice, but Ms Adams said she could not recall each reason and JC was concerned she was dumbing down Ofsted's concerns, e.g. she described leaving an 18 month-old child in her garden as accidental and a mistake, whereas the Cancellation Tribunal found she had tried to hide children from JC. Ms Adams used the interview as an opportunity to deny what had gone before, failing to accept the Cancellation Tribunal's decision or Ofsted's evidence. JC did not feel there could be a relationship between Ms Adams and Ofsted due to the level of distrust and the fact Ms Adams did not view risk in the same way.
26. Although Ms Adams said she had undertaken significant safeguarding training and JC tried to explore this with her, Ms Adams' responses (e.g. to PREVENT duty, FGM and failure to recognise the word 'disclosure') concerned JC, as she felt anyone with a very basic level of training should recognise those

terms. JC was also concerned that Ms Adams' certificates were 'tokenistic,' as she was unable to provide information or an explanation as to how she had increased her knowledge and understanding or demonstrate how she could put into practice safeguarding policies to prevent the children in her care from risk of harm.

27. In response to questioning, JC submitted she did not gain the impression at the interview on 23 May 2017 that Ms Adams had learnt her lesson and was sorry for what had happened.
28. JC denied she had lied about events, as claimed by Ms Adams in her application for the Cancellation Tribunal's decision to be set aside.
29. The second waiver interview on 4 August 2017 was arranged following this appeal application to give Ms Adams another opportunity to explain exactly what she was sorry for and to really try to understand what she was saying and referring to, i.e. so she could provide details of what she was sorry for and the changes she had made. JC contacted Ms Adams beforehand to suggest it might assist her to list what she believed she did and did not do and what improvements she had made, but she turned up to the interview saying she had not managed to make a list. JC's overall impression was that Ms Adams was dismissive of the disqualifying events; she would say she could not remember or had forgotten; it was her opportunity to explain but she did not appear to be working with Ofsted at that stage. JC could not trust Ms Adams in the future and felt it would be too risky to allow her back on the childcare register, as she would have concerns about Ms Adams' ability to deceive in order to protect herself, which she places above her responsibility to the children in her care.
30. JC would have expected Ms Adams to see the waiver interview as an opportunity to identify where she had gone wrong, to acknowledge the need to change and make improvements, to have read and understood the reasons for Ofsted's decision not to waive her disqualification, to have come fully prepared with information as to what she would do in future and to ask what Ofsted was looking for. Instead, Ms Adams came to interview denying most of what had happened and minimising the risks she had taken e.g. saying losing a child in the garden was an accident or a mistake.
31. Another example at the waiver interview of Ms Adams refusing to accept what had gone before was her denying she had told a child at Gainsborough Children's Centre ("GCC") to "shut up" (which led to the original complaint initiating Ofsted's concerns), despite the Cancellation Tribunal finding that she did say it and JC also witnessing Ms Adams telling her own son to "shut up" when JC was finally let in to Ms Adams' house on her unannounced visit on 16 December 2014.
32. JC felt Ms Adams was sorry that her actions had led to cancellation of her registration rather than being genuinely remorseful, i.e. she will say what she thinks people want to hear to get what she wants, e.g. as was the case on JC's visit on 15 December 2014 when JC was initially completely convinced

by her, and when Ms Adams produced a very detailed profile of someone who did not exist when explaining who had accompanied her to GCC, as she preferred to place the protection of an adult above safeguarding children.

33. The only improvement Ms Adams appears to have made is to invest in erecting a fence in her garden. JC felt this showed a fundamental lack of understanding of risk and what needs to be in place to protect children. JC would have expected Ms Adams to be beside herself and grateful nothing had happened when she lost a young child in her garden. The fact she has said the neighbour who found the child was a nice man is irrelevant; he had not been vetted and she should have realised why this child was so vulnerable.
34. JC also considered the fact Ms Adams did not share her disqualification and registration history with her co-director indicated a lack of acknowledgment of the gravity of Ofsted's concerns. She should have withdrawn her application when the Cancellation Tribunal issued its decision on 23 November 2015; in not doing so her co-director would have been automatically disqualified if the application had proceeded to registration stage.
35. Although Ms Adams acknowledged in her first waiver interview that 'her registration was cancelled because [she] did not tell the truth', this was only one of the reasons. It went to her integrity and truthfulness, but Ofsted had other concerns about her placing children at risk.
36. JC considered these were some of the most serious matters she had dealt with as an Inspector because of the extent to which Ms Adams tried to cover up her actions and the fact that she had placed children at risk to protect herself and she also placed other people's children at risk when she took her unregistered and unvetted friend (GA) to GCC. Her threshold for risk is not as it should be; she does not understand the consequences of taking such risks and what she is exposing children to and her lack of understanding raises concerns about her suitability. Child-minders need to have a transparent, working relationship with Ofsted, with a common aim to keep children safe, but Ms Adams seems to view Ofsted as the enemy. She manipulates information for her own gain and if a child in her care were to be at risk in the future JC would be concerned that she would not inform Ofsted for fear of exposing herself.

Elizabeth Coffey's (EC) evidence

37. EC's evidence in chief is contained in her witness statement dated 6 October 2017. At the Tribunal she gave oral evidence that Ms Adams' blatant lack of integrity in her dealings with Ofsted, with the Cancellation Tribunal, with other childcare professionals and agencies (e.g. GCC) and with her co-director, significantly impacted on her decision-making.
38. Ms Adams' history of having put children at risk of harm is significant and her behaviour and approach to both minded children and her own children (e.g. telling them to 'shut up') was of significant concern to EC, as was her failure to acknowledge and recognise how her misleading information to Ofsted, her

lies and dishonesty appeared to be driven by her wish to protect herself from the consequences of being found out, rather than to protect young, vulnerable children placed in her care.

39. EC would have serious concerns about Ms Adams' ability to work with Ofsted, to co-operate, to be truthful and to act in a way that would safeguard and protect children. An applicant's attitude to the disqualifying event is a crucial element in a waiver application and EC was deeply concerned by Ms Adams' lack of remorse or acknowledgment of when she was questioned about leaving children in her care in her, or her neighbour's, garden. Her response that she panicked appeared to be driven by the fact that she was caught out and did not extend to the children in her care. She did not appear to have given any thought to the vulnerable position she placed the children in, whereas a responsible child care provider would be panicking about the risk and potential consequences to the children.
40. In response to questions EC confirmed Ofsted had referred Ms Adams to Social Services, who visited and assessed Ms Adams' own family and children, but found no concerns.
41. EC confirmed the comments in her witness statement that Ms Adams had put children at significant risk of harm in the past and that she assessed Ms Adams' behaviour and actions to be of a serious concern.
42. If it was purely training that Ms Adams needed to undergo, the safeguarding and first aid courses she had undertaken might have made a difference, but the training does not appear to have had the impact Ofsted would have wished. The evidence from the waiver interviews is that the training does not appear to have upscaled Ms Adams' knowledge and understanding; she was unable to demonstrate a robust, safe and secure working knowledge. The Cancellation Tribunal concluded that "It is not enough to have qualifications and to have completed the appropriate training. Ofsted has to have confidence and trust in the child minder and the behaviour of [the] Appellant broke that trust and confidence."
43. It is not just a question of training, but Ms Adams' overall understanding, acknowledgment and assessment of risk and her behaviour, i.e. she is driven by the need to protect herself rather than the children in her care.
44. Since November 2015 Ms Adams has continually failed to tell the truth to Ofsted or the Tribunal and also implicated a co-director, i.e. she was prepared to ruin someone else's dream job. She has shown a repeated pattern of lack of integrity, dishonesty, minimising and being selective with the information she shares with others.
45. As a minimum, Ofsted would want to know that Ms Adams had taken steps to acknowledge the lies she told, her behaviour and her actions and how these had impacted on the children in her care. The ingrained behaviour and default stance Ms Adams has adopted with Ofsted and other agencies make it difficult to pinpoint if there is any specific action she could take or behaviour

she could exhibit that would convince Ofsted that she has truly changed and is truly remorseful, that she understands what she has done, and she is able to move forward.

46. EC did not believe parents who had left their children in Ms Adams' care would have written supportive references for her if they had been fully aware of her actions and behaviour. When Ofsted registers applicants, parents are given a sense of security and trust that their child minder will be honest and open and will put their child's needs before their own.
47. Ofsted is not aware of any parents' complaints about Ms Adams, but given her lack of openness and transparency with Ofsted, the Tribunal, her co-director, GCC and other child minders in the locality, EC doubted whether parents who used Ms Adams were fully aware of the facts.

Witness 1's evidence

48. In 2015 Witness 1 provided a letter for the Cancellation Tribunal confirming that she had placed her two children in Ms Adams' care for several months in 2014. She stated that she had found Ms Adams to be a good childminder with whom her children were happy. Even after Ms Adams stopped caring for them, when they bumped into her, her oldest child wanted to follow her, If Ms Adams had treated her children badly, Witness 1's oldest child would have told her about it. She had no concerns at all about Ms Adams as she was a good minder and a good mother.
49. Witness 1 gave similar oral evidence to this Tribunal. She also confirmed that when she had arrived at Ms Adams' home unannounced on one occasion when she had finished work early, she saw her child painting with Ms Adams, who said she always did painting with the children. She also took them to the park and GCC and always informed Witness 1 where she would be taking her children.
50. When Ms Adams told Witness 1 she could not care for her children anymore and Witness 1 asked why, Ms Adams told her what had happened. She said Ofsted had come and a child had been accidentally left in the garden or at the neighbours and a neighbour had brought the child in to her. Witness 1 had seen children playing in the garden before, but Ms Adams was always with them.
51. Having heard the Tribunal evidence so far, Witness 1 felt upset at what had happened, but believed Ms Adams deserves a second (but not several) chance. Accidents and mistakes happen, and Ms Adams had told Witness 1 she would not do anything like that again, that she had done the necessary training and Ofsted were there to check on her.
52. Witness 1 had not had time to hear the whole story on the day and did not follow up with a phone call. When initially questioned, she confirmed that she would still leave her children with Ms Adams as they are very bonded with her. However, when asked to read a full account of exactly what happened

and then asked again if she would still give Ms Adams another chance with her children, she replied that she would not.

53. Witness 1 confirmed that she had been talking about her own children in her letter of support for Ms Adams when she stated she had no concerns at all.
54. She also confirmed that she and Ms Adams come from a culture where it is common to tell a child to 'shut up' and they do not see it as a bad thing to say.

Appellant's evidence

55. Ms Adams submitted that she would be doing herself an injustice if she did not refer to the evidence given by JC and EC. She felt the only way she could rectify the situation would be to be given the opportunity to work. She emphatically denied that she had come to her waiver interview unaware of what had happened to her in the past or that she had been dumbing down Ofsted's concerns. She has regretted what happened every day for the last 3 years and she wants another chance to prove to Ofsted that she is competent in childcare. At the waiver interview JC asked questions and somehow give her answers to say, e.g. when Ms Adams denied that she had hidden children and said they were playing in the garden, JC asked if she was saying JC had lied.
56. Ms Adams felt her waiver interviews were not about what had changed and were more focussed on the negative; she did not think they would be interviews to look back on what had happened. She was accused of lying and felt her words were being twisted, so she became terrified and worried about saying anything, e.g. she knew about issues such as FGM, it was just the abbreviations that she did not recognise.
57. Ms Adams denied she would have said she did not know what integrity means, although this was recorded at the first waiver interview. She felt that in some instances her answers had not been accurately portrayed and the way that JC made her answers appear was not how they were at interview. She later said she had said she did not know what integrity means because she wanted to hear Ofsted's definition of integrity. However, she conceded that she had been nervous and panicked at interview and that could have affected her replies and when pressed, she said she could not remember any specific examples and conceded that when she said her answers were not all accurately recorded, it may have been her choice of words and accepted the difference between what she said and what she should have said.
58. Ms Adams feels she has the necessary knowledge and policies and has carried out the necessary risk assessments. She has undertaken the required courses she was asked to do and taken on board EYFS Health and Safety and Lost Child Policy and Procedure. She has undertaken a significant amount of training, she knows about PREVENT duty and how to involve the relevant agencies, she has raised her garden fence to 6½ feet and during her Ofsted inspection in April 2014 no safety issues were identified. She recognises that not telling the truth has affected her, her career and her

integrity with Ofsted. She regrets her actions, is sorry and wants another chance.

59. Although she does not currently need it, Ms Adams took out public liability insurance in March 2017 because she has always been registered with Pacey and felt it would show she is committed to doing this, she is not giving up and she would have insurance cover in place in case she was inspected.
60. Ms Adams acknowledged she has done wrong in the past and she needed to improve her safeguarding to ensure she never puts children at risk again. She would be happy to do further training and to accept support. She accepts she had been minding too many children and is sorry about that, but she denies she hid children or said 'shut up' to her own child. When challenged about failing to admit her guilt and to apologise for things she did not accept, she acknowledged that she has disappointed Ofsted in her practice and that she has done things that she regrets.
61. Ms Adams confirmed she has been working in health and adult social care for CCP since July 2017. She has a Level 3 NVQ in Social Care and looks after older people in their own homes or in residential care homes one or two days a week. Since then she has undertaken further courses, including several e-learning courses (e.g. Delivering the EYFS on 12 October, Safeguarding Children on 12 October and Safeguarding Adults on 20 October) and a Level 2 Award in Food Safety for Catering on 22 October 2017. She organised and paid for this training herself and none of it was through her employer.
62. Ms Adams initially confirmed she had disclosed her cancellation of registration to CCP, then later said she was not sure she had, but she had told them there were issues with Ofsted but not the gravity of it and then said that she did not disclose it to them because she was working with adults and not children and Ofsted's Cancellation Notice only said she could not work with children from 0 to 18 years,

[At this point the Tribunal indicated it would like to see a copy of Ms Adams' CCP application form and Mr Toole agreed he would contact CCP to try to get it, which he managed to do on the second day. This application form is dated 18 May 2017 and shows that Ms Adams disclosed her Ofsted registration had been cancelled and stated that she had been minding more children than she should, that she was not forthcoming with Ofsted when questioned about her failings and that she had appealed the Ofsted decision and was hoping for a favourable outcome. She listed her husband and sister as her referees (she disclosed her first referee as her husband but misleadingly placed the word 'Ofsted' in front of his name, and did not disclose her second referee as her sister). The interview notes on the application form recorded by Dayo Olunowo indicate that Ms Adams mentioned at interview that "she was being accused of child abuse at her previous job, but she said this was only an allegation". The covering e-mail dated 14 December 2017 from Mr Olunowo confirms that Ms Adams does not work alone, she is always in a double-up team, does not work with any family that has children or anywhere that she

may be exposed to children and that she has been trained by CCP on safeguarding children and adults.]

63. When the hearing resumed on the second day Ms Adams asked to give further evidence. She explained that she had gone home the previous day with a heavy heart and now wanted to admit to some of the things which happened on 16 December 2014 and was ready to face the consequences. She had not told the truth about what happened. When JC had knocked on her door she had panicked and taken the children through her garden (where the young child was left) to her neighbours, as her husband had stepped out and she had an extra two children. She had also asked her friend GA to help her with the child she took to GCC, although GA is not registered or vetted, because the child was GA's friend's daughter and Ms Adams felt GA would get on well with her as she was used to her.

[At this point the Tribunal asked Mr Toole to assist in directing Ms Adams to allegations she had not previously admitted or accepted, and he referred to Ofsted's summary of concerns and allegations set out in its Response to Appeal dated 17 June 2015].

64. In addition to allegations Ms Adams has previously accepted, Ms Adams now admits that she regularly used GA (but not her neighbour) as her assistant, without carrying out the necessary checks on her; she minded more children than she was permitted (but not as many as 12/13), a lot of whom were under 5; she hid minded children from Ofsted on 16 December 2014 (but this only happened once with Ofsted and not with any other agencies); as a result of attempting to hide children from Ofsted, she left a minded very young child unattended in the back garden of a neighbouring property; she told her own child and a minded child to 'shut up' (but she did not call a minded child a 'cry baby'); to this day, she has never been honest with Ofsted about the amount of children she was minding, their names and who she was working with. Ms Adams now denies that she provided false documents to Ofsted, including attendance registers of minded children, as she only had one child on 15 December 2014 (although her acceptance of this allegation is recorded in an Order dated 23 July 2015).
65. Ms Adams now accepts JC's version of events is true and wants to move on. She had not had the right help and advice in 2014 and if she had been up front then she would not be where she is today.
66. Ms Adams said she had not told Ofsted about her CCP job interview at her waiver interview on 23 May 2017 as she did not think it was relevant information or that it would make any difference to Ofsted and JC did not ask her what she was now doing. She had disclosed on the application form that her husband was her referee and told CCP that her other referee was her sister.
67. Ms Adams confirmed she had said all she wanted to say in evidence and had nothing further she wanted to say.

Information provided by Mr Toole at Tribunal's request

68. Mr Toole confirmed that Ofsted had not referred Ms Adams to the Disclosure and Barring Service (DBS). He submitted that nothing compels Ofsted to make a referral and, in his experience, the threshold for referral appears to be extremely high with Ofsted taking the view that an individual who is disqualified from being involved in childcare is unable to be involved in any childminding or child care which requires registration. However, unless there is a referral to the DBS [or the individual concerned has a conviction or caution], nothing would show up on an enhanced DBS check.

Closing submissions

69. Mr Toole's closing remarks emphasised the starting point has to be Ms Adams' attitude towards the disqualifying event. She only changed her mind to accept the Cancellation Tribunal's findings today and despite her general assertion that she was sorry, and she has learned her lesson, she has proved that she is not sorry, and she has most definitely not learned her lesson. There is no real difference in her position since the Cancellation Tribunal in 2015; in an e-mail for that Tribunal dated 20 July 2015 she accepted almost all of Ofsted's allegations, only to retract her position during a TCMH on 23 July 2015 and she has continued to contest findings of fact made at the Cancellation Tribunal. Ms Adams' attitude has not changed; the first step to rehabilitation is not only accepting wrongdoing, but genuinely accepting it and then taking action to demonstrate reflection, e.g. relevant courses. As Ms Adams did not genuinely accept her wrongdoing, her training would have been a tick-box exercise and she would not have accepted the courses she undertook applied to her. JC and EC gave evidence that Ms Adams is manipulative and over the last two days she has demonstrated this, by telling lies with ease (e.g. in her signed witness statement, at the Cancellation Tribunal and in her evidence to this Tribunal), or by failing to supply full information (e.g. providing her husband as a referee and indicating he is from Ofsted on her CCP job application form), or by deceiving her co-director. She either fabricates or relays insufficient information so that others cannot make a proper decision about safeguarding vulnerable children or adults. She has never mentioned the potential impact of her actions on children, she continues to lie, and it is unclear whether she will ever change. Ms Adams needs to be told very clearly that Ofsted does not trust her and could not work with her in the future.
70. Ms Adams stated in conclusion that she was happy that she had cleared her conscience about the past today. She regrets what happened and is thankful every day that the situation was not worse. She acknowledged she has been untruthful. She has done courses to educate herself and to show Ofsted that she is ready and able to work professionally if she is given the opportunity. She has also heightened her fence, will not use unvetted adults and has fitted a front doorbell. A lot has changed for her over the passage of time; she accepts that she has failed and the 2015 Tribunal decision. She believes she should receive some mercy, she has admitted all her past faults, learned her

lessons and she apologises to JC for all her wrongs and lies. She has gained more knowledge, is happy to work with Ofsted and to be truthful in everything she does. Childminding is her passion, there have never been any other events or accidents in her house and no safety issues were identified at her 2014 Ofsted inspection.

Tribunal's Findings and Conclusions

71. We have borne in mind the Ofsted guidance within its Early Years Compliance Handbook. Whilst this guidance does not have statutory force, it sets out matters which we find appropriate to be considered in what is effectively a risk assessment that must be undertaken in connection with this application.
72. We first looked at the risk to children and JC's and ECs evidence on this issue. We found them to be thoughtful and credible witnesses and place due weight on their evidence.
73. We note JC's evidence that the reasons for Ms Adams' cancellation were some of the most serious matters that she has dealt with as an Inspector, because of the extent to which Ms Adams tried to cover up her actions and the fact that she placed children at significant risk to protect herself. We further note her view is that Ms Adams' assessment of risk is not as it should be and that she fails to or does not understand the consequences of taking such risks and what she is exposing children to and that her lack of understanding raises serious concerns about her suitability.
74. We also take account of EC's evidence that Ms Adams has put children at significant risk of harm in the past and that she assessed Ms Adams' behaviour and actions to be of serious concern.
75. It is also of note that although Witness 1 appeared as a witness for Ms Adams, when asked to read a full account of exactly what happened, she indicated that she had changed her mind and that she would not give Ms Adams another chance with her children.
76. Ms Adams' denied she hid children in evidence on the first day, but admitted she had done so on the second day, submitting that she had not previously told the truth about what happened.
77. Given Ms Adams only changed her mind to accept the Cancellation Tribunal's findings (including hiding children) and her wrongdoing at the very last minute, we are unable to give credence to her evidence relating to risk. Mr Toole said in closing submissions that Ms Adams either fabricates or relays insufficient information so that others cannot make a proper decision about safeguarding vulnerable children or adults. We conclude that this is correct, and Ms Adams remains a risk to children.
78. We next considered the nature and severity of past compliance. Again, we note the concern expressed by JC and EC as to the gravity of Ms Adams' actions and the level of risk to which this exposed both children in her care

and other children at GCC. We consider the nature and severity of Ms Adams' lack of compliance in the past to be at the higher end of the scale and conclude the gravity of her actions exposed children in her care to an unacceptable level of risk.

79. We also considered the age of any past compliance. The disqualifying event took place exactly three years ago and the Cancellation Tribunal's decision was just over two years ago. Judge Tudur refused Ofsted's application in relation to striking out Ms Adams' appeal on the basis there is no requirement for a set time to pass before an application can be made for waiver of the disqualification and, by the time the appeal would be heard, two years would have passed since the date of the Cancellation Tribunal's decision and it would be legitimate to consider evidence of what had changed during that period.
80. JC gave evidence that Ms Adams came to the first waiver interview with very wide, open statements of regret and apology, but with no real substance as to what she intended to do to make any improvements and reassure Ofsted and although Ms Adams said she had undertaken significant safeguarding training and JC tried to explore this with her, Ms Adams' responses concerned JC, as she felt anyone with a very basic level of training should recognise the terminology she had used. JC was also concerned that the courses Ms Adams had undertaken were 'tokenistic,' as she was unable to provide information or an explanation as to how she would put into practice her knowledge and understanding.
81. EC gave evidence that if it was purely training that Ms Adams needed to undergo, the safeguarding and first aid courses she had undertaken might have made a difference, but the training does not appear to have had the impact Ofsted would have wished. The evidence from the waiver interviews is that the training does not appear to have upscaled Ms Adams' knowledge; she was unable to demonstrate a robust, safe and secure working knowledge. It was not just a question of training, but Ms Adams' overall understanding, acknowledgment and on-going assessment of risk and her behaviour.
82. Ms Adams told us that she has done courses to educate herself and to show Ofsted that she is ready and able to work professionally if she is given the opportunity. She has also heightened her fence, will not use unvetted adults and has fitted a front doorbell. There have never been any other events or accidents in her house and no safety issues were identified at her 2014 Ofsted inspection. A lot has changed for her over the passage of time and she believes she should receive some mercy as she has admitted all her past faults and learned her lessons. She has gained more knowledge, is happy to work with Ofsted and to be truthful in everything she does.
83. Whilst we accept there is no requirement for a set time to pass before an application can be made for waiver of the disqualification and two years have now passed since the date of the Cancellation Tribunal's decision, we consider the evidence of what has changed during that period to be

insufficient. Whilst Ms Adams has undertaken some courses, we note that she was unable to provide information or an explanation as to how she had increased her knowledge and understanding at her waiver interview with JC and the training does not appear to have had the impact Ofsted would have wished. We further note Ms Adams has made some minor home safety improvements since her registration was cancelled, but given her lack of overall understanding, lack of candour and dissembling, we accept the evidence of JC and EC and conclude that the minimal steps Ms Adams has taken in the last two years fall well short of what is required, and she is not anywhere near the stage at which waiver of her disqualification could realistically be considered.

84. We next turned to consider the evidence from the two waiver interviews. The notes from those interviews set out Ms Adams' explanation of and attitude to the disqualifying events, and JC's impression of her at those interviews. We note that at the first interview JC did not gain the impression that Ms Adams had learnt her lesson and was sorry for what had happened, but rather she appeared to be dumbing down Ofsted's concerns and using the interview as an opportunity to deny what had gone before, failing to accept the Cancellation Tribunal's decision or Ofsted's evidence.
85. Likewise, at the second interview we note that JC's overall impression was that Ms Adams was dismissive of the disqualifying events and she would say she could not remember or had forgotten and whilst it was her opportunity to demonstrate a willingness to explain what had changed, she did not appear to be working with Ofsted at this stage.
86. Both JC and EC gave evidence that, as a result of the waiver interviews, they did not feel they could trust Ms Adams in the future and it would be too great a risk to allow her back on the childcare register. We note their concerns that Ms Adams' failure to acknowledge and recognise her misleading information to Ofsted, her lies and dishonesty appeared to be driven by her wish to protect herself from the consequences of being found out, whereas a responsible child care provider would be panicking about the risk and potential consequences to the young, vulnerable children placed in her care.
87. The evidence from the waiver interviews leads us to conclude that Ms Adams' attitude and behaviour were, and are such, that waiver of her disqualification cannot realistically be considered at this stage.
88. We now turn to consider whether there are any mitigating circumstances. In Ms Adams' favour, we note that there does not appear to have been any repetition or any particular pattern of offending and that when referred to and assessed by social services, no concerns were found in relation to her own children.
89. We further note the courses Ms Adams has undertaken since the Cancellation Tribunal. However, Ofsted's decision letter dated 27 June 2017 indicates that, notwithstanding the courses Ms Adams completed, Ofsted did not consider her knowledge of safeguarding to be complete or sufficiently robust to ensure

children would be safe and protected in her care and noted documentation she presented as examples of how she would meet EYFS requirements was out of date and no longer applicable and that she was unaware of the current statutory framework of the EYFS. JC and EC's evidence in relation to these courses (see paragraphs 79 and 80 above) is also of concern.

90. We are also perturbed by the conflicting evidence in relation to the further courses that Ms Adams has undertaken since she commenced working in adult social care for CCP in July 2017. Ms Adams told us that she organised and paid for this training herself and none of it was through her employer, whereas the e-mail dated 14 December 2017 from Mr Olunowo states that she has been trained by CCP on safeguarding children and adults. This is yet another example of the difficulties Ofsted and the Tribunal face in discerning the veracity of Ms Adams' evidence and brings us to consideration of Ms Adams' honesty, integrity and credibility.
91. Although Ms Adams confirmed on the second day of the hearing that in addition to allegations previously accepted, she now admits to almost all of Ofsted's other allegations, there remains confusion as she still denies some of the detail of those allegations. Mr Toole submitted in his closing remarks that Ms Adams' only changed her mind to accept the Cancellation Tribunal's findings at the last minute and despite her general assertion that she is sorry, and she has learned her lesson, there is no real difference in her position since the Cancellation Tribunal in 2015 when she accepted almost all of Ofsted's allegations, only to retract her position during a TCMH on 23 July 2015.
92. JC's evidence was that Ms Adams initially presented as competent, able, organised and plausible but by the time of the Cancellation Tribunal her view was that she had never met anyone who was prepared to present so much misleading and inaccurate information and that Ms Adams will say what she thinks people want to hear to get what she wants. JC believes Ms Adams manipulates information for her own gain and if a child in her care were to be at risk in the future JC would be concerned that Ms Adams would not inform Ofsted for fear of exposing herself. JC did not feel there could be a relationship between Ms Adams and Ofsted due to the level of distrust and the fact Ms Adams did not view risk in the same way.
93. EC's evidence was that since November 2015 Ms Adams has continually failed to tell the truth to Ofsted or to the Tribunal and she also implicated a co-director. Ms Adams has shown a repeated pattern of lack of integrity and dishonesty and minimised and been selective with the information she shares with others. In order to waive Ms Adams' disqualification, as a minimum, Ofsted would want to know that she had taken steps to acknowledge the lies she told, her behaviour and her actions and how these had impacted on the children in her care. The ingrained behaviour and default stance Ms Adams has adopted with Ofsted and other agencies make it difficult to pinpoint if there is any specific action she could take, or behaviour she could exhibit, that

would convince Ofsted that she has truly changed and is truly remorseful, that she understands what she has done, and she is able to move forward.

94. We accept Mr Toole's closing remarks that Ms Adams demonstrated over the course of the hearing that she is manipulative (e.g. she tells lies with ease or fails to supply full information or deceives others such as her co-director) and she either fabricates or relays insufficient information, so that others cannot make a proper decision about safeguarding vulnerable children or adults. We conclude that Ms Adams cannot be trusted and that her disqualification must be upheld.
95. Finally, we wish to place on record our concerns in relation to Ofsted's safeguarding processes. JC gave evidence that this was one of the most serious cases she has dealt with and EC confirmed that Ms Adams had put children at significant risk of harm in the past and that she assessed Ms Adams' behaviour and actions to be of a serious concern. Despite this, Ofsted failed to refer Ms Adams to the DBS and Mr Toole confirmed to the Tribunal that Ofsted rarely makes such a referral. This means that unless an individual has a conviction or caution in relation to childcare, nothing would show up on an enhanced DBS check and, as was the case here, an individual disqualified from childcare could go on to work with Adults at Risk. We would ask Ofsted to take account of our concerns and carefully consider whether it needs to bring this matter to the attention of the appropriate regulators and to establish a clear policy for referral of individuals to the DBS.

Decision

Appeal dismissed.

Tribunal Judge: Debra Shaw
Care Standards
First-tier Tribunal (Health Education and Social Care)
Dated: 21 December 2017