

First-tier Tribunal Care Standards

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

[2022] 4776.EY

Neutral Citation number: [2023] UKFTT 730 (HESC)

Hearing held on 29 and 30 August 2023 at Nottingham Tribunal Hearing Centre

BEFORE

Ms S Brownlee (Tribunal Judge)
Mrs Josephine Heggie (Specialist Member)
Mr Matthew Turner (Specialist Member)

BETWEEN:

Brythan House Limited (Clovelly House Children's Home)

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. The appeal is brought by Brythan House Limited ('Appellant') against a decision of Ofsted ('Respondent') dated 8 November 2022 to cancel the Appellant's registration to carry on the children's home, Clovelly House Children's Home ('the home') on the grounds that the home has been carried on otherwise than in accordance with the regulatory requirements as set out in the Care Standards Act 2000 ('the Act'), the Children's Homes (England) Regulations 2015 ('the Regulations') and the 'Guide to the children's homes regulation including quality standards' ('the guide') and because the home has failed to take steps set out in a number of compliance notices. Mrs Jennifer Collighan, Responsible Individual for the home and director of Brythan House Limited brings the appeal. References to the 'Appellant' refer to Brythan House Limited and Mrs Collighan.
2. On 29 November 2022, Mrs Collighan filed an appeal to the First-tier Tribunal. The home continues to be subject to a suspension notice, which means that the home cannot carry on a children's home on an interim basis. The cancellation notice has not come into effect due to this appeal. Mrs Collighan

would like the Tribunal to allow her appeal and direct that the cancellation notice should not have effect. Mrs Collighan would like the Tribunal to either take no further action so that the current suspension notice continues to have effect or consider imposing conditions.

The Hearing

3. The hearing took place on 29 and 30 August 2023 as a face-to-face hearing at the tribunal hearing centre in Nottingham. All participants attended in person and the hearing was held entirely in public. Any references to children/young people maintain anonymity.
4. Some participants were working from hard copy bundles and some from digital bundles. The Tribunal worked from a hearing bundle running to 930 pages.
5. On 17 August 2023, the Respondent sent the Tribunal and Mrs Collighan a revised chronology, the contents of which was agreed by Mrs Collighan. On 22 August 2023, the Respondent sent the Tribunal and Mrs Collighan a skeleton argument. Mrs Collighan did not prepare a skeleton argument. The Tribunal took the view that her arguments, which remain consistent, had been adequately set out in her appeal application and the written documents she had produced in response to the Respondent's documentary evidence, which were included in the hearing bundle. The Tribunal also had a Scott Schedule, to which both parties had contributed.

Attendance

6. Mrs Collighan attended, representing the Appellant and, in effect, she was the Appellant in person, as she is the sole director of Brythan House Limited. Mrs Lucie Keeler, solicitor, instructed by Ofsted Legal Service, attended, representing the Respondent. Ms Laura Walker, social care regulatory inspector ('SCRI'), Mrs Joanne Vyas, regulatory inspection manager ('RIM'), Mrs Sarah Orriss, SCRI and Mrs Corrinne Barker, RIM, attended as witnesses for the Respondent. The Appellant called no additional witnesses.

Preliminary issues

7. The Tribunal was conscious that Mrs Collighan was representing herself in the appeal. In response to questions from the Tribunal, she confirmed that she had not taken any legal or professional advice in preparing for the appeal. Furthermore, the Tribunal had been provided with limited evidence as to what steps the Appellant had taken to remedy the apparent breaches of Regulations which were notified to her between 2021 and 2022. Mrs Collighan confirmed that she did not have any further documentary evidence on which she wished to rely. The Tribunal took the view that it would be appropriate for Mrs Collighan to speak directly with Mrs Keeler and Mrs Barker to understand the significance of making a new registration application in comparison to the decision to continue with the appeal. This was the first time Mrs Collighan spoke directly to Ofsted, as opposed to email/letter correspondence since registration in 2017.

8. After some time, Mrs Collighan confirmed that she wished to continue with the appeal.
9. The Respondent updated a mistake in one of the documentary exhibits in the hearing bundle, to ensure the Tribunal had a copy of the monitoring report after a visit to the home on 16 August 2022. The Respondent also flagged two additional redactions required to documents to remove the identities of children.

Background

10. Mrs Collighan has been the Responsible Individual of the home since its registration in October 2017. Clovelly House Children's Home ('the home') is a privately owned children's home which provides care for up to four children who may have emotional and/or behavioural difficulties. The home is on the same site as an independent special school called 'Clovelly House School' ('the school'), which is registered to provide education to up to 20 pupils. Mrs Collighan registered the home first of all and then later in 2017, she registered the school with the Respondent.
11. On 18 November 2019, the home was subject to an inspection and received compliance notices for Regulations 12 (protection of children) and 13 (leadership and management).
12. On 17 December 2019, the home was subject to a monitoring visit and received compliance notes for Regulations 13, 16 (statement of purpose), 23 (medicines), 33 (employment of staff), and 37 (other records).
13. On 13 and 14 October 2020, the home was subject to an assurance visit and received requirement notices in respect of Regulations 33 and 34 (policies for the protection of children).
14. On 9 and 10 June 2021, a full inspection took place and the home was rated 'inadequate'. It received a compliance notice for Regulation 13 and a requirement notice for Regulation 12.
15. On 4 and 10 August 2021, a further full inspection took place and the home was rated 'requires improvement'. It received requirement notices for Regulations 12, 13, 26 (fitness of registered provider) and 39 (complaints and representations).
16. On 29 and 30 June 2022, a further full inspection took place and the home was rated 'inadequate'. It received compliance notices for Regulations 12 and 13 and all requirements notices from August 2021 were re-set as they had not been met. The Respondent placed a restriction notice on the home which prevented it from admitting any more children to the home whilst improvements were being made.
17. On 16 August 2022, a monitoring visit took place and compliance notices were issued for Regulations 12 and 13 as they had still not been met.

18. On 20 and 21 September 2022, a further full inspection took place and the home was rated 'inadequate'.
19. On 22 September 2022, the Respondent issued a suspension notice.
20. On 27 September 2022, the Respondent sent the Appellant a notice of proposal to cancel registration.
21. On 24 October 2022, the Respondent received representations from the Appellant.
22. On 8 November 2022, the Respondent sent the Appellant a notice of decision to cancel registration.

Legal Framework

23. Brythan House Limited is a provider of a children's home. Children's homes are a type of social care provision which are regulated by Ofsted. The legal framework for the registration and regulation of children's homes is set out at part II of the Care Standards Act 2000 ('the Act'). Providers must, as a condition of registration, comply with the requirements of the Care Standards Act 2000 (Registration)(England) Regulations 2010, the Children's Home (England) Regulations 2015 and the Guide to Children's Homes Regulations, published in 2015.
24. Section 14 of the Act provides Ofsted with the power to cancel registration of a children's home on the ground that the children's home has been carried on otherwise than in accordance with the relevant requirements and on the ground that there has been a failure to take the steps specified in a compliance notice within the time specified.
25. Sections 17, 18 and 19 of the Act sets out the procedural requirements where the Respondent proposes to cancel registration.
26. Section 21 of the Act provides a right of appeal to the First-tier Tribunal. The Tribunal can confirm the decision or direct that it shall not have effect. In addition, the Tribunal shall also have the power to direct conditions or the vary a period of suspension.
27. The Respondent bears the burden of persuading the Tribunal that cancellation of registration is a proportionate and necessary decision as at the time of the appeal hearing. The Respondent must establish that the facts upon which it relies to support its decision are more likely than not to have occurred.
28. The Tribunal is required to determine the matter afresh and make its own decision on the merits and evidence as of the date of hearing and should take into account evidence which post-dates the notice of decision (subject to fair notice).

The Decision under Appeal

29. Ofsted adopted the notice of proposal and cancelled the registration of the Appellant, relying on the breaches to Regulations 12 and 13 of the 2015 Regulations. Regulation 12 states:

'The protection of children standard

12.—(1) *The protection of children standard is that children are protected from harm and enabled to keep themselves safe.*

(2) In particular, the standard in paragraph (1) requires the registered person to ensure—

(a) that staff—

(i) assess whether each child is at risk of harm, taking into account information in the child's relevant plans, and, if necessary, make arrangements to reduce the risk of any harm to the child;

(ii) help each child to understand how to keep safe;

(iii) have the skills to identify and act upon signs that a child is at risk of harm;

(iv) manage relationships between children to prevent them from harming each other;

(v) understand the roles and responsibilities in relation to protecting children that are assigned to them by the registered person;

(vi) take effective action whenever there is a serious concern about a child's welfare; and

(vii) are familiar with, and act in accordance with, the home's child protection policies;

(b) that the home's day-to-day care is arranged and delivered so as to keep each child safe and to protect each child effectively from harm;

(c) that the premises used for the purposes of the home are located so that children are effectively safeguarded;

(d) that the premises used for the purposes of the home are designed, furnished and maintained so as to protect each child from avoidable hazards to the child's health; and

(e) that the effectiveness of the home's child protection policies is monitored regularly'.

30. Regulation 13 states:

'The leadership and management standard

13.—(1) *The leadership and management standard is that the registered person enables, inspires and leads a culture in relation to the children's home that—*

(a) helps children aspire to fulfil their potential; and

(b) promotes their welfare.

(2) In particular, the standard in paragraph (1) requires the registered person to—

(a) lead and manage the home in a way that is consistent with the approach and ethos, and delivers the outcomes, set out in the home's statement of purpose;

(b) ensure that staff work as a team where appropriate;

- (c)ensure that staff have the experience, qualifications and skills to meet the needs of each child;*
- (d)ensure that the home has sufficient staff to provide care for each child;*
- (e)ensure that the home's workforce provides continuity of care to each child;*
- (f)understand the impact that the quality of care provided in the home is having on the progress and experiences of each child and use this understanding to inform the development of the quality of care provided in the home;*
- (g)demonstrate that practice in the home is informed and improved by taking into account and acting on—*
 - (i)research and developments in relation to the ways in which the needs of children are best met; and*
 - (ii)feedback on the experiences of children, including complaints received;*
- and*
- (h)use monitoring and review systems to make continuous improvements in the quality of care provided in the home'.*

Issues

31. The key question for the Tribunal is whether there were breaches of the Regulations and whether the Respondent is able to demonstrate, on the balance of probabilities, that the decision to cancel the Appellant's registration remains a proportionate, reasonable and justified one (as at the date of the hearing), when considered alongside the requirements in sections 14 and 21 of the Act.
32. We had a helpful skeleton argument from the Respondent, which we considered in advance of the hearing and as part of our deliberation, as well as the oral closing submissions from both parties and the written submissions from the Appellant, contained in the hearing bundle.

The Appellant's position

33. The Appellant set out five grounds of appeal. Four were set out in the hearing bundle and at the beginning of the hearing, Mrs Collighan added 'incorrect evidence which influenced judgments'. The other four grounds were (1) the decision to cancel registration was made without new evidence based information or onsite consultation despite the positive momentum of the action plan (dated September 2022); (2) the inadequacy of a system implemented by Ofsted to ensure compliance – namely the Regulation 44 officer; (3) the discourtesy of inspectors towards Mrs Collighan and her team following a complaint raised in 2017 and in 2022; and (4) Mrs Collighan's personal perspective.
34. As a starting point, the Tribunal made it clear to Mrs Collighan (as the Respondent had done previously) that the Regulation 44 officer is an independently appointed person who must visit the children's home at least once a month. It is a requirement of the Regulations, which is not governed or overseen by the Respondent. As such, it is difficult to see how the Respondent's decisions were related, at all, to the Regulation 44 officer's

reports.

35. Mrs Collighan accepted that the Responsible Individual (in Mrs Collighan's view, the acting Responsible Individual, Ms Scott) and the home manager (Ms Hollingsworth) had failed to perform key duties to standard, despite efforts made to support them in their roles.

The Respondent's position

36. The Respondent submits that the decision to cancel the Appellant's registration should be confirmed, as the decision remains justified, reasonable and proportionate given the Appellant's poor history of compliance with the requirements of the Act, the Regulations and the guidance. The Respondent further submits that the evidence presented of the improvements made since the most recent inspection in September 2022 is not sufficient to engender confidence that the Appellant is able to provide sustained levels of safe and effective care to vulnerable children in a well-led and well-governed home in the future.

Evidence

37. We considered all the evidence that was presented in the hearing bundle and during the hearing. We have summarised the evidence insofar as it relates to the relevant issues for the Tribunal. What is set out below is not a reflection of everything that was said or presented at the hearing or in the hearing bundles.
38. Ms Walker stated that she attended the full inspection of 9 and 10 June 2021 as one of two inspectors (along with Mrs Vyas). She understood that the registered manager, Ms Fiona Muddle, had been suspended from her role on 22 April 2021 due to allegations of bullying made by a child who lived in the home. She stated that there appeared to be a culture of fear at the home amongst staff and they were frightened to speak out against Ms Muddle – this was shared with Ms Walker as the reason why staff did not raise concerns with Ofsted. One child spoke of feeling suicidal in a letter of complaint that they sent to Mrs Collighan because of the alleged treatment from the registered manager. Ms Walker understood that this was the second complaint raised by the child relating to the registered manager. The first was raised in August 2020. Ms Walker was not able to review any documentation relating to the assessment of the complaint in August 2020 and the way in which it was escalated, investigated and the outcome from it. She had to rely on what she was being told by Mrs Collighan, who was in attendance from the inspection, in her role as the Responsible Individual. Accessing of important information was an issue during the inspection as Ms Walker was informed that the information was held on Ms Muddle's computer.
39. Ms Walker noted deficiencies in risk assessments relating to road safety for a child being allowed to walk on a road with a national speed limit for part of it and no pavement. There was no detail around the mitigating arrangements which had been considered for the child or items the child might require to

ensure safety/levels of contact with staff/levels of road safety knowledge.

40. Ms Walker stated, in cross examination, that she did not receive a complaints file at the inspection. She accepted that she saw a 'pink file' which Mrs Collighan shared with her, but there were no records as to how Mrs Collighan managed the complaint which was first raised by the child in August 2020. Ms Walker explained that she did not see evidence that Mrs Collighan had responded to the complaint in August 2020. Ms Walker explained that there had, by that time, been a previous complaint, raised by the child, of sexual exploitation relating to a male member of staff who worked in the school and also completed bank shifts in the home. Ms Walker stated that she was very concerned about the experience of the child, compounded by the effect of alleged abuse from adults at the school and the home.
41. Ms Walker had concerns that members of the teaching staff were working in the home and there was no specific policy relating to arrangements for when a teaching staff member worked in the care setting. There was no policy to cover boundaries and safeguarding arrangements. Ms Walker observed that staff appeared to be relieved at the decision to suspend the registered manager as they had been anxious about attending work. The staff were explicit about that when Ms Walker spoke with them. Ms Sarah Smith was, at that time, the acting manager in the absence of Ms Muddle. Ms Smith confirmed with Ms Walker, as she recorded in her contemporaneous note of the discussion with Ms Smith, that the teaching staff member (accused of an inappropriate relationship with one of the children in the home) no longer worked at the home, but the investigation into the teaching staff member had not yet concluded. Ms Walker recalled that feedback was provided orally at the end of the inspection, on 10 June 2021 and it was accepted by Ms Smith and Mrs Collighan (as recorded in her autonomous notes) and they confirmed they were 'happy with it'.
42. Ms Walker was also an inspector at the monitoring visit of 16 August 2022, following the full inspection of 29 and 30 June 2022. The feedback process took the same form, with Ms Walker providing oral feedback to Ms Smith who confirmed she was happy with the way Ms Walker had led the visit. The outcome was that the compliance notice after the full inspection of 29 June 2022 remained unmet in relation to Regulation 13 as staff were not being adequately supervised and were not receiving formal appraisal of their work. Ms Smith and Ms Amy Hollingsworth (deputy manager) explained that Mrs Collighan had completed an internal audit of the home. This was requested during the visit, but not provided. Ms Walker also concluded that Regulation 12 was not being met as there was little evidence of a system to organise information on safe recruitment of staff and no evidence that managers had received training for reporting safeguarding incidents, no evidence of evaluation by managers of reported incidents and missing key information in risk assessments relating to the children. There were missing incident reports for a child who was at risk of exploitation and an incident during which children climbed through their bedroom windows onto a roof. Ms Walker had concerns that children continued to be at risk due to the lack of completion of the

compliance notices.

43. Mrs Vyas confirmed that she first inspected the home in 2019 and it was rated 'good' with one breach of Regulation 32 (fitness of workers). She explained that a requirement notice is usually issued where there has been a breach of the Regulations and then a compliance notice is usually issued where there has been a breach or breaches and there are concerns on children safety. Mrs Vyas observed that Ms Smith seemed confused about her role during the inspection of June 2021. Ms Smith said she was the interim manager, but she was also acting as the deputy manager with some added responsibility, so she was unable to do things that she felt she would do as a manager.
44. Mrs Vyas conducted the second full inspection on 4 and 10 August 2021. Ms Smith was present on 4 August 2021 and Mrs Collighan was present on 10 August 2021. Mrs Vyas had concerns about the policies and procedures, which were not being followed or were confusing. As an example, she explained that one child had previously been walking about one mile on a country road and now, at this inspection, two children were doing it and their risk assessments were exactly the same, even though on the previous inspection, the inadequacy of the risk assessment documents had been specifically highlighted as in breach of the Regulations and a reason as to why the home was rated 'inadequate'. Mrs Vyas observed that she did not consider that any changes had been made from the time of the first inspection and this, the second inspection. It was only after the inspection of 4 August 2021 that Ms Smith emailed Mrs Vyas to indicate that the children would no longer walk to the village, but would catch the bus or could be dropped off and collected by a staff member.
45. Mrs Vyas explained that she conducted a fit person interview for Ms Hollingsworth in her application to become the registered manager of the home. She noted that Ms Smith attended with Ms Hollingsworth and Ms Hollingsworth seemed very nervous. It was discussed that Ms Hollingsworth did not demonstrate a good understanding of safeguarding practice and afterwards the team agreed to allow her registration with support from Ms Smith, who, at this time, was the deputy manager, acting up as the manager and Ms Hollingsworth's line manager. Ms Hollingsworth and Ms Smith did not raise any concerns at the time of the interview, but after the event, Mrs Collighan raised a complaint about questions being asked about an unregistered care home for children aged 16 and over. It was agreed by Ms Barker, who dealt with the complaint, that Mrs Vyas would not attend as the inspector on the next inspection after 10 August 2021.
46. Mrs Orriss became involved as the inspector for the next full inspection, which took place on 29 and 30 June 2022. She conducted the inspection on her own and concluded that the rating would be one of 'inadequate'. As examples, she explained that the issues concerned safeguarding of children and leadership

and management in the home. Restraints were being used by staff and were not being recorded. There was no clear oversight of how children were being supported. It was very, very difficult to gain information and the information received was out of date. The home had agreed to submit an action plan every six months, but the one shared with Mrs Orriss was from two years previously and was full of mistakes. There was no up to date staff list and no record of training completed by staff. No one seemed to know where the supervision records for staff were stored and they were eventually located in a cupboard. Mrs Orriss observed that she was told work had been completed, but when she asked for evidence of it, none was produced. Then, at one point during the inspection, Ms Smith and Ms Hollingsworth indicated that they hadn't got some of the information and hadn't done some of the work and had been misleading the inspector and trying to cover up the shortcomings but decided to be transparent with Mrs Orriss. She recalled thanking them for being honest with her.

47. Mrs Collighan introduced herself at the beginning of the inspection and left. Mrs Orriss explained that she found this surprising as she was not present for the inspection or the feedback even though she remained registered with the Respondent as the Responsible Individual. The team did not raise any concerns with the oral feedback Mrs Orriss provided at the end of the inspection – they came across as very positive and talked about taking on board what was being shared by Mrs Orriss.

48. Mrs Orriss next attended for an inspection on 20 and 21 September 2022. Mrs Collighan was unwell and not present. Ms Smith and Ms Hollingsworth were there at the beginning and then disappeared, which Mrs Orriss found unusual as there was no one present from the senior leadership team to support her. The deputy manager who was in attendance became overwhelmed and indicated that she felt unsupported in having to deal with a child protection issue, when she had been provided with no information about it. It would appear that during a staff debrief it was shared that a child said that they had been touched inappropriately. There had been no discussion with the child. The child had also gone missing overnight and when they made contact with the staff, they were informed to 'get an Uber'. there was no risk assessment in place and this was in spite of the same child reporting, after their return to the home, that they had engaged in sex acts. Mrs Orriss stated that there was evidence that the children at the home had devised their own safety plan to protect the child in question. In Mrs Orriss' views, there was a real danger that one of the children was being exploited. She was very, very concerned at this point and spoke with her manager. At the case discussion, after the inspection, it was agreed that immediate action needed to be taken. In Mrs Orris' view, there was a disconnect between the management and staff, who were not receiving effective leadership. At that point, the decision was taken to issue a suspension notice. Mrs Orris later attended for a monitoring visit and spoke to Mrs Collighan and Ms Smith. Several staff members at the school had left or walked out the day before and it was clear to Mrs Orriss that the home was in a difficult position as most of the senior leadership team had left.

49. After September 2022, the Respondent received no further copies of reports from Regulation 44 visits. At the point when a notice of decision to cancel was issued, Ofsted had received an action plan. In her view, she did not know what changes have been made to reassure on safe care and she was not sure that the leadership and management in the home was strong enough as it was her experience that it was unusual to serve compliance notices and for providers not to follow the steps to ensure they were met.
50. Mrs Barker stated that in her experience, compliance notices are rare. She explained that she recalled drafting the compliance notices and setting out what was required in crystal clear terms. She explained that the provider worked quite well when very clear steps were set out to follow with measurements. The pattern was that the home would just enough to get through that process but the position could not be sustained. The home talked about changes it was going to make - 'talked a good talk', but there was not robustness to what was put in place. That was the reason why, in Mrs Barker's view, Regulations 12 and 13 were breached consistently.
51. Mrs Barker indicated that 80% of children's homes are, at any time, rated 'good' or 'outstanding'. A very small proportion go into enforcement and, in her experience (as an inspector/manager for seven years), it is really rare that Ofsted has to go as far as it did with this home in terms of enforcement. In her view, the home had become accustomed to seeing it as normal to get a compliance notice, but the Respondent viewed compliance notices as exceptional.
52. Mrs Barker explained that the compliance notice she drafted after the inspection of 9 and 10 June 2021 was the most pointed notice she has ever written. It was a pointed way of saying – you are not doing your job and you should consider your capability and competency for the role – written to the Responsible Individual and director (Mrs Collighan). She viewed the compliance notice as being a way to say – you need to 'get a grip, take responsibility and consider someone else in the role'. She had concerns that the leadership was not reflective enough to safeguard children.
53. From the inspection of 4 and 10 August 2021, she could see that a lot of work had gone into the action plan, but it was not reflective. There was a sense that it was not about what was right for the children, but about pacifying Ofsted. By the time of the inspection on 29 and 30 June 2022, Mrs Barker recalled that she was off work at that time, but she was kept informed as to the outcome of the inspection and had already formulated a plan. In her view, this was a really serious outcome as it was another rating of 'inadequate and a restriction notice became a necessary step. This was in response to a serious safeguarding incident of a child who was being sexually exploited – filming sexual acts for drugs and sharing them. In her view, at this point, the home was struggling with the children it had. There appeared to be an inflated sense of how good the

home was, which meant it was admitting children with complex needs and there was a risk it was doing more harm than good. Around this time a 16-year-old young person was moved to an unregistered care home which Mrs Collighan had set up, which was permissible at that time, if the 16-year-old young person could manage semi-independent living. However, Mrs Collighan was in the process of registering that home. Mrs Barker queried if the 16 years old was actually ready for semi-independent living, given that when the home was registered, there was a plan to have carers in place to meet the children's care needs.

54. At the inspection of 20 and 21 September 2022, there was a different tone to the inspection as staff had walked out. Mrs Barker explained that Ofsted tries to avoid negative impacts on children, but in this case, a suspension notice, as an urgent step, was required as it was no longer fair for children to spend any longer living in a home that was substandard. Mrs Baker recalled that the decision to cancel registration was not a difficult decision because she considered that the Respondent had used every tool available to try to bring the home up to the standards required. Mrs Barker considered the written representations to the notice of proposal to cancel registration and noted that the representations focused on peripheral issues and did not demonstrate insight and reflection. There was a sense that the Responsible Individual would just get new managers. Mrs Barker found it of note that the external consultant who was commissioned to review the home, on behalf of Mrs Collighan, agreed with the concerns raised by Ofsted.
55. In Mrs Barker's view, it seemed as if Mrs Collighan did not want to rescind the role of Responsible Individual, despite appointing Ms Smith as 'acting Responsible Individual'. The process for updating registration of that person with Ofsted is a straightforward administrative task, but it was never completed properly. Mrs Barker explained that at the time when Ms Hollingsworth was interviewed to become the registered manager, she was incredibly nervous and Ofsted worked to find a solution. It was Ms Hollingsworth who made reference to the unregistered care home during her interview and after the event, a complaint was received from Mrs Collighan about Ofsted not having the right to ask about it. In Mrs Barker's view, Ofsted had every right to ask about it and it would have been failing in its duties if staff had not asked about it. She observed that all complaints were dealt with at an informal stage and there was no evidence of anything other than transparency and fairness.
56. In Mrs Barker's view, if the home was to reopen, she would like to see a different person as the Responsible Individual and in her view, Mrs Collighan should not be involved in the day to day running of the home. Mrs Barker noted that safeguarding was being carried out by school staff, such as the bursar. People were playing key roles in safeguarding whose skills and competence had not been tested and it was poor. She would wish someone with a social care background to lead the service. Mrs Barker had concerns to hear that Mrs Collighan had received advice from a person who had previously been subject to a suspension notice at the home they oversaw. In her view, the home

requires a root and branch review before it can reopen.

57. Mrs Collighan explained that she had understood that the appeal would provide clarity and then she would implement improvements. This explained why she had not submitted any evidence to demonstrate changes made or changes planned since the home was made subject to a cancellation notice (although because the appeal was filed, the cancellation does not effect, pending the outcome of the appeal). Mrs Collighan explained that by the beginning of December 2021, she felt it would be better to have a new Responsible Individual. Her reasoning for this was because she felt that her relationship with Ofsted had broken down. In her view, a lot of things she had said have been misreported, such as misinformation about safeguarding incidents. For example, a school staff member worked as a bank worker at both the school and the home. At the time, the manager was happy to appoint staff members to work in both places. Mrs Collighan explained that she witnessed the male staff member, who worked in the school and the home, standing next to the child in the child's bedroom and giving her a hug, noting that the door was open. Mrs Collighan explained that she reported the incident to the LADO and stopped the member of staff from working in the home. She recorded it as a 'near miss'. The documentation was not submitted as evidence in the appeal.
58. Mrs Collighan went on to explain that by 11 May 2021, a young person made an allegation to Ms Hollingsworth that they had engaged in sexual intercourse with a male staff member. As a result of this, the then home manager, Ms Muddle held a meeting and the outcome was reported back to Mrs Collighan – the decision made was to contact the police and the LADO. Mrs Collighan accepted that in hindsight, she would have dealt with the issues raised by a child in August 2020 relating to the home manager, Ms Muddle, in a different way. At the time, Mrs Collighan took the manager off site and spoke to her about the complaint. By the time of April 2021, when a second complaint was raised about the home manager, action was taken and the home manager was suspended.
59. Mrs Collighan explained that as the team were receiving satisfactory Regulation 44 reports, they were all shocked to receive rating from the inspection at the end of June 2022, as Mrs Collighan had made changes, such as Ms Scott operating as acting Responsible Individual (from around December 2020) and the move of Ms Hollingsworth into the manager role. Mrs Collighan explained that weekly management meetings were taking place and there was an opportunity to raise safeguarding concerns. Mrs Collighan stated that as a result of that inspection, Ms Scott and Ms Hollingsworth went to pieces and she was really struggling to keep things going. Mrs Collighan explained that by September 2022, she felt that Ms Scott and Ms Hollingsworth were not being truthful with her. In Mrs Collighan's view, the decision to cancel was unfair as the suspension notice would have been sufficient to give Mrs Collighan time to put in place a new leadership team.
60. Mrs Collighan indicated that in the past the home had received a good

inspection and she had previously worked in education and in care homes. She had done this since 2001 and in 2017, she set up the home and then set up the independent special school (Clovelly House School), with Mrs Collighan as the principal. There is a headteacher in post at the school. She explained that she did not know that she needed to connect the two applications to update the Responsible Individual with Ofsted. In terms of looking back, Mrs Collighan explained that she had learnt that she trusted the team she appointed too much. She explained that she would increase salaries now and only appoint staff who are experienced in meeting compliance and managing care homes. She accepted that she would definitely appoint an experienced registered manager and Responsible Individual and give them full authority. In her view, if she had competent leaders in place, she would leave them to the day to day running of the home. She explained that she is really committed to keeping children safe.

61. In answer to questions from the Tribunal and Mrs Keeler, Mrs Collighan accepted the nature of the breaches of the Regulations at each relevant inspection. She also accepted the ratings from each relevant inspection and accepted that there was no documentary evidence to demonstrate remediation of the issues. For Mrs Collighan, she wants to involve the new manager and Responsible Individual in that process. At the time of the last inspection, Mrs Collighan explained that she brought in two consultants to try to help Ms Scott and Ms Hollingsworth. Mrs Collighan explained that the process was very difficult as once the home had received an inadequate rating, it felt like she had to fight fire all the time with auditors coming in. She stressed that the leadership staff cared for the children at the home and the children's social workers wanted the children to remain at the home. At around the time of the inspection in September 2022, the team had experienced the death of a child who had been at the home and this hit Ms Scott and Ms Hollingsworth hard. Mrs Collighan stated that she wants the home to be good and to make it a happy place for children again. She wants to have a team in place which is robust and can withstand setbacks as well as a management team she can trust.

62. Mrs Collighan confirmed that she considered she had been able to engage effectively with the appeal hearing.

The Tribunal's conclusions with reasons

63. Dealing with the factual matters which remained in dispute, as set in the Scott Schedule, the Tribunal reminded itself that the evidential burden rests with the Respondent. We are grateful to all of the witnesses who attended to give oral evidence at the appeal hearing, which assisted us significantly in reaching our decision.

Inspection of 18 November 2019

64. As a result of this inspection, the home was found to have declined in effectiveness, which resulted in breaches of Regulations 12, 13, 32 and 40. Mrs Collighan appeared to accept the outcome during oral evidence. In any event, the Tribunal considered the Respondent's report from the inspection and

the oral evidence from Mrs Barker. At the time, the home did not contest the outcome of the inspection or the issuing of two compliance notices from Regulations 12 and 13. It seems to the Tribunal that the evidence base for the concerns, based on a direct inspection of the home, was reliable and the action taken was proportionate. The Tribunal accepted the evidence from Mrs Barker of the 'ladder' of regulatory actions from Ofsted. It was considered that compliance notices, sitting above requirement notices and below conditions of registration/suspension/cancellation, were a reasonable action to take at that point, as it provided the home with a clear time frame and clear steps that had to be taken to come into compliance. Accordingly, the Tribunal finds, as a matter of fact, that there was sufficient evidence to support the conclusion that the home was in breach of four Regulations on 18 November 2019. Ultimately, if a home is in breach of the fundamental requirements of the Regulations, the Tribunal accepted the position from Ofsted that to require compliance and to require it in a timely fashion, was a proportionate response.

Monitoring visit of 17 December 2019

65. As a result of this visit, the home was found to be in breach of Regulations 13, 16, 33 and 37. Mrs Collighan suggested, in the Scott Schedule, that there was adequate supervision in place at the time. As a theme of this appeal, we were provided with no documentary evidence to demonstrate that staff were adequately supervised, through staff rotas, staff meetings, one to one meetings, appraisal records, frequent audits of records, performance management arrangements or any policies to demonstrate what the home had in place, by way of standard operating practices at the material time. Again, as detailed in the report dated 17 December 2019, the registered manager and the Responsible Individual accepted that mistakes were made in relation to the management of a safeguarding matter (which linked to the findings from the inspection of 18 November 2019). The report acknowledged that improvements had been made, but there were issues which remained outstanding, which led the inspector to conclude that breaches of the Regulations were still engaged. As such, a decision was made to impose further compliance notices. This, in the Tribunal's view, was a proportionate response, given that the home was not meeting the basic requirements of the Regulations.

Inspections of 9 and 10 June 2021, 4 and 5 August 2021, 29 June 2022 and 20 September 2022

66. The Tribunal placed significant weight on Mrs Collighan's position, in affirmed oral evidence, that she accepted the breaches of the Regulations identified at the inspections of June 2021, August 2021, June 2022, September 2022 and the monitoring visit of August 2022 and the ratings which results from each inspection.

67. The Tribunal carefully examined the documentary evidence, which included

contemporaneous evidence reports compiled by the inspectors who directly attended the inspections on each occasion. In addition, the Tribunal heard, in affirmed or sworn oral evidence from three inspectors (at the material times) and one inspection manager as to the approach taken to the inspection process on each occasion. It was planned, taking into account the previous rating of the home and the levels of compliance demonstrated by the home (in particular with compliance notices). The Tribunal found each of the Respondent's witnesses to be credible, able to corroborate their conclusions with references to contemporaneous notes of inspections and consistent in their evidence. In particular, the Tribunal was struck by the oral evidence from Mrs Orriss (who conducted inspections on her own) and Mrs Barker, who demonstrated a comprehensive understanding of the history of the home. This was entirely appropriate as she was not only a decision maker in relation to regulatory action which was taken during 2021 and 2022, but also the person responsible for drafting compliance notices, based on evidence gathered from inspector colleagues who attended inspections and monitoring visits.

68. The Tribunal concluded that the evidence upon which the conclusions that there had been breaches of the Regulations, during the inspections and monitoring visit which took place in 2021 and 2022 are clearly supported by both the contemporaneous records and the oral evidence of the four witnesses from Ofsted. Ultimately, at the hearing, Mrs Collighan did not seek to counter the breaches or to suggest that the ratings from each inspection were unreasonable or based on erroneous evidence. The Tribunal concluded that it was more likely than not that the home breached a number of Regulations at each inspection in 2021 and 2022 and, as a result of the breaches, regulatory intervention was taken by the Respondent which was proportionate and necessary.
69. Mrs Collighan sought to advance an argument that the inspectors were discourteous because she had raised a complaint in 2017 and in 2022. The Tribunal could find no rational evidence base to support this assertion. In fact, what was clear was that the Respondent was doing all that it reasonably could to try to avoid making the decision to cancel the home's registration, not least due to the impact it would have on vulnerable children. Mrs Barker explained that looking back, when the home was unable to comply with its compliance notices within the set period of time, that probably should have led to more serious regulatory intervention, rather than resetting the compliance notices. Furthermore, the Tribunal considered it significant that once a complaint was raised about Mrs Vyas' approach to Ms Hollingsworth's registration interview, she was not involved in any further inspections. There was simply no coherent evidence base for suggesting that the Ofsted inspectors were unfair or discourteous in any way.

Compliance with Regulations 12 and 13

70. The Tribunal took into account the Appellant's lines of questioning of the witnesses, which, in the Tribunal's view, often focused on, as Mrs Barker characterised it in her oral evidence, peripheral issues. In the Tribunal's view, this failed to demonstrate insight into the significance of a home being found to be in breach of Regulations 12 and 13 (protection of children and leadership

and management) consistently between 9 June 2021 and 20 September 2022. Arguably, Regulations which concern standards for the protection of children and leadership and management are fundamental to the provision of safe and effective care to children residing in children's homes. As an example of this, Mrs Collighan focused her questioning on Mrs Vyas inappropriately asking questions about an unregistered home during the registration interview with Ms Hollingsworth. However, it became clear that Ms Hollingsworth was using examples of her time working at the unregistered home to inform her answers to the questions asked. Mrs Collighan asserted that this was discourteous, after the interview, an interview which Ms Scott and Ms Hollingsworth had been positive about and had appreciated the agreed supportive plan to ensure the Respondent would approve Ms Hollingsworth's registration. As another example, Mrs Collighan accepted that despite witnessing a male teaching staff member in an embrace with a child, in the child's bedroom in the home, in July 2020, it was not reported to the LADO until October 2020. There was not satisfactory explanation as to why there was a delay in reporting the incident.

71. The Tribunal was struck by Mrs Collighan's apparently limited levels of understanding of the regulatory and appeal process, even taking into account that Mrs Collighan had not sought legal advice or professional advice or contacted Ofsted at all, other than to raise a complaint on 23 August 2017 as to how long registration was taking and on 7 April 2022 as to the registration process for updating the Responsible Individual and registered manager. The Tribunal accepted the clear evidence from Mrs Barker that the process for updating the registration of the Responsible Individual with Ofsted was administrative and required the person ceasing the role to complete a form at the same time as the person proposed to take over the role. Despite providing this information to the home, the application process, to the date of the hearing, had not been completed. The significance of this was that the Responsible Individual, since registration of the home, remains Mrs Collighan. The Tribunal concluded that this was an example of the Responsible Individual failing to understand basic elements of administration which was relevant to the Tribunal's assessment of ability to demonstrate remediation of the leadership and governance issues, as of the date of the hearing.
72. Mrs Collighan had not appreciated that she could use the action plan, formulated in September 2022, in response to the suspension notice, to plan and make improvements in the systems of assurance and oversight at the home. It was Mrs Collighan's intention to put in place a new management/leadership team before doing work to make improvements. It is the Tribunal's firm view that there was a reasonable period of time, from the date when the appeal was filed on 29 November 2022 to the date of the hearing to demonstrate, by way of a detailed action plan and strategy, the improvements made, the timelines for recruitment, updating policies, standard operating processes, templates, staff structure, supervision, arrangements for performance management, records management, and what was going to change in the home's approach to safeguarding. This was especially important, given that at the time of the inspections and during oral evidence, Mrs Collighan accepted that safeguarding procedures were not adequate.

73. The Tribunal has to consider the matter afresh and decide, having regard to the legislative framework, if the decision to cancel registration of the home is proportionate, reasonable and justified, based on the evidence present to it in the hearing bundle and in oral evidence from the five witnesses.
74. The Tribunal, as detailed above, had found, as a matter of fact, that there were breaches of Regulations 12 and 13 of the 2015 Regulations at each inspection or monitoring visit which took place between 2021 and most recent full inspection of 20 and 21 September 2022. In fact, Mrs Collighan accepted that regulatory action is still required, bearing in mind that she indicated, during the course of her oral evidence and in closing submissions that the home's registration should not be cancelled, but it should be subject to suspension until a new leadership team could be put in place.
75. The Tribunal had no doubt that at the time of the decision to cancel the registration of the home, the decision was proportionate in all the circumstances. By that point, there was no sense that any progress was being made against the action plan, drafted in July 2022, updated in September 2022 and overseen by external consultants (following the suspension of the home's registration). The breaches of the Regulations, which had been continuous for over one year and had resulted in numerous compliance notices, which detailed to the letter the actions required and the dates by which they should be completed, were serious. They amounted to entrenched, cultural failures which supported the view of the inspection team that without systemic change, including Mrs Collighan stepping back as the Responsible Individual, the placing of children at the home would place them at undue risk.
76. However, the matter does not end there. The Tribunal must make the decision afresh, based on any evidence which has been submitted since the decision to cancel, in order to support improvement and lead to assurance that the decision to cancel is no longer a proportionate decision, as of today. The Tribunal carefully examined Mrs Collighan's written submissions, documentary exhibits and weighed up her oral evidence. The Tribunal did not consider that Mrs Collighan demonstrated insight into the seriousness of the failures. Despite a period of approximately nine months passing since the appeal was filed, there was no evidence of improvement to the home, including evidence to assure on the ability of the home to meet the requirements of Regulations 12 and 13 on a consistent basis. The Tribunal was struck by Mrs Collighan's response to what changes she would make and what she had learnt from the process – she explained that she would recruit a new leadership team and would not be so trusting. In the Tribunals' view, this answer demonstrated the limited insight that Mrs Collighan currently has to the extent of the difficulties and the systemic nature of the changes which are required – the process will take more than installing a new registered manager and a new Responsible Individual. It will require clear assurance, based on evidence, of a fundamental review of the home. In the Tribunal's view, that process will need to take place before the home can consider a new application for registration at a date in the future.

77. The Tribunal considered carefully whether there are conditions which could be formulated to meet the level of risk and the nature of the regulatory breaches, to allow the home to remain subject to registration at this time. The Tribunal could not formulate any conditions which would meet the level of risk and the entrenched nature of the regulatory failures identified over more than one year at the home.

Decision

The appeal is dismissed.

The Respondent's decision of 8 November 2022 to cancel Brythan House Limited's registration to carry on the children's home, Clovelly House (12 Charnwood, Barwell, Hinkley, Leicestershire, LE9 8FL) is confirmed.

**Judge S Brownlee
District Tribunal Judge**

**Care Standards & Primary Health Lists Tribunal
First-tier Tribunal (Health, Education and Social Care)**

Date issued: 07 September 2023