

## **First-tier Tribunal Care Standards**

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

**NCN: [2020] UKFTT 385 (HESC)  
[2020] 4108.EY-SUS (VKINLY)**

Hearing held on 30 September 2020 via video

**BEFORE**  
**Tribunal Judge [Ms Melanie Lewis]**  
**Specialist Member [Mr. Michael Flynn]**  
**Specialist Member [Ms Denise Rabbetts]**

**BETWEEN:**

**Mr Colin Rankine**

**Appellant**

**-v-**

**Ofsted**

**Respondent**

### **DECISION**

#### **Representation**

Ofsted were represented by Mr Simon White Solicitor

The Appellant Mr Colin Rankine attended and presented his own case.

#### **Witnesses**

Ms Janet Russell- Independent Consultant to Sandwell Local Authority  
Mr James Norman-Senior Ofsted Inspector.

Mrs Mawuena Rankine, the Appellant's wife was not available to attend the hearing due to caring for their child. However, she was available to be questioned on her statement. In the event, no party had any questions for her.

With the agreement of Mr. Rankine the Tribunal gave permission for Ms Joanne Shilton Solicitor and Mr Matthew Hedges Senior HMI to attend as observers for professional development purposes. Accordingly, they played no part in the proceedings.

## **Appeal**

1. This appeal brought by Colin Rankine (“the Appellant”) relates to the decision of Ofsted on 27 August 2020 to suspend his registration as a childminder on the Early Years Register and both the compulsory and voluntary part of the Childcare Register for a period of six weeks until 7 October 2020.
2. At the request of the Appellant this matter was listed for an oral hearing.
3. The Tribunal also makes a restricted reporting order under Rule 14(1)(a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Health Education and Social Care Chamber Rules 2008 (‘2008 Rules’), prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any children or their parents in this case so as to protect their private lives. For that reason we have not been specific on some details, as this decision will go on a public website.

## **Preliminary Issues**

4. Due the restrictions in force due to Covid 19, this oral hearing took place by video. There were some technical issues, but with the assistance of the clerk, we were able to work around these. At the conclusion of the hearing, the Tribunal and parties confirmed that they were satisfied that the hearing had provided a full opportunity for the parties to put their case.
5. Both parties made applications to submit late evidence. Neither party objected to the admission of the late evidence.
6. We admitted an updating statement from Mr Norman dated 29 September 2019 as it was relevant and also allowed Mr Rankine to understand the current reasons for Ofsted’s concerns. It set out that Ofsted are moving to cancellation in this case and that Mr Rankine should shortly receive a Notice of Intention to which he can set out his responses. In the light of those response, Ofsted will decide whether issue a Cancellation Notice, which will generate a right of appeal.
7. On behalf of Mr Rankine we accepted 11 documents. He set out in a letter dated 25 September 2020, that he wanted us to consider them as they related to a fraud he said had been committed. Mr White did see that they were relevant, but took a pragmatic view as the Appellant was presenting his own case and did not resist us seeing them. We admitted them as they appeared to relate to Mr Rankine’s case that the allegations that Ofsted are concerned about, arose out of an acrimonious relationship breakup and that Sandwell Local Authority and Ofsted were pursuing a vendetta against him. He had made clear in his appeal and in what he then said to the Tribunal, that he believed that they were racist and were pursuing him because he was black.
8. Mrs. Russell was not available to give evidence until the afternoon, as she was conducting interviews. As this is a suspension hearing there was short notice of this hearing date and she could not re-arrange the interview date. Mr

Rankine wanted to hear the Ofsted evidence first but in order to make best use of the time, agreed that he would give evidence first but have a second opportunity after their witnesses had given evidence. The Tribunal concluded that that was a fair and proportionate way to proceed and avoid delay which could have meant going into a second day.

### **Background**

9. The Appellant has been registered as a childminder since 2008. Since registration in 2008, the Appellant has only had one inspection when he was observed with children present, in 2012, when he was graded as “satisfactory”. At the last two inspections in 2016 and 2017, the Appellant did not have any children on roll. At one inspection, he was deemed as not able to meet requirements, at the other he was deemed as meeting requirements.
10. The Appellant states that there have been no previous allegations against him, but that is not correct. The history shows that there have been concerns, which have been investigated but no permanent action was taken in relation to his registration. At the time of his registration in 2008, Ofsted became aware of child protection information that arose in 2006 relating to a family member. He said, as he does now that this arose in the context of relationship breakdown. Ofsted’s concern was that he hadn’t shared that information with them when he was applying to register. Advice was given on the need to work collaboratively.
11. In 2010, Ofsted were made aware of allegations of domestic abuse made by the Appellant’s ex-partner against the Appellant. Again, these matters had not been reported to Ofsted by the Appellant. Ofsted suspended the Appellant’s registration in May 2010 while the matters were investigated ,but no further action was taken.
12. In evidence we also heard about an investigation in 2015, when no further action was taken.

### **Issues of concern to Ofsted**

13. Ofsted have a number of reasons for being concerned that a child may be at risk of harm.
14. The initial trigger for the suspension notice on 27 August 2020 was that Ofsted received information from Sandwell Local Area Designated Officer (“LADO”) that an allegation of sexual abuse had been made against the Appellant. Ofsted could not share information with him as the matter was the subject of a police investigation and Ofsted did not have consent to disclose information to the Appellant.
15. We were updated that the police are not going to take any further action at this stage, because the complainant do not wish to make formal statements, not because it was felt the alleged actions by the Appellant did not amount to criminal conduct.

16. Mr Norman further updated that on 25 September 2020 he attended a virtual Complex Strategy Meeting hosted by Sandwell Children's Services. At that meeting, it was decided that a Section 47 Children Act 1989 single-agency assessment should be conducted in relation to the Appellant.
17. Mr Norman also updated that he was concerned that the Appellant failed to promptly notify Ofsted that allegations of sexual abuse had been made against him, despite being made aware of this early as 12 August 2020. The first time Ofsted was aware of the notification on 27 August 2020. It was alleged this was a breach of the statutory requirement for the Appellant to notify Ofsted of significant events that could affect his suitability. There is an issue about whether the email sent by the Appellant on 19 August 2020 was sufficiently full. It had been sent to a general Ofsted email and only discovered when Mr Norman sought it out, having been alerted to its existence by the Appellant.
18. On 3 August 2020, the First Tier Tribunal (Judge Thorne and panel) issued a judgement in relation to the Appellant's home-school (case reference [2019] 3857.INS). The Appellant had appealed against the Secretary of State for Education's decision to impose a restriction upon the school to the effect that no new pupils could be admitted. The Tribunal dismissed the Appellant's appeal. His answers gave further rise to a concern of a risk of harm to minded children cared for by the Appellant.
19. The decision can be read in full, but that Tribunal set out in detail answers that caused them concern. In summary, the Appellant admitted that documents provided to Ofsted were falsified in order to mislead Ofsted in relation to the education being provided. He used his own systems to track children's progress. He did not want to share them with Ofsted because they would plagiarise them. In that case he also expressed a strong view that the action against him was racially motivated.

### **The Appellant's case**

20. In the Home school appeal and in this appeal the Appellant's clear case was that the regulator was racist and only motivated to act against him due to the colour of his skin. He cited a number of sources that supported his view that Ofsted were institutionally racist.
21. He stated in his appeal form that no children had ever been harmed in my care, that Ofsted had provided no evidence what so ever, all allegations are hearsay without foundation. He stated '*This allegation is politically and racially motivated. As a black male in this hostile environment, I have experienced different agencies prepared to tell untruths without any foundation.*'
22. He further stated '*I have been a registered childminder since 2008 where I have looked after many babies and children. I have received no allegations during that time yet now, as I am running for Mayor and Crime Commissioner, I am receiving a flurry of threats from Ofsted inspectors and other agencies,*

*telling me that I must withdraw from my legal right to run in the elections'. He suggests that this case is part of that conspiracy.*

23. The Appellant stated that the case for Ofsted had no substance, was based on hearsay and that incorrect procedures had been followed.

### **The Evidence**

24. As we are not making findings of fact at this stage we summarise the oral and written evidence briefly, highlighting the key points.
25. When giving oral evidence, the Appellant repeated his strong view that Ofsted's actions were racially motivated. He went further and said that they were making payments to others to make false allegations. At a number of points the Tribunal had to remind him that we understood the basis of his case and that he did not need to keep repeating it. They further reminded him on a number of occasions, that they were not making findings of fact at this stage.
26. Mr Rankine stated that his wife, who had prepared a short statement had no reason either professionally or personally to have any concerns about him.
27. When questioned by Mr White, he confirmed his view that Ofsted had gone out looking for evidence against him. Ofsted and Sandwell LA were in a conspiracy to bring false allegations before him about him to bring him down. Mr Norman and Mrs Russell were lying.
28. He said that he was appealing the Home School case. However, when certain statements were put to him, such as '*the Ku Klux Klan and the Ofsted inspectors make National Front look like Mother Theresa*', he agreed that is what he thought. When asked by the Tribunal Judge if he had or now wished to reflect on the views he previously expressed, he was clear he did not.
29. Mrs Russell explained that she is an independent consultant, who is the interim Head of Service at Sandwell LA's safeguarding unit. She set out the process that is being followed and that there will be a single service section 47 investigation. She said this was the right process and her only concern was that it was not started earlier. She agreed it was proportionate to suspend the Appellant until that investigation had taken place.
30. She confirmed that she had no previous knowledge of Mr Rankine. She did not accept his allegations that the investigation was racially motivated.
31. When questioned by Mr Rankine, she said that when she had made her decision, she was not aware of his ethnicity. She had no knowledge of his political activities. She is an independent consultant and does not live in the West Midlands. Whilst she follows politics in her local area including BAME politics (she is black), she had never heard of him before.

32. Mr Norman updated us as set out above. He saw the current risk of harm to children as being that Mr Rankine's word could not be relied on and that he would not do what he said he would.
33. When questioned by Mr Rankine, he agreed that there had also been an investigation in 2015. He had not been the Inspector at that point but the notes he had seen said that there was no sufficient cause was found to move to enforcement action.

### **The Law**

34. The test for suspension is that the Chief Inspector has grounds to conclude that continued provision of child care by the registered person to any child may expose such child to a risk of harm. That is set out in Regulation 9 of the Child Care (Early Years and General Child Care Registers), Provisions Regulations 2008.
35. Harm is defined in Regulation 13 as having the same definition as in Section 31 (9) of the Children Act 1989:-  
  
*Ill treatment or the impairment of health or development, for example impairment suffered from seeing or hearing the ill treatment of another.*
36. The burden of proof is on the Respondent to show that 'there is reasonable cause to believe' is established. The standard lies somewhere between the balance of probabilities and 'reasonable cause to suspect'. Belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information believes that a child might be at risk. We must look at whether the condition is both necessary and proportionate.

### **Consideration**

37. We have balanced a number of factors. We have kept in mind that the Appellant is presenting his own case and for the reasons set out, has not yet been told the detail of the allegations against him. This is not the first time there have been allegations against the Appellant. He believes they come from the same source, so is not taken wholly by surprise.
38. These current allegations cover a number of forms of abuse of children, all serious and need to be fully investigated.
39. Ofsted are not the lead investigator. The concerns were brought to them and they have acted promptly to work with other agencies to ensure they are investigated promptly. There is an ongoing Section 47 Children Act 1989 investigation. We found the evidence of both Mrs Russell and Mr Norman to be balanced and measured even though they were both under personal attack.
40. The Appellant holds strong views about the motivation of adults who he says are putting children up to make allegations.

41. He also makes a number of very serious allegations about the motivation of both Ofsted and Sandwell LA. We are not bound by the views of another Tribunal, who were hearing a different appeal and applying different law. However, it is striking that the extreme views he expressed in that case were repeated in this appeal. It was striking that he not able to modify or reflect on those views, even when Mrs Russell (a black woman) explained that she made her decision without knowing his ethnicity. She had no knowledge of his local political activities and championing of religious and ethnic issues.

### **Conclusion**

42. This is now the third time allegations have arisen. The Appellant does not appear to accept that Ofsted have a duty as the regulator to ensure these allegations are investigated. He did in his closing remarks come closer to a more reflective view, referring to the need for more men to be child minders and particularly more black men. We are aware that childminding is one of the Appellant's livelihoods, but he did not put any evidence of loss of earnings to consider.
43. We identify there may be a risk to minded children of a number of possible forms of abuse. There is a risk that the Appellant will not work with the regulator who has a duty to investigate these allegations. We conclude that suspension was and is both necessary and proportionate and that Ofsted have made out their case.

### **Decision**

The appeal against the interim suspension is dismissed. The suspension continues.

**Judge Melanie Lewis**  
**First-tier Tribunal (Health, Education and Social Care)**

**Date Issued: 06 October 2020**