

First-tier Tribunal Care Standards

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

NCN: [2023] UKFTT 462 (HESC)
[2022] 4536.EY

At Birmingham Civil Justice Centre
On 9 and 10 November 2023 (11 December vacated)
And on 19, 20 and 21 December 2022
And on 17, 18 and 19 April 2023

BEFORE:

Tribunal Judge Siobhan Goodrich
Specialist Member Libhin Bromley
Specialist Member Pat McLoughlin

BETWEEN:

Simon Wall

Appellant

- and -

Ofsted

Respondent

DECISION AND REASONS

The Appeal

1. This is an appeal by Mr Simon Wall against the decision made by the Respondent on 1 March 2022 under section 13 of the Care Standards Act 2000 to refuse his application for registration as the manager of a children's home, Wheatsheaf House. The right of appeal lies under section 21 of the Care Standards Act 2000.

Our Decision

2. Following the substantive hearing which took place between late 2022 and 19 April 2023 it was canvassed with the parties and agreed that the panel could issue a short form decision with detailed reasoning to follow.

3. Following panel deliberations we decided to allow the appeal and a short form decision was then issued. The reasoning that now follows is on the basis of our consideration relative to the date of the hearing. When we refer to “today” this means the date of the decision.

The Parties

4. At the date of the hearing the Appellant was working for Child First Residential Ltd (CFR) as a senior residential care worker (SRCW) under a waiver granted by the Respondent. The appeal concerns the refusal of the Appellant’s application made on 29 April 2021 to be registered as a manager at Wheatsheaf House.
5. The Respondent is the Office for Standards in Education, Children’s Services and Skills (Ofsted) and is the statutory authority responsible for the registration and regulation of children’s homes under the Care Standards Act 2000, and the regulations made thereunder, which include the Children’s Homes (England) Regulations 2015.

Restricted Reporting Order

6. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matters likely to lead members of the public to identify the children to whom reference may be made so as to protect their interests.
7. By way of brief overview the Appellant had previously served in the RAF, ultimately as a Police Sergeant, during which time he worked as a Child Protection Officer. In December 2011, following his discharge after 23 years’ service, the Appellant decided to work in residential care. He did so in various posts. In April 2016 he went to work for Homes2Inspire Ltd at Rosendale House as a deputy manager. Due to the suspension of the existing Registered Manager (RM) he was responsible for managing the home until a new RM was appointed in June 2016. In October 2017 when the RM left Mr Wall was promoted to Interim Manager pending his application to Ofsted for registration. Following an FPI (Fit Person Interview) conducted by an Inspector, Mrs O’Donovan, he was granted registration at Rosendale House. In the event Mr Wall resigned this post on 1 March 2019.
8. On 1 July 2019 Mr Wall went to work for N H Care Ltd at Poppy House. He applied for registration as a manager which was granted on 11 May 2020. He was dismissed for gross misconduct on 30 November 2020.
9. On 1 March 2021 Mr Wall commenced his employment with CFR at Wheatsheaf House.

The Chronology regarding the decision under appeal

10. The main dates are as follows:
 - i. On 29 April 2021 the Appellant submitted his application for registration as the manager of Wheatsheaf House.

- ii. On 26 November 2021 an FPI was conducted face to face by Early Years Regulatory Inspectors (EYRI): Mrs Battersby and Mrs Cooper.
- iii. Following the FPI the evidence gathered overall was reviewed by a senior officer, Mrs Lownds.
- iv. On 20 December 2021 a Notice of Proposal (NoP) to refuse registration was sent to the Appellant. The NoP set out reasons explaining why it was intended to refuse the application, the right to make objections, and that the refusal, if made, would result in the Appellant becoming disqualified from working in childcare.
- v. On 12 January 2022, the Appellant sent detailed written objections to the NoP to the Respondent. The objections were considered at a case review and were not upheld.
- vi. On 1 March 2022, the Respondent sent the Notice of Decision (NoD) to refuse the registration of the Appellant as manager at Wheatsheaf House.
- vii. On 17 March 2022 the Appellant lodged his appeal. The Respondent held a further case review to consider the Appellant's detailed grounds of appeal. The decision was taken that the grounds of appeal contained no information which would reverse the Respondent's original decision, and that the appeal should be defended.
- viii. The ordinary consequence of the refusal of an application to be granted registration as a manager is that the unsuccessful Applicant is automatically disqualified from, amongst other matters, working as a carer in a residential home and being a foster parent.
- ix. Mr Rajinder Singh Kudhail (who wished to be called Mr Singh) is the owner, director and Registered Individual (RI) for CFR which had, and still has, one children's home: Wheatsheaf House. He applied for a waiver so he could continue to employ the Appellant to work at the home as a senior residential care worker (SRCW). This was granted by the Respondent on 8 April 2022.

The Decision under Appeal

11. In summary the Notice of Decision (NoD) relied upon the criteria under Regulation 28. We will not set out all of the detail of the NoD. In summary:

- under the heading "*Good character and professionalism*":
The Respondent stated that the Inspectors as part of their planning for the FP identified "emerging themes regarding your understanding and implementation of appropriate professional boundaries. We have information that you have had concerns at three separate organisations."
- The NoD then went on to summarise concerns at 2 different organisations where the Appellant was registered manager and to refer to whistle blowing concerns received from member of staff at Wheatsheaf House by Ofsted on 16 October 2021. These concerns included:
 - "Your poor approach to children. For example, shouting at children and speaking about children in a derogatory manner
 - Your use of prejudice and offensive language towards staff
 - Your use of unprofessional language. For example you used

- negative comments about a social worker's decision making for children
 - That you treat children differently
 - That you speak to staff in a rude and derogatory manner, you talk about members of staff in a negative way to other members of staff
 - Your unprofessional behaviour results in staff being uncomfortable to speak to you.”
- Under the heading “*Skills and Knowledge*” it was said, amongst other matters that during the interview:
 - “you did not demonstrate that you understood the difference between a complaint and an allegation and how these should be managed.”
 - “You also failed to demonstrate your understanding of the role of the LADO and how to manage safeguarding concerns. This has the potential to leave children at risk of harm.”
- “ 48. It is also noted that you feel you do have the experience, qualifications and skills deemed necessary to run a good children’s home...it is noted that a number of professionals speak highly of you, your work with children and enabling good outcomes for children. However, this has not yet been fully tested. Ofsted are concerned that you have not demonstrated adequate skills in how to help and protect children and in leadership and management to meet the required standard to be registered.”
- “51. Ofsted is not satisfied that you have the necessary leadership skills you require to manage a team needed to be a registered manager. You have had continued allegations raised about your conduct and professionalism that calls into question your suitability”.

The Appeal

12. The Appellant submitted very lengthy and complex Grounds of Appeal. These included, amongst other matters, that: the Respondent had demonstrated a closed mind; the absence of sufficient reference to instances of fact made it challenging for the Respondent to provide adequate reasons for its decision; the failure to provide a sufficient factual basis for reasons in the NoP fundamentally tainted and undermined the logic of the procedure as a whole; in the NoP the Respondent wrongly conflated, extended and/or misapplied the statutory requirements; it did not approach the question of fitness properly or fairly in the NoP; this tainted the decision made.

The Response

13. In summary in opposing the appeal the Respondent contended, amongst other matters, that:

- a) the Appellant had not demonstrated that he is a fit person, having regard to his “character and professionalism” and his “skills and knowledge”.

- b) he did not respect appropriate professional boundaries, has not adequately reflected on allegations raised by previous employers and, as a result, has not engaged in any additional strategies. He “additionally demonstrated dishonesty in respect of reporting safeguarding matters.”
- c) as to professional boundaries, the Appellant had been the subject of allegations of offensive behaviour, inappropriate touching, violence towards staff and had been dismissed for gross misconduct. There have been whistle blowing concerns of a similar nature raised at his current employment (Wheatsheaf House) relating to the Appellant’s professional conduct and boundaries.
- d) accepted that it was aware of the allegations made against the Appellant whilst in employment at Rosendale House when the Appellant applied to be registered as the manager at Poppy House. The Respondent was satisfied at that time as to his fitness. However, given the subsequent allegations at both Poppy House and Wheatsheaf House it appears that the Appellant’s behaviour was not a “one off occurrence” and appears to be “a pattern of behaviour”.
- e) The Respondent was not satisfied that the Appellant has any insight into his behaviours which “strengthens the Respondent’s view that the Appellant is not a person of integrity and good character such that he is suitable for registration”.
- f) As to skills and knowledge, in the FPI the Appellant was unable to properly articulate the difference between an allegation and a complaint saying that they “are essentially the same”.

The Legal Framework

14. The provisions of the Childcare Act 2000 include the following:

“13. Grant or refusal of registration.

(1) Subsections (2) to (4) apply where an application under section 12 has been made with respect to an establishment or agency in accordance with the provisions of this Part.

(2) If the registration authority is satisfied that—

(a) the requirements of regulations under section 22; and

(b) the requirements of any other enactment which appears to the registration authority to be relevant,

are being and will continue to be complied with (so far as applicable) in relation to the establishment or agency, it shall grant the application; otherwise it shall refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the registration authority thinks fit.

(4) On granting the application, the registration authority shall issue a certificate of registration to the applicant.

(5) The registration authority may at any time—

- (a) vary or remove any condition for the time being in force in relation to a person's registration; or
- (b) impose an additional condition."

The Children's Homes (England) Regulations 2015

15. The 2015 Regulations made under section 22 of the Act provide as follows:

"Fitness of manager

28.—(1) A person may **only manage a children's home if—**

- (a) the person is of **integrity and good character;****
- (b) having regard to the size of the home, its statement of purpose, and the number and needs (including any needs arising from any disability) of the children—**
 - (i) the person has the **appropriate** experience, qualification and **skills to manage the home effectively and lead the care of children;...****

(our **bold**)

16. These Regulations, enacted under section 23 of the Care Standards Act 2000, set out the Quality Standards that "must be met" in homes. Section 4 is as follows:

"Quality standards for children's homes

4. The following standards ("the quality standards") are prescribed for the purposes of section 22(1A) of the Care Standards Act 2000 in relation to children's homes—

- (a) the quality and purpose of care standard (see regulation 6);
- (b) the children's views, wishes and feelings standard (see regulation 7);
- (c) the education standard (see regulation 8);
- (d) the enjoyment and achievement standard (see regulation 9);
- (e) the health and well-being standard (see regulation 10);
- (f) the positive relationships standard (see regulation 11);
- (g) the protection of children standard (see regulation 12);
- (h) the leadership and management standard (see regulation 13);
- (i) the care planning standard (see regulation 14)."

17. The quality standards on which the Respondent relies are regulations 12 and 13 – see (g) and (h) above. We have considered these and also the Respondent's "*Guide to Children's Homes Regulations including the quality standards*" published in April 2015 regarding both of these standards, amongst others.

The Hearings

18. By way of background this appeal had been carefully case managed to seek to ensure, amongst other matters, that the facts and issues in dispute were clear. The appeal was listed to be heard over three days between 9 and 11 November 2022.

19. In advance of the hearing commencing on 9 November 2022 the panel had received and read a large indexed and paginated bundle which included the witness statements, the supporting evidence and the Scott Schedule (SS). We received opening skeleton arguments from both sides shortly before the hearing which we had also read.

20. The skeleton provided by the Appellant was extremely lengthy and raised matters regarding the SS and other preliminary issues regarding the fairness of the proceedings and the scope of the inquiry. This was in the context that the NoD relied on matters that had not been raised in the NoP, so it was argued that the Appellant had not been afforded the right to comment on these matters before the decision was made. Further, it was also argued that the NoD, with its reference to “professionalism”, “knowledge” and “experience”, and the SS was problematic in many respects. Amongst other matters, the allegations on which the Respondent relied contained many hidden/implicit assumptions which had not been made clear. We summarise to say that the Appellant also raised concerns about “mission drift” and the risk that the Appellant was being required to answer a case that had not been clearly set out in the NoD or the SS.
21. The judge reminded the parties that the panel’s function was to conduct a de novo hearing and was not to conduct a judicial review type exercise regarding the Respondent’s NoP or the NoD. The issue was fairness as at today. It seemed to us that the SS was broad and unclear. For example, it made no reference to an allegation of dishonesty which had featured in the NoD, and on which the Respondent presumably sought a finding. We were shown correspondence between the parties which seemed to show that the parties had been at cross purposes. Ms Gutteridge accepted as much.
22. In the event the panel decided that it was necessary, and in the interests of justice, to direct that a revised SS be prepared which clearly set out all the matters on which the Respondent still relied in support of its case. This process was then commenced but could not be completed until the next day. By 10 November 2022 the matters on which the Respondent relied were then set out in a revised SS. In this some 13 allegations were made subdivided by reference to the issues on which the Respondent relies under Regulation 28: “integrity and good character” and “appropriate skills”. The Respondent made clear that it was not part of its case that the Appellant lacked qualifications and experience under Regulation 28.
23. The revised SS resulted in an application to adjourn the hearing which we granted because we considered that it was fair and in the interests of justice to do so. We refer to our decision issued on 11 November 2022 which sets out the background and the directions given.
24. The relisted hearing heard on 19 - 21 December 2022 had to be adjourned part heard on 21 December 2022 due to lack of time. There was reference to whistle blower allegations in Mrs Lownd’s evidence which appeared to be new i.e. in the sense that documents had not been disclosed, and these were provided to us with the express agreement of the parties. Whilst the parties reached agreement, on the basis that Ms Gutteridge made clear that the Respondent did not rely on certain matters, the panel had to raise the issue of whether the Appellant sought recusal given that it had been exposed to material that could be considered potentially prejudicial. We refer to the adjournment order issued on 6 January 2023 which summarised how these issues were resolved and the further directions given.

25. In the event recusal was not sought. The panel satisfied itself that it could make a fair and impartial decision. After a further case management on 3 March 2023 which involved the reception of further evidence by consent, the hearing resumed after a long interval on 17 April 2023.

The Revised Scott Schedule

26. In summary, the revised SS provided on 10 November 2022 set out 15 allegations relied on by the Respondent:

- allegations 1-7: in support of the contention that the Appellant “*is not a person of integrity and good character.*”
- allegations 8 -13 in support of the contention that the Appellant “*does not have the appropriate skills to manage the home effectively and to lead the care of children having regard to the size of the home, its statement of purpose and the number and needs of children.*”
- The Respondent made clear that allegation 8 is a repeat of allegation 1, but as relevant to skills.

27. During the hearing, and pursuant to direction, we were provided with a good deal of further evidence which we agreed to receive. We directed that this be included in the updated bundle, and with the index amended in red. We note, for the sake of completeness that the revised SS does not appear to be in the updated bundle index/bundle, but this and all other evidence was before us in hard copy.

Witnesses

28. We heard oral evidence:

For the Respondent (December 2022):

Mrs Louise Battersby: Early Years Regulatory Inspector (EYRI)

Mrs Alison Cooper: EYRI

Mrs Nicola Lownds: Regulatory Inspection Manager (RIM), and the decision maker

Mrs Sarah Berry: EYRI

Mrs Battersby was recalled (on 17 April 2023)

For the Appellant (April 2023):

Mr Simon Wall, the applicant for registration as manager at Wheatsheaf House

Mr Rajinder Singh Kudhail, the RI (hereafter referred to as Mr Singh at his request).

The Oral Evidence

29. The statements of witnesses are a matter of record and we directed that these stand as the main evidence in chief. Most witnesses answered some supplemental questions before being cross examined by the other party on oath. We will not set out all the oral evidence given but will refer to parts as necessary when giving our reasons.

The Burden and Standard of Proof

30. In an appeal against the refusal of registration it is for the Appellant to satisfy us that he meets all the requirements of Regulation 28. The standard of proof is the balance of probabilities.
31. However, when a party makes an allegation, that party must prove that which is alleged on the balance of probabilities.

Our Consideration of the evidence

32. It is common ground that, standing in the shoes of the Regulator, we are required to determine the matter afresh and to make our own decision on the evidence as at today's date.
33. Subject to fairness, we can consider any new information or material that was not available at the date of decision which is relevant in our "de novo" decision-making. It is, for example, open to any appellant in any given case to rely on evidence to show that the facts and circumstances were not as alleged and/or to contend that opinions or views reached were wrong and/or mistaken and/or unjustified/unreasonable and/or that the issues have since been addressed and/or that his/her attitude/insight has developed. In other words, it is open to any appellant to argue that whatever past facts may or may not be established, he/she meets the requirements of Regulation 28 today. Conversely, subject to fairness, it is open to the Respondent to rely on evidence that has arisen since the NoD. The ultimate burden is on the Appellant to satisfy us that he today meets the requirements of Regulation 28 on the balance of probabilities.
34. The redetermination in this appeal includes consideration of the evidence provided by both sides in this appeal as well as the oral evidence which has now been tested in cross-examination. We have considered all the evidence and submissions before us with care. If we do not refer to any particular aspect it should not be assumed that we have not taken all of the evidence or submissions into account.
35. As set out above, it was accepted by the Respondent at the hearing that there is no issue about the Appellant's qualifications and experience.
36. We set below our consideration of the Allegations in the revised SS which, as per the Respondent's case as now formulated, falls into two sections in the context of Regulation 28. We recognise that the references to parts of evidence in a SS do not provide the "be all and end all" in any case. This is a case where we have a significant amount of documentary evidence that provides information that is relevant to the assessment of the evidence given. Nonetheless, applying the overriding objective, the SS is a useful and practical way to seek to address the allegations on which the Respondent relies.

Integrity and Good Character

37. Allegation 1 is that:

"The Appellant has been the registered manager at two previous homes, (Rosendale House and Poppy House) where he had "failed to meet the requirements of the Regulations, in particular Regulations 12 (the protection of children standards) and Regulation 13 (the leadership and management standard)."

We noted that Mrs Battersby considered that this allegation is relevant to Mr Wall's integrity and good character. When asked in terms by Mr Workman: "are you saying that he has not got the skills because he has not got the character" Mrs Battersby replied in the affirmative. Mrs Lownds appeared to adopt her approach but we will return to this in due course.

We doubt that the simple fact of breaches of standards impact in any meaningful way on the integrity and good character of any appellant, absent any evidence of wilful or reckless disregard. There is no suggestion that such is relevant in this case. It was, however, acknowledged that Allegation 1 is repeated as Allegation 8 which, we agree, is relevant to the alleged lack of appropriate skills. We will our make findings regarding Allegation 8 in due course.

38. Allegation 2 is that:

"The Appellant was dismissed from his employment from Poppy House for gross misconduct."

We consider that:

- a) It is common ground that the Appellant was dismissed from his employment at Poppy House (NH Care Limited) for gross misconduct on 30 November 2020.
- b) The documents show that a decision was made following an investigation conducted by an external HR consultant. Mr Wall has always maintained that the allegations made were false. We noted that it appears that the core allegation made was that of inappropriate behaviour towards a member of staff - see I129 and I130.
- c) We have not been provided with any statements, record or notes. The HR consultant did not provide any decision or reasons that have been shown to us.
- d) We noted that Mr Wall has always denied the allegations. He had insufficient length of employment to enable him to appeal to the Employment Tribunal. His appeal was therefore limited to an internal appeal which was rejected.
- e) We note also that Mr Wall had written a lengthy and detailed letter to N H Care Ltd on 25 January 2021. In essence, he said he had been provided with information from an employee at N H Care Ltd to the effect that the staff who had complained about him were motivated by his investigation of a safeguarding allegation which had resulted in the dismissal of one member of staff, and the other receiving a letter of concern. In short, whilst recognising that the decision to dismiss him could not be reversed, Mr Wall wanted to draw the attention of N H Care Ltd to the information he had received that the complainant had manipulated several staff to report against him.
- f) We noted that Mr Glen Smith, Mr Wall's line manager at Poppy House, was provided as a referee in the registration application. He was contacted by Mrs Battersby on 5 October 2021 for an oral reference before the FPI. Apart from the fact of the dismissal no other concerns were noted about Mr Wall

in the reference. Indeed, Mr Smith said to Ms Battersby that he would consider employing Mr Wall again.

- g) None of the allegations made by staff at Poppy House have been investigated by the Respondent so as to obtain first hand evidence from the members of staff/alleged victim(s). We can understand why this is so. However, the simple fact is that the evidence before us regarding the alleged events at Poppy House is, to say the least, very scant indeed. We really have no satisfactory evidence as to what the specific allegations were, what the evidence was, or how the HR consultant approached his task. The Respondent relies on parts of the information obtained from Mr Glen Smith when he was telephoned. The fact that Mr Smith spoke so positively about Mr Wall, in the face of the decision to summarily dismiss Mr Wall for gross misconduct, raises obvious issues. We will consider this in more detail when considering Allegation 3 below.
- h) The reality is that we have to assess the evidence presented and decide what weight we attach to it. Overall, we consider that the weight to be attached to the past allegations/process undertaken is limited.
- i) However, given the nature of the Respondent's overall case regarding "emerging themes", and "a pattern of conduct", we resolved to keep these allegations in mind when considering matters in the round.

39. Allegation 3 is that:

"Reference checks from Rosendale House and Poppy House raised concerns regarding the Appellant's professional boundaries and behaviours, including the Appellant's use of foul and abusive language, making inappropriate and sexualised comments to staff, inability to manage a team and acting in an intimidating manner."

40. We consider that the matters set out above, if proven, would provoke real concern. We looked for the evidence that supported Allegation 3 above. We were not provided with the original references of Mr Parker and Mr Smith but we saw detailed evidence regarding the verbal reference checks conducted at various dates. We consider these below.

Rosendale House

42. We find that:

- a) On 7 April 2020 Mrs Cooper, when considering Mr Wall's application to be granted registration as a manager at Poppy House, spoke to Mr John Parker the senior manager at Rosendale House (Homes2Inspire Limited). He had known Mr Wall for just over three years.
- b) The summary of his reference made by Mrs Cooper noted "concerns about the applicant's leadership and management skills. Struggled in managing a large team. Especially in relation to boundary setting and clear expectations of staff regarding the management of children."
- c) When his view was explored by Mrs Cooper, Mr Parker shared that in his experience Mr Wall had some excellent qualities such as being child focussed, resilient and trustworthy. However, he considered that he would

benefit from reflecting on his leadership style and how he can develop his approach to ensure that staff are clear about expectations and consistent in their practice. Mr Parker said that he had had a frank conversation with Mr Wall about his performance and that Mr Wall had decided to leave. Homes2Inspire Ltd paid the Appellant 3 months' notice because Mr Parker considered that "it was only fair- he had been a fantastic advocate for the children."

- d) We noted that the detail recorded [at H92] that Mr Parker considered that Mr Wall "has two sides to him - huge caring and nurturing side - genuine. That doesn't translate into management. Situations would occur in the home that he needed to get a grip of - he needed to meet the standards, ensure staff were supervised that staff were on his side because of effective challenge, that staff adhered to instruction, followed policies and procedures. He would say he would deal with it but he was too friendly with the team. He asked rather than told which caused problems. Collusion between him and colleagues, for example he would give excuses for people's underperformance. Reluctant to challenge – staff would say he hadn't challenged. He would appease the staff - struggled as a leader. ...Some people adored him and some didn't. Staff had mixed feelings all liked but not all respected him.... He has to drive his own personality in a different way to drive outcomes upwards. This is my personal view – another organisation might value that if they have different people around him."
- e) Mr Parker said that the Appellant was "reliable and trustworthy...over softened scenarios to make the delivery easier? He sticks at it regardless. He is a trooper..."
- f) Pausing there, there is nothing in the information provided by Mr Parker that raised any concerns about Appellant's alleged use of foul and abusive language, making inappropriate and sexualised comments to staff, or acting in an intimidating manner at Rosendale House. The overall impact of Mr Parker's concerns were directed to issues regarding poor leadership and management at Rosendale House. We noted that this was in the context of a first management post that involved the care of 5 children.
- g) Mrs Cooper states that Mr Parker expressed no concerns about the Appellant's suitability for the RM role. He felt that Mr Wall had a good understanding of safeguarding protocols and that he had worked hard to help move the home from an "inadequate" inspection judgement to a "requires improvement to be good" judgement.
- h) When considering the Appellant's application to be registered at Poppy House, Mrs Cooper, discussed what Mr Parker had said with Mr Wall in the FPI on 9 April 2020. He agreed wholeheartedly with Mr Parker and reflected that he had taken this learning into his new post (Poppy House): "having a stronger and more focused approach to leadership which includes understanding children's view on their care and being clear with staff on practice expectations." He reflected also that the home itself was too big a task for him as a new RM. In difficult times this had led him to try and appease staff to keep them going and get them into work. He was doing too much himself, was not focussed on listening to children and he was not

using the team and other professionals as well as he could to help manage the challenges. This led to personal burn out, a lack of clarity in decision making and contributed to chaos in the home.

- i) The outcome of the application was that registration as the manager at Poppy House was granted on 11 May 2020.
- j) When asked what it was that did not satisfy her about integrity and character with regard to Rosendale, Mrs Battersby said it was “more about his skills to manage.” Our view is that there is no evidence to support the allegations made by the Respondent regarding the alleged use of foul and abusive language, making inappropriate and sexualised comments to staff, and acting in an intimidating manner at Rosendale House. There is also no evidence of any inappropriate behaviour. The evidence points clearly to the admitted difficulties that Mr Wall had in his first RM post, and that he had found it difficult to lead and manage a large team, and on his evidence, without adequate support.

Poppy House

43. In the context of the application under appeal, on 5 October 2021 Mrs Battersby spoke to Mr Glen Smith who had been Mr Wall’s line manager at Poppy House, from which post he had been dismissed for gross misconduct on 30 November 2020. To quote Mr Smith, this was for what was “deemed to be violent behaviours towards a mos” (member of staff).

- a) We note that when asked what happened Mr Smith said that Mr Wall “got into the banter that got to be too familiar, he stepped over the mark - slapping over the backside – the investigation saw this as violent conduct. Outside of this he is an excellent manager.”
- b) We note also that Mr Smith said that he would re-employ Mr Wall. He told Mrs Battersby that “It would be 50/50 we would need to go through with him – go through his learning and thinking - there was a strange culture - not justifying his behaviour but want to be fair to him. We have other issues come up since where we have started to question the trust worthiness of the person who brought this up. Sometimes when you set boundaries there can be a kick back – I just don’t know- I was surprised with the outcome and the phrase ‘violent behaviours’. Outside of this – the paperwork – work with children of a good standard. I really don’t want you to think I am minimising what happened but I also want to be fair to him and everything else he has achieved.”
- c) In answer to the question asked by Mrs Battersby “Did he show any learning?” Mr Smith said that Mr Wall “was devastated through the process - he can only say that is not what happened. I genuinely (sic) believe that he would never get into the banter now- he will take this on board.”
- d) Mr Smith also said: “He really did improve things for our service whilst he was here - we were on serious compliance - he worked seriously hard- he really took it out of compliance – he took it to RI over a short period of time – his commitment was second to none.”

- e) In his statement at para 22 Mr Wall described all the steps he took to address Ofsted's concerns in readiness for a return visit in six weeks after the judgment of "inadequate" and with several compliance notices issued.
- f) Mr Wall's unchallenged evidence is that despite his dismissal for gross misconduct Mr Smith had later telephoned him in January 2022 offering him a job. Mr Smith had reassured him that none of the staff previously employed were still in place. Mr Wall declined.
- g) Pausing there, and also recognising the complexity of the evidence, we see nothing in Mr Smith's reference that supports Allegation 3 made by the Respondent regarding the use of "foul and abusive language" or "acting in an intimidating manner" at Poppy House.
- h) It appears to us that it is doubtful Mr Wall's dismissal for gross misconduct was ever justified. It is very odd for a senior manager:
 - to provide a positive reference after such allegations have been made (and not least when the organisation had acted on them).
 - to invite a previously dismissed manager to take up a post.

44. Allegation 4 is that:

"An internal investigation... in October 2021 at Wheatsheaf House confirmed that some staff were concerned that the Appellant treats children differently, makes staff feel uncomfortable and uses foul language (swearing)."

- 45. This allegation relies on some aspects of the evidence gathered in the internal investigation carried out by Mr Singh at the request of the LADO (Local Authority Designated Officer for safeguarding). The background to this, as relied on in the NoD, is that Ofsted received a whistle blower (WB) allegation on 16 October 2021, the details of which are set out in Mrs Battersby's first statement. Mrs Battersby contacted the LADO. On 21 October 2021 the LADO, Ms McKetty Campbell, asked Mr Singh to conduct an internal investigation. Mr Singh set out the information provided by the LADO over the telephone in his statement. Mr Singh suspended Mr Wall pending the conclusion of his investigation. He concluded that the allegations made were not substantiated. He sent the outcome of his investigation to the LADO and to Ofsted on 27 October 2021. The LADO did not raise any issue or seek any clarification from him.
- 46. Suffice to say that it is clear that Mrs Battersby was not content with the outcome of Mr Singh's investigation. In our view in his witness statements Mr Singh described the information he was given by the LADO and the process he undertook in detail. He told us, and we accept, that he trusted that the LADO had told him what he needed to know. When asked by Ms Gutteridge he made clear that he had interviewed all relevant staff. When asked to put to Mr Singh any further aspects of his investigation which were alleged to be inadequate, Ms Gutteridge did not put any specific matters to him.
- 47. The matters relied on in Allegation 4 are extracted from comments made by some members of staff during Mr Singh's investigation as the RI. In our view Mr Singh's investigation has to be considered as a whole and in proper context. In our

experience some RIs may possess few, if any, direct experience or qualifications. Mr Singh told us that left school at age 16 plus. He became a nursery nurse and then achieved a BA in Children's Early childhood studies between 2016 and 2019. From 2019 he studied for his Master's degree in Social Work which was awarded in 2021. From 2019, and whilst studying his Masters, he worked as a residential social worker for children in care. It was clear to us from his evidence that he is both knowledgeable and passionate about providing a quality residential service.

48. Mr Singh told us, and we accept, that he had never previously conducted an internal investigation at the request of the LADO. He did have experience in providing section 47 reports as a social worker in the context of care proceedings which applies a similar end threshold test, namely, whether the allegations are substantiated or not, and whether the matters substantiated may pose a risk of harm to children. He had recorded the matters of concern relayed to him by the LADO over the telephone. His priority was to speak with the two children FC and LM and to members of staff on an individual basis.
49. In our view the process that Mr Singh employed was one that was open and transparent. He did the best he could, given the information provided by the LADO. He asked open questions and recorded the answers given. He made sure that the employees had the opportunity to read through what he had recorded and to correct this if they wished to do so.
50. We have considered the allegations pursued by the Respondent in Allegation 4 on the basis of Mr Singh's investigation so as to make some findings. We do so below.
51. The Respondent contended in para 35 of NoD that: "from the six members of staff who were interviewed, half raised concerns about you, your care of children or conduct".
52. We find that Mr Singh interviewed 6 members of staff (MoS) as well as Mr Wall. We also find that he interviewed all relevant MoS. He also spoke with the children: FC and LM.
53. As to the allegation that Mr Wall "*treats children differently*" we find that:
 - a) This comment was made by 2 out of 6 members of staff:
 - Christine Briscoe: who commented that she felt that Mr Wall did not make enough effort with FC and that "even though he is caring to the children, it appears he is more caring with LM rather than FC."
 - Chantel Brandy: "feel that he treats both children differently. Simon always blames FC for the way LM goes on. It comes across that he favours LM over FC."
 - b) Nothing was said by either child to suggest that they felt that they had been treated differently. The views of each child regarding Mr Wall were positive.

54. Mr Singh explained that his thought process was that both children had different experiences and traumas. FC's trauma was associated with males and he expected that it would take FC longer to build up to the level of trust with Mr Wall for that reason; whereas, in contrast, LM had needed a male role model figure from the offset as his experiences with males were different. In our view a child-centred approach requires that the needs of each child are considered and met on an individual basis. We consider that the concerns of the two members of staff that Mr Wall treated children differently seemed to show a less than complete understanding of the individual needs of each child.

55. We noted also that the comments of Ms Chantel Brandy seemed to reveal a marked antagonism towards Mr Wall. Her discontent seems to be based on what she claims to have seen in an email, which she effectively acknowledges was not something she should have been reading. She said: "I feel Simon has tarnished my name." She also referred to him being "narcissistic". We consider this is a very strong description/label to use. This, and her view that he was "unapproachable" is at odds with the balance of the comments of the large majority of staff members which were very complimentary with comments such as: "he talks very professionally and speaks to the children very nicely"; "he does not speak badly to the children or the staff"; "is very professional and is the most professional manager I have ever worked for"; "very kind, very maternal"; "very fair with the staff"; "really fair with the kids... he prefers restorative work for them to understand what they have done"; "always supportive and always available".

56. As to the allegation that the Appellant "*makes staff feel uncomfortable*": We find that:

a) One out of six staff members said that Mr Wall made her feel "uncomfortable":

- Ms Chantel Brandy said: "I feel Simon makes people feel uncomfortable the way he talks sometimes his tone can be nasty". In context this was just before she went on to describe why she felt that Mr Wall "had tarnished" her name: see above.
- When asked about "room for improvement" Ms Brandy said: "maybe not so controlling and let others take the lead". We noted in this context that Mrs Brandy was a senior care worker.

b) Ms Briscoe said that she was able to speak to Mr Wall if she had any issues about other staff members or concerns. She felt that at times he was not very approachable especially when busy and focussed on the screen. When asked about "room for improvement" Ms Briscoe said: "maybe try to build a better relationship with FC".

57. As to the allegation that "*...the Appellant uses foul language (swearing).*" We find that:

a) Mrs Chantel Brandy said that Mr Wall "sometimes swears a lot" which made her feel uncomfortable, but she said that he does not swear when children are present.

- b) Ms Briscoe said that he “will swear when kids are not on site but this is usually to imitate what someone has said”. She could not recall any instances where he had sworn at staff or about staff.
- c) Mr Wall’s evidence was that he has never sworn in front of children. In our view the comments of staff, including Ms Briscoe and Ms Brandy support this.
- d) The Respondent places reliance on the fact that during the FPI, when quoting what had been said to him, Mr Wall repeated the actual swear words used. Of course, we consider it was unwise of him not to have been more oblique. In the context of the evidence overall, and the allegations advanced, this is not a matter to which we attach any significant weight. Mrs Battersby accepted that this was not, in itself, a reason for Mr Wall to be considered “unsuitable”.

58. Overall, we consider that the real thrust of the evidence revealed by the investigation was that Ms Brandy had very strong views about Mr Wall. Ms Briscoe had some negative views but these were relatively mild in comparison. We have distinct concerns about the weight to be attached to Ms Chantel Brandy’s comments. Ms Gutteridge submitted in closing that Mr Wall was selective in that he relied on the “good parts” of the comments made by staff in the RI investigation but disputed the parts he did not like. In our view this is simplistic: the same could just as well be said of the Respondent’s approach.

59. We find that the negative comments in the RI investigation were very largely those of Ms Brandy. We consider that Ms Brandy, by and large, had made one positive comment that Mr Wall’s paperwork was “very good”. She had not followed the internal procedures regarding grievance or whistle blowing. On the evidence before us Ms Brandy had given in her notice on 30 September 2021. She was working out her notice on sick leave, and there was an ongoing dispute about her having to reimburse CFR for the significant cost of her level 5 study. Mr Singh told us that it was Mr Wall who had had to communicate that decision to her.

60. Applying our specialist experience in this field and common sense, it can be expected that some managers will not achieve a positive endorsement from all employees, and there may be other issues affecting the reliance that can be placed on comments when an employee has left in circumstances that are not straightforward. The fact is that Ms Brandy’s evidence has not been tested before us. However, we resolved to consider all of the evidence in the round. We do not forget the other WB allegation - which the Respondent relies on as evidence of a pattern - and to which we will return in due course.

61. Allegation 5 is that:

“The Appellant was dishonest in his Fit Person Interview on 26 November 2021 when he told inspectors that all allegations made by children were referred to the LADO.”

62. We find that:

- a) In the FPI [H107] Mrs Battersby asked questions regarding the action to be taken if a child is hurt by a member of staff but does not want to make a

complaint. Mrs Battersby asked “so how many have gone to LADO? Mr Wall replied “all of them have gone to LADO – pattern of behaviour? Spoke with Belinda and you?”

- b) The impact of Mr Wall’s statement was to the effect that it was only after the interview that he realised that what Mrs Battersby had been driving at was that he should have reported each of the incidents to the LADO concerning the one child separately in close proximity to the time they were made.
- c) In our view Mr Wall’s email to Mrs Battersby dated 8 November 2021 [H108] seeking her advice regarding the need for a Regulation 40 notification had, in fact, made clear that the allegations by the child in question (LM) had been notified to the LADO as a “pattern of behaviour”.
- d) In cross examination Ms Battersby said that “it was clear from his email [i.e.H108] that he had not been contacting LADO at the time of each incident because of a question he had asked her.”
- e) It was not suggested to Mr Wall in cross examination that he had deliberately sought to mislead Mrs Battersby and Mrs Cooper in the FPI. We consider that his email to Mrs Battersby on 8 November 2021 was clear. Mr Wall had sought her advice. The fact of his email to Mrs Battersby, which was well before the FPI, shows that he was open, honest and transparent as to the situation presented. Having considered all the evidence we find that Mr Wall’s had no intention to mislead the Inspectors in what he said during the interview. We find that the Respondent has not discharged the burden of showing that the Appellant was dishonest in the FPI.

63. Allegation 6 is that:

“Repeated complaints have been received by Ofsted alleging bullying behaviours by the Appellant towards staff at Wheatsheaf House. The Appellant received a verbal warning.”

64. This allegation relates to the WB allegations. In our view the allegation has been truncated in relation to dates. The Respondent’s case put globally by Ms Gutteridge to Mr Wall concerned 2 whistleblowers (16 October 2021 and 4 August 2022) and a complaint by a child (also reported by the WB on 4 August 2022). For the moment we focus on the bullying behaviours alleged.

65. We acknowledge that the Respondent will receive anonymous WB allegations from time to time. There are, of course, strong public interest considerations in play, and this includes the need to encourage the reporting of concerns in the public interest. Often a WB will not wish to be identified or to provide formalised evidence, for fear of reprisal, unfair treatment, employment disadvantage etc.

66. However, the fact that one or more WB(s) has made allegations does not make the allegations true. In any judicial process any WB allegation is evidence that has to be assessed in the ordinary way. The Tribunal, of course, can receive hearsay evidence but the issue is that of the weight to be attached to untested evidence. The reasons for any reluctance on the part of any WB to be identified or give a statement, if evidenced, may be relevant in any assessment of the issue of the weight that might be attributed to an anonymous and hearsay allegation. There is no evidence before us that any WB was asked to make a statement or to give a reason or explanation as to why she could not do so.

67. Information was provided to Ofsted by a whistleblower, DC, on 4 August 2022. Her identity is openly disclosed in the papers before us but we anonymise. DC raised that she “thinks that there is a safeguarding issue towards children and staff, Simon Wall. They have had three employees (4 now including her) that have left due to him bullying, making them feel uncomfortable, and overstepping the mark – he kissed one employee on the head. D said she handed her notice in due to him bullying her in the workplace, saying horrible things to her and about her to staff. He was also sending her horrible text messages and things, just not a very nice person at all....”
68. DC also referred to a disclosure by a child to which we will later return.
69. The background is that DC had lodged a formal complaint on 2 August 2022 with Mr Singh and Ms Geddes, the manager. It is clear to us from this and the various Whatsapp exchanges before us that DC had been involved in a dispute with the Appellant regarding the rota. Ms Geddes had apparently delegated the rota to DC even though she was a junior member of staff. It appears that DC and Ms Geddes were close friends. Mr Wall was upset because it appeared to him that the rota change suited DC personally, and without regard to the planning in place that he would be taking LC (a child) out on a trip on that particular day. He also considered that he should have been consulted about rota changes by Ms Geddes, and not by a junior MoS.
70. We find that DC had, in fact, made extremely favourable comments about Mr Wall when interviewed by Mr Singh on 22 October 2021. Her lengthy comments were wholly positive and included that: he is one of the best managers she had ever had; is always supportive and always available; was always pushing her to make sure she was developing her practice; always professional and loving towards children; when children have incidents he will change his tone of voice to bring across the seriousness but he has never shouted at children; he is very loving and caring towards them: he is a really good manager, never unprofessional or rude towards staff of children. Team meetings are really open and everyone can say what they want. If there were any concerns she would have reported then straightaway. Suffice to say that DC’s views at that time were fulsome.
71. The contrast between DC’s views on 20 October 2021 and those expressed on 2 and 4 August 2022 is stark. There may be many possible explanations but it would be wrong for us to speculate. The fact is that her 2022 allegations regarding bullying are untested before us.
72. The evidence that is before us is that Mr Singh investigated the complaint made by DC to him swiftly. DC had resigned and did not return his calls. Ms Geddes said that she did not instruct DC or authorise her to send a message to Mr Wall. Mr Singh considered the “Whatsapp” messages. We accept Mr Singh’s evidence that in his investigation he spoke to Mr Wall about his language and how it can be interpreted. We accept that this was not a “verbal warning” in employment/grievance policy terms. It amounted to an informal verbal warning. We noted that the other outcome was to the effect that Ms Geddes would resume the

rota duties and ensure that all things related to the rotas were discussed with her to avoid disgruntlement between staff.

73. We were not provided with the actual record of the earlier whistleblower complaint that had been made on 16 October 2021, although we were informed of its contents in Mrs Battersby's statement. We noted that the comments made bear a marked resemblance to the matters raised by Ms Chantal Brandy when Mr Singh carried out his internal investigation at the request of the LADO.
74. Irrespective of the actual identity of the WB on 16 October 2021, we have significant concerns about the weight to be attached to the WB allegations on which the Respondent relies regarding Mr Wall's alleged behaviour to staff. The WB allegations of 16 October 2021 – like those made on 4 August 2022 - are second hand evidence which is untested. It is, of course, always the case that other evidence may show, by other means, that weight is to be properly attached to the untested evidence of absent WBs. However, in the context of the evidence as whole we consider that little, if any, weight is to be attached to the whistleblower allegations in all the circumstances.
75. Overall, we consider that the evidence provided in a good faith process in October 2021 that arose because of WB allegations communicated to Mr Singh by the LADO resulted in very many positive comments regarding Mr Wall's character, attitude and leadership skills from the large majority of staff. Although we recognise that these statements are also untested, the views of the large majority of staff are consistent with other positive character evidence before us from Mr Parker and Mr Singh that Mr Wall is a reliable and trustworthy person. The preponderance of evidence in October 2021 supported, by a considerable margin, was that staff trusted and respected him as a good manager.

The disclosure made by a child – AB

76. DC also said on 4 August 2022, that 2-3 days before, a child had made a disclosure that "she feels very uncomfortable when Mr Wall hugs her, when he pats her leg and when he pats her shoulder."
77. Mr Wall's unchallenged evidence in his second statement that when he was told of what AB had said by a MoS he reported this himself to the manager, Ms Geddes. He expected that it would be reported to the LADO as an allegation.
78. The background to the matter is set out in the email correspondence between Mr Singh and Ms Pinnock-Ouma, the LADO on 16 August 2022. In summary, Mr Singh had received an email from a MoS which stated that AB had shared that, following a recent sexual assault outside of the setting, she no longer wished to be in close proximity or touched by staff, particularly male staff. AB said that SW would pat her on the leg and shoulder and it made her feel uncomfortable. Ms Geddes, the manager, had asked AB if she wished to make an allegation about Mr Wall. AB had said no and that she is "normally OK with Mr Wall, just not at the moment because of her experiences." Mr Singh shared with the LADO that Mr Wall is very animated and when celebrating children's achievements will often pat them on the shoulder or leg in the knee area to say "well done".

79. Ms Pinnock-Ouma gave Mr Singh advice. She also concluded, amongst other matters, that “it would appear that there is no clear allegation that Mr Wall has harmed AB and no clear evidence that Mr Wall has harmed or may have harmed AB.” She concluded that there was currently insufficient evidence that Mr Wall has behaved in a way to indicate that he may be unsuitable to work with children.
80. We agree. In our view there was also nothing about the concerns of AB to suggest that the Appellant lacks integrity or good character.
81. Allegation 7 is that:
“The Appellant has been involved in the management of Wheatsheaf House whilst disqualified.”
82. We find that it is clear from Ms Berry’s records and her statement that a prior focus for the visit in September 2022, which was to monitor compliance with the Regulation 12 notice, was also to see whether Mr Wall was acting in breach of the waiver. In our view the records show that it was a marked focus. There is, of course, nothing wrong with that. It is clear from Mrs Lownds’s second statement that she had been alerted to the issue of possible breach of the waiver because the Appellant, by his solicitor, had submitted records of his supervision which suggested that Mr Wall had taken on more management role.
83. By the time of Mrs Berry’s visit Mr Wall’s appeal against the NoD was well underway. In his very detailed witness statement [I16-I41] the Appellant had mounted a significant challenge to parts of the Respondent’s factual case, as well as the assertions made about his character/integrity. A witness statement had also been provided by Mr Singh.
84. We note that Mrs Berry took the opportunity to ask Mr Singh about what Mr Wall had said in his appeal witness statement, including his comment that Mr Singh had worded something badly. In our view it was unwise for an Inspector to seek to ask a supporting witness about the account given by the Appellant in his witness statement in an ongoing appeal. At the very least it ran the risk of creating the impression that she was seeking to gather information that might undermine Mr Wall’s evidence/his credibility. This impression appeared to be reinforced by the questions posed by Ms Gutteridge to both Mr Wall and Mr Singh as to why each now wanted to work for/work with the other. Ms Gutteridge also ultimately submitted that Mr Wall’s credibility was undermined on the basis that Mr Singh’s oral evidence regarding his discussion with Ms Battersby re a waiver application was different to Mr Wall’s understanding. We will return to this.
85. We noted that, whilst gathering evidence about possible breach of the waiver, Mrs Berry did not take the opportunity speak to Mr Wall about this even though he was present so as to find out his response. Her explanation in cross examination was she did not do so because this was not the responsibility of Mr Wall, but that of Mr Singh as RI. In our view this rang somewhat hollow. The allegation regarding breach of the waiver became an additional reason for the Respondent’s decision as against the Appellant.

86. Leaving all of the above to one side, we stood back and considered the crux of the Respondent's allegation that breach of waiver had occurred.
87. In her statement and evidence Mrs Berry asserted that Mr Wall had carried out an audit. Having considered the document in question we find that Mr Wall ticked off the documents for an audit to be actioned by the manager. We find that his input was wholly technical/administrative. We find that he did not act as a manager in relation to any audit.
88. We considered the other aspects of the Respondent's case about the alleged breach of waiver. In summary we find that:
- In early June 2022 Mr Singh was on his honeymoon and the holiday of Ms Geddes (the RM) overlapped with his for a period of 4/5 days.
 - Mr Palmer was in post as a new manager for 2/3 of those days.
 - Mr Wall was working under a SRCW contract. Mr Singh decided that the contract included on call duties - as did the contracts of other SRCWs at the home.
89. In our view, as a matter of common sense a Registered Manager cannot be present at the home or on duty 24/24 for 7 days a week. The operation of any home requires that matters requiring management input or action during any period of absence of the RM, whether simply off duty or on holiday, are reported to, and then acted upon by senior management i.e. the RM and/or the RI.
90. Whilst we agree that it was undesirable that the RM and the RI were on holiday at the same time, we find that Mr Singh was, at all times, available to be consulted by telephone, video call or email, and even when travelling. Mr Singh's unchallenged evidence was that he was, in fact, contacted in this period by Ms Geddes via a video call when she handed over her RM responsibilities to him to cover during her holiday. We accept also Mr Singh's evidence that he had asked Mr Wall to be on call as a senior residential support worker and to refer any matter arising to him. No issues arose.
91. The Respondent's case is that the Appellant was carrying out management duties in the home without oversight from the responsible individual. It relies on the 'Reflective Practice' document written by the Appellant dated 10 June 2022 which states 'This week the Responsible Individual and the Home Manager have been on annual leave. Therefore, I have taken a more management role within the home, supporting the staff and children and covering the on-call position'. Mr Singh commented in his supervision record: 'Simon stepped up to the challenge of a more senior role, whilst myself and LG were on leave'. In the supervision notes dated 17 June 2022, Mr Singh stated "Simon....this month... was undertaking some of the managers duties...". We noted also that in supervision on 17 June 2021 Mr Wall had referred to "undertaking some of the managers' duties alongside AP (new homes manager)."
92. In proper context we consider that Mr Wall's comments were consistent with an employee reflecting to his employer that he had had greater responsibilities whilst

the RM and NI were away. In our view it is entirely usual for an employee to remind his employer of his worth. We consider that Mr Singh when referring to “manager’s duties” in the supervision notes on 17 June was loose in his language. Mr Wall has clearly stated that this was “alongside” the manager. Having viewed the evidence overall we find that Mr Wall was, at all times, working as a SRCW as required under his contract. Mr Wall’s evidence was that he always very careful indeed to make sure he did not undertake any duties that might be construed as taking on the role of an RM. We accept that this was so. They both believed that the on-call rota duties were part and parcel of duties of a SRCW. When Ofsted questioned this Mr Singh immediately removed Mr Wall from such duties.

93. We considered whether Mr Singh had, in fact, delegated the responsibilities of an RM to the Appellant. We find that this was not so. The Respondent has not satisfied us that the Appellant acted in a breach of the waiver.

94. Overall, we considered that this issue appeared to have been added in as a “make weight” to bolster the decision made regarding the Appellant’s alleged lack of integrity.

Appropriate Skills

95. The Respondent contends that the Appellant does not have appropriate skills and relies on Allegation 8 to 13. We deal with each allegation below.

96. Allegation 8 is that:

“The Appellant has been the registered manager at two previous homes (Rosendale House and Poppy House) where he “failed to meet the requirements of the Regulations, in particular Regulations 12 (the protection of children standards) and Regulation 13 (the leadership and management standard).”

97. In our view these matters are historic, as had been said in the original SS. We have not been provided with the inspection reports themselves so as to enable us to examine the detail or context. We find also that the inspection outcomes at Rosendale House did not prevent the Respondent registering Mr Wall as the manager of Poppy House on 11 May 2020. We consider that Ms Cooper had correctly recognised that this had been a first management post for Mr Wall where the issues regarding leadership and management concerned a much larger home.

98. We noted the extremely positive evidence of Mr Smith re Poppy House (and notwithstanding the fact of Mr Wall’s dismissal for gross misconduct) was that:

“He really did improve things for our service whilst he was here - we were on serious compliance - he worked seriously hard- he really took it out of compliance – he took it to RI over a short period of time – his commitment was second to none.”

99. In our view the notion that any past breaches of the quality standards at Rosendale House or Poppy House have any real or continuing significance to the skills issue in this application is thin. Amongst many other matters, they were different homes and different organisations. At Rosendale House, in particular, Mr Wall had been at an early stage of development regarding leadership and management.

100. Allegation 9 is that:
“At the FPI on 26 November 2021 the Appellant was unable to articulate the important distinction between an allegation and a complaint.”
101. In our view what was said at the FPI needs to be considered in proper context. When asked what the role of the LADO in the FPI:
- Mr Wall said “to report any incidents of a safeguarding nature. Reason I went to the LADO on that occasion was a sexual comment from one child to another – would next step be SG? When I phoned Linda she said to speak to SW” (social worker).
 - Ms Battersby replied: “So you are saying that the LADO is there for any safeguarding issue and you were phoning for advice”. Mr Wall agreed.
- In our view Mr Wall’s answer is not incorrect as such, although it could have been a fuller and more nuanced answer.
102. We accept that when then asked “Is there a difference between allegation and complaint?” the Appellant did not articulate any distinction in the FPI. He said that they were more or less the same. We agree that the important distinction is that the LADO must be informed of all allegations made by a child against adults who work with children (whether or not the child wants to make a “complaint” in writing – see para 41 of the NOD). It is agreed that Mr Wall was very nervous at the FPI. In our experience it can occur that people may be unable to articulate the distinction, and even in circumstances when they are not being interviewed. Based on our experience many consider this to be a grey area: people use the words complaint and allegation interchangeably. Whatever is said may be commonly viewed as a complaint but there is a further level required as to whether the “complaint” is an allegation by the child of harm caused by an adult. If so, this must be referred so that the LADO can take an independent view and decide how the matter is to be investigated in his/her coordinating role under “Working Together to Safeguard Children.”
103. We find that Mr Wall recognised in his first witness statement [para 63] that each of the allegations made by LM should have been reported individually and immediately, and the fact that LM had withdrawn each allegation immediately did not affect this. We find that he has satisfied us that he does understand the difference between an allegation and a complaint. His understanding is indeed demonstrated by the incident that arose in early August 2022: having reported what had said by FC to Ms Geddes, he expected the LADO to be notified.
104. Allegation 10 is that:
“At the full inspection of Wheatsheaf House on 13 July 2021 a requirement under Reg 12 (protection of children standard) was raised in respect of a safeguarding issue.”
- It is common ground that this related to an incident where Ms Kaur, a senior care worker, had spoken to a child about an allegation the child had made against her. In her inspection in July 2021, Mrs Battersby considered that this practice has not been explored “and is a missed opportunity for staff to learn how best to respond to children when they make an allegation without asking them questions.”

105. Allegation 11 is that:
“At the FPI on 26 November 2021 the Appellant was unable to confirm the role of LADO despite the requirement issued at the inspection on 13 July 2021 when he was the manager.”
106. The requirement in question was issued following inspection on 13 and 14 July 2021 related to Mrs Battersby’s finding that, although the home was rated “good” under the “experiences of children” standard and also under the “leadership and management” standard, she considered the home “requires improvement to be good” under the protection standard.
107. The requirement was directed to the registered person, i.e. Mr Wall, to ensure that staff understand the roles and responsibilities in relation to protecting children that are assigned to them by the registered person and that the premises are furnished and maintained so as to protect children from avoidable hazards. The matters that caused Mrs Battersby to reach that view had their origin in the following:
- a) The matters referred to at allegation 10 above and the view that this requirement had not been met.
 - b) “Regular health and safety checks are completed. However, staff are not always alert enough to identify and quickly resolve issues identified. For example, inspectors saw a phone charger that was held together with sticky tape”. On this last issue Mr Wall’s unchallenged evidence was that a MoS had brought in the offending charger that day. When he saw this, he had immediately put it in the bin.
108. As to the Appellant’s alleged ability to confirm the role of the LADO at the FPI we refer to our findings regarding Allegation 9 above. Ms Gutteridge submitted in closing that Mr Wall’s oral evidence showed that he did not understand safeguarding. We made clear that this did not seem to accord with our understanding of the evidence so that she could address this. Ms Gutteridge said that Mr Wall, when asked by her, had agreed that a child on child allegation needed to be referred to the LADO. We asked both parties to check their notes. It was not, however, possible for the representatives to agree what had been said regarding the child on child allegation. Ms Gutteridge did not have a note as this was in cross-examination. Mr Workman said that his note was that the question was “not other children” to which Mr Wall said “Yes”— which might explain why he did not re-examine. The judge’s note is to the effect that when being asked questions about what matters needed referral to the LADO Ms Gutteridge asked about allegations between children, and Mr Wall said “yes”.
109. We proceed on the basis that that Mr Wall did say that a child on child allegation should be referred to the LADO. We do not consider that this provides sufficient basis for us to conclude that the Appellant does not have the skills to deal with safeguarding issues appropriately. It is not, in our experience, a significant issue if an RM seeks advice from a LADO even where it is not strictly required. The effect of the evidence before us, and our own experience is that the LADO is willing and able to give guidance. This is what Mr Wall had done regarding at least one issue and the outcome was that the LADO gave him advice to regarding a MARF (Multi Agency referral).

110. In answer to the panel Mrs Battersby said that sometimes Mr Wall makes safeguarding referrals to the LADO, and sometimes he does not, and that Mr Wall “needs a clear understanding of what is an allegation and what is a complaint.” We find that:
- 1) in the FPI Mr Wall was asked about the situation “if a child is hurt by a MOS but does not want to make a complaint?” [H107]. His answer was full and he said the LADO should be notified. In our view it is clear from this answer and his subsequent answer that Mr Wall was treating the scenario put to him as an allegation.
 - 2) The Appellant explained his understanding in his witness statement and this was not challenged. He has satisfied us that he does understand the distinction.
 - 3) Importantly, Mr Wall said in cross examination that even when a child declines to make a formal complaint he would refer the matter to the LADO. He also said that he would refer to the LADO because he does understand that it is for the LADO to determine what investigation is required.
111. Ms Gutteridge challenged Mr Wall about an incident when he had not referred a matter to the LADO when the child said his foot had been caught under the door. He said he did not refer on that occasion because what the child alleged was “impossible” because the gap under the door was only 20 mms, However, when the Rule 44 Independent Person (IP) suggested that it be referred, he did so. Ms Gutteridge’s challenge was that he should not have needed advice from an IP. In our view there could well be different, but reasonably held views, as to whether an allegation based on something that was obviously physically impossible needed to be referred. We need not decide this: the evidence is that Mr Wall did act on the advice given.
112. We have also considered other evidence regarding Mr Wall’s interaction with the LADO. We consider that whilst he has consulted the LADO more than is strictly necessary and has sought advice, this does not pose a risk to children. Indeed, the opposite is true.
113. In our view Mr Wall has demonstrated to us both in his witness statement and in his evidence that he does have a good understanding of the principles of safeguarding.
114. Allegations 12 and 13 can conveniently be considered together:

Allegation 12 is that:

“At an interim inspection of Wheatsheaf House on 9 March 2022 the requirement under regulation 12 (protection of children) was found not to have been met and was required to be reissued.”

Allegation 13 is that:

“At an interim inspection of Wheatsheaf House on 9 March 2022, the home was judged to have declined in effectiveness under the management of the Appellant since the full inspection of 13 July 2021.

115. These allegations and the relevant evidence need to be considered in chronological sequence, and in context:
- a) It is common ground that at full inspection on 13 and 14 July 2021, the first full inspection since opening in January 2021, the judgement regarding leadership and management had been judged to be “good”.
 - b) We find, in particular, that Mrs Battersby recognised that Mr Wall was a good advocate for children. It is to be noted that Mr Wall had in fact been working as manager since 1 March 2021. In our view the fact of this largely positive judgement about 4 months after his appointment is a very significant factor that falls to be taken into account when assessing his skills. The above demonstrates that the Appellant does know what is needed to meet the overall quality standards. It also chimes with the evidence of Mr Smith regarding the Appellant’s performance at Poppy House where, in a very short period, that home improved significantly under his leadership.
 - c) We consider it unlikely that Mr Wall had, between July 2021 and the decision on 1 March 2022, somehow “lost” the management and leadership skills that had led to a judgement of “good” leadership and management in July 2021.
 - d) It is, however, a simple fact that within days of the decision to refuse registration it was considered on 9 March 2022 that Wheatsheaf House had declined in effectiveness. The reasons for that are set out in the inspection report and the requirements issued and we need not repeat them here.
116. Mrs Battersby’s repeated evidence was that under Mr Wall’s management and leadership the home had “declined so he does not have the range of skills required to run a home”. This is a reductionist approach. We consider that it reflects a somewhat rigid view. Nobody is perfect: even a person with appropriate or even good skills can make errors of judgement and mistakes. Mrs Cooper agreed in cross examination that a shortfall in standards does not necessarily indicate a lack of skill.
117. Whilst we agree that the quality standards of care “must be met” the overall structure of the regulatory regime is directed towards proportionate measures being taken to secure improvement. Experience in this jurisdiction, including the specialist experience of panel members informs us that there can be many and various reasons why a home may decline in effectiveness. We looked for evidence that the Inspectors had considered the background and context on 9 March 2022. We found little recognition that the Inspectors had understood the particular challenges that had been experienced at the home.
118. In our view, the situation of LM which the Respondent had referred to in the inspection report of 9th March 2022 as an “unplanned” departure from the

home, showed good practice in decision-making and support for an extremely troubled child.

119. We find that Mr Wall had recognised that there had been a significant change in LM's behaviour after his transition to High School in September 2021 when he became particularly violent towards all female members of staff, causing them actual injuries. The concern was that this behaviour could also affect the other female resident at the home. Consequently, after consultation with the child's social worker, school and other professionals it was decided that it was in the best interests of LM and the female staff caring for him who had suffered quite serious physical assaults, to move him to an environment where his violent behaviour could be managed more effectively with more male staff. LM left the home in February 2022 – a few weeks before the inspection.
120. Mr Wall told us that he had had to take on many more overnight duties in efforts to address LM's violent behaviour. It was very clear from his evidence that the fact he was male (and the only male MoS) was highly important. LM responded to him in a way that was different and physical violence stopped immediately when he was there. We were also impressed by Mr Wall's evidence as to how he had drawn on the resource of local community police officers in the context of restorative work in the form of a Community Resolution Order to try and address the situation. When it became clear that a new placement was necessary Mr Wall actively liaised with many other professionals about LM's move. Mr Singh was also involved and contacted LM's new placement to assure himself that it would meet LM's needs.
121. In our view the Respondent's use of the word "unplanned" was a somewhat reductionist way of describing what had happened. It seemed to cast a negative light on the Appellant. It missed any real recognition of the elements of good practice that were in evidence. In our view the important point is that there can be little doubt that dealing with the change in LM's behaviour must have had a significant effect on the running of Wheatsheaf House and on Mr Wall's ability to perform his management role. In our view, the Appellant's professional response to a complex problem was worthy of praise. We find that the view that the home had "declined in effectiveness" did not adequately take into account the proper context.

The Evidence of Mrs Lownds - the decision maker

122. Mrs Lownds gave detailed evidence regarding her evaluation of the evidence before her when she made the decision to refuse the application. She made it clear that she "owned" the decision. The effect of her evidence is that it was clear that she attached weight to both the Poppy House and Wheatsheaf House WB allegations. It was also clear to us that she did not – at least initially – differentiate between integrity and character issues, as distinct to skills.
123. Mrs Lownds said that she took into account Mrs Battersby's assertion that "the October 2021 investigation was poor in places and there were gaps in the investigation, and the themes in previous employments." She told us that she had accepted what Mrs Battersby had said about the 2021 investigation.

124. Mrs Lownds also made it clear that she took historic and later information into consideration when making the decision. With regard to Rosendale she took it that there were concerns re leadership and management, but that these had been considered to be proportionate to the grant of RM status at Poppy House. In short Ofsted had considered Mr Wall to be suitable following his reflection regarding his leadership at Rosendale, but she nonetheless considered that it “builds a theme in terms of conduct and good character” and that “more serious concerns have occurred since.” We see no real evidential basis for the view that events at Rosendale had much, if anything, to do with the Appellant’s conduct, integrity and/or character. People of integrity and good character can be poor at management and leadership. There was, in fact, nothing in the evidence that suggests that Mr Wall had “misconducted himself” at Rosendale House.
125. Mrs Lownds said that the decision was not about one single issue. She said that it was a collection of themes emerging, and information, with nothing looked at in isolation but everything formed part of the decision making. She referred yet again to concerns at all three organisations - PH, Rosendale and Wheatsheaf. In our view this approach was devoid of proper analysis.
126. In the event, however, Mrs Lownds did eventually agree in cross examination that her perspective was the “emerging themes regarding conduct were the difference.” She said these were not a problem previously, but a lot more had happened at Poppy House and the dismissal. She referred to “more emerging themes.” She said that integrity and character were more an issue in this case and she conceded that “skills can be addressed.”
127. In answer to the panel’s questions Mrs Lownds agreed that there was no evidence that the Appellant had not taken on board the advice following the incident with child FC. When asked what was high on her concerns list Mrs Lownds said that there is no evidence that the Appellant had not learned. She said that the issue was whether how Mr Wall acts around adults might transfer to children. She said that the boundary issues regarding how he may have acted with an adult is a medium level concern. Swearing was also a medium level concern.
128. It was clear to us from Mrs Lownd’s evidence that the allegations regarding Mr Wall’s alleged conduct at Poppy House and at Wheatsheaf House had been at the very core of how she approached her decision on his registration. In our view this was entirely in line with Mrs Battersby’s approach. We have little or no doubt that the fact of the Appellant’s dismissal from Poppy House and the WB allegations at Wheatsheaf House were the core reason for the decision to refuse registration.
129. For reasons we have already explained why we consider that little weight should be attached to allegations regarding conduct towards staff members at Poppy House and Wheatsheaf House.
130. Mrs Lownds said that she considered the issue of skills in the specific context of Wheatsheaf House. In our view this was not apparent in the NoD, even

though this is a prior condition to the assessment of skill under regulation 28. Be that as it may, we do not consider that any of the Respondent's concerns regarding "skills" would have resulted in refusal of registration in the context of the size of the home and its statement of purpose and the needs of children, absent the firm view taken by the Ms Battersby, and adopted by Mrs Lownds, regarding an alleged "pattern of inappropriate behaviour" towards staff at Poppy House and at Wheatsheaf House.

Satisfaction of Regulation 28

131. Ultimately it is for the Appellant to satisfy us that he meets the requirements of Regulation 28. We have made findings regarding the matters on which the Respondent places principal reliance. We have considered the evidence overall and in the context of all of the Respondent's reasons for refusing the application as expressed on the NoD and in evidence.

Integrity and good character

132. There was very little challenge in cross examination to the evidence contained in the witness statements of Mr Wall. In our view Mr Wall's statements, [11-141] and [1316- 1324], provide a comprehensive account where he dealt in very considerable detail with his background and his response to the matters of apparent concern regarding his integrity and character. In our view the pinnacle of cross examination was that Ms Gutteridge asked Mr Wall whether his case was that "bad things happen to good people". Understandably he said that he could not comment. We consider that this superficial challenge to the substance of Mr Wall's evidence speaks to the limitations of the Respondent's overall approach. In our view the general thrust of the Respondent's case is that "there is no smoke without fire" and allegations of lack of integrity and/or dishonesty and/or bad character can be made or alluded to without more. On proper analysis the "pattern of behaviour" and "emerging themes" regarding integrity and good character on which the Respondent relies have not been established.
133. Ms Gutteridge submitted that Mr Wall's evidence at [79] of his statement that: "Mr Singh informed me that whilst speaking to Mrs Battersby she had told him that if I submitted an appeal to the Tribunal any waiver allowing me to be employed in any capacity would not be considered" damaged his credibility because the oral evidence of Mr Singh and Mrs Battersby was different. This submission surprised us: the simple fact that some evidence might potentially be considered inaccurate and/ or unreliable does not necessarily impact on credibility. Common sense and judicial experience informs us that there can be very many reasons why individuals can have a different recollection or understanding of what was/may have been said at a given time, especially when the information relayed is second hand. Indeed, this has been amply demonstrated in this appeal. If the Respondent's case was that Mr Wall was telling a deliberate untruth when he gave his account of his understanding that needed to have been put to him by the Respondent fair and square. The judge pointed out to Ms Gutteridge she had not put to Mr Wall that his account was dishonest. She agreed.

134. We should also say that we do not consider that Mr Wall's statement at [79] is properly to be viewed as inaccurate. In his statement dated 20 June 2022 at para 114 Mr Singh had said that during the unannounced inspection on 8 March 2022 Mrs Battersby informed him that Mr Wall could not submit a waiver until Mr Wall had decided whether or not he intended to appeal. Mr Singh said that when he later telephoned her – according to his statement after the passage of some time - Mrs Battersby informed him that Mr Wall could submit a waiver even though he was considering an appeal. We can see what the basis for Mr Wall's understanding. We do not consider that there is any material inconsistency, let alone one that has any real impact on the assessment of Mr Wall's reliability or credibility.
135. We were impressed by Mr Wall's evidence. We find that his evidence overall was straightforward, cogent and credible. He conceded reasonable points put to him. He showed that, as a professional person, he could understand the views of the regulator, albeit that he explained his perspective. In our view he did so in a measured and thoughtful way. In a situation where some might have been overwhelmed by a sense of unfairness and grievance, he showed that he can today view the matter objectively and has taken on board the concerns of his regulator. He demonstrated to us that he understands the importance of regulation and is committed to work with his regulatory body. In our view he has good insight.
136. The Respondent had made criticisms of Mr Singh given that he added to his supervision record after he had spoken to Mr Wall regarding the advice given by the LADO following the actual supervision session. He gave an explanation for this which we accept. The Respondent recognised that he was a new (i.e. inexperienced) RI at the time.
137. We attach significant weight to the evidence of Mr Singh. We consider that he was appropriately careful to confine his evidence to matters of which he had knowledge, and he strove to be accurate. He made clear that he saw his role was not to support one side or the other, but to give what he saw as factual and accurate evidence to the Tribunal. He was scrupulous about what he could, or could not, say. In our view he was an impressive witness.
138. Other matters inform us in our assessment of Mr Singh's character – and which impacts of the value of his evidence overall and his opinion of Mr Wall. In our view Mr Singh has a very clear vision and commitment to the values to which he subscribes regarding CFR. He explained to us that he had put on hold his long held plans regarding registration of another potential home, Oak House, because he wanted to first get to "good" at Wheatsheaf House. It was clear from his evidence that he has dismissed/parted company with managers who he did not consider shared the same vision and values in line with the CFR Statement of Purpose - the true core of which is to place the child first. The fact that he was present throughout the hearing over many extended dates tends to support his commitment to due process. Importantly, we came to the clear view that Mr Singh had no "axe to grind" i.e. in the sense of being motivated to support Mr Wall come what may. In the recent inspection on early April 2023 the service provided at Wheatsheaf House has been provisionally rated "good" in all

domains under the overall leadership and management of a new RM and a new Deputy manager. It is very clear to us that Mr Singh is not, in any sense, dependent on the services of Mr Wall for the future success of his plans for CFR at Wheatsheaf House.

139. The Respondent referred us to **Wingate and Anr v SRA; SRA v Malins** [2018] EWCA Civ 366 where Lord Justice Rupert Jackson said at [102]:

“Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public....”

In the context of the discussion regarding **Wingate** both parties agreed with the judge/panel formulation that the importance of integrity, applying regulation 28, goes to the issue of whether the Respondent can reasonably trust that the applicant will be open and honest with the regulator.

140. In making our decision we stand in the shoes of the Respondent, applying the law to our findings, and through the lens of the Respondent’s duties in respect of registration and regulation of the quality standards of care in residential care homes for vulnerable children, and as informed by the published guidance. Having had the opportunity to see the evidence tested in a full judicial process, we make a positive finding in the Appellant’s favour he is a person of integrity. We find that his evidence overall was consistent, coherent, credible and trustworthy. We also find that he is properly regarded to be of good character.

Skills

141. As to skills we refer to our findings above. The issue of skills has to be considered:

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

142. We find that Wheatsheaf House is a residential home that provides care to 2 children - usually approaching teenage years and with a high level of need. We have received a great deal of evidence regarding the high level of challenge involved in caring for children who are often very damaged because of difficult and traumatic life experiences. The children cared for at Wheatsheaf House are usually placed there because arrangements have broken down and they are awaiting, hopefully, a foster care placement that will meet their needs. Such children are highly vulnerable, and also present significant challenge for any number of different and individual reasons. The statement of purpose at Wheatsheaf House makes clear that the strong value of always placing children first underpins the philosophy of care. In our view the Appellant has demonstrated a good level of overall skill in meeting the needs of very damaged children, and in leading the care of children for which Wheatsheaf House provides a home, albeit usually temporary. We also find that the Appellant has demonstrated in his evidence that he has grown in the development of his skills

regarding safeguarding principles and procedures. We find also that the Appellant has appropriate management skills which have developed because of his past experiences. The Appellant has satisfied us that he has the appropriate skills to manage the home effectively and to lead the care of children.

Summary

143. The Appellant has satisfied us that he meets all the requirements of Regulation 28.

Decision

The appeal is allowed. The Tribunal direct that the Respondent's decision dated 1 March 2022 shall not have effect.

Judge Siobhan Goodrich

First-tier Tribunal (Health Education and Social Care)

Date Issued 01 June 2023