

Care Standards

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

[2020] 4016.EY-SUS

Before

Tribunal Judge Hugh Brayne
Specialist Member Marilyn Adolphe
Specialist Member Denise Rabbetts

JW

Appellant

-v-

Ofsted

Respondent

DECISION

This decision is the decision of the above panel which convened via telephone conference on 2 April 2020.

The appeal

1. The Appellant appeals against the Respondent's decision dated 26 February 2020 to suspend her registration as a child minder on the early years register and the compulsory part of the childcare register for six weeks until 7 April 2020.

The hearing

2. The Appellant asked for a determination on the papers. The Respondent agreed to proceed without an oral hearing. We apply Rule 23 Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 and consider this appeal suitable for determination without an oral hearing.
3. The Tribunal adjourned the appeal on 23 March 2020 to enable the Respondent to provide more evidence and, if so advised, to apply for an order under Rule 14(2) to withhold evidence from the Appellant. An application was then made and refused, following which, on 27 March 2020 further evidence relied on was disclosed to the Tribunal and the Appellant. The Tribunal adjourned again on 30 March 2020 to allow the Appellant more time to seek legal advice in relation to the additional evidence.
4. The Tribunal 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, prohibiting the disclosure or publication of any

documents or matter likely to lead members of the public to identify the Appellant, any child minded by the Appellant, or any member of the families of these individuals, so as to protect their private lives.

The stated reason for the suspension on 26 February 2020

5. The Appellant has been a registered childminder since 21 June 2019. On 31 January 2020 the Respondent received a concern about the Appellant's behaviour towards a minded child, including a reference to her shouting at a child. The Respondent obtained further evidence leading it to form the view that the Appellant had emotionally abused a child "by such means as prolonged shouting, belittling, humiliating, mimicking and use of inappropriate language." The Respondent formed the view that children may be at risk of harm and decided to suspend the Appellant's registration.

The legal framework

6. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. This Act establishes two registers of childminders: the early years register and the general child care register. Section 69 (1) Act provides for regulations to be made dealing with the suspension of a registered persons' registration. The section also provides that the regulations must include a right of appeal to the Tribunal.
7. Under the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 when deciding whether to suspend a childminder the test set out in Regulation 9 is that the chief inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.
8. The suspension shall be for a period of six weeks. Suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist.
9. "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 including, for example, impairment suffered from seeing or hearing the ill treatment of another".
10. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector and so in relation to regulation 9 the question for the Tribunal is whether at the date of the respondent's decision the respondent reasonably believed that the continued provision of child care by the registered person to any child may expose such a child to a risk of harm.
11. The burden of proof is on the respondent. The standard of proof 'reasonable cause to believe' falls somewhere between the balance of probability test and 'reasonable cause to suspect'. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child might be at risk.

The documentary evidence and submissions

12. In the following summary there are frequent references to a particular child who was looked after by the Appellant. We refer to her as Child C. Quotes containing errors of grammar or spelling are not corrected.
13. The notice of suspension dated 26 February 2020 told the Appellant: "We cannot at this time tell you the detail of all our concerns as to why we believe children are, or may be, exposed to risk of harm, as to do so may prejudice any

investigation.” At the date of submitting this appeal, therefore, the Appellant was not aware of the grounds of the decision.

14. The Appellant’s statement in support of her appeal drew attention to the fact that she had not been provided with information about the suspension or why there was a risk of harm. She submitted that at the time of the suspension she had been taking care of seven children, and all parents could confirm that they were happy with the services provided and that children were not exposed to any emotional or other harm. She had not received any complaints. She always took care of the emotional state of the children. She provided written questions about each child to parents (in Polish) so the parents could provide her with information about a child’s emotional state, likes, allergies etc. She said that she had had “one unpleasant situation with one of the parents [of Child C] which I wanted to inform the Ofsted about, but the information was not sent due to the fact I wanted to inform Ofsted by phone.” She attached a copy of a note (see following paragraph).
15. The note referred to in the grounds of appeal concerned particular parents not, it was stated, co-operating with the Appellant’s encouragement for their child to say good morning on arrival. That had changed the Appellant’s relationship with the parents. “Recently when the child was drop off by Dad as usual I challenge [Child C] as she again didn’t reply when I said ‘good morning’. I asked Dad if they have visitors at home as she also not saying “good morning”. Dad’s reaction was unexpected and unacceptable as he raise his voice and reply ‘maybe something is wrong with you’ and left. After that incident [Child C] had wet herself. The next day requested DCC copy of the contract. I said I can’t give to her copy of that and she stop contact with me. Since [that date] they didn’t bring the Child anymore ...In her last email she treated me she will report to Ofsted...”
16. The Appellant provided signed references from seven parents, all stating (in identical wording on the pro forma provided to them by the Appellant), that they were very satisfied with JW’s services, that she is a professional with exceptional skills, that their child was very happy to attend the setting, and there were no signs of neglect or risk of harm.
17. The response to the appeal, dated 5 March 2020, provided no new information, but drew attention to the fact that the wording in the Appellant’s witness statements was identical, with a space for the child’s named and parent’s name to be included.
18. The Appellant then provided a response to the Respondent’s response, dated 10 March 2020. She said the Respondent had not made clear what the words “inappropriate language and belittling” meant in terms of actions and activities. She said she had “strong evidence against the allegations”, and provided seven further supportive references from parents. She said she had been caring for one of the children for four years. The statements, she submitted, showed that parents trusted her and had no issues regarding her work and care.
19. In the response to the response document, the Appellant also said that she had informed the local authority on 29 January 2020 of the incident with the parent [who was no longer bringing Child C]. The local authority had then contacted her on 3 March 2020 and had stated on the phone that there would be an investigation regarding her behaviour towards her own child, but “I was also

informed that there nothing to worry about". She said that she had made an accident report [concerning Child C], which was included with the response. She also attached a document "My EYFS learning journey", which related [to Child C], and which, she submitted, provided evidence that the child was developing well, and, in the photographs, looked happy and relaxed. She included a pre-assessment of Child C, which had been conducted with the parent at an initial meeting in August 2019, where additional needs, emotional state, allergies etc had been identified. The original of this document was in Polish, but she included a translation. The parent had at that time described Child C as withdrawn, having poor contact with other children, not talking a lot to other people, and possibly having selective mutism. These were confirmed in text messages from the child's mother (not provided but, she said, available for translation). She provided notes of a meeting about Child C's development in November 2019 with Child C's mother. She provided copies of an email dated 27 January 2020 to the parent whose child had been withdrawn and the parent's confirmation of that withdrawal and the fact a complaint would be made to Ofsted. She provided a copy of the developmental assessment of Child C conducted in October 2019.

20. The Appellant provided a supportive letter from the principal of the Polish Saturday School, where she has worked since 2010.
21. The Appellant said she had provided evidence from her own child (born March 2010) as to her own calm and polite manner, though this was not found in the hearing bundle. She submitted that she did not raise her voice in her home (which was also her place of work). We have not seen this evidence.
22. The documents referred to in paragraphs 18 to 22 above appear to the Panel to be consistent with what is said by the Appellant about their contents, apart from the absence of evidence relating to her son's opinion, and they do not need to be summarised here.
23. The Respondent provided a witness statement, dated 10 March 2020, from Kathryn Bell, an Early Years Senior Officer. She said she first became aware of concerns relating to the Appellant's registration on 31 January 2020 when Ofsted received concerns about the care provided by the Appellant. The concerns indicated that the Appellant was shouting at a young child in her care and making inappropriate comments towards them, and that she had been witnessed screaming at her own son aged 10 years." Ofsted received further concerns on 2 February 2020 "which indicated the Appellant had spoken about a child in a negative way".
24. Ms Bell said that the above concerns were referred to the Local Authority Designated Officer (LADO), who decided that the referral did not meet their threshold.
25. Ms Bell stated that on 26 February 2020 "we were provided with a further source of evidence which heightened our concerns considerably. The information strongly suggests that the Appellant has emotionally abused a child in her care through such means as prolonged shouting, belittling, humiliating, mimicking and use of inappropriate language". A referral was again made to the LADO and also to children's social services in relation to JW's own child. Ms Bell said that as a result of the information received the Appellant's registration was suspended. The LADO was liaising with the police to decide whether a criminal

investigation should take place. On 5 March 2020 the local authority emailed to say a multi-agency meeting would take place in the next two weeks, and “decisions will then be made as to which agency will take the lead in investigating these matters.”

26. Ms Bell concluded that she strongly believed children would be placed at risk of emotional harm if the Appellant was allowed to continue to care for children. The next step would depend on whether child protection agencies decided to investigate, in which case the Respondent would monitor the outcome; if they did not investigate the Respondent would interview the Appellant regarding “the serious concerns we have received.”
27. The Respondent provided final submissions, dated 19 March 2020. Much of the content repeated information already noted above. The Respondent drew attention to the new references from parents, five of which were from parents who had provided the original, identical, references, and one of which used identical wording to the original reference. None of these references referred to the incident which had been referred to the Respondent on 31 October 2019, and which contained serious allegations. The Appellant’s own account of the incident with a parent was not dated or addressed and did not address the serious allegations and evidence received by Ofsted.
28. The Appellant provided her own version of the hearing bundle. It contained two documents not identified above. She provided a chronology, which is consistent with the above documents, and her own case summary, which succinctly sets out her case but does not contain new submissions.
29. Following the first adjournment the Tribunal received additional information from the Respondent. It is summarised in the second statement of Kathryn Bell, dated 26 March 2020. At paragraph 4 she noted the contents of a telephone call received by Ofsted on 31 January 2020. As far as we are aware the child referred to, C, is Child C mentioned above. Child C’s parent had reported that Child C had apparently come home in a somewhat disturbed state, using inappropriate (Polish) vocabulary, believed by the parent to have been learned from the Appellant. Child C’s behaviour had been troubled since November, when she started to wet herself and show signs of being afraid to attend nursery. The parent had put a recording device onto Child C’s clothing, and the Appellant had been heard to talk inappropriately to Child C and to scream at her. (As we refer to translated transcripts below, we do not detail the content further here.) The parent reported that the Appellant had also been witnessed shouting at her own son for dropping a bag.
30. Ms Bell obtained transcripts and referred to two recordings in particular. She stated the following: “In the first recording I identified the voice of an adult woman (alleged to be the Appellant), and the crying/ whimpering of a small child, which can be heard throughout the recording. The recording is approximately 45 minutes in duration. I believe the woman is speaking in Polish. The woman’s tone alters throughout but frequently can be heard shouting at the child and appearing to mimic her. I would also describe her as ranting at times. The child’s name is the same as the child referred to in the concerns received. When listened to, in conjunction with the written translation - and despite the language barrier, I was upset by what I heard. It was as a result of listening to the recording, along with the document provided by the Ofsted colleague, that I made the decision to suspend the registration of the Appellant.”

31. Ms Bell obtained a translated transcript from a translating company (Big Word). She picked out the following examples from the second recording “to highlight the extent of the abusive and prolonged language directed at the child”:
- ‘Clean your piss up quickly’
 - ‘Change everything and wipe yourself, sort yourself out if you pissed yourself’. ‘you got it all wrong thinking I will be cleaning up your piss’.
 - You must be sick if you do not know when you want to pee’
 - ‘Pissy pants’.
 - ‘If you like staring so much, stare at what you are doing! Stare at what you are doing, not at me, because I will not help you. I have changed you enough, you are too big for me to sort you out, I think you are taking the piss, you are kidding around’.
 - ‘A human tragedy, a child is watching cartoons and does not know when to pee’.
 - ‘The dress was pretty, but now it is ugly and soiled. You soiled it, not me, what do you want me to do about it? You soiled a pretty dress so now you will be wearing trousers. Take it off. That is how long you wore the dress for, you simple soiled it. You had such a nice dress and you soiled it, because you had to watch cartoons’.
 - ‘Fuck, when I feel like having a wee, I go to the toilet, not watch a cartoon.’
 - ‘You are standing in the piss; can’t you see it? Disgusting, disgusting’.
 - ‘If you had not pissed yourself, then you would not be crying now’.
 - ‘Wipe your whole ass, between your legs, because you pissed yourself all over’.
 - ‘What are you staring at? Get dressed? What are you pulling this face for? Do you think somebody will help you? No one will help you because you are here on your own. There is no mum or dad, and now you have to put on your leggings yourself.’
 - ‘I feel like vomiting looking at the piss. Cleaning somebody’s wee, you are taking the piss, aren’t you? There you go, a set for a pissy child. Do you like it? Do you know what will happen at 3pm? It will smell like an old woman’s ass. Do you understand? This is how your dresses will smell. Because I am not washing it, your mum is. I feel like throwing up when I am removing it from the bag because it smells of piss. Wee stinks and your dress will be sitting there until it rots’.
32. Having listened to and read the transcript of the seventh recording Ms Bell stated the following: “In the seventh audio recording an adult woman can be heard (again alleged to be the Appellant) and a number of differing voices as children and parents can be heard. Towards the end of the recording it appears that other children have left leaving one child with the adult. The transcription confirms that the adult then speaks to the child negatively referring to the child’s behaviour as ‘tragic’ and a ‘massacre’, that the child had behaved ‘horribly horribly’ and its as ‘if there was a monster inside you’. This is a significantly concerning way for an adult to speak to a child. The adult demonstrates no thought as to the impact of her words on the child’s emotional wellbeing. There is no warmth or caring displayed towards to the child. It appears the adult is remonstrating with the child for behaviour exhibited earlier in the day. The child is not allowed to respond in any way as the adult simply maintains dialogue.”

33. Ms Bell concluded that the earliest available date for a multi-agency meeting to consider the concerns, the progress of the section 47 (Children Act 1989) investigation and a possible prosecution is 15 April.
34. We have read the transcripts of all seven translated recordings and are satisfied that the words cited from recordings 1 and 7 by Ms Bell are accurate. There is no need here to refer to the content of the other five recordings. For reasons explained below we consider it important to cite, in full, the relevant part of the transcript of the first recording:

Paper and you clean your piss quickly, there you go. Paper and you clean your piss, and (throw it) into the loo, quickly. There you go. You take paper in your hand, clean your piss and throw it into the loo. You will learn how to clean up after yourself, you will quickly learn how to pee in the loo. You did not know you have to get up sooner to go to the loo? Clean and throw the paper in the loo, quickly! Throw this wet paper with wee in the loo, put it there, go on clean up! You pissy pants! Go on, I will not be cleaning up your piss from the morning, you got it all wrong thinking I will be cleaning up your piss. If you pissed, you clean it up, simples. Get changed. You pissed everything, a child does not know when to go to the loo, she is sitting and watching cartoons, and she does not know that she needs to pee. Get changed, you pissy pants, do you think I will change you? Change all those soiled clothes, do you think I will touch them? Change everything and wipe yourself, sort yourself out if you pissed yourself! Don't you know when to get up to use the toilet? You will find out soon. You will find soon when to get up to use the toilet! What are you staring at? It will not help you; you do not know when to do a pee? When you feel like having a pee, you go to the toilet, and not when you are already peeing. Any more questions? Take those soiled clothes off, because there is no way I am touching them. You pissed yourself, you sort yourself out, like always. Me sorting you out is not an option, do you understand? You are a big girl, and you know when you pee and when to use the toilet, but no, you are watching cartoons and you do not know when to use the toilet. You are a big girl. Take all those soiled clothes, put them in a bag, and wipe yourself down. I will not be touching your pee. I know when I want to pee and then I go to the toilet. You also know, I have had enough. A big girl, and she pissed herself because she is watching cartoons. She does not know when she is peeing herself, what's that supposed to mean. You must be sick if you do not know when you want to pee. Because when I want to pee, I go to the toilet. I do not have a problem with that. And you wipe yourself down and get changed. You have to take the shoes off first to get understand, don't you? But no, you are forcefully taking your clothes off pulling silly faces. It's best to pull a silly face and look in the sky when taking the shoes off. When I am taking my shoes off, I am looking at the shoes, not in the sky. Or looking at people, I have to put my shoes on, and I am staring at people. No, I am looking at my shoes when I am putting them on, not staring at people. You started a day really well, you pissed yourself. Sort yourself out, you are a big girl. I will not be changing or nursing you until you go to school. Putting your shoes on and dressing you, because you cannot do it yourself. If you keep staring at me, you

will not get dressed. If you like starrng so much, stare at what you are doing! Stare at what you are doing, not at me, because I will not help you. I have changed you enough, you are too big for me to sort you out, I think you are taking the piss, you are kidding around. You are making fun out of me; a big girl does not know when to use the toilet. You have peed and poeed in the toilet so many times, and you peed yourself watching a cartoon. She did not make it in time because she has to finish watching a cartoon. The cartoon was more important than the urge to pee. When I do not tell you that you have to pee in the morning, you will not, who are you? You must pee in the morning! Get undressed and throw this rubbish into ... you will not be wearing the soiled shoes today; you will be walking around barefoot. A human tragedy, a child is watching cartoons and does not know when to pee. When I feel like having a pee, I go to the toilet. When I want to piss, I go to the loo. And where are you going? Take off this soiled dress, you did not wear this nice dress for long, did you? Now you have a soiled dress. What are you putting this silly face for? Don't you know when to use the toilet? Were you more interested in the cartoon than using the toilet? When I need to pee, I run to the toilet. And what did you do? You had to finish watching the cartoons, didn't you? I will finish watching the cartoons, maybe I will make it in time. You will never make it in time. Pack up these stinky, soiled clothes. The dress was pretty, but now it is ugly and soiled. You soiled it, not me, what do you want me to do about it? You soiled a pretty dress so now you will be wearing trousers. Take it off. That is how long you wore the dress for, you simple soiled it. You had such a nice dress and you soiled it, because you had to watch cartoons. Because when she wants to wee, she does not pay any attention to the fact that she wants to wee, she has to finish watching a cartoon, because the toilet is too far, and she might make it in time. Fuck, when I feel like having a wee, I go to the toilet, not watch a cartoon. If I leave you for a second without saying [Child C] go and use the toilet in the morning, then you will not go, because you think you will hold it, princess. Pack it up, take off those soiled clothes. Take them off! I will not take them off because they are soiled. I have told you something about weeing, there is no pissing at my place. You have learnt how to use the toilet, then use the toilet. Pack those soiled slippers in here, quickly! Wipe your feet underneath, wipe your feet underneath! You are standing in the piss; can't you see it? Disgusting, disgusting. I am not touching it. I do not touch piss, do you understand? I have enough of dog piss, do you understand? I will not be cleaning after you. You must be taking the piss, phooey, disgusting. Take off this soiled dress, now. Now! I will not be waiting that long. Hand up, exercise, get a move, do not stand there as stiff as a soldier. Get a move, and do not just count on your mother and father. Exercise, hands up, one, two, three. One, two, three! You cannot take your dress off, it is because you hope your mother or father will do it for you. There is no mum or dad here, you have to take it off yourself. There is no other way out.

Speaker 1:

[crying]

Speaker 3:

If you had not pissed yourself, then you would not be crying now. When I want to pee, I am not interested in the cartoon. Instead of concentrating on taking the dress off, you are concentrating on crying. [Mimics the child crying] How is this going to help you? Maybe it is helping you with taking your dress off? [Mimics the child crying]. I will also be crying like that and be naughty today.

Speaker 1:

[crying]

Speaker 3:

Each time I am explaining to you, if I want to pee, I run to the toilet. The same applies when you are watching cartoons. No one will use the toilet for you, you have to go to the toilet when you need to pee. When you want to pee, you run, you do not care about the cartoon, you do not care about anything but the toilet, about making it on time to the toilet. I want to pee, I run, I do not wait for the cartoon to finish, and then go. Oh, you have done it, you should have grunted even more. If you had not been grunting so much you would have taken it off long time ago! But you prefer grunting, you can only grunt, nothing else. Wipe yourself all over, your ass, all over. And then put the wipes here. Your feet underneath. And then my floor. Put the wipes here nicely. Wipe your whole ass, between your legs, because you pissed yourself all over. I will not be washing you. [Child C] does not know that peeing is more important than cartoons. She would rather wet herself and then change and grunt. Grunt because she could not spare five minutes to go to the toilet. She did not know she wanted to pee, because pee comes out straightaway. Why are you putting them in the loo? You cannot put those wipes in the loo, you are not serious. There is a carrier bag. What a ... hen. You do not put wipes in the toilet because they will not flush and will block it. Hasn't your mother taught you? Clean up the floor now. And here is a carrier bag for the paper, do not put it in the loo. What a child, she is watching cartoons, she wants to pee but instead of going to the toilet she is rocking in the chair. I will go to the toilet later, maybe I will make it, maybe I will not. But no, she thought that everything was ready for the princess, that the seat is waiting for her, and that she will make it on time. It is good I do not let you sit in the sofa, or it would have got soiled long time ago. You would have wet it long time ago and that is why you are not allowed on it. Because you do not know when you want to pee. I mean, you know very well when you want to pee, you just think you will make it. You will not make it, you will never make it, you prefer crying ... Here is a wipe, clean up the floor. If you prefer crying, then cry. I will not be changing you; you are a big girl. What are you pulling this face for? You have wet yourself, not me, Put your knickers on quickly. Is it me that should be crying because I wet myself? How can you be sitting on the chair and not know that you want to wee? Come on, people are not that stupid. And I am not stupid. I am not stupid [Child C]. I know when you would have made it to the toilet, but no, the cartoon was more important. Your mum says the same, everything is more important, because you think you will make it to the toilet. Do you think I do not talk to your mum? I know everything, how you cannot go to the toilet because you have to finish a task or finish watching a cartoon, and then you can go to the

toilet or if somebody takes you by your hand to the toilet, because you do not know yourself that you need to pee, don't you? You know nothing, completely nothing. Peace and quiet and she pissed herself. She is on her own, she has the toilet for herself, but she did not go, she wet herself in front of it. I think I will throw up, phooey. How can one wet themselves? I know when I need a pee, a pee does not come out straightaway ... am I standing and wetting myself now? No, first you get the urge to pee and then you know you have to go to the toilet. Not wait for a pee to start coming out and then run. I never wait for a pee to start coming out, I just go and do a pee. I do not wait until I have wet my knickers and then run because I think I might make it. If I have a spot in my knickers, then I run. La, la, la. It was so pretty but [Child C] prefers wetting herself not stop watching a cartoon and go to the toilet. Wetting oneself is best. And then I can say that I did not make it because I had to finish watching a cartoon. You are big and you should be using the toilet yourself. Don't you know that socks should be put on in a sitting position? Shall I explain it to you with a stick? She does not know how to put socks on, she is standing and crying, and thinks that socks will put themselves on. [Mimics child crying]. This is show you are acting [Child C], just like I am showing to you. [Mimics child crying]. Did you think that socks will put themselves on? Don't you know how to get dressed? If you do not know how to get dressed, then you have two left hands. It is because a cartoon was more important than doing a pee. [Child C] is waiting for me to ask her. [Child C], do you want a pee?? And then: 'yes'. Do you pee on the chair? A human tragedy. Here are some clothes so get dressed. Don't you have enough clothes? Come and pick some. It is abnormal for me [Child C], do you understand? When I am sitting on the chair and I want to wee, I get up and go to the toilet. And what are you doing? You are sitting on the chair; you need to pee, and you go: I need to pee but maybe I will make it. And you run to the toilet when you are already peeing. How can you not understand it? You need to wee; you go to the toilet. Simple. I do not go to the toilet the last second when I am weeing in my knickers. What are you staring at? Get dressed? What are you pulling this face for? Do you think somebody will help you? No one will help you because you are here on your own. There is no mum or dad, and now you have to put on your leggings yourself. Do you understand? You put the top away, you take the trousers and put them on your ass, and not cry. Because crying will not help you, will not help you at all. I feel like vomiting looking at the piss. Cleaning somebody's wee, you are taking the piss, aren't you? I change little kids that pee in nappies, and not big girls that pee on the toilet. You got my entire toilet wet and maybe I should be nursing you now? Like your dad does? And maybe I shall change you? Make your father's mistakes. A child that wets themselves, gets dressed themselves. There you go, put it on because we are leaving, those trousers are warmer. Me having to clean up piss in my own toilet, bloody hell. She cannot be left on her own, because I did not ask the princess if she needed a wee. If I had asked you, took you by your hand then I could have gone upstairs. I can never leave you on your own, because you will wet yourself. First, I have to ask you if you need

a wee, and then I can leave. Look, the label is here, can you see it? And the label should be at the back. Take it off.

Speaker 1:

[quiet crying]

Speaker 3:

[Mimics child crying] You could get undressed instead of grunting. Your grunting is not doing anything for you. You have to be a tough woman. There you go, a set for a pissy child. Do you like it? Do you know what will happen at 3pm? It will smell like an old woman's ass. Do you understand? This is how your dresses will smell. Because I am not washing it, your mum is. I feel like throwing up when I am removing it from the bag because it smells of piss. Wee stinks and your dress will be sitting there until it rots.

Speaker 3:

Do you need a wee? You will definitely not wet yourself? You will not wet yourself in the car? You will not pee yourself? Have you peed everything out in your knickers? Have you peed everything out, or not? If you have not, then why aren't you going to the loo?

Speaker 3:

Here are your shoes, put them on the way they are positioned. Do you want to pee: no. Have you peed everything out: no. I do not understand anything? Have you peed yet? Because I need to go out. I am asking if you want to pee or not? If you do not need to pee, then what are you doing there? I do not have to time to wait for you. If you are not going to pee, then get off from there.

Speaker 1:

[child crying]

Speaker 3:

Hurry up or I will be late for school, do you understand? The shoes the way they are placed, do not change their position, [Child C], I do not have time, because I have to go to school. Put the shoes on quickly. If you did not get enough sleep, you go to sleep, and not wet yourself. Hurry up girl, because I do not have time to wait for you. I asked if you weed everything in your knickers, and you said no. If you say 'no' I understand that you did not wee everything yet. That means you give wrong answers to questions. Maybe you should think before you answer? When I ask if you want an ice cream and you say 'no' am I to understand it as 'yes' [inaudible] If you do not say 'hello' to people, you lose friends and acquaintances, do you understand? If you do not say 'hello' back to people for three, four days then the other person stops saying 'hello' to you, they no longer feel like it because you will not respond anyway. This is what friendship is about. If you are not friendly towards people and if you do not say 'hello' and 'good day' then people will not want to speak to you. If somebody did not say 'hello' back to me, I would never say 'hello' to them again. It is lack of respect, my dear child. [inaudible] Can you go and get me some potatoes because I do not have time to do it now. And turn the heating down to 19 because it is very hot, one cannot get dressed before leaving the house. Just do not open the door for anyone, ok?

35. The Appellant provided a witness statement on 1 April 2020. She also provided a number of documents which had previously been provided: parental references, records relating to Child C, and evidence of qualifications, courses attended and DBS certificates.
36. We summarise the important elements from the Appellant's witness statement. The evidence provided showed parents trusted the Appellant and her educational methods. Children were well taken care of and happy. She is a lively person and an audio recording cannot show the difference between speaking loudly and screaming. "visual footage ... would show the attitude towards the child, face expression and body movements which were not aggressive or abusive but educational and positive rather than abusive." She was shocked that she had not been able to control her emotions, and it would not happen again. She accepted that some of the words used were not appropriate. "My intention [in using repetition for tasks like wiping, putting on shoes or hanging up a jacket] was not to scare the child or abuse the child in any way, this was simply an educational method I use to teach children to be independent". The Appellant referred to the translation of certain words into English, and stated that in Polish the word translated as "massacre" was used to mean "oh my God".
37. The Appellant stated that she had agreed with Child C's parents the need to teach basic words and behaviours such as "good morning" and "thank you". The documents provided showed Child C to be developing well, looking happy, relaxed and smiling, and this was not consistent with the Appellant being abusive or humiliating. On the day of the recordings Child C's behaviour had been "weird". The Appellant had agreed to report to the parent on her behaviour at the end of the day, which was why she had said "I will tell Mummy how you do behave". Because of Child C's communication problems, the Appellant was simply encouraging her to explain why she was behaving the way she was. This was not mimicking or humiliating. She was trying to teach Child C how to use the toilet and explain why not doing so properly would cause her to have to wear less nice clothes and her clothes would smell. She was trying to teach Child C to hang up her coat herself. Child C had a tendency to make a sound like crying when she wants something. "The situation with the child's father also influenced and made me upset, that is also the reason why my emotions could be even more vivid than normal."
38. The Appellant wrote the following in relation to the first recording: "In the recording there is a lot of conversation, talking, repeating and loud vivid voice. I am a very energetic persona and my voice is very loud, but this is the way I talk which maybe can be confused with screaming, but it is not intentional. Repeating what to do to the child had an educational purpose mentioned above, and its purpose was for the child to understand the situation and be able to express ones needs. It was not forcing the child or humiliating but teaching how to behave and what to do it something like that happens. In the meantime, I was also running around the house, cleaning the pee of the floor and bringing tissues to teach the child how to wipe oneself when a situation like that happens. Due to the fact I was in different rooms to take all needed cleaning items and the wipes my voice was risen so the child can hear me, that I am still here, and she is not left alone. This can make an impression of screaming again, but without the whole content of the situation and visual footage the

situation can be easily misunderstood. I believe that the child is in the age to learn how to do some activities such as wiping oneself. I was teaching all children how to be independent, to put the coat and take it off themselves and put the shoes on. In this rush and emotions, I used the words I truly regret but they were not used to humiliate the child. The situation with the child's father happened before also could not leave my emotions calm because I did not know how to act not to put anyone in trouble and where to report it."

39. She wrote the following in relation to the seventh recording (we have changed the name of other children mentioned to "Child A", "Child B" and "Child D"):

"[Child A] went home and she got some cookies on the way. I am having a conversation with Child C to get ready because we are going home. The tone of voice is educational to show her that it is time to go home and she needs to stop what is she doing and start to put her shoes on. I am asking [Child B] to put her shoes on and asking Child C to come to us. [Child C] is sitting at the table with not a very happy face and her behaviour around the table is different. I am helping children to dress up, I am checking do they have clean dippers. I am telling [Child C] that I am asking her 30 times already what is she doing and she responds: no. I am also talking to other child asking who will pick her up mummy or daddy and telling [Child D] that she behaves very nicely and she tells Thank you and Sorry. This is used educationally to show other children that good behaviours are always welcome and rewarded with a good word and appreciated. I also say with no names that other need to be pulled by the tongue and I have no strength. This is a Polish saying which means that someone does not want to talk, and you need to ask many questions to find out what is happening. This has no harmful tone or meaning. All conversations are educational and have goal to show children that there are some behaviours which are nice, and it is good to follow them. I am dressing the children up and the children are playing.

Every voice is very sharp and easy to hear due to the fact the recording equipment is in the bag we are all standing near to.

I am also trying to make [Child C] aware that her behaviour when she does not say what is happening and not answering to the questions is difficult to understand. I am trying to explain to her that she needs to express her feelings and emotions because if her mum will be in the kitchen, not seeing her face, she may not know and understand what is happening. I am trying to teach her that saying yes, or no is needed because it will help others to understand what is happening and what does she need.

I also give [Child C] the shoes supporting her and teaching her how to put them on, I am saying which leg she should put and put them in the way to make it easier for her. There is loud voice which is educational but also a lough which suggests that the atmosphere is nice not tense.

I am talking to all children and say to [Child C]: I do not know what you were doing after lunch, I was looking at you and I will need to tell your mum. I am showing [Child C] what was she doing because I think she may not remember her behaviour to visualise her how did it look like. It was not mimicking but educating the child that behaviours like that are

not easily understood. [Child C] is looking surprised at me and I am telling her do not look surprised because it was exactly how she was behaving. I am again telling her how to act when she wants to pee, that she should go to the toilet, I tell her what to do when she pees in her clothes and how to wipe some parts of the body. The words 'no-good manners' should not be used and regret saying it to a child and will take a lesson for the future to use different examples. I was very stressed with the previous tense situation with the father and I regret using these words.

When we were getting into the car. I am telling [Child C] again due to no reaction from her side, that when I say what she was doing at the table it turns everything in my head (Polish idiom not used in an angry way, more funny harmless way) I also said: you were behaving not like you, like a monster would get into you. Again, it was used to help the child to visualise that the behaviour was not nice. Monsters in cartoons or children stories usually behave badly, the comparison was used so the child can understand that it was not a good behaviour. The word used: 'masakra', is not used in the harmful way it is the same as 'oh dear, oh my goodness' in the English language and it has no hidden meaning. By interpreting it into the English language it may give a different impression, but this is a cultural difference and I believe that it will be taken into consideration. I always talk to parents about their children's behaviour in the end of the day as a part of my daily report."

The Tribunal's decision and reasons

40. We are not, as a Tribunal, required to make findings of fact in this appeal. It is our function to make an independent determination of the single issue, which is whether the Respondent "reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm".
41. We have no hesitation, on the above evidence, of making that finding. The Appellant herself admits to allowing her emotions following a discussion with a child's parent to affect her behaviour towards a child, not least using inappropriate language. Her explanation that the repetitive comments to the child are educational are not consistent with this admission. We cannot comment on the use of idiomatic Polish words, but it is painfully apparent from the transcript of the first recording that for an extended period (Ms Bell timed it at 45 minutes) the Appellant spoke to Child C in a sustained and abusive episode of taunting, mimicking and humiliating. The effect on any person, let alone a very young child, would have been extremely distressing. There is no educational value to repetition if delivered in a humiliating fashion. The abusive behaviour was not excusable because the Appellant had had a difficult conversation with Child C's parent. It is of great concern that the Appellant would seek to justify her behaviour with references to educational theory and educational goals. This shows she does not understand the educational theory, if she thinks it justifies her conduct.
42. We have not set out the transcript of recording 7, but the Appellant's attempt to explain it itself provides evidence to show how inappropriate her conduct was. We also note that Child C had already sustained the abuse evidenced in recording 1. She admits having asked Child C 30 times what she is doing. She

admits, even if the colloquial term is less frightening than its English translation, having to pull the tongue of the child to make her speak. She admits speaking in a loud voice, at times continuing to address this young child from another room about the child's perceived failures. She admits criticising Child C in front of the other children, comparing her failures with their behaviour. This explanation is itself consistent with humiliation of Child C.

43. There is little more this Tribunal needs to say to justify our conclusion that the Respondent had reasonable cause to believe that a child may be at risk of harm if the Appellant is allowed to continue to work as a registered child minder, pending a full investigation. The evidence shows that the Appellant can behave in an abusive fashion towards a child, over the course of a day, following an emotional upset, and that the same child has previously developed a fear of attending nursery and started to wet herself, and that the Appellant lacks any insight into the gravity of the incident. The Respondent, on receipt of this evidence, had no alternative but to suspend the Appellant, and to initiate multi-agency investigations. References from other parents, however positive, and evidence purportedly showing Child C to be progressing and apparently happy, cannot dispel the clear evidence that there may be a risk of serious harm to children minded by this Appellant.

Order

The appeal against the Respondent's decision of 26 February 2020 to suspend the Appellant's registration is dismissed.

Hugh Brayne, First Tier Tribunal Judge

03 April 2020