Care Standards

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

IN THE FIRST-TIER TRIBUNAL CARE STANDARDS

[2014] 2226.EY

Heard on 10-12 November 2014 at the Manchester Civil Justice Centre

BEFORE

JUDGE MELANIE PLIMMER
SPECIALIST MEMBER MS MICHELE TYNAN
SPECIALIST MEMBER DR SURENDRA KUMAR

BETWEEN

KATHLEEN RYAN

Appellant

-v-

OFSTED

Respondent

DECISION

Representation

The Appellant was not represented
The Respondent was represented by Ms Smith.

1. The Appellant was the Registered Manager ('RM') for three children's homes operated by Advanced Childcare Limited ('ACL'), a limited company with Mr Sarwar named as the Responsible Individual ('RI'). Shelfield Lane children's home ('Shelfield') was owned and operated by ACL, and is the Registered Provider ('RP').

2. Following an incident in 2013 in which a young person resident at Shelfield went missing for a short period and during that time committed a serious sexual offence for which he has been convicted, Ofsted investigated Shelfield and the individuals

involved. Ofsted then made decisions to cancel the registration of Shelfield as RP, the RI and the RM. We are only concerned with the Appellant's appeal against Ofsted's decision dated 2 May 2014 to cancel her registration as RM.

Hearing

3. The appeal was heard over the course of three days. At the beginning of the hearing Ms Smith clarified the relevant legal framework. This was explained to the Appellant and she indicated that she agreed with it. We set out that framework below. We also clarified that both parties had access to the detailed large bundle prepared for the hearing, together with the Scott Schedule. This contains an updated list of the allegations Ofsted relies upon against the Appellant to support its case, with the Appellant's responses to these. We bear in mind that the Appellant has not had the benefit of legal representation at any stage during these proceedings. We have therefore considered her responses in that light and clarified a number of matters relevant to those responses during the course of the hearing.

4. We then heard evidence from the respondent's witnesses, Ms Oldham, Ms Henderson, Ms Fell and Ms Holden, before hearing from the Appellant.

5. At the end of the evidence we heard submissions from Ms Smith and the Appellant before reserving our decision, which we now provide with reasons.

Out of time decision

6. On 30 June 2014 the Tribunal made a decision giving the Appellant permission to extend time. This is because she served her appeal on 11 June 2014 when it should have been served on 29 May 2014. It is accepted that the Appellant used her best endeavours to lodge her appeal but misunderstood the relevant process. On that occasion the Tribunal extended time without acknowledging that there is no provision within the relevant enabling statute, the Care Standards Act 2000 ('the 2000 Act') to extend time – see Rule 5(3)(a) of the 2008 Rules and section 21(2) of the 2000 Act. This was erroneous in law. The Tribunal indicated to Ms Smith that it proposed to review this decision of its own motion and admit the appeal but for different reasons. Ms Smith took instructions and told us that Ofsted had no objection to this approach. Although the appellant was obliged to file her appeal application in 28 days and has not done so, we are satisfied that we should extend time in order not to breach Article 6 of the ECHR.

7. The Upper Tribunal has made it clear that absolute time limits should be read as subject to the Tribunal having power to extend if that is necessary to avoid a breach of Article 6 – see **Sheikh v CQC** (2013) UKUT 137 (AAC) and **Sheikh v CQC** (2014) (HC/2062/2014) at para 11.

8. This is a case affecting the Appellant's livelihood in a direct way. If cancellation takes effect Ofsted accepts that she will not be able to work in her current post or any employment in a children's home, without making an application for a waiver. She has eight years of experience of working with young people in children's homes and it is her chosen career. Although the Appellant lodged her completed application form late, this is a result of misunderstanding the process. She has used her best endeavours. Although this appeal is late Ofsted has accepted they have not been caused prejudice. Bearing in mind the overriding objective and all the circumstances of this case the Tribunal regards it as appropriate to review its previous decision and to admit the appeal in order to avoid a breach of Article 6.

Legal Framework

9. The 2000 Act states that anyone wishing to operate a social care establishment for young people, such as a children's home must register with Ofsted. Once registered they are known as the RP. The RP must nominate an RI that acts on behalf of and is the point of contact for the RP. The RI must demonstrate to Ofsted that the RP will meet the relevant requirements for registration. The RP must ensure that each establishment has a RM. They are appointed to take full-time, day-to-day or operational control of the children's home. The RP and RI must be fit to act in that capacity, and must carry on or manage the home with sufficient care, competence and skill. The criteria for registration and the obligations on the part of the RP, RI and RM are also set out in the Children's Homes Regulations 2001 (as amended). We accept that the role of the RM is particularly important and the RM has responsibility for young people in their care at the 'frontline', as submitted by Ms Smith.

10. Section 14(1)(c) of the 2000 Act provides that Ofsted "*may at any time cancel the registration of a person in respect of an establishment or agency-…on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements"*. Ms Smith relies in particular upon regulations 11, 16 and 25 of the 2001 Regulations and we set out the relevant extracts below.

"**11. Promotion of welfare**

(1) The registered person shall ensure that the children's home is conducted so as to –

(a) promote and make proper provision for the welfare of children accommodated there; and
(b) make proper provision for the care, education, supervision and, where appropriate, treatment, of children accommodated there.
(2) The registered person shall make suitable arrangements to ensure that the home is conducted -
(a) in a manner which respects the privacy and dignity of children accommodated there; and
(b) with due regard to the sex, religious persuasion, racial origin, and cultural and linguistic background and any disability of children accommodated there.

…

16. Arrangements for the protection of children
(1) The registered person shall prepare and implement a written policy which -
(a) is intended to safeguard children accommodated in the children's home from abuse or neglect; and
(b) sets out the procedure to be followed in the event of any allegation of abuse or neglect.
…
(4) The registered person shall prepare and implement as required-…
(b) a missing child policy.

…

25. Staffing of children's homes
(1) The registered person shall ensure that there is at all times, having regard to –
(a) the size of the children's home, the statement of purpose, and the number and needs (including any needs arising from any disability) of the children accommodated there; and
(b) the need to safeguard and promote the health and welfare of the children accommodated in the home,
a sufficient number of suitably qualified, competent and experienced persons working at the children's home.
(2) The registered person shall ensure that the employment of any persons on a temporary basis at the children's home will not prevent children from receiving such continuity of care as is reasonable to meet their needs.”

11. Section 21(3) of the 2000 Act provides a right to appeal to this Tribunal where Ofsted makes a decision to cancel a RM’s registration. The legal burden remains vested in Ofsted, which must establish the facts upon which it relies to support cancellation. It must also demonstrate that the decision to cancel the Appellant’s registration is proportionate and necessary. The standard of proof to be applied is the balance of probabilities. We must make our decision on the basis of all the evidence available to us at the date of the hearing and we are not restricted to the matters available to Ofsted when the cancellation decision was taken.

12. The powers of the Tribunal can be found in section 21(4). Essentially the Tribunal may either confirm Ofsted’s decision to cancel or direct that it shall cease to have effect. Whilst the Tribunal has the power to direct any such condition as it thinks fit shall have effect in respect of the establishment or agency (s 21(5)),

the RP in this case (the relevant establishment) has already been cancelled, and this has taken effect as there was no appeal against that decision.

13. We were told by Ms Smith, and we accept that a person who has been concerned in the management of a children's home, in respect of which her registration has been cancelled under section 14 of the 2000 Act is disqualified from working in a children's home – see regulations 2(1) and (7) of the Disqualification from Caring for Children (England) Regulations 2002 and sections 65 and 68 of the Children Act 1989. Ms Smith reminded us that if the decision to cancel is upheld the Appellant is entitled to apply for a waiver and Ofsted would make a proportionate decision. She reminded us that Ofsted had accepted the application for a waiver on the part of the RI for Shelfield.

The evidence and our findings

General approach to the evidence

14. We have carefully considered the extensive documentary evidence before us together with the oral evidence. Before turning to our findings we set out our broad assessment of the witnesses who appeared before us. We find that all the witnesses provided honest evidence. Where they did not know an answer or were unsure they were candid in making that clear. They all responded to questions directly and were not evasive. This includes the evidence provided by the professional witnesses and the Appellant. The Appellant conceded weaknesses and responded clearly and honestly to all the questions she was asked. She came across as a 'straight-talking' person with the ability to clearly communicate her own views and instructions to others. Indeed, to their credit, Ofsted's witnesses who spent time with the Appellant such as Ms Henderson and Ms Oldham agreed that she was an honest and straightforward person who was consistently open and forthcoming with them.

15. There were times when we did not agree with the professional witnesses' interpretation of events or assessment of the evidence, but we accept that their views were and are genuinely held**.** We have taken those views into account but have reached our own findings on all the evidence available to us.

The question for us to determine

16. Ofsted's case against the Appellant is set out within the Scott Schedule. This has been agreed by the parties as constituting the updated allegations against the Appellant. These are narrower than the list of concerns set out in Ofsted's decision letter. This is entirely understandable. Ofsted inevitably focuses its case as it receives further evidence.

17. In the Scott Schedule and indeed throughout the relevant documents, Ofsted has predicated its case against the Appellant on her personal culpability. We must determine the Appellant's role in any breach of the Regulations in relation to Shelfield (the establishment for the purposes of section 14 of the 2000 Act). Ofsted's case against the Appellant is that in accepting AR's placement and for the duration of the time he was resident there, she has caused or contributed to a breach of Regulations 11, 16 and 25. Ms Smith has put her case firmly on the particular role played by the Appellant as RM. We therefore need to consider whether the Appellant is culpable for a breach of the Regulations in any of the seven specific ways alleged by Ofsted within the Scott Schedule. In order to do so we must consider the relevant chronology and make findings of fact.

<u>Our findings regarding the chronology of events</u>

18. Shelfield was registered on 15 February 2013 as a provision with the capacity to accommodate only one young person at any given time. It is based in the North West of England. The Appellant was the RM at Shelfield and two other children's homes. There is no dispute that there were no serious concerns about her role as RM prior to September 2013. After an inspection on 2 September 2013 Shelfield's overall effectiveness was judged by Ms Oldham as adequate but with areas for improvement including ensuring that children's records are updated, signed and dated. It was specifically observed in the inspection report:

> "*The staff team are supported within their role by an experienced manager who understands the strengths of the home and is proactive in addressing any identified shortfalls to develop the service and provide a positive level of support for young people.*"

19. After the inspection Shelfield accommodated a young person, who in October 2013 who went missing repeatedly. He assaulted a member of staff at Shelfield and destroyed much of the furniture there. The Appellant told us and we accept that this caused considerable upset and the morale at Shelfield was low. She also felt under a great deal of stress and pressure from her employer. This is supported by contemporaneous documentation relevant to this time. In an email dated 4 September 2013 the RI indicated that ACL was "*not in a position to be choosy about referrals"* and "*any new referral forwarded must be dealt with immediately".* This was cascaded to the managers in the organisation in another email by the regional manager, Ms Sullivan, the Appellant's line manager. This email states "*…we need to push for every placement to be accepted no placement should be refused unless there are potential safeguarding issues attached and then we need to discuss if need*

could be met elsewhere in the region. I know you are all trying hard but think outside the box a little if needs increased staffing then accept and we will work out the logistics later".

20. In an email dated 18 September 2013 to her line manager the Appellant indicated that she was worried that Shelfield did not have a full team and morale amongst staff including herself was low. At a meeting on 1 October 2013 with her line manager the Appellant set her concerns in more detail. This included issues described as 'critical' regarding staff, the need for further training and the need to address issues underlying the demoralisation of the staff. The Appellant made it clear that she felt overworked and if this continued she did not feel she could continue as RM.

21. About a week after the departure of the last difficult resident on 22 October 2013, the Appellant agreed to Shelfield accommodating a 15 year old 'looked after child', AG, from a London local authority. This was an emergency placement as AG was being held in a youth detention centre and the local authority wished to place him in a solo unit out of area and far from his associates and family members, some of whom were known to have encouraged his criminal offending and drug habits. When questioned the Appellant agreed that she accepted the placement quickly (about 20 minutes after the email was sent) even though the information accompanying the referral was incomplete. The referral particularly highlighted that AG was known to use crack and heroin and had a history of theft / burglary offending to fund his drug habits. The Appellant told us and we accept that AG's history was not an 'untypical' one for her as a RM or for Shelfield and her staff and that she considered that they should be able to meet his needs. She admitted that that was a great deal of pressure to accept referrals and to do so quickly but she still thought AG's needs could be met.

22. AG arrived at Shelfield the next day (23 October) straight from his court appearance with only the clothes he was wearing. He was sentenced to a two-year youth supervision order with supervision, drug treatment and testing, and a daily curfew from 8pm to 7am, to be electronically monitored without a tag. He was however released without a tag, and Ofsted accepts that due to no fault of the Appellant, this was not inserted until 30 October. Just prior to his arrival the Appellant received a copy of his pre-sentence report ('PSR') dated 22 October. This gave fuller details about AG. There is considerable documentary evidence to support the Appellant's claim that she pro-actively chased various agencies from 22 October (but after accepting his referral) for further information and in order to set up appointments, assessments and meetings. The social worker was chased on 23 October on a number of occasions and a planning meeting took place on 28 October.

23. The Appellant did not put a detailed tailored package of care in place immediately because she said this would only take place after she had fuller information. The PSR made it clear that further assessments needed to be carried out regarding his risk of sexual offending and drug-related offending. The Appellant did arrange for 25 hours per week of tutoring to begin. We accept this only began on 4 November but accept that there is a reasonable explanation for the delay. Arrangements had to be made within a very short space of time and the period before this represented the half term holiday for many teachers. AG also visited a gym but decided not to take up this offer.

24. On 30 October the Appellant attended a Youth Offending Team (‘YOT’) meeting. At this meeting it emerged that there was additional information regarding the extent of AR’s offending. He was said to have 37 previous convictions including burglaries and use of weapons / firearms. At this meeting the attendees were still pulling together all the relevant information. The Appellant was told that she would be provided with further documentation such as a full PNC printout, and that further assessments needed to be completed.

25. The first time that AG went missing was some seven days after his arrival on 31 October. This supports the many references within the documentation that at first AG seemed to be settling in reasonably well, was polite and compliant with staff. In the evening of 31 October he went missing for 18 minutes, and he returned smelling of cannabis. We were told by the Appellant and we accept that the next day on 1 November she reminded her staff of the relevant procedures to ensure he did not go missing again.

26. AG went missing again on the night of 1 November (a Friday) and then again on 3 November (a Sunday). In breach of the normal practice the Appellant was not told by either her staff or the ‘on call’ team of the incidents when AG went missing between 1 and 3 November until she arrived at Shelfield on the morning of Monday 4 September, prior to AR being arrested. We accept her evidence that when she found out about what had happened on Friday night and during the course of Sunday, she spoke to the staff in the strongest of terms. AR was then arrested by police. It has since been clarified that he was convicted of raping a 78 year old during the time when he went missing from Shelfield on the morning of 1 November 2014 between 9.50 and 12.21. AG was on his phone on the side of the house and then went out of sight. Staff spoke to him on his mobile phone and told him to come home. Staff informed him that if he did not return in 10 minutes they would call the police. When he did not return staff rang the police to report him absent and then rang ‘on call’.

27. A number of investigations followed this incident and we have considered documentation from these. The Appellant objected to the notice of decision to cancel her registration. This was considered by an objection panel but Ofsted decided to cancel her registration on 2 May 2014. Ofsted also took the decision to cancel Shelfield as RP. This was not appealed and took place on 1 May 2014. We were also told that the registration of the RI was cancelled and not appealed but he has successfully applied for a waiver and is currently working as a Regional Manager for a large company that took over ACL.

28. ACL investigated the Appellant's role and concluded that she should be demoted from RM to first line manager. We do not know what investigation was conducted on the part of ACL in relation to others at the company including the RI. The Appellant told us that it was the RI who conducted the investigation into her. We have seen an investigatory report completed by Mr Sarwar but we do not attach very much weight to this as it is difficult to see that he was sufficiently independent to conduct the investigation.

Was the Appellant responsible for breaching the relevant Regulations in the manner alleged by Ofsted?

29. In the Scott Schedule Ofsted relies upon seven specific allegations, which we consider in turn.

Regulation 11

Allegation 1

30. It is submitted that the Appellant accepted AG's placement without adequate consideration of the care, supervision and treatment that would need to be offered in order to meet his needs and promote his welfare. Ms Smith drew our attention to the letter from ACL (not written by the Appellant) to the commissioning local authority offering a nurturing environment at Shelfield with a highly experienced staff team and a 2:1 staff ratio at a significant cost of nearly £5000 per week.

31. We entirely accept that the placement was accepted very quickly and on the basis of incomplete information. The placing authority omitted to include a full chronology or even an updated placement request form. We accept that it would have been preferential for there to have been more detailed information and for the placement not to commence until all services to meet needs were in place. We must however consider the reasonableness of the Appellant's acceptance of AG's referral against all the relevant circumstances. This was an emergency referral and AG was to be placed straight from detention. He could not lawfully be held in detention beyond his sentence. He therefore required an urgent placement

somewhere. The request was being made the day before he was due to be released. We note that the placing authority made the referral request on 22 October by email. This described AG as a very challenging child currently in detention but due to be released next day and requiring a placement straight from detention. He was also described as a Class A drug user (including crack and heroin) with a history of burglary to feed his drug problem with a chaotic family life. Reference was made to the need to explore his sexually inappropriate behaviour through an AIMS assessment and that he was at risk of reoffending and would therefore have a robust youth offending programme. This summary is supported by the other information accompanying the referral and is not inconsistent with the further information provided within the PSR and from the YOT.

32. We are satisfied that the Appellant was entitled to accept the referral on the basis of the information she was provided bearing in mind the experience she had of managing children with what she reasonably regarded to be similar backgrounds on the information made available to her.

33. We do not consider that the Ofsted witnesses properly appreciated the practical reality involved in an emergency placement such as this. Referrals are often requested and accepted on an urgent basis without all the relevant information and without having all the relevant services / interventions in place, so long as the provider is reasonably confident that on the material available, needs can be met. If upon admission to the children's home it becomes clear at any point that this is no longer the case then the matter is reviewed urgently.

34. Ofsted's witnesses criticised the Appellant for being insufficiently robust in refusing AG's placement. It was emphasised that a RM is expected to make difficult decisions and to stand up to their employer where pressure is being exerted. We are satisfied that the Appellant was sufficiently robust. She raised a number of very difficult issues directly with her line manager and set these out in detail at a meeting very shortly before accepting this placement. The notes of that meeting on 1 October 2013 do not suggest that the Appellant was reluctant to raise concerns, quite the opposite. We accept that the Appellant genuinely believed that AG's needs could be met and that she was entitled to reach that decision on the information available. Whilst that information was not complete, it was accompanied by regular communications with the placing authority and AG's social worker.

Allegations 2(i) and (iv)

35. We do not accept that the Appellant failed to put in place an adequate risk management plan on the basis of the information she had. The Appellant accepted that there was some confusion in the

points system used by the RP to measure risk. However we accept that the Appellant correctly assessed the risk presented by AG to be high in relation to theft, burglary and illegal drugs and medium in relation to sexual offending. This assessment is consistent with the most comprehensive and up to date assessment available – the PSR.

36. Ofsted's witnesses were consistent in their view that the Appellant did not sufficiently stress the level of risk presented by AG regarding sexual offending. We consider that this view has been tainted with the benefit of hindsight. AG committed a heinous offence of rape upon a vulnerable victim shortly after his arrival at Shelfield. We have considered whether the Appellant has unreasonably minimised his risk on the material available to her prior to this offence taking place. We accept her evidence that the placing authority focussed more on his drugs / theft / burglary risk of offending than his sexually inappropriate behaviour. This is consistent with the email attaching the referral from the placing authority. This makes reference to sexual risks being less well known and requiring an AIMS (sexual behaviour) assessment. This is consistent with the PSR. AG's social worker did not emphasise a particular sexual offending risk in her email dated 24 October arranging for the placement planning meeting. At that meeting on 28 October it was said that the purpose of the placement included work around criminal activity, therapeutic intervention and sexualised inappropriate behaviour. We accept that work on AG's sexualised inappropriate behaviour could not usefully be arranged until after the AIMS assessment.

37. Although the risk management plan prepared by the Appellant did not make the level of risk clear on the face of the document (because the points system was unclear), the Appellant explained to us and we accept that the points system she used reflected the assessment in the PSR.

38. We accept that the Appellant clearly communicated to the relevant staff the risks presented by AG as she correctly assessed them to be. The Appellant accepted that she should have ensured that staff signed the relevant risk assessment so that she could be sure that they had read it and could evidence that she had communicated this to them. When interviewed by Ofsted the first line manager, Ms Irlam said that the Appellant was very clear with herself and staff about the risks and the need to follow the supervision and missing from home ('MFH') protocol closely.

39. We therefore do not accept that Ofsted has established that the risks were not correctly identified or that those risks were not clearly communicated to staff, on the part of the Appellant.

Allegations 2(ii) and 3

40. We are also satisfied that the Appellant implemented a strict 2:1 supervision with no free time policy and this was communicated to all staff. We also accept this was appropriately re-emphasised to staff albeit this should have been recorded more clearly.

41. There are obvious limitations to what staff can be expected to do when supervising a young person closely. They cannot deprive a person of their liberty without the sanction of the court. Whilst AG was to be supervised he could not be restrained by staff or physically prevented from leaving Shelfield.

42. Although Ofsted suggests within the decision letter that there should have been waking night staff in order to ensure compliance with the curfew, Ms Smith accepted at the hearing that this did not form part of the referral and that AG was accepted on the basis that he would have 2:1 supervision only. On the evidence available to us we find that the placing authority did not require waking night staff and as such none was provided. We note that even if this was provided it would not have prevented the times that AG is recorded to have gone missing.

43. Ofsted specifically criticised the failure to properly supervise AG when he attended a gym induction. We find that in keeping AG within eyesight when he was being accompanied by a gym instructor was a reasonable way in which to supervise AG in all the circumstances.

Allegations 2(iii) and 4

44. We do not find that the missing from home ('MFH') policy in relation to AR was unclear or that the Appellant acted unreasonably in MFH incidents. We note that in the recent September 2013 inspection report rated the service good at keeping young people safe and feeling safe and it was specifically observed that:

> "*Young people's safety is promoted and staff have a good knowledge of safeguarding. This includes ensuring that appropriate procedures are followed in the event of a young person missing in care.*"
>
> *"Staff support young people to return to the home and follow up what may be contributing to them leaving the home through sessions with their key worker.*"

45. Whilst this inspection took place at a different time (September 2013) and is not determinative, it is relevant to take it into account when assessing this Appellant's approach in relation to AG, shortly after the inspection (October 2014).

46. The MFH risk assessment was made on 24 October and reviewed on 31 October. It unequivocally states:

> "*Should AG go missing he will be reported immediately as [AR] is on tag with a 8pm-7am curfew. Staff to stress that he is to be classed as missing not absent due to the high risk he poses to himself and the community. The risk at present is believed to be more in the area of theft but staff are to be aware that he displays risky sexualised behaviour.*"

47. The document sets out known triggers and warning signs. We accept that the document was not signed and dated by members of staff and that the Appellant was deficient in failing to ensure this was done. We also accept that there was a document stating that AG had 30 minutes to get back in touch if missing. However we accept that this was a mistake and this mistake was put right and at all material times it was known that he should be reported immediately and the police contacted within 10 minutes. There is some inconsistent evidence from staff members within the bundle but having considered all the relevant evidence in the round we are satisfied that the above assessment was communicated orally and made clear to all staff.

48. Ofsted also alleges that the Appellant took inadequate action in response to the MFH incidents. We consider that the Appellant acted reasonably in devising a strong protocol in the terms set out above. This was clearly communicated to staff. It is relevant that AG did not go missing until after a week and then only for 18 minutes. We accept that the Appellant reminded staff the day after about the importance of complying strictly with the protocol. She told us that she expected at shift changeovers for advice that she had given to be repeated. We note the MFH was reviewed on 1 November. We have been provided with the handover sheets for 1 and 2 November. These emphasise that AG is to be in eyesight at all times even when he goes out for a smoke.

49. We also accept that the Appellant cannot be blamed for not taking further action after the MFH incident in the evening of Friday 1 November when he was missing from 18.30 to 19.35. This was not communicated to her until Monday morning. She explained that staff or the on call team would normally contact her (she does not work on weekends) but they failed to do so. We have already described the practical limitations involved in supervising a young person determined to go missing. We do not accept that the Appellant took inadequate action in response to MFH incidents or failed to reasonably complete and review the MFH policy.

<u>Regulation 16</u>

Allegation 5

50. Ofsted has alleged that the Appellant failed to implement an adequate care plan, risk management plan, MFH risk management plan and review of the MFH plan. We accept that there was a dearth of meaningful activities (although he was taken for a gym induction but chose not to return to the gym, and taken on town visits) at the beginning of AR's placement but the reason for this has been adequately explained. Education could not begin until 4 November. Further assessments needed to be completed. AG did not even have clothes when he arrived from prison. We accept that the Appellant was actively working toward setting up appropriate activities and interventions. She was also actively liaising with the relevant agencies. We accept that she was working toward an individualised plan for AG. Ms Henderson accepted that in the short term the staff team was competent to meet AG's needs and manage his risks, but not in the long term. AG was of course at the home for a very short period before being arrested.

Allegation 6

51. Although the Scott Schedule refers to the Appellant's failure to meet certain actions under Regulation 33, when we pressed Ms Smith for greater particularity she confirmed that she was content for us to simply take into account the actions set after the Shelfield's inspection in September 2013. This indicated as an area for improvement ensuring that records maintained are up to date and signed and dated. We accept that the Appellant did not meet this action. We were taken to a number of documents which were not signed or dated by relevant staff members or included the wrong date. Whilst we agree that this is of concern we note that the Appellant has acknowledged her weakness in this area. We accept her assurance that that all relevant matters relating to AG were adequately communicated orally to the relevant staff, but it would have been better for these to have been more comprehensively recorded.

Regulation 25

Allegation 7

52. We note that the Appellant had raised concerns regarding the team available to her prior to AG's placement. She was told that she had to form a team out of the individuals allocated to her. The Appellant told us and we accept that the members of staff may have had weaknesses but were adequate to meet AG's needs. Although the team may not have all worked together or in the local area, many of them had worked together and were experienced in working with troubled teenagers. Although there were training gaps amongst some of the staff we accept that there was sufficient drugs

awareness and understanding of managing sexualised behaviour in the team as a whole.

Conclusion on Appellant's role

53. It follows from the above that we do not accept that Ofsted has displaced the burden upon it to establish that the Appellant has been deficit in the manner alleged within the Scott Schedule. We do not accept that there was a breach of the relevant regulations on the part of the Appellant, in the manner alleged or at all.

54. We accept that the Appellant should have been more robust in evidencing matters relevant to AG within the paperwork. We accept that this is important to ensure effective communication for all staff members, particularly where they are working in shifts and in a challenging environment in which the failure to record and effectively communicate small changes may have very serious consequences. We also note that the record keeping at Shelfield was found to lack information at the September 2013 inspection and this was set as an action. This tends to show that the Appellant's approach to record keeping was not as robust as it should have been. Ms Smith asked us to find that the Appellant has demonstrated little insight into this. We believe that the Appellant in her evidence before us genuinely accepted that this had been a weakness on her part but that she had learned a great deal from this and has since been much more careful about completing all paperwork. We have considered her recent performance review record, which lends support to this.

55. We note that the Appellant indicated very clearly to us that she was content in her current role as first line manager and had no intention of returning to a RM post. If the Appellant wishes to return to a specific RM post in the future it would be helpful to carefully consider her understanding and implementation of record keeping, and whether further training is necessary in this area.

Decision

56. We find that Ofsted has not displaced the onus upon them to satisfy us that the Appellant's registration should be cancelled. We therefore find that it shall cease to have effect.

57. We allow the appeal and there shall be no order as to costs.

Judge Melanie Plimmer
First-tier Tribunal Judge (Health, Education and Social Care)
Lead Judge, Care Standards and Primary Health Care Lists

Date Issued: 19 November 2014