

## Care Standards Tribunal

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

Before:

Judge Melanie Lewis  
Specialist Member Caroline Joffe  
Specialist Member Linda Redford

**KINGFISHER FOSTERING LIMITED**

**Appellant**

-v-

**OFSTED**

**Respondent**

**[2014] 2161.EY**

**DECISION**

#### **Representation**

Mr Boland attended and presented his own case. He was supported by Ms Warren, whose role was to take notes for him.

Mr Saigal, Solicitor, represented the Respondent. The following attended as witnesses: Mr Lucas, Social Care Regulatory Inspector (but Social Care Team Manager from 27 June 2011 to 20 May 2013), Ms Heller, Social Care Regulatory Inspector, Mr Broomhead, Social Care Compliance Inspector and Mrs Deary, Social Care Regulatory Inspection Manager. Additionally, Mr Jackson the case manager attended. He did not give evidence.

#### **The Appeal**

1. The Appellant appeals against the decision taken on 27 December 2013 to cancel the registration of Kingfisher Fostering Ltd because they had failed to nominate a 'Responsible Individual' (RI) who met the required level of fitness. Mr Boland was the Responsible Individual.
2. On 30 October 2012 Ofsted were informed that Mr Boland had been arrested by the police on suspicion of being drunk and disorderly and criminal damage on 6 October 2012. In addition, Ofsted was informed that the RI had a previous conviction for being drunk and disorderly, and had been arrested for an alleged breach of the peace in

September 2008. He was interviewed by two Ofsted inspectors, Martin Davis and Clive Lucas on 8 November 2012 and asked about these matters, as well as the need for the service to have a Registered Manager. Mr Boland was asked to send Ofsted written notification of the details of his conviction, as required by Regulation 9 of the 2011 Regulations, and facilitate the provision of a Criminal Records Bureau (now known as a Disclosure Barring Service) check. Only on 12 December 2013 did Mr Boland notify Ofsted that he had been convicted of just one offence of being drunk and disorderly on 1 January 2013. He gave no further details. Neither did Mr Boland provide an enhanced DBS check despite a number of requests

3. At the date of the hearing the necessary details had been provided but Ofsted maintained their decision on the basis of the cumulative factors leading to the delay and that it showed that Mr Boland did not think rules applied to him, failing to understand that, as an RI, he would be subject to information sharing by various agencies and saw himself as a victim. Subsequent information that had come to light since the decision enforced not reduced their concerns.
4. In his grounds of appeal Mr Boland challenges the process, the changing grounds for the decision and false accusations made against him. He challenges his conviction and is making a complaint against the police. Mr Boland agreed that he had reached a settlement with his employer in a case he brought for unfair dismissal in 2008 and that he faces charges for racially/religiously/aggregated common assault at Southwark Crown Court.

### **Preliminary Matters**

5. Mr Boland had asked for Ms Warren to attend as a supporter. It became clear to us that he had employed her the previous day to take a verbatim note. We clarified that she could take a note to assist him but it would not be an agreed record of proceedings.
6. We refused Mr Boland's application to strike out a reference to an Employment Tribunal Case in 2008 in which he had reached a settlement with his employer. He agreed that the news reports were an accurate account of what had happened. What weight to be attached to them would form part of our decision making process.
7. Mr Boland sought to re-open the applications he has made for "full disclosure "of all the documents relied on by Ofsted in their decision making." We refused the application. The Order of Deputy Chamber President Aitken dated 27 March 2014 ruled that the relevance of such disclosure was not clear as the Tribunal would consider matters afresh and that discussions between Ofsted employees do not amount to evidence.

## **The Law**

8. On an appeal, the Tribunal is considering matters afresh. It is not deciding whether the decision of Ofsted was a reasonable one at the time, but whether the registration of the agency should be cancelled. We should take into account the whole history, including matters that have arisen since Ofsted made their decision.
9. The grounds for cancellation are under Section 14 (1) (c) of the Care Standards Act 2000, namely that the agency is being carried on otherwise than in accordance with the relevant requirements. The relevant requirements are set out in regulation 5, Fostering Service Regulations 2011.
10. Regulation 5 (1) (d) 2011 Regulations requires that the 'Responsible Individual' who is a director, manager, secretary or other manager of the organisation and is responsible for supervising the management of the fostering agency. That person must satisfy the requirements of paragraph 2.
11. Regulation 5 (2) 2 states that;–
  - (a) The person is of good character
  - (b) The person is physically and mentally fit to carry on the fostering agency, and
  - (c) Full and satisfactory information is available in relation to the person in respect of each of the matters specified in Schedule 1.
12. Schedule 1 Regulation 9 requires that where a registered person or responsible individual is convicted of any criminal offence, that person without delay must give notice in writing to the Chief Inspector of;–
  - (a) The date and place of conviction
  - (b) The offence of which they were convicted
  - (c) The penalty imposed in respect of that offence

## **The Background**

13. Kingfisher Fostering Ltd is a small independent fostering agency, first registered on 26 August 2005. It is operated on a small scale with only a few placements and the Manager is a Registered Social Worker.
14. The agency had had a mixed inspection history but that is not the ground for the decision. In 2008 and 2010 the provision was graded as satisfactory but inspections on 16 September 2009 and 11 June 2013 recorded 'inadequate outcomes'. The inspection on 11 June 2013 resulted in the service of a compliance notice on 5 July 2013 detailing shortcomings in the procedural requirements. A monitoring visit on 9 August 2013 deemed the notice met.

15. The agency had been late in paying the annual fees, culminating in the issue of a decision to cancel in March 2013. That was subsequently met and again is not part of the grounds for cancelling registration.

### **The Evidence**

16. We considered 234 pages of written evidence and heard the oral evidence, all of which we have carefully considered. We summarise the evidence necessary to explain our decision.
17. Ofsted's documents clearly set out the timeline and the number of attempts that were made to chase Mr Boland to provide an enhanced DBS check.
18. We read the statement and heard evidence from Mr Lucas. He visited Mr Boland on 8 November 2012, accompanied by Martin Davis. Ofsted rely on this as the key date because of the action plan that was agreed. The three agreed action points were (i) that Cynthia Wilson's application for registered manager would be received by Ofsted by 23 November 2012; (ii) Mr Boland was to send retrospective notification to Ofsted providing details of the convictions required by Regulation 9 of the 2011 Regulations; and (iii) Mr Boland would facilitate the provision of a Criminal Records Bureau (now known as Disclosure and Barring Service [DBS]) check as soon as possible. To assist, Ofsted's process officer would provide the relevant forms for submission.
19. Mr Boland states that some delay set in because he was not provided with the relevant forms in a timely manner. In questions to Ms Heller, he emphasised his case was that he had made 'a full and frank disclosure to her when she visited him in June 2013 giving feedback on 11 June. The outcome of this inspection was an inadequate rating overall. She raised the issue with Mr Boland as to why he had not responded to the action plan agreed with Mr Lucas at the request of Mr Lucas but this was not the focus of her role or her visit. She did not know that this conversation was being recorded by Mr Boland. This has been transcribed by Mr Boland and was submitted by him as part of his appeal papers. Ofsted take no objection stating that it assisted their case.
20. At that point in June 2013 Mr Boland said that he had sent in a completed DBS form. In Ms Heller's notes which we read, she records that Ofsted had not received it. It then says '*PB said he would check if this had been sent. Said that it would have been photocopied somewhere. He said last DBS was done on 4.7.12 number 34136069*'.
21. Time was spent examining why that DBS check had not reached Ofsted and what proof there was that it had been applied for and sent. Mr Boland said Ms Heller was shown a photocopy. That raised the issue of why that had not been sent to Ofsted but Mr Boland said that must have been lost.

22. Mr Boland felt his meeting with Ms Heller was sufficient and did not write to Ofsted explaining the position. Ms Heller confirmed that her involvement in the case ceased thereafter and her role in relation to the DBS check had simply been to remind Mr Boland of the need to comply.
23. Mr Broomhead gave largely factual evidence as to the 'chasing correspondence' sent. Mr Broomhead confirmed the evidence set out in his statement dated 17 March 2014. A disclosure application form was sent to Mr Boland on 9 November 2012, chasing correspondence was sent to Mr Boland to remind him to return the completed disclosure form on 28 November 2012, 6 December 2012, 15 January 2013 and 7 February 2013. Mr Boland in his questions focussed on the fact that 2 letters dated 28 November 2012 and 15 January 2013 had not been retained. We clarified that these had been 'standard form letters' and that the compliance concern had been escalated up. Mr Boland did not deny that he had received those letters.
24. On 18 November 2012 Mr Boland was contacted by Ofsted to return the disclosure form. The notes stated that he told Ofsted, he was waiting for his identification documents to be returned to him from the Prince's Trust. We examined that point and disclosed our knowledge that the original document would not be retained but only the copy, to which Mr Boland agreed. This was his reason for the initial delay.
25. His second reason was that Ofsted hadn't sent the right forms. Mr Broomhead was able to assist on that. On 21 January 2013 Mr Boland is recorded as telephoning and requesting a new disclosure application form which was sent the same day. A chase up letter was sent on 13 March and another letter was sent on 21 August 2013. That letter mentioned the meeting with Clive Lucas when he suggested that he had a copy of a previous check. Ofsted stated they hadn't received that. He was also asked to apply for a new DBS check, and if he had a copy of the previous check, to send it as quickly as possible. No response was received.
26. Another point made by Mr Boland was that the procedures had changed. Mr Broomhead acknowledged that. From July 2013 Ofsted required individuals to apply for their DBS check online using a provider called Capita. .
27. A notice of proposal to cancel the registration was issued on 14 October 2013. It was acknowledged that it incorrectly states that he had 3 convictions. Mr Boland took strong objection to that and stated that it caused him great stress.
28. On 12 December 2013 Mr Boland attended an objection panel chaired by Mrs Deary. The decision was signed off by Mrs Sally Rowe Mr Boland stated that she should have been called to be questioned but

the other witnesses said that she reviewed the evidence from the inspectors. Mr Boland told the objection panel that he had sent notification to Ofsted of his conviction on the morning of the panel meeting. It was subsequently received, was incomplete and did not comply with the requirements in Regulation 9. Mr Boland made strong objection to that, stating that it wasn't reasonable that a decision should have been taken without allowing for 7-10 days for his letter to arrive, particularly over the Christmas period.

29. On 17 December Ofsted carried out a check on the online disclosure which revealed that the disclosure was only completed on 16 December. On 17 January Mr Broomhead had a discussion with Mrs Wilson, the registered manager of the agency about whether the registered manager could be the responsible individual. We saw email correspondence relating to that.
30. During the telephone case management hearing with Deputy Chamber President Aitken on 21 February 2014, Mr Boland volunteered information that he was involved in proceedings in the Crown Court. He has pleaded not guilty. That matter came to trial in April 2014 but the jury had been stood down. The case will recommence in June 2014.
31. Other information that came to Ofsted's attention did not give them confidence. This was the subject of an application to strike out this 'allegation' which we refused because it was not an allegation. It was a news report, but Mr Boland agreed that it was accurate reporting: that he had been involved in an unfair dismissal case in the employment tribunal with his former employer. The matter was settled and the employer conceded that Mr Boland had been unfairly dismissed. Mr Boland read out a prepared statement in which he unreservedly apologised to his former employer and to the tribunal for wasting their time for what he now realised were unfounded allegations. In particular he apologised to the employer for suggesting that he was either racist or homophobic. He expressed remorse.
32. The enhanced certificate is dated 16 December 2013 and for the first time gave details that on 14 December 2011 at South East Suffolk Magistrates' Court the Appellant was convicted of being drunk and disorderly and fined £350. The conviction was upheld on appeal. That enhanced disclosure also gave details of the impending prosecution for the offences racially/religiously aggravated common assault/beatings and battery.
33. We spent time with Mr Boland examining or attempting to examine why he had not sent the enhanced DBS check to Ofsted. He stated that they had searched but could not find the photocopy. He also suggested that he had sent it but that they had lost it.
34. The statement of Cynthia Wilson dated 26 October 2012 was only exchanged at the evidence exchange date of 18 March 2014, but

states that she completed a DBS identity verification check for Peter Boland in her role as a qualified social worker in early 2013. She further stated a photocopy of the application for identity verification was made available to Joanne Heller.

### **Conclusions and Reasons**

35. Ofsted must make out their case to the civil standard. We are considering matters afresh so can consider the whole history and what has happened since Ofsted made its decision.
36. The history of the agency has not been one of compliance and no concerns, but those breaches and financial issues are not relied upon and we only take them into account as part of the background.
37. Regulation 9, 2011 Regulations, is clear. The Appellant was bound as the 'responsible individual' to notify Ofsted 'without delay' of any conviction. He failed to do so. He acknowledged that this was an error on his part but stated he had been advised by both his solicitor and the judge that he did not have to do so.
38. Mr Boland has only one conviction. It was Ofsted's case and we agree that it was not of the most serious and of itself would not lead to de-registration. We do not pre-judge the outcome of the jury trial that is now due to take place in June 2014.
39. We have weighed a number of factors and concluded that Mr Boland is not a fit and proper person to be registered. The long delay in supplying the required information is a key factor but so is Mr Boland's reaction to straightforward requests for information.
40. Ofsted's case was amply supported by written records. We find that all the witnesses gave their evidence in a straightforward manner and we accept their evidence as factually accurate. This case is not so much about what happened but a challenge to the process and the conclusions reached. Mr Boland's recordings of his meetings with Ofsted inspectors and the meeting in December 2013 show that he was dealt with in a calm and professional manner.
41. No one factor is decisive but we set out our key reasons. Allowing for the fact that Mr Boland may have been misinformed or misunderstood in the past, in November 2012 it could not have been clearer. He had to provide Ofsted with details of the conviction and he had to undergo an enhanced DBS check or CRB check as it then was. This would appear to be a fairly minor requirement compared to some of the other regulatory compliance matters that the agency were having to work on and overcame.
42. Mr Boland acknowledged in November he had a conviction. We accept that Mr Lucas was clear that once the information was forthcoming,

Ofsted would make a decision looking at a number of factors. We reject any suggestion that Ofsted at this or any other stage set out to remove Mr Boland. The onus was upon the Appellant, not Ofsted. We conclude that Ofsted gave him numerous opportunities to comply as set out in the correspondence sent to him.

43. Mr Boland feels strongly that he was unjustly convicted of being drunk and dis-orderly on New Years Day 2011. Mr Boland has made a complaint against the police to the IPCC. However, notwithstanding this fact, he was still bound to disclose it to Ofsted.
44. Other than his assertion we do not find evidence that Mr Boland had previously submitted a DRB check to Ofsted. We place little weight upon the evidence of Ms Wilson. Her statement is not signed. It is not detailed and she was not called to be questioned upon it. Had Mr Boland been seeking to comply there would seem no reason why he would not send the certificate to Ofsted or re send it if it was available.
45. Mr Boland's case spent some on the contents of a meeting with Ms Heller in June 2013. If there was any confusion about that meeting or what she saw, then subsequent letters from Ofsted showed him that they were still chasing the relevant documentation. If he believed that that meeting meant he had complied, then he didn't take that up with Ofsted. He acknowledged he should have sent it recorded delivery and said he re sent it.
46. If he believed that Ofsted was as he said "a useless administration" and lost his documents, then he did not raise that with them at the time and send further copies. He focussed on admitted letters that were lost, and didn't accept that any system could be fully purged. The point is irrelevant. There were plenty of other chasing letters.
47. He was aggravated and very aggrieved that 3 convictions had been relied upon by Ofsted, albeit not before us. Again, the remedy was in his hands to bring the correct information before Ofsted.
48. No evidence of an application to the DBS or from the Agency records was produced to show an application was made and sent to Ofsted This was clearly a key document that, had it existed, would have meant that Ofsted would have no need to take further action and expend resources on this case.
49. The only clearly documented fact is that it was only on the very cusp of the decision being made, that Mr Boland took the first and what might be seen as the simple step of notifying Ofsted of the conviction in a communication in which he didn't provide the necessary details.
50. Even in January 2014, Mr Boland still had a chance to remedy matters. Ofsted offered to stay the proceedings and consider the evidence. Mr



Boland didn't take up that offer, stating that he wished for the agency to continue to make placements

51. Mr Boland's attitude towards the regulator is not one of respect and co-operation. It is one of hostility. The background evidence and what we ourselves observed during an extended hearing show that Mr Boland is somebody who can, when under stress or when others will not accept his point of view, become threatening and intimidating. As we canvassed with him, the role of Registered Individual is not minor and he must monitor procedures and ensure compliance.
52. We have taken into account that Mr Boland told us he was clinically depressed and on medication. But if he was having difficulties, it was open to him at all points to go to Ofsted and explain what the problems were.
53. Before us Mr Boland had a fresh hearing, a chance to explain and satisfy us that one conviction did not make him unsuitable. He manifestly failed to do so. Making every allowance for his position as a litigant in person his behaviour was extreme. Despite being cautioned by us he freely called witnesses "liars", without any foundation. We note the Employment case when he as part of the settlement read a statement retracting allegations of racism and homophobia, expressing great remorse for having made them. When the Tribunal Judge tried to direct his line of questioning to relevant issues, he threatened a complaint. He similarly threatened to make a complaint against Mr Saigal. He frequently interrupted other speakers: the tribunal panel members, Ofsted's representative and witnesses.
54. Weighing all the evidence at the date of the hearing Ofsted have made out their case that Mr Boland failed to comply until enforcement proceedings were started. He has shown no remorse for this or understanding of their concerns which we find amply made out. The Appellant agency has failed to nominate a responsible individual who meets the required level of fitness and the appeal is dismissed.

## **Decision**

**The appeal is dismissed.**

**Judge Melanie Lewis**

**Tribunal Judge  
Health Education and Social Care Chamber**

**Date Issued: 28 April 2014**