

Care Standards

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

[2014] 2203.EY

IVA INEZ TULLOCH

Appellant

v

OFSTED

Respondent

DECISION

TRIBUNAL:

Judge John Burrow
Ms Bridget Graham Specialist Member
Ms Margaret Diamond Specialist Member

The hearing was on 24 and 25 September 2014 at Pocock Street.

Representation and Witnesses

1. The Appellant appeared and gave evidence. She was unrepresented and called no other witnesses. Ofsted was represented by Ms Smith, solicitor with P.S. Law. She called Ms C Walker, an Inspector with Ofsted, Ms Karen DeLastie, Senior Officer with Ofsted, and P.C. Horan, police officer.

Reporting Restrictions

2. A Restricted Reporting Order was made under Rule 14(1)(a) and (b) of the 2008 Rules prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any child or family member mentioned in the appeal.

Appeal

3. Ms Tulloch appeals against the decision of Ofsted on 2nd April 2014, to cancel her registration to provide early and later years childminding. Ms Tulloch appealed on 2 May 2014 and continued to provide child

care. On 24 July 2014 her registration was suspended. She has not appealed against her suspension.

4. The bundle contained documents relating to the case of both parties, case summary, orders, witness statements and exhibits. At the hearing further papers were served by both parties. Ofsted served an additional witness statement from P.C. Horan, a letter from Lewisham Homes dated 19 September, a chronology of LA contacts with Ms Tulloch and a Scott Schedule. Ms Tulloch served a bundle of papers of 37 pages including her procedures at the childminding provision, permissions signed by parents for minding by a child care assistant, record of information about minded children, contracts for child minding services, references, and 4 Early Years Information Team (EYIT) training certificates and two Bunbury Training certificates.

Background

5. Ms Tulloch was first registered for childminding on 12 September 2006, although she said she first began to accept children in 2008. She was registered in the Early Years Register and both parts of the General Childcare Register. Childminding took place at her home address.

Law

6. The framework for the registration and regulation of child-minders is contained in Part 3 of the Childcare Act 2006. Broadly the provisions of the Act seek to significantly upgrade the requirements for the provision of childcare, particularly in the areas of learning and development, assessment and safeguarding. The new standards in these areas are set out in detail in the Early Years Foundation Stage (EYFS) document. The Act envisages a regime of registration, inspection, safeguarding, and cancellation or suspension of registration where standards are not being met. The EYFS are given statutory effect by the Childcare (Early Years Register) Regulations 2008 which provides inter alia that an early years child-minder must be 'suitable' and that the childminding must meet the EYFS learning and development and welfare requirements, and must ensure children's health and safety. Every person living or working on the premises must be checked and suitable.
7. Ms Tulloch is registered for early years childminding and for both parts of the General Childcare Register. A decision to cancel registration is made by Ofsted under Section 68(2), and here Sections 68(2)(a)(c) and (d) are relied on. Ofsted state that Ms Tulloch has not satisfied the requirements for registration, failed to comply with relevant regulations, and failed to comply with learning and development requirements.
8. Under Section 74(1) of the 2006 Act, there is a right of appeal to the First Tier Tribunal. The burden of proof lies on the Respondent Ofsted,

and the standard of proof is on the balance of probability. The Respondent must also show the decision is proportionate and necessary. Because the First Tier Tribunal step into the shoes of Ofsted in remaking the decision, and the appeal is not simply a review of the Ofsted decision, new evidence arising after the decision by Ofsted is admissible.

9. Under Section 74(4) of the 2006 Childcare Act, the First Tier Tribunal may confirm Ofsted's decision to cancel or direct the decision shall not have effect. If it does not confirm the decision to cancel, the First Tier Tribunal may impose, vary or cancel any condition.

The Case for Ofsted

10. There was little dispute between the parties on the facts. In 2008 Ofsted inspected the premises and Ms Tulloch was given a 'good' rating. Ofsted's concerns about Ms Tulloch began in 2010, when they were contacted by the Local Authority about her application to them to be a carer for her grandchild, in respect of whom there were care proceedings. During the LA's assessment of Ms Tulloch, they became aware that she had been involved with Children's Social Care in relation to two of her own children. The children had made allegations of slapping against Ms Tulloch. As a result Ms Tulloch's application in respect of her granddaughter's care was not completed. The LA notified Ofsted of this matter and Ofsted became concerned that in her application to them to become a child-minder in 2006, these matter had not been disclosed.
11. In 2011 Ofsted received notification that Ms Tulloch was using two childminding assistants who had not been notified to Ofsted, which if proved was a criminal offence. She was interviewed about the matter and admitted the offence. Rather than prosecute, Ofsted issued a formal warning on 8 July 2011.
12. In June 2011 Ms Tulloch submitted details of her daughter to Ofsted. She wished to use her as a childminding assistant. Ofsted visited the premises in respect of this matter on 3 August 2011 and found that Ms Tulloch was significantly exceeding her permitted number of minded children. A repeat visit by Ofsted on 4 August 2011 found she was still minding more than the permitted number of children. Furthermore it was found she had again failed to notify Ofsted of changes to people living and working on the premises. She was interviewed under caution on 22 August 2011 for these offences and given a further formal warning on 9 September 2011.
13. During this period, Ofsted inspections of Ms Tulloch's premises revealed a number of breaches of the Early Years Foundation Stage (EYFS), including keeping a record of children, effective systems to meet the needs of children, provision of child initiated activities, provision of appropriate experiences and allowing persons who had not

been checked to have unsupervised contact with the children. On 31 August 2011, a child was found alone in an upstairs room watching TV. Welfare Requirement Notices (WRN) were issued on 9 September 2011, 3 October 2011 and 12 March 2012, in respect of these and other matters.

14. When the WRN Notice was served at the premises on 9 September 2011, Ms Tulloch was found again to be minding more children than she was permitted. Subsequently a number of items specified in the WRNs were not met and inadequate progress was being made. This is an offence for which she could be prosecuted, but again Ms Tulloch was cautioned. Subsequently Ms Tulloch again made inadequate progress with respect to the WRNs and they were re-served. For a third time Ms Tulloch made inadequate progress and again the WRN was reserved.
15. Matters continued to be monitored and eventually, on 25 April 2012, Ms Tulloch met the WRNs and achieved a 'good' grading. However following an inspection by an LA Training Officer with the Early Years Improvement Team (EYIT) the following day, 26 April, a number of areas, including learning and development, were recommended as requiring further training. On 14 July 2012, Ms Tulloch attended EYIT training in "The Revised EYFS" and on 20 October 2012 she attended the EYIT training on "The implications of the revised EYFS".
16. In November 2012 Ofsted received a complaint from a parent that Ms Tulloch was leaving her minded child alone with childminding assistants. An inspection was carried out on 31 January 2013. The provision was found to be 'inadequate'. There were several adverse findings including that Ms Tulloch did not have sufficient understanding of the EYFS, children's language was not being promoted, safety was not adequately considered and self evaluation and monitoring of planning and assessment systems were inadequate. Ms Tulloch was observed to attempt to transport a child in her car with no car seat or restraint.
Also Ms Tulloch admitted leaving minded children with unvetted assistants for extended periods of time. Ms Tulloch was issued with a WRN and Notices to Improve.
17. A further visit on 3rd May ascertained that while the requirements of the WRN relating to travel safety had been met, and there had been some other improvements, some actions which were the subject of the Notice to Improve, including her knowledge of the EYFS had not been met. The overall assessment was 'inadequate'.
18. A further visit was carried out on 31 July 2013. It was found there had been some attempts to improve, but the overall assessment was still 'inadequate'. There was insufficient progress with knowledge of safeguarding and learning and development. Ms Tulloch was found to have taken some steps to improve her knowledge by obtaining

documentation, but she failed to demonstrate a thorough understanding. Ms Tulloch had failed to obtain permission from all parents to leave children with assistants. A further WRN was issued.

19. On 22 November 2013 a further visit was made. The provision was again judged to be inadequate. Ms Tulloch had by now obtained permission from all parents to leave children with assistants. However only limited and inadequate progress had been made in developing systems for observations and assessments and she has been unable to implement what she has learnt. Her knowledge of safeguarding continued to be weak. The inspector concluded that serious concerns had been raised about aspects of welfare and learning.
20. At a case review meeting on 6 December 2013, it was decided to cancel Ms Tulloch's registration and on 22 January 2014, a Notice of Intention was issued. On 31 January 2014 Ms Tulloch advised she wished to object to the cancellation, and a telephone meeting was held with Ms Tulloch on 12 March 2014. At this meeting Ms Tulloch admitted she could have done more to keep up to date with the requirements of the EYFS, and that 'she was to blame'. She said she was continuing with an NVQ and it was due to be completed soon. She said she had just completed a course on keeping children safe, but she was not able to explain the risks of employing assistants who did not have appropriate clearance.
21. Ms Tulloch admitted not keeping up to date with changes and had employed the wrong assistants. She was unaware of how to move children on developmentally. She admitted not all her policies were up to date with the current EYFS despite it commencing in September 2012. She admitted not contacting the LA EYIT recently to secure further support and training. The decision to cancel registration was upheld and the Notice of Decision was issued on 2 April 2014. Ms Tulloch issued her appeal on 2 May 2014.
22. On 30 June 2014, police raided Ms Tulloch's address. According to the LA Community Safety Officer the raid was in response to a number of anonymous complaints from members of the public raising suspicions about supplying drugs from the property. Ms Walker accepted she could not say how many people had been visiting the premises.
23. PC Horan, a specialist drugs officer, is the investigating officer. He was not on the drugs raid on 30th June 2014, but has had access to documentation in respect of it. A warrant was obtained under the Misuse of Drugs Act 1971 to search Ms Tulloch's premises. The search commenced at 6:40 am. PC Horan said crack cocaine and heroin worth nearly £30,000 were found in two upstairs bedrooms, along with £8,300 in cash.
24. Some of the drugs were in larger amounts of up to 45 grams, which were of some 31% purity – a relatively high degree of purity. Also found were large numbers of individual wraps, along with scales (on

which there was drugs residue) and three razor blades. In PC Moran's professional opinion these exhibits indicated the wraps were being made up on the premises from the larger amounts of drugs and a cutting agent.

25. The drugs and cash and paraphernalia were in two of the bedrooms. In bedroom 1 the drugs were in a 'man bag'. Also in that bedroom were Mrs Tulloch's adult son and an adult friend of his found "hiding" beside the bed. Ms Tulloch said this was her son's bedroom.
26. In bedroom 2 there were a number of wraps on display on top of the chest of drawers, along with a further quantity of drugs. In that room there were more drugs in the wardrobe and in drawers. The 3 razor blades and the scales were also in the room, on show. The drugs and razor blades could be seen by anyone entering the room. Also present were 10 mobile phones. The cash was in the wardrobe in a Pringles box. Mrs Tulloch's son's friend had some £700 cash on him. There was no one in bedroom 2.
27. The house is a small 3 bedroom house. One of the downstairs rooms was also being used as a bedroom, and in that room was Ms Tulloch in bed with Anthony Drake. None of the bedrooms were locked and there were no stair gates to prevent access by children.
28. The three males and Ms Tulloch were all arrested for possession with intent to supply Class A drugs. They were taken to police stations. The three males were interviewed and bailed. Ms Tulloch was bailed without interview. She was re-arrested on 11 September for child cruelty, on the basis of Class A drugs being on the premises of a childminding provision, and possession with intent to supply drugs. She was interviewed but gave mostly 'no comment' answers, but did say she had asked Anthony Drake to stay with her after he left his wife. She was bailed without being charged. Consideration is being given by police and CPS as to charges against Ms Tulloch. PC Horan stated that in his professional opinion among other risks of dealing Class A drugs was a risk of violence arising from the loss of drugs bought on credit.
29. Through oversight, Ofsted was not immediately informed by police of the raid. They were eventually informed by the LA Community Safety Officer on 24 July 2014. On the same day Ofsted received a complaint from a parent about the care of her child at the premises. The parent said Ms Tulloch's daughter had phoned her on 11 July 2014 to say no-one was available the following week to look after the children. No explanation was given and there was no mention of the police raid or of drugs being found on the premises.
30. On 24 July 2014, Ofsted suspended Ms Tulloch's registration. When attempts were made to serve the suspension notice, Anthony Drake was found to be on the premises. Anthony Drake has not been notified

to Ofsted as being at the premises. Ms Tulloch's son's friend has also not been notified to Ofsted as being on the premises. Ofsted say they have never been notified by Ms Tulloch of the raid or the drugs found on the premises, despite Ms Tulloch being party to a TCMH on 30 June 2014, the day of the raid. Ofsted say they have carried out checks and there are no records of such a notification. Ms Tulloch has a duty under paragraph 3.76 EYFS to notify Ofsted of significant events. Further, Ms Tulloch's landlord, Lewisham Homes, in a letter dated 19 September 2014, has said they have served a Notice Seeking Possession of the property on the grounds of rent arrears and anti-social and criminal behaviour. Ms Tulloch failed to notify Ofsted of this fact.

31. Ms Walker gave evidence about breaches of the EYFS in 2011 and 2013. She said a large number of the requirements have been breached by Ms Tulloch including paragraphs 1.2 (EY learning and development), 1.6 (communication and language), 1.9 (implementation of learning and development), 2.1 and 2.2 (assessment), 2.6-2.10 (assessment), 3.4 and 3.5 (child protection), 3.7 and 3.8 (safeguarding), 3.10 and 3.11 (checking suitability), 3.18 and 3.19 (staff qualifications), 3.41 (numbers of children minded), 3.53 and 3.56 (safety), and 3.56 and 3.57 (premises and equipment). Ms Walker said Ms Tulloch had been served WRNs and Notices to Improve, but often there had been no or no adequate improvement and further action had to be taken.

The Case for Ms Tulloch

32. Ms Tulloch said she was first registered in 2006, when she had 6 weeks training from EYIT for 2 hours in the evening. She was registered to mind up to 3 children. She was married at this time and lived with her husband and 4 children. Her premises consisted of 3 bedrooms on the first floor, plus a further bedroom on the ground floor. Childminding took place in the front room and downstairs bedroom. She began minding children in 2008, when she got a "good" grading from Ofsted.
33. She accepted that in 2010 she had failed to disclose to the LA when applying to be a carer for one of her daughter's children, that she herself had been the subject of allegations of physical slapping by two of her own children. She subsequently wasn't approved as a carer. She accepted she had not informed Ofsted of these matters, but denied she was trying to hide them.
34. She accepted that in 2011 she was minding too many children on a number of occasions. She said she didn't understand the restrictions on the number of children. She also said there had been no one else to mind them. Her relationship with her husband had broken down. She was intending to use her daughter Atasha as a childminding assistant. She admitted she had not informed Ofsted of this. She had not understood the need to notify Ofsted initially, but she did now. She

admitted to receiving a number of WRNs and Notices to Improve in 2011. She did her best to improve her knowledge and improve the childminding provision and on 20 April she obtained a 'good' grading.

35. At the end of 2012 she was in dispute with a parent over fees payable while she was on holiday. Ofsted was notified and they began to inspect the premises again. She said she did not know how to carry out an observation of a child. The failure to provide a seat or restraint for a child was a silly mistake, which she quickly rectified. She did her best to learn about the EYFS. She started an NVQ course on the EYFS in 2012, which was home based with visits from an assessor.
36. She has signed up for a 2 year foundation course in early childhood which was due to start in September 2014, but she had been away and she hadn't managed to attend. She could not remember the name of the college. It was in East London. She had no documents to substantiate the course, and could not remember the name of her assessor, other than that Leigh was his first name. There were 22 modules and she had done them all, but couldn't say what they were. She has attended about 6 or 7 courses with the LA EYIT.
37. Ms Tulloch produced certificates for 4 EYIT courses including EYFS on 20.10.12 and 7.12.13 and safeguarding on 6.1.14, and two Bunbury Training Courses including behaviour and observations on 31.3.12 and 27.10.12. She had tried to sign up for more but they were expensive, some were over subscribed and the LA were short staffed. She had not tried to carry out her own research.
38. During 2013 she amended her contract form to include signed consents from parents about use of assistants although she accepted one was unsigned. She implemented new procedures and she has submitted copies to the Tribunal. Ms Tulloch accepted her knowledge of EYFS was poor and needed updating in 2013, but she believed she had now updated her knowledge. She had tried to comply with the WRN and Notices to Improve served on her in 2013, although she accepted she had not done EYIT training since March 2014.
39. In respect of the drugs raid she denied any knowledge of drugs or drug dealing. She said Anthony Drake was not staying on the premises. He was just a friend who visited from time to time despite the fact they had been found in bed together and despite the fact there was a vacant guest bedroom available. He came in the evenings when children were not there. She didn't know her son's friend was on the premises. He just visited on the odd occasion. She accepted her son lived in the house, and he had been notified to Ofsted. She denied there had been a number of visitors to the premises buying drugs. She admitted allowing her son to remain at the premises with minded children after his arrest on drugs charges on 30 June.

40. Ms Tulloch said she had notified Ofsted by phone during the week before 11 July 2014 of a police raid on her home. She didn't mention drugs, or what she had been arrested for, and Ofsted did not ask. She had not sent anything in writing. Ofsted have checked their records and there is no trace of notification from any of Ms Tulloch's known phone numbers. Ms Tulloch said she briefly used a different phone chip at this time.
41. In her Grounds of Appeal she had said she had not been the subject of any complaints or action by Ofsted other than in 2013. She had not meant to be misleading by this remark. She now accepted there had been instances in 2011. She said she now understood her duties under the EYFS through her NVQ course, and has taken action to upgrade the provision in the areas complained of, including learning and development, learning opportunities and safeguarding. She relies also on the improvements notified during some of the inspections.
42. In cross examination Ms Tulloch accepted she had continued to mind children after the drugs raid on 30 June 2014. She had allowed her son to stay on the premises when minded children were present. She did not say she was able to exclude him from the drug dealing although she did not say he had been dealing. She has allowed Anthony Drake to visit the premises in the evening after the minded children had left. She now checks around the premises and restricts access of children. They are not left to wander around. Ms Tulloch said she had informed parents of the raid, but did not tell them about drugs on the premises. She accepted she hadn't told all parents of the raid.

Decision

43. We considered all the evidence. We noted that in respect of the inspections, the findings of breaches of the EYFS, the service of WRNs and Notices to Improve in 2011 and 2013, the facts were not in dispute. Ms Tulloch did not seek to argue that any of the facts reported by Ofsted, or the grounds on which WRNs and Notices to Improve were issued were wrong or erroneous. She said merely that she had done her best to remedy matters, or that she had not fully understood the requirements.
44. Neither did Ms Tulloch dispute the fact she had not disclosed the allegations made against her by her own children in 2010 to the LA, or that she had failed to disclose these matters to Ofsted. She did not deny that she had allowed her son to stay on the childminding premises after his arrest for drugs and while childminding was continuing. She did not deny drugs and drug dealing paraphernalia had been found on her premises.

45. Some matters were contested. We bore in mind the standard of proof which was on the balance of probabilities and the burden of proof which remains on Ofsted. Ms Tulloch denied all knowledge of drugs or drug dealing from her premises. We concluded on the balance of probabilities she was not actually concerned in the preparation or sale of drugs from the premises. However we did conclude she knew that dealing was going on and had turned a blind eye.
46. This is because of the small size of the house, the fact she was on the premises for long periods during the day, the large amount of drugs, cash and drug dealing equipment in two rooms, the fact the bedrooms were unlocked, the fact some drugs and drug dealing paraphernalia were on open display to anyone going into the room. This suggested those responsible for preparing and selling the drugs had no fear of discovery by her. We also concluded that there must have been some trafficking into and out of the house by those concerned, and that some processing of the drugs into small individual wraps was taking place on the premises. We accepted on balance that she was aware of the drug dealing.
47. Ms Tulloch denied her sons friend or Mr Drake were living or working on the premises. We concluded on balance that we could not say that either of them had been living or working on the premises, but we did find, as was admitted, that Ms Tulloch did allow her son to remain in the premises after drugs were discovered there on 30 June, while minded children were present. She could not be sure that her son was not involved with the drug dealing, and she should have, in our view, excluded him from the premises.
48. Ms Tulloch also claimed she had notified Ofsted of the raid on her house in June 2014, which was not accepted by Ofsted. We felt unable to make a finding on the balance of probabilities that she had not informed Ofsted, but we concluded it was not done in a reasonable time and did not give a full picture of what had occurred. We further accepted she should have, but did not, notify Ofsted that a possession notice had been issued in respect of her premises.
49. We considered the evidence and our findings of fact. We were concerned at the earlier examples of Ms Tulloch's failure to disclose relevant matters to the LA and to Ofsted about the allegations against her by two of her children. A failure to disclose relevant information was a recurring theme throughout the period of inspections in 2011 and 2013, when she was issued repeated reminders and warnings. The recurring trend was accentuated in a very serious manner by her failure to notify Ofsted appropriately and fully of the circumstances surrounding the drugs raid in 2014. A still further failure to notify occurred in respect of the possession notice on her premises.
50. We considered her knowledge of the EYFS. It was very apparent that her knowledge was wholly unacceptable in 2011. It took repeated visits and inspections and training to bring her knowledge up to an

acceptable level in April 2012. Then once the interventions by Ofsted ended, despite receiving further training from the LA and others, her standards again declined, often in the same areas as before. There were many breaches, often repeated after having been given warnings, of the provisions and safeguards in the EYFS in 2011.

51. Repeated inspections, warnings and further training failed to improve her standards sufficiently in 2013, and she received a number of 'inadequate' assessments during that year. We felt that Ofsted had given Ms Tulloch every reasonable opportunity to improve, and despite further training she had failed to do so adequately. It was apparent that she could not sustain an adequate level of expertise despite training and support. We concluded Ofsted's decision in April 2014 to cancel registration was necessary and proportionate and correct.

52. The circumstances surrounding the drug dealing from her premises in our view confirms that decision. We have found she knew drug dealing was going on and turned a blind eye, despite the many risk inevitably associated with such an activity. This, in our view, makes her wholly unsuitable to be registered as a child-minder. Even if she did not know, her failure to find out what was going on, to ensure a safe environment for her minded children, to allow her son to remain in the premises, to continue with her childminding without fully informing Ofsted or the parents of the full circumstances, render her, in our view, wholly unsuitable to be registered as a child-minder.

The appeal is dismissed.

It is ordered:

The appeal by Ms Tulloch against the decision to cancel her registration as a child-minder is dismissed.

**Judge John Burrow
Judge Care Standards / Primary Health Lists
First-tier Tribunal (Health Education and Social Care Chamber)**

Date Issued: 2 October 2014