

First-tier Tribunal Care Standards

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

[2022] 4694.EY

Neutral Citation number: [2023] UKFTT 432 (HESC)

**Hearing held at Royal Courts of Justice
on 25-27 April 2023**

**Before
Tribunal Judge Scott Trueman
Specialist Member Pat McLoughlin
Specialist Member Libhin Bromley**

Mrs Caroline Ofori-Atta

Appellant

-v-

OFSTED

Respondent

DECISION

The Application

1. This appeal is brought by Mrs Caroline Ofori-Atta (in this decision ‘the Appellant’ or ‘Mrs Ofori-Atta’) against the decision of Ofsted (‘the Respondent’) by notice dated 14 June 2022 to cancel her registration as a child minder on the Early years Register and the compulsory and voluntary parts of the General Childcare Register in accordance with section 68 of the Childcare Act 2006.

Attendance

2. Mrs Ofori-Atta attended the hearing and was represented by Mr Peter Gilmour, counsel. Her solicitors were Stephenson’s. The Appellant did not call any witnesses other than herself. The Respondent was represented by Ms Genevieve Bushell, solicitor, Ofsted Legal Services. The Respondent’s witnesses were Early Years Regulatory Inspectors Ms Anne Maher; Dr Nataliia Moroz; Ms Jenny Gordon; Ms Agnieszka Wink; and Early Years Senior Officer, Ms Joanne Wildman.

Restricted reporting order

3. 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 (as amended) (“the Tribunal Rules”) prohibiting the disclosure or publication of any document or matter in this appeal likely to lead members of the public to identify any child or their parents in this case so as to protect their private lives.

Preliminary Issues

Late evidence

4. Some late evidence in this appeal had been permitted by the Order of Judge Khan on 4 April 2023. This had allowed the submission of a second witness statement from Dr Moroz dated 27 March 2023 with exhibits and a second supplementary statement from Mrs Ofori-Atta in response, dated 3 April 2023.
5. At the hearing both parties applied to adduce further late evidence, and neither party objected to the submission of this evidence by the other. The Respondent applied on 21 April 2023 to adduce a 3rd witness statement from Dr Moroz, dated 21 April with 2 exhibits; and the Appellant applied on 24 April 2023 to adduce a third supplementary statement dated 24 April 2023. We considered that these documents and exhibits were all relevant and that it was in the interests of justice to admit them to the bundle.

Evidence at the hearing

6. At the hearing, the Tribunal indicated that the various witness statements made in the proceedings should, in respect of the professional witnesses, stand as their primary evidence in chief and that oral evidence in chief should be confined to additional or corrected material. Evidence from these witnesses therefore focused on cross-examination. We indicated that we would be content for Mr Gilmour to take Mrs Ofori-Atta through her own evidence in more detail if he wished, reflecting that she would not be used to giving evidence. In the main, however, Mr Gilmour did not take us up on this offer and Mrs Ofori-Atta's own oral evidence in chief was also brief. We allowed both parties opportunities to re-examine witnesses if they wished.

Background

7. Mrs Caroline Ofori-Atta has been a registered childminder since 2003. She operates from her home in Tottenham, North London and operates every weekday from 8am to 6pm. Over the years she has looked after a number of children of a variety of ages. The Appellant's first inspection following registration was in 2006. The outcome of that inspection was a rating of 'satisfactory' though some issues were raised as 'recommendations' for improvement. The Appellant was reinspected in 2009 at which time the quality of the provision was again judged to be overall 'satisfactory'. It noted that the Appellant had made a number of improvements which contributed to enhancing the care and learning opportunities for children, but again identified steps that needed to be taken to improve provision. This inspection identified a number of steps that it said Mrs Ofori-Atta 'must' take to fully meet the specific requirements of the Early Years Foundation Stage (EYFS) and dates were set

for this. However, no additional inspections were undertaken to check compliance with those dates or more generally.

8. The Appellant was next inspected in February 2015 at which time there were no children present at the setting, and the inspection therefore proceeded as one with 'no children on roll' (NCOR). For such inspections full grades are not given, but the standards required of providers are said to be 'met' or 'not met'. Mrs Ofori-Atta's provision was marked 'not met'. The report noted that her knowledge of the EYFS was 'weak' and said that she was not meeting a number of the legal requirements of both the EY Register and the Childcare Register. Specific actions were again set, but without specific dates for completion.
9. The Appellant's premises were next inspected by Ms Anne Maher on 27 October 2021, some 6 and half years later. This resulted in a judgment of inadequate in all areas of inspection. The Inspector issued 3 Welfare Requirement Notices (WRN)¹ relating to improving safeguarding knowledge, undertaking appropriate training and professional development, and to developing a sound understanding of the process for complaints and concerns from users of the service. The completion date for these was 24 December 2021. The Appellant was the subject of a monitoring call from another Early Years inspector, Dr Nataliia Moroz, on 30 December 2021. Following the call, Dr Moroz determined that some of the WRN requirements had been met but that the Appellant was still struggling to recognise allegations made against individuals and could not explain correct procedures. The WRN relating to safeguarding was therefore re-issued with a revised completion date of 28 February 2022.
10. On 3 March 2022 the Appellant was the subject of an unannounced re-inspection, conducted by Ms Jenny Gordon, another Inspector. The outcome of this inspection was that the Appellant's practice was rated inadequate with enforcement. WRNs were again set, with a completion date of 18 March 2022. On 10 March 2022 the Respondent held an internal meeting chaired by Senior Officer Joanne Wildman at which the decision was made to cancel the Appellant's registration for persistent failure to meet the required standards.
11. A Notice of Intention (NOI) to cancel the provider's registration was issued on 17 March 2022. The Appellant lodged objections to this NOI on 22 April 2022. In the meantime, the Respondent conducted an unannounced monitoring visit on 22 March 2022.
12. As a result of that monitoring visit, the Respondent determined that the requirements of the WRNs were met; however, an additional breach was identified, in relation to the presence of the Appellant's mother on the premises, but not separately actioned.
13. The Respondent considered the Appellant's objections to the NOI and confirmed by Notice of Decision dated 14 June 2022 that it intended to cancel the Appellant's registration. In summary the reasons provided to the Appellant

¹ Under Early Years Foundation Stage (Welfare Requirements) Regulations 2012 regulation 10.

for this decision were that the Respondent considered that she was unable to demonstrate that she met the learning and development and or the safeguarding and welfare requirements of the EYFS. It also said that it considered that she was no longer suitable to remain registered as a childminder due to persistent failures to comply with the requirements of registration. It reviewed the inspection history and said that the Appellant had never achieved an inspection rating of good or better since registration and had demonstrated that she did not have capacity to sustain improvements that had been made to her practice in response to earlier inspections. It said that the Appellant had failed to demonstrate that she could consistently meet the legal requirements.

14. It is against this decision that the Appellant now appeals to this Tribunal. The appeal was issued on 7 September 2022. Although this appeal was commenced outside the 28 -day time limit, no point was taken in relation to this by the Respondent because of the terms of the Notice of Decision which had inaccurately told the Appellant that she had 3 months in which to appeal the decision made. As the Respondent did not realise its mistake until later however, the Respondent assumed after the 28- day deadline for appeal had passed that the Appellant did not intend to appeal. Accordingly, the Respondent wrote to the Appellant on 18 July 2022 to inform her that her registration had been cancelled and the Respondent wrote to the LA on the same day. When the mistake was realised in September, the Respondent contacted the Appellant by phone call and email to confirm that her registration had not been cancelled, and that she could continue childminding pending the outcome of these proceedings. We return to these specific incidents later on.
15. Since the appeal has been issued the Appellant has been subject to a number of other monitoring visits, inspections and subject to suspension proceedings. On 29 September 2022 the Appellant received an unannounced full inspection from Ms Agnieszka Wink, another Inspector. At the time, there were no children present at the setting, Mrs Ofori-Atta having explained that she had understood herself to be unable to take children since the summer and the Ofsted letter of 18 July 2022. The judgment reached at this inspection was 'not met with enforcement actions'. 6 WRNs were issued with a completion date of 31 October 2022. The inspector attended a case review meeting later on 29 September 2022 at which it was decided by Ms Wildman that the Appellant's registration should be suspended, initially for a period of six weeks.
16. Ms Wink carried out an unannounced monitoring visit on 2 November 2022. No children were present. The Inspector concluded that some of the WRN requirements had been met, but that requirements around understanding of safeguarding and of the EYFS framework and responsibilities were still not met. A revised due date of 30 November 2022 was set. Ms Wink returned on 8 December for an additional monitoring visit. This visit concluded that Mrs Ofori-Atta now met the two WRN requirements still outstanding on 2 November. However, the decision on 15 December was that the suspension should remain in place. The Appellant appealed against the third period of suspension, however, and this Tribunal set aside the Appellant's suspension by Order dated 26 January 2023.

17. On 9 March 2023, the Appellant received an unannounced inspection conducted by Dr Moroz. The outcome of this inspection was 'not met with enforcement'. A WRN was issued relating to the Appellant's knowledge of safeguarding requirements, particularly around the 'Prevent' duty². Compliance was due by 31 March 2023. Dr Moroz also identified breaches of the learning and development requirements. Dr Moroz subsequently conducted a monitoring call with the Appellant on 12 April 2023. She concluded that the Appellant's safeguarding policy was not in accordance with the local Safeguarding partners, a requirement of the EYFS. She also concluded that whilst the Appellant had improved her overall basic knowledge of the Prevent duty, she still did not have a clear understanding of relevant reporting procedures or have an ability to identify concerns and correct next steps.

Issues in the Appeal

18. The parties had identified 21 separate issues in the Scott Schedule which related to most of the inspections or monitoring visits conducted. They were split into broadly 3 categories:

- 1) allegations that the Appellant had failed to properly implement and/or maintain the learning and development requirements of the EYFS in 2006, 2009, 2015, 2021, March 2022 and September 2022;
- 2) allegations that the Appellant had demonstrated safeguarding failings in 2006, 2009, 2015, 2021, December 2021, March 2022, September 2022, and November 2022; and
- 3) allegations that the Appellant had failed to maintain appropriate records and/or had demonstrated weaknesses in her processes and procedures (including self-evaluation) in 2006, 2009, 2015, 2021, March 2022 and September 2022.

19. This apparent list of issues for the Tribunal to resolve however belied the reality that Mr Gilmour conceded that almost all of the judgments reached by the inspectors at all of the inspections and monitoring visits were accepted as having been accurate at the time of making. The Appellant's case was not that the judgments reached were not accurate or appropriate but that notwithstanding these judgments and findings it was neither necessary nor proportionate to cancel Mrs Ofori-Atta's registration as a result. Mr Gilmour took issue with a number of the later findings and conclusions of the Respondent's inspectors, and we have dealt with these below; but otherwise, it was not really necessary for us to make detailed findings in respect of many of these apparent issues, because there was really no dispute about them.

20. The Tribunal raised with the parties at the outset the question of some of the regulatory activity that occurred after November 2022 where the present Scott Schedule stopped. The parties accepted that these were also 'issues' for the Tribunal to the same extent as those above: that the judgements and findings were largely uncontested, but that they went to the question of the proportionality and necessity of cancellation. These additional issues therefore

² This is a duty under s.26 Counter-Terrorism And Security Act 2015 on specified bodies to have due regard in the exercise of their functions to the need to prevent people being drawn into terrorism. This duty applies to registered childminders under Schedule 6 to the Act.

were: an additional alleged failing to implement or maintain the learning and development requirements in March 2023; alleged safeguarding failings in March and April 2023; and an alleged failure to have an up to date and accurate safeguarding policy in April 2023. We have therefore considered these on the same basis.

Legal Framework

21. Childminders are regulated by Part 3 of the Childcare Act 2006 which provides for registration and regulation by the Respondent in one or both of two Registers: The Early Years Register and The General Childcare Register. The General Childcare Register has two Parts, A and B which are described as the compulsory and the voluntary Parts respectively. Section 68 of that Act provides:

'68 Cancellation of registration in a childcare register: early years and later years providers

...

(2) The Chief Inspector may cancel the registration of a person registered under Chapter 2, 3 or 4 [of the Act] in the early years register or the general childcare register if it appears to him—

(a) that the prescribed requirements for registration which apply in relation to the person's registration under that Chapter have ceased, or will cease, to be satisfied,

(b) that the person has failed to comply with a condition imposed on his registration under that Chapter,

(c) that he has failed to comply with a requirement imposed on him by regulations under that Chapter,

(d) in the case of a person registered under Chapter 2 in the early years register, that he has failed to comply with section 40(2)(a) [of the Act]...'

22. An appeal lies to this Tribunal under section 74 of the Childcare Act 2006 against cancellation of registration by the Chief Inspector. In any appeal, the Tribunal must either confirm the cancellation or direct that it shall not have effect. If the cancellation is not confirmed the Tribunal may also impose, remove or vary conditions of registration. The Respondent must demonstrate that the cancellation is proportionate and necessary. The burden of proof in relation to cancellation lies on the Respondent.

23. Under the Childcare (Early Years Register) Regulations 2008³ it is a prescribed requirement for registration (and continued registration) that the childminder is suitable to provide early years childminding; that the childminder will secure that the early years childminding meets the EYFS learning and development requirements; and that the childminder will comply with the EYFS welfare

³ SI 2008 No. 974 as amended.

requirements⁴.

24. Under the Childcare (General Childcare Register) Regulations 2008⁵, it is a prescribed requirement for registration (and continued registration) that the childminder is suitable to provide later years childminding⁶ in both the compulsory and voluntary parts of the register.

Evidence

Written evidence

25. We had copies of the inspection reports on Mrs Ofori-Atta from 2006, 2009 and 2015 but we did not have copies of any other materials or statements from relevant inspectors in relation to those.
26. We had written statements from all of the inspectors who had conducted inspections or monitoring visits at the Appellant's premises since October 2021. Each inspector exhibited the notes of their inspections, any WRN and follow up documentation or monitoring visits that they conducted. Some inspectors also made supplementary statements detailing their dealings with the Appellant subsequently to the initial evidence deadline.
27. The Appellant herself submitted 4 witness statements with a variety of extensive exhibits and these she elected to stand primarily as her evidence in chief.

Oral evidence

28. We had oral evidence from all of the witnesses who had made written statements.
29. Ms Maher said that the Appellant had been nervous during the inspection in October 2021. She said she tried to put the Appellant at ease but did not see any interaction between Mrs Ofori-Atta and the child who was present. She had started to interact with the child herself as a hint to the Appellant to do so. She accepted that the mother of the minded child, S, had been happy with the care provided. She confirmed that there had been 3 requirements in the WRN issued on 12 November. She accepted that no WRN relating to the absence of a paediatric first aid certificate (PFA) had been issued even though it was mentioned as being such in the inspection report. She said this had been an oversight. In any event, she said that it had featured in the December monitoring visit and had been treated as completed.
30. Ms Maher said that during the inspection she had asked Mrs Ofori-Atta about where the local library was as part of the discussion about the lack of resources and toys in the setting. She said that Mrs Ofori-Atta was missing resources in many areas, and that the child had very little to play with. She noted that books

⁴ Schedule 1, paragraphs 1, 4 and 5 respectively. The EYFS learning and development requirements and safeguarding and welfare requirements are given force by an Order and Regulations respectively, made under s. 39 Childcare Act 2006.

⁵ SI 2008 No. 975 as amended.

⁶ Schedule 1, paragraph 1.

were vital for the early years and that the Appellant had none. She said that whilst a nursery might have more resources in terms of sand, water, easels etc, providers could be creative- shells, conkers, pots and pans could all be learning tools. It was how they were used.

31. She confirmed that the EYFS had changed in September 2021 shortly prior to the inspection. She said that this focused more on education than previous versions, and there were now lengthy paragraphs on the educational programmes. She said that more was expected under this framework but accepted there were no hard and fast rules; it primarily gave examples. She did not accept that more was expected from nurseries than childminders: she said the standards were the same. All providers had to deliver high quality provision in the 7 areas of learning. She said that what providers did inevitably varied, and some did more, others less, but what the inspectors saw on the day of inspections varied. The key was delivering the 7 areas to a standard Ofsted were happy with. She noted that the new version had been online since March 2021 and accessible. It was an LA's role to highlight the changes and many LAs did run training in advance. She said she believed Haringey had done so.
32. Ms Maher said that although the Appellant showed willing and apologised for the shortcomings in her setting, she didn't demonstrate self-reflection. She noted that there were things not put right from previous inspections and said she saw little evidence of those changes being made. She said that to improve compliance Mrs Ofori-Atta needed to do more than simply attend courses – this would not work by itself. She said that she maybe should have sought support from the LA or attended another setting to see what outstanding or good practice looked like. She said how a provider interacts with a child tells you a lot and said that she did not see evidence of the importance of the areas of learning reflected in interactions or articulated well in discussion.
33. Ms Maher said that she had made no assumptions about the inspection but was aware of the history. There had been a gap in the inspection regime because Ofsted were then focusing on those who had children in their settings, which Mrs Ofori-Atta had not in 2018. When she did take children again the pandemic had occurred shortly thereafter.
34. Dr Moroz noted that her first involvement with the Appellant was in a monitoring call to the Appellant on 30 December 2021 to follow up on completion of the WRNs set by Ms Maher at the October inspections. The Paediatric First Aid (PFA) certificate was included in the list to check. She accepted that the Appellant had made improvements and had met actions on handling complaints; her knowledge of activities and resources; and had a valid PFA but that whilst there was improvement on safeguarding, this was not completely satisfied: there remained some gaps on allegations and radicalisation. A new WRN had been raised in relation to this because of the need to be very specific about the action that is required of a provider to meet the WRN. Dr Moroz noted that the requirement was the same, but that the action was now more specific. She said that the new December 2021 WRN had a completion date of 28 February, but the issue had been closed and it was agreed that it would be dealt with by way of the full inspection that occurred on 3 March 2022.

35. Dr Moroz said that the WRN issued after the inspection on 3 March by Jenny Gordon concerned hygiene processes and identifying and removing risks through risk assessment. She said that responsibility for monitoring the WRN and ownership of the case generally passed back to her in time for the visit on 22 March, though this was only due to availability of inspectors and not consciously. She noted that the issues that were the subject of the WRN arose from concerns about the cleanliness of the eating area in the kitchen and hygiene more generally, as well as risks arising from cracked and sharp tiles in the bathroom.
36. Dr Moroz accepted that the decision was made to cancel the Appellant's registration at a case review meeting the following week on 10 March even though the completion date for the WRNs wasn't for another two weeks. She said that the EY enforcement policy was clear that after two inadequate inspection outcomes it was necessary to consider whether to cancel a provider and that Ofsted had considered the whole history of the provider's registration and inspection outcomes. She said that it was not necessary to wait for the WRN completion but that the decision could always be reviewed in the light of that and she was content to make a recommendation to cancel without waiting. Dr Moroz said that the recommendation which she made to the senior officer to cancel was due to the poor inspection history not because of the outstanding issues on any WRN. She noted that monitoring visits and compliance with WRNs was in any event different to a full inspection. Only specific actions were looked at in a monitoring visit and a decision was made whether to close or not. The decision to recommend cancellation was based on the history of all actions, including some of the safeguarding issues but it was the overall poor quality of childcare that was the issue- the provider did not meet the requirements either of learning and development or safeguarding and welfare.
37. Dr Moroz said that when she undertook the monitoring visit on 22 March 2022 she had focused only on the issues of hygiene and appropriate risk assessments. She had not reconsidered the safeguarding actions set at the end of December, because these would have been covered in the 3 March inspection itself. She accepted that on 22 March the actions that had been set were met and that it was not necessary to set any additional actions or issue any further WRNs. It was put to Dr Moroz that she had advised Mrs Ofori-Atta against appealing the decision to cancel her registration, though Dr Moroz never really answered the question as to whether she had. She said that her statement read as though she had offered such advice, but accepted that it would have been inappropriate to do so, even if it was acceptable to offer some information on the range of options open to Mrs Ofori-Atta. She said that her comment that putting right the deficits in her knowledge would not be a 'quick fix' was an attempt to help Mrs Ofori-Atta understand what she needed to put right if she was to continue as a childminder, not an attempt to discourage an appeal. She denied that there was nothing that Mrs Ofori-Atta could do at that point to change Ofsted's mind and said these matters were kept under review. She said that the decision to cancel was not based on the compliance or not with the two most recent WRNs.

38. Dr Moroz said that she had drafted the notice of decision for issue by Ms Wildman on 25 March that was the basis of the final decision issued on 14 June. She accepted that neither she nor Ms Wildman had noticed the mistake about the time limit for appeal recorded in that letter and accepted that they had probably used the wrong template. She said that Ofsted had not established what had gone wrong, and that this was human error. She accepted that the cancellation letter had been issued on 18 July on the assumption that Mrs Ofori-Atta did not intend to appeal and that the mistake about timings had only come to light after Mrs Ofori-Atta did appeal on 7 September and the Tribunal accepted the appeal. Dr Moroz called Mrs Ofori-Atta on 14 September 2022 and left a voicemail to inform her that she could continue to childmind pending the outcome of the appeal, and Ms Wildman had sent her an email the following day to the same effect. Dr Moroz had mistakenly said in her statement that she had emailed Mrs Ofori-Atta. Ms Wildman said that whilst she did not know if the Appellant had received either the message or the email, these had been sent to the registered details that Ofsted had for Mrs Ofori-Atta, and the email address from which she had issued her appeal.
39. Dr Moroz said that once the Appellant had been restored to the register the Ofsted processes required that she be inspected within 6 months of her last inadequate inspection. She had not herself considered whether an inspection in those circumstances was fair but was certain this had been considered by Ofsted more widely.
40. In relation to the 9 March 2023 inspection, Dr Moroz said that Mrs Ofori-Atta did not seem nervous even though she had not expected it. The Appellant was confused about why Ofsted were present, and she accepted that Mrs Ofori-Atta may have thought that issues had been resolved by the suspension proceedings and judgment in January 2023. She accepted that Mrs Ofori-Atta was distracted at the start of the inspection. She said that the version of the safeguarding policy she saw in March 2023 was different from that which she'd seen in December 2022 and it was not accurate in that it had incorrect contact details for various other bodies that the Appellant might need to contact. She said that she had raised an action about the Appellant's Prevent duty knowledge following this inspection. She said that the Appellant's knowledge had improved from March to April 2023 and accepted that they did not expect providers to carry all of the relevant information around in their head- they needed to be able to recognise that there was an issue.
41. At the April monitoring discussion, she said the real problem was Mrs Ofori-Atta's difficulty with applying her knowledge to a scenario put to her. She said that after asking Mrs Ofori-Atta the same question 3 times it was clear that she had contradicted herself, didn't really understand what the concerns were in the scenario and was confused as to when and why she should refer someone to the Channel programme⁷. She said Mrs Ofori-Atta could not show that she could apply her knowledge in a specific case. She had failed to ask additional questions within the scenario to establish whether there was a problem.

⁷ 'Channel' refers to the panels set up by local authorities under s.36 Counter-Terrorism and Security Act 2015 to assess the extent to which individuals are vulnerable to being drawn into terrorism.

42. In her oral evidence, Ms Jenny Gordon said that she had conducted the unannounced inspection in March 2022. She accepted that the basic cleanliness requirements were all met and it was clear that the child present at the setting, S, had a good connection with the Appellant. She accepted that there were no concerns about Mrs Ofori-Atta's honesty and integrity and said that she seemed keen to learn and to improve the quality of the education provided. She did not consider that there was much evidence that her knowledge had been implemented, however.
43. Ms Gordon said that her conclusion that Ms Ofori-Atta did not understand how to teach children what they needed to learn in their communication and language reflected her assessment of all 3 of the prime areas and the overall standard. She said that Mrs Ofori-Atta needed a good curriculum. She did not accept that the judgment reached overall was harsh; she accepted that Mrs Ofori-Atta had some good curriculum intent behind the activities but said that the implementation of it was lacking. She said that she had observed limited two-way interactions and modelling of sentences with the aim of expanding and enriching vocabulary. She accepted that S was developing age-appropriately but said that it was unclear that Mrs Ofori-Atta was doing enough to develop the child given the level of ability Mrs Ofori-Atta had said she thought S had. She said that there were many possible reasons why S was age-appropriate not necessarily driven by the care received from Mrs Ofori-Atta. She noted that despite being present for 3 hours to undertake the inspection, she had seen no physical activities aimed at improving gross motor skills or increasing S's independence. Mrs Ofori-Atta had also referred to the activities that she wanted to undertake with S, but not the skills that she wanted S to develop. Ms Gordon noted that the activity where S had identified colours using chalk and a board could have been developed into a more significant activity with wider discussion but had not been. She said that Mrs Ofori-Atta could explain what S knew but could not explain the next steps for her. She said that in the time available a good setting would have been able to show activities across all of the prime areas of learning.
44. In relation to the WRNs that were issued following the inspection, she confirmed that these related to the fact that there were concerns about general cleanliness and hygiene in the setting, particularly in that she had observed unhygienic conditions in the kitchen and had seen S eat an orange with her hands without having been asked to wash them at any point. The WRN relating to risk assessments reflected the finding of broken tiles and risks in various parts of the premises that had not been assessed.
45. Ms Agnieszka Wink had conducted the unannounced inspection on 29 September 2023 when there was no child present at the setting. She said that Mrs Ofori-Atta had told her she was nervous. Ms Wink was aware of the issues relating to the incorrect time limit in the Notice of Decision, and that the cancellation had occurred but then been reversed with Mrs Ofori-Atta being reinstated. She said that although she did not know whether Mrs Ofori-Atta was aware that she had been reinstated at the start of the inspection, she was aware that Mrs Ofori-Atta had been contacted by various means and it was reasonable

to assume she had become aware of the position through the registered details on record. She said that the question of whether it was fair to carry out the assessment on 29 September had not been one for her; the question was only whether the registered provider was complying with the requirements of registration. She said that she followed the required procedures and had explained the reasons for the visit which was that it was required within 6 months because she had had an inadequate judgment. She said she was understanding of the situation that Mrs Ofori-Atta was in and said that the Appellant had said she wanted to carry on with the inspection. She said she had fully taken into account that the Appellant had told her that she wasn't ready for an inspection. Ms Wink said that she told Mrs Ofori-Atta that it was possible to defer the inspection to another day, but that Mrs Ofori-Atta had said that she wanted to carry on.

46. She noted that books and toys had been packed away but that she assumed they were present at the setting. She said that she had asked Mrs Ofori-Atta to risk assess her own property on the day as if a child were present, and she had failed to identify all relevant risks. Ms Wink said that some of the evident risks were similar to ones raised previously by colleagues. She said that the state of the premises and Mrs Ofori-Atta's failure to identify risks had caused her to ask for a conversation with the duty officer at Ofsted to raise her concerns. She joined a conversation later that day at which it was decided to suspend the provider's registration.
47. Ms Wink said that she accepted that Mrs Ofori-Atta could support children's language and communication skills and discuss teaching satisfactorily from the discussion and noted that she had attended recent training. She said however that it would have been necessary to see these things implemented with children to be fully satisfied that the requirements were met. She noted that the example about using the child's interest in the *Goldilocks* story to develop other skills had been good. In relation to the keeping of accidents and injuries, Ms Wink said Mrs Ofori-Atta had been able to talk about how to speak to the child and to parents appropriately about this. She could not say whether Mrs Ofori-Atta had always kept a written accident or injury record, but Mrs Ofori-Atta had not referred to one until prompted and then had asked her about why it was necessary to have one. She accepted this was not in her notes but said that these were not a *verbatim* record. She denied that the judgment made on the day in September was too harsh and identified that the judgment reached was based on not only the risk assessment but also other breaches- child protection concerns and failure to answer questions when she had been able to answer them in March; issues around the accident and injury record; hygiene, cleanliness and the skills demonstrated. She said there were concerns based on Mrs Ofori-Atta's knowledge and understanding.
48. Ms Wink had returned to see the provider on 2 November and noted that the issue around accidents and injuries had then been resolved- Mrs Ofori-Atta demonstrated that she had forms that she would complete and said she would keep an appropriate log- and Ms Wink said that it was not suggested in November that there had been any misunderstanding or confusion at the last inspection about these issues. She noted that the Appellant now complied with

these requirements. She said that most of the actions from the September inspection had been met by November, though not all were. She said that she also went back to monitor on 8 December and the remaining two actions were met- Mrs Ofori-Atta having talked about additional training attended and knowledge gained. In December, she accepted that the Appellant's knowledge of safeguarding policies and procedures was 'secure'.

49. Ms Wildman confirmed that she had been the decision-maker in this case both in respect of the cancellation decision and the decision to suspend registration in September 2022. She accepted that she had missed the incorrect time limit for appeal recorded on the decision letter in June 2022 and that Ofsted had only corrected this once an appeal had been issued. She insisted that Ofsted had acted swiftly to rectify the issue once they became aware of it and had taken no point on the appeal being technically commenced out of time. Ms Wildman accepted that she had not apologised for the error at the time of sending her email to the Appellant on 15 September saying that her priority was to make Mrs Ofori-Atta aware that she could continue to childmind and would continue to be monitored on that basis. She accepted in hindsight that she ought probably to have apologised and to have explained how the error came to be made. She said that whilst she accepted the various messages received by Mrs Ofori-Atta from Ofsted were potentially confusing, they had explained that she could continue to mind and that she could get in touch if she wanted to discuss and had not done so. She could not comment on whether Mrs Ofori-Atta had tried to speak to someone in the summer when she had been cancelled. She accepted that getting through to relevant officers at Ofsted on the telephone could sometimes be challenging. She said that the call and email had been sent to the registered details they had for Mrs Ofori-Atta and that it was reasonable to assume on that basis that she had received the information. She noted that the email had been sent from her own personal account and therefore any reply from Mrs Ofori-Atta would have come directly to her, rather than to a generic inbox.
50. Ms Wildman said that she had considered the fairness of inspecting Mrs Ofori-Atta on 29 September 2022 following her very recent restoration to the register but said that fairness was only relevant to part of the issues. She said that she didn't believe the inspection was unfair, and Ofsted had a procedure to follow. Mrs Ofori-Atta remained registered and had been told she could continue minding children. She noted that there was at the time a legal obligation on Ofsted to complete all outstanding inspections on providers by 30 September and therefore Mrs Ofori-Atta would be included in that. She noted that the last inspection of Mrs Ofori-Atta had been on 3 March and that as an inadequate provider another inspection was due, but said they had pushed it back to 29 September, as far back as possible. She said that child welfare had to take priority over any individual provider. Ms Wildman said that she was conscious that Mrs Ofori-Atta could mind children at any time whilst registered and not suspended, and Ofsted could not enter into informal understandings with providers that they would not currently childmind. She said that the 29 September inspection was justified because the premises proved to be un-fit for purpose and Mrs Ofori-Atta couldn't identify what was unfit about them.

51. Mr Gilmour queried whether the statement in Ms Wildman's written evidence that '*during the course of her registration, she [Mrs Ofori-Atta] has only sustained failure in respect of her compliance*', was harsh. Ms Wildman did not accept that it was. She said that the history of Mrs Ofori-Atta's inspection judgments bore out the statement in that she had not had a good or better inspection result. She noted that what had initially been 'satisfactory' gradings in Ofsted were now considered to be 'requires improvement' because satisfactory was not good enough. She noted that one of the issues raised in 2006, the need to obtain parental agreement to medical treatment was one of the easiest to satisfy but was still outstanding in 2009. She considered this evidence of 'sustained failure'. She accepted that no one had disputed that Mrs Ofori-Atta cared for the children or that there were ever any issues about the physical needs of children being met (though there had been hygiene concerns). She did not accept that her words suggested that Mrs Ofori-Atta was considered a failure at everything but said it merely reflected that she consistently failed to meet requirements at inspections. She also accepted that there had been no complaints made about the Appellant.
52. She did not accept that the Appellant had shown sustained improvement in her practice. Ms Wildman noted that given that Mrs Ofori-Atta had been registered for 20 years, Ofsted would expect to see improvements in the practice to be sustained for more than a year, and that she should always meet the requirements without Ofsted having to identify the issue. She noted that even though Mrs Ofori-Atta met the WRNs when raised, it was incumbent on Mrs Ofori-Atta to identify issues and taken action before Ofsted identified them.
53. Ms Wildman accepted that not exactly the same issues arose each time that concerns were raised; but she said that safeguarding and child protection included a number of elements and if the issues raised on one part were resolved then another would 'break' instead. She said that the concerns raised over the years consistently concerned safeguarding knowledge and child protection.
54. Ms Wildman also accepted that Mrs Ofori-Atta attended a large number of courses and undertook learning but said that the fact that Mrs Ofori-Atta could 'recite' what she's learned on a course did not prove that she had understanding. She said that the history of inspections showed that when the tested the Appellant's ability to implement the things she said, her practice was found to be lacking, even though Ofsted accepted the intent was there. With respect to the latest concerns about the Prevent duty, Ms Wildman said that she appreciated that Mrs Ofori-Atta had read up on Prevent and understood the need to report concerns about radicalisation, but said that having that basic knowledge wasn't sufficient: a provider also needed to understand what they were seeing in their own practice sufficiently to understand the need to look at their own policy and consider whether they need to make a referral. She said that Mrs Ofori-Atta still could not apply the knowledge she had in practice.
55. Ms Wildman said in response to questions from the Tribunal that she considered that Mrs Ofori-Atta had reached 'the end of the road' for registration and that there was now nothing she could do to demonstrate that her

registration should continue. She said that in her view Mrs Ofori-Atta was unsuitable to be a childminder and did not have the ability to meet the requirements. She accepted that the consequence of this would be that Mrs Ofori-Atta would be disqualified from working with children too but said that Mrs Ofori-Atta could apply for a waiver so as to undertake a specific different role, and that the considerations for Ofsted in those circumstances would be very different. It might be that on assessment, Mrs Ofori-Atta would be suitable for a role in a non-domestic setting. But this could not be pre-judged.

56. The Appellant herself gave evidence. She said that she had been very confused by Ofsted's letter to her of 18 July 2022 telling her that her registration was cancelled. Mrs Ofori-Atta said that she knew there was a process for cancellation, and she was confused that Ofsted were able to apparently simply cancel her registration without going through it. She said she had tried to contact Ofsted on the phone after the letter but without success and although she had left messages no one had returned her calls. She said that it was only when she decided to appeal that the Tribunal administration told her it would get in touch with Ofsted, and this was when Ofsted had finally got in touch with her. Mrs Ofori-Atta said that she had missed the September call from Ofsted but had seen the email which followed.

57. She said that when Ms Wink had attended on 29 September 2022 to undertake the unannounced inspection, she had not felt ready. She said having had her registration cancelled she had not expected them to come again so soon after telling her that she could mind children again. She accepted that Ms Wink had mentioned the possibility of deferring the inspection but said Ms Wink had told her that if she didn't agree she would be treated as having obstructed the inspection. On the basis of that assertion, Mrs Ofori-Atta said that she had agreed to participate in the inspection.

58. She said that in terms of the inspection, she had not expected to be asked about radicalisation and said that she had not really got to this in detail in the learning she was undertaking. She noted that this was covered only briefly in the safeguarding training she had attended. She agreed that she had been asked about this to an extent before but said that there was a lot more to learn that she hadn't got to as yet. She couldn't say whether she had ever heard of Channel before. She accepted that she had undertaken a safeguarding course in both October 2022 and in February 2023- and had included relevant proof in the bundle but said the training within it on radicalisation was brief. She accepted that she should have been able to say more about it and answer the questions put by the inspector.

59. Mrs Ofori-Atta accepted that she had said in her December 2022 statement and in her January 2023 statement that she was intending to undertake the HCFE CACHE level 3 course which was due to last 10-12 weeks but said that she had not in fact done so, having found that the course was expensive. She said that it was more about development than safeguarding and that the providers had suggested it was for those new to child minding. She said that it was only later that the course had agreed to take her. She accepted that she had signed her statements even with this misleading information in it and accepted that she

should have taken it out before signing the statements given that she knew that she was not going to attend the course before she signed the first statement.

60. Mrs Ofori-Atta accepted that given the number of safeguarding courses she had been on within the previous 18 months by March 23, it was reasonable to assume that she had a good knowledge of safeguarding. She also said that whilst she had said at the suspension hearing before the Tribunal in January 2023 that she was 'confident' with safeguarding procedures, she now accepted that this was not true and that it hadn't been true in January 2023 either. She accepted it was an issue back as far as 2006.
61. Mrs Ofori-Atta also accepted that there had been repeated hygiene failures across a number of inspections- including those conducted by Ms Gordon and Ms Wink. In relation to the new EYFS that came into force in September 2021 Mrs Ofori-Atta said that she knew there was a new framework and that she was a bit confused by it at the time. She also said that she had looked at it but needed to spend longer examining it. She said she was busy looking after a child at the time, and it was all new to her. She accepted that she should have read it before it came into force properly, and that it was a mistake to not have done so. She was aware at the time that it had come into force. She accepted that it was her responsibility to keep up to date with developments in her field.
62. The Tribunal asked Mrs Ofori-Atta questions too about how she approached minding children and how she decided what to pursue with them on specific occasions. Mrs Ofori-Atta described a large number of activities that she undertook with minded children. She noted that she had looked after S from the age of 5 months in September 2020 until June 22, when she was prevented from looking after children by the cancellation of her registration. She noted that she had looked after children of a range of ages and had up to 3 at any one time.
63. There was discussion about the Appellant's paediatric first aid certificate (PFA) and when prior to October 2021 this had expired. Mrs Ofori-Atta initially said that she had this document at home and had filed it with her other documents. However, when the Tribunal asked her to bring it to the following day's hearing, she said on the next day that she must have cleared it out as part of a general throw-away of documents once her registration had been cancelled.
64. Mrs Ofori-Atta said that she would like to continue to be a child minder and said that whilst she accepted she had a lot of failings, for which she apologised, she felt she had potential with a lot of training, and had made progress already. She said that she had realised where she had previously gone wrong. She said that she knew a lot of childminders in her own area and was keen to visit some of them and see how they operated.

The Tribunal's conclusions with reasons

65. Although much of the evidence was presented to us chronologically, in our view it makes more sense both of Ofsted's case, but also of our understanding of

how the Appellant has approached and changed her practice over time, to examine the areas of concern thematically across the relevant period.

66. This consideration has also been simplified by Mr Gilmour's concession that almost none of the judgments made by Ofsted as to the deficiencies in the Appellant's practice made at each of the inspections was disputed. The only point made by the Appellant in substance was that *notwithstanding* those concerns, it was still not necessary or proportionate to cancel the Appellant's registration.

The September 2022 inspection

67. We have approached the September 2022 inspection slightly differently from the other inspections undertaken on the Appellant's setting. Mr Gilmour invited us to put little weight on the conclusions or evidence from this inspection conducted by Ms Wink because of the circumstances in which it was conducted and the resulting unfairness that he said attached to it.
68. The Appellant received a notice of decision from the Respondent on 14 June 2022, indicating that the decision had been taken to cancel her registration. The letter gave her 3 months in which to appeal that decision. The Respondent accepts that that was a mistake, and that it was not noticed at the time, but so far as the Appellant was concerned, she had until mid- September 2022 to appeal.
69. As the Respondent had not realised its mistake however, we noted above that it cancelled her registration and notified her of this on 18 July 2022. The Appellant's surprise and concern at receiving this letter can well be imagined and she gave evidence to us (not disputed, and entirely credible) that she made a number of unsuccessful attempts to contact the Respondent and its inspectors after that date to ascertain the correct position. No one ever contacted the Appellant in response to her calls or sought to explain the position to her. In fact, it was not until notified of the appeal, commenced on 7 September 2022, that the issue came to light and was addressed by the Respondent. The Respondent sought to make a virtue of the speed of its response thereafter and of its concession that it would take no point on the time limit for the appeal. But this was a submission that entirely missed the failure to respond to the Appellant's earlier attempts to contact them. We were unimpressed by the point.
70. When the Respondent did realise its error, the tone of its email communication with the Appellant was brief in the extreme, lacked any explanation of the mistake, and offered no apology or contrition. True to Ofsted's apparent relentless focus on process, all it did in substance was confirm that the Appellant could continue to mind children whilst her appeal was pending and informed her that monitoring inspections would continue. Ms Wildman accepted in the hearing, to her credit, that an apology should have been offered to Mrs Ofori-Atta for the error (though no unequivocal apology was in fact offered). But she said that she was keen to make sure that the Appellant understood the position as soon as possible and said that the Appellant had not replied to her

email at any point, which she took as a sign that the Appellant understood the position.

71. That was a dangerous assumption, not least as the email did not invite a reply- it suggested the Appellant contact Dr Moroz or use the general telephone line from which Mrs Ofori-Atta had already had no joy. In our view, the email could have been far more detailed, offered some humility and recognition of failing; of the anxiety probably caused; and offered the Appellant some more details of the implications of the reversal of her cancellation, particularly warning her in rather more detailed terms not only of the potential for her to take children again, but also the *assumption* of Ofsted that she should be ready to do so. It did none of these. As we noted at the hearing, the email is an example of bureaucracy at its least attractive.
72. It is against this background that the unannounced inspection by Ms Wink occurred barely 2 weeks later. Again, Ofsted sought to make a virtue of the additional time it said it had given Mrs Ofori-Atta before conducting the inspection- but lacked the introspection to note that the reason it was under (self- imposed) time pressure was because of its own procedural failings. We consider therefore the fact that Mrs Ofori-Atta was largely unprepared physically for the inspection to be wholly unremarkable, and we have concluded that it would be unfair to hold large parts of the conclusions reached at it against her. We have therefore acceded to Mr Gilmour's submission to place little or no weight on the cleanliness or hygiene of the premises, the absence of toys, and the presence of clutter in the setting because of the unfairness of the circumstances in which these judgements were formed.
73. It was suggested in the hearing that the opportunity to defer the inspection had been offered to Mrs Ofori-Atta. We find that this was not the case. The case notes for the visit are detailed, and whilst we accept that they were not *verbatim* in our view, it would be exceptional not to record such a significant offer to the Appellant in such a detailed note. In our view it would be a key thing to record in the notes because it would be used- as it has been- as evidence of fairness (or not) to the Appellant. Whatever the specific wording used we do not find that Mrs Ofori-Atta was realistically offered the chance to defer and as a consequence we find that she felt compelled to proceed with the inspection.

The early 2006 and 2009 inspections

74. There was some debate in the hearing as to the correct analysis to be applied to issues identified in the Appellant's inspections in 2006 and 2009, at least, and whether these could be identified as 'failings'. Ms Wildman's view was that as these early 'satisfactory' judgements and the issues raised within them would now be treated as 'requires improvement', we should also treat them as unsatisfactory and as evidence that the Appellant had failed to make necessary improvements when identified. It was a view resiled from somewhat in the hearing in the face of questioning but the issues raised from these inspections were not treated qualitatively differently from any later criticisms or WRNs. We do not consider it right to treat these early issues in the same way as those identified in later inspections. Aside from the obvious unfairness of retrospectively treating what was at the time a recognition of having overall met

a standard as now being something less than that, the language used in the 2006 inspection report treated the Appellant's provision overall as 'sound' and meeting national standards. The things which the Appellant had to do were recorded as 'recommendations'. A similar approach applied in 2009 when the Appellant's provision was again said to meet the national standards- though the improvement requirements were now harder- edged, setting out things to improve and things the Appellant 'must' do to fully meet the specific requirements of the EYFS.

75. We do accept that there are some issues which arise in this period which recur later and to that extent we take into account the fact that they had been raised before with the Appellant, sometimes more than once. But we are not content to treat them as failings on a par with those identified later. And we note that if they were of the sort of concern to the Respondent that is now suggested, it is curious that this concern did not translate into any form of more urgent re-inspection. It was another 6 years before the Respondent returned after the issues in 2009 were apparently of such importance.

76. We turn to consider the 3 key areas which the Respondent identified as the key areas of weakness in the Appellant's practice.

Alleged failures to comply with the learning and development requirements

77. The Appellant's persistent difficulty in complying with the learning and development (L&D) requirements is the key theme of this appeal. This was one of the principal reasons why the Appellant was graded as not meeting the standards in 2015, when it was noted that she had a 'weak' knowledge of the EYFS, a poor knowledge of the L&D requirements and failed to evaluate the learning that was provided. The inspection report noted that she could not identify the different ways that children learn, and she failed to undertake progress checks for 2-year- olds. But even at this stage, the 2015 inspection reflected more minor concerns from earlier inspections- that she lacked variety in resources for older children in 2006 and did not undertake observational assessments or keep a record of achievements for those in her care, so as to monitor progress, in 2009.

78. Since that time, the Appellant has satisfied no inspector at any of the other 4 later inspections that she had sufficient knowledge and understanding of the L&D requirements or that her setting delivered an acceptable level of education for the children in her care.

79. Ms Maher's evidence from October 2021 was that the Appellant accepted that she was not familiar with the new version of the EYFS that had come into force the previous month. Mrs Ofori-Atta accepted that she had not read the document, and in oral evidence before us accepted as much again, saying that this had been a mistake. Although she criticised the Respondent in her appeal documents for expecting her to know this information so soon after it had come into force and with only a day's notice of the inspection, there was uncontested evidence before us that the new framework had been published in March 2021 and many LAs had offered training in relation to it. Mrs Ofori-Atta accepted that

she had been aware of it and had not taken up any offer of training about it. Given the centrality of this document not only to her own practice, but also to the inspection framework under which she would be monitored, we regard the Appellant's concession that she was unaware of the framework's requirements as significant.

80. Allied to this in October 2021 was the paucity of resources, and the complete lack of books available in the setting to children and to the child 'S' in particular who was present at the inspection. The inspector's (uncontested) evidence was that the Appellant failed to engage meaningfully with S during the inspection; did not meet her physical development needs at all and did not involve parents in informing them of what was being taught or how to continue the learning at home. The Appellant was unable to explain why she did not then use the local library or take S to any child play groups in the vicinity to increase her social skills. Most pertinently for these purposes, Mrs Ofori-Atta was unable to explain to Ms Maher *how* and *why* she chose particular activities to undertake with the children in her care. Ms Maher could not undertake a joint observation of any activity.
81. Ms Maher therefore concluded that the Appellant failed to evaluate her setting or practice and did not understand the differing ways in which children learn or carry out effective assessments. We pause to note that these were the same concerns first raised, less critically, in 2015 and in relation to the earlier EYFS where there had been a less strong focus on the educational content. The educational issues identified were set out clearly in the inspection report that followed (see bundle, H82). It made a number of clear recommendations for improvement.
82. At Ms Gordon's inspection it was clear that the Appellant had improved her interaction with S, but Ms Gordon found nevertheless that the Appellant still did not plan learning opportunities with clear outcomes or assess the child's next steps in learning. Physical development remained an issue and there were limited opportunities for S to develop gross motor skills. This Inspection identified additional issues connected to L&D in that the child was not supported to develop independence skills in eating or to develop personal hygiene through washing hands. The inspector concluded that the Appellant had undertaken insufficient professional development since the last inspection. Again, the inspection report was clear (bundle, H236 *et seq*), that the Appellant did not plan a clear programme of learning and did not understand how to teach children what they needed to learn.
83. Mr Gilmour took issue with this judgment, saying that it was accepted that the Appellant's ability to teach communication and language could be better, but was overall acceptable. He noted various comments by Ms Gordon that identified that Mrs Ofori-Atta had read to S, S was developing in an age-appropriate fashion and was developing a love of books (see H219). In her evidence, however, Ms Gordon did not accept that her findings were harsh: she noted that whilst Mrs Ofori-Atta had some reasonable curriculum intent around reading, what she saw did not go far enough, and failed to include modelling sentences or expanding vocabulary. She queried how the Appellant knew

where S was developmentally, and whether the intent she had for her was realistic at 23 months. But elsewhere, she said there was still evidence of insufficient development across the various learning areas, and S was clearly bored at times (demonstrated by throwing things around the room).

84. Whilst we understand the thrust of Mr Gilmour's argument, the terms of the relevant parts of the EYFS framework itself make clear what is expected (see paragraphs 1.6, 1.11, 1.14 and 2.1) and also when related to Ms Gordon's evidence show where Ms Gordon considered that the Appellant's practice was not sufficient. We agree with Ms Gordon that in relation to communication and language, the Appellant did not understand the requirements; but also more widely, in her failure to address the other prime areas, did not understand what children should learn to develop physical skills. We therefore accept that the judgement of Ms Gordon on these issues was accurate. The final report identified what the Appellant needed to do to improve and to meet the EYFS requirements. We accept that S was said to be developing age-appropriately. But it cannot be said with any certainty that this was due to the care of the Appellant.
85. The September 2022 inspection by Ms Wink was conducted in the absence of children which made it more difficult to assess the Appellant's apparent approach to the L&D requirements in practice; and as we have noted the Appellant was not expecting any form of inspection. However, the inspector did note distinct improvements in the Appellant's practice including a clearer curriculum intent, planning and sequencing. The inspection notes reveal a richer, more detailed discussion about learning and about the various elements of the prime and other areas. It also noted that she understood the need for a 2 -year progress check and a profile at age 5. Despite this however, the inspector recorded that the Appellant could not evaluate her practice well enough and that there was still a lack of full understanding of supporting children's personal, social and emotional development, including through confidence, self-esteem and managing behaviour. We note that Ms Wink's oral evidence supported that the Appellant had undertaken relevant training and could give the inspector sufficient evidence in theory to demonstrate that she could support a child's language and communication skills. The final report however still identified weaknesses in the Appellant's knowledge of the EYFS.
86. At the last full inspection, in March 2023, also an NCOR inspection, Dr Moroz also acknowledged that the Appellant had improved her knowledge of how children learn and of how to plan a curriculum, but also said that she identified additional breaches of the L&D requirements. The Appellant had struggled to explain how she would meet the needs of individual children if there were multiple children in the setting, and she provided contradictory answers to the various scenarios put to her. Dr Moroz also identified weaknesses in relation to the Appellant's approach to literacy skills and to those for whom English is an Additional Language (EAL).
87. We also questioned the Appellant ourselves as to her approach to teaching children and asked her more than once to describe *how* and *why* she selected particular activities. Although the Appellant was able to describe how she had

moved S on from focusing only on one key favourite book, we too considered it notable that the Appellant focused heavily, if not exclusively, on *what* she intended to do with children in her care. And whilst as part of that she could give some indication of the likely prime and other areas of L&D that would be impacted by her activities, we still did not really understand what the Appellant's basic approach to selecting learning opportunities was.

88. We appreciate that the inspectors have given the Appellant credit for the development of her knowledge and the improvements that they have observed at a number of inspections. These are to Mrs Ofori-Atta's credit; as is the training that she has undertaken with PACEY and elsewhere to improve her knowledge, referred to in her statement and exhibits. But we have concluded that the Appellant did not have a sufficient grasp of the requirements of the EYFS at its introduction in September 2021 and could not explain them in October 2021. We have also concluded that although her knowledge has improved since then and she has a clearer, richer grasp of the curriculum requirements of the EYFS, her knowledge and understanding is still insufficient to reach the required standards. The documents that she has exhibited to her statements show she has a process for identifying and capturing learning programmes and intent. These are helpful, but they do not reveal how the Appellant will use them in practice; and her oral evidence did not answer those questions satisfactorily either.

89. We therefore conclude that the Respondent has made its case that the Appellant has persistently failed to meet the requisite learning and development requirements from the EYFS.

Alleged failures to comply with the welfare and safeguarding requirements

90. Bearing in mind the points made above about the 2006 and 2009 inspections, welfare and safeguarding concerns were first raised in 2006 about the access that children had to hazardous substances and issues around fire safety were identified in 2009 particularly around access to a fire blanket and to emergency evacuation procedures both of which recurred in later inspections. These specific issues do not appear to have featured in 2015, but it was clear that the Appellant was still conscious of them even in 2021- and took steps to bring out the fire blanket after the inspector had arrived in an attempt not to fail on the same point again.

91. In 2015, it was primarily the Appellant's safeguarding *policy* that was considered deficient, but by October 2021 her knowledge more generally was accepted not to be robust. She struggled to verbalise her policy or to identify the correct procedures for referring concerns about abuse or neglect. This became the subject of one of the first WRNs. Over the following 2 years it is clear that concerns about the Appellant's knowledge of child protection procedures simply did not go away- though the exact focus of concern did shift as the Appellant's knowledge and understanding was tested in different ways over time.

92. Although her knowledge of child protection procedure was partly satisfactory in December 2021 Mrs Ofori-Atta was still unsure then about the full process for dealing with referrals to other agencies, and it was necessary to extend the WRN relating to managing allegations against members of the household until February 2022. Testing on this specific outstanding issue was subsumed into the next full inspection conducted by Ms Gordon on 3 March 2022.
93. It is fair to note that Ms Gordon did not identify knowledge of safeguarding referral procedures as an issue at her inspection; but she found clear evidence of other safeguarding problems, this time focused on poor hygiene in the kitchen and broken tiles in the downstairs bathroom. She observed a lack of risk assessment to have led to the persistence of risks to children's health across the setting.
94. The issue of child protection referrals and Mrs Ofori-Atta's knowledge of the process was again deficient at the September 2022 inspection. In a direct echo of the October 2021 inspection, Mrs Ofori-Atta could not demonstrate she understood her own policy or that she could follow the right processes: she indicated that she would first question the child about alleged safeguarding concerns. The difficulty remained at Ms Wink's monitoring visit in November 2022 and it was only by December 2022 that Ms Wink was satisfied that Mrs Ofori-Atta's knowledge of safeguarding processes was 'secure'.
95. Notwithstanding that apparent satisfaction on reporting requirements, further issues about correct reporting and understanding of safeguarding processes were revealed by Dr Moroz at the full inspection in March 2023 and at the monitoring visit barely two weeks prior to the Tribunal's hearing, on 12 April 2023. This time the issue was not about a knowledge of abuse or neglect but concerned issues of what to do in the event of suspected radicalisation of children, or the potential of exposure to those who were radicalised. But the detailed questioning in the inspection reports shows a similar confusion and lack of knowledge of the detail across both differing child protection issues. Mrs Ofori-Atta was unable to identify circumstances in which it was right to question parents or children further about travel, beliefs or views and at what point it was right to refer the knowledge already gained to other stakeholders for further investigation.
96. There was also across time an issue about the presence in the home of those who were not appropriately cleared to be in the setting with children. This had been an incidental issue in 2006 in the context of Mrs Ofori-Atta's son, and was swiftly rectified, but it should have given the Appellant a clearer sensitivity to this issue. The Respondent considered that it was unable to get a clear answer from Mrs Ofori-Atta about when and for how long her mother, who had not been DBS checked, had been present in the home. We also noted that the specific advice of Ms Maher about the need for DBS for her mother given in October 2021 (bundle, H56) was prayed in aid for a much more extended stay, continuing in March 2022 (bundle, H184) in circumstances not contemplated by Ms Maher. We too struggled to understand exactly when Mrs Ofori-Atta's mother had been present. Mrs Ofori-Atta's first witness statement says only in 2021 (bundle, I10-I11); her second says 2022 (I165). Her oral evidence was

that her mother did not stay with her in 2022 *at all*, even though this was clearly contradicted by the written evidence. She told us in her statements that she did not take children in early 2021 because she was focusing on her mother's health. But that was not true: she had been caring for S since September 2020.

97. We understand that the pandemic has made recalling exact dates difficult for all of us. But the presence of an un -DBS checked person in the setting for an extended period is a concern; and given that the Appellant made witness statements in these proceedings and gave evidence on oath, we would have expected rather more clarity on these issues by the time of the hearing before us than we found. We conclude therefore that at the very least Mrs Ofori-Atta's mother was present in the setting for a sufficient period, even allowing for 2 week rotations with her son, to have required notification and DBS checking that was not initiated and that this period extended *at least* from October 2021 through to March 2022.
98. As noted the early concern about children's access to risks in the kitchen identified in 2015 was picked up again in the 3 March 2022 inspection by Ms Gordon, and these were swiftly put right by the time of Dr Moroz's monitoring visit on 22 March; but even allowing for the fact that Mrs Ofori-Atta was quite unprepared for an inspection in September 2022, and the limited weight in this regard we have indicated we will give this particular part of this inspection, there were still concerns more widely at that point about the longer term condition of the premises: there were dangerous cabinets in the kitchen, broken tiles in the kitchen, sharp edges on a bathroom mirror and peeling paint on a wall. And even though the Appellant said that she was not intending to take children at this point, she had by then appealed the Respondent's decision and indicated a desire to continue to do so.
99. Set against these persistent failings is the Appellant's participation in learning that should have given her the relevant knowledge. She noted in her statement that she had undertaken an online safeguarding course with the local authority in February 2022 and again in October 2022 and exhibited to her statement slides demonstrating that it dealt with safeguarding in detail. She also noted attendance at PACEY safeguarding training, date unclear. We would also note that it was recorded in the WRN dated 5 January 2022 and in Mrs Ofori-Atta's own training log that she had also undertaken training on safeguarding including FGM and radicalisation in November 2021 (See bundle, pages H145 and I168). All of this was confirmed in the Appellant's oral evidence. Mrs Ofori-Atta accepted that on the basis of the course attendance and any additional reading she had done, she should have been able to answer the questions put to her by the inspectors. She said at times that she was nervous and did not consider that the training she had attended had dealt with the Prevent duty in detail, nor with Channel. But she also accepted that it was her responsibility to be up to date with her learning and that she understood the importance of being able to identify any emerging issues to the children for whom she cares whether that is physical or emotional abuse, neglect or potential exposure to extremism. We were also unsure about the Appellant's apparent change of heart about attending the 8-10 week course in November 2022. It seemed to us that much was made of this intention in the statement, but that a decision not to proceed

with this was not communicated in evidence. Mrs Ofori-Atta admitted orally that she should have corrected her statements but could not really explain why she had not done so.

100. In cross-examination Mr Gilmour took issue with the Respondent's decision to cancel the Appellant's registration on 10 March 2022 without waiting for the deadline for compliance with the WRNs on 18 March 2022 to elapse first. We did not consider that this was a significant issue. The aim of the WRNs was to require the Appellant to rectify immediate concerns of a specific nature. They were not intended to act as a proxy for the wider inspection just conducted and it could not be extrapolated even from compliance with the WRNs that the issues from the 3 March appeal were thereby resolved. The inspectors said, fairly in our view, that they took the outcome of the monitoring visit into account after the event and would have used the evidence as part of a continuing review of the decision. But we accept that it was not necessary to wait for 18 March to pass before making a cancellation decision.

101. We conclude that this part of the case made by Ofsted is also made out.

Alleged failures to maintain appropriate records and/or alleged failings in process and procedures.

102. The last area of focus for the Respondent's case relating to this appeal was in relation to what it said were continued weaknesses in the Appellant's policies and procedures documents, and in her record- keeping. Again, it was said that some of the issues identified went back as far as the 2006 inspection.

103. It was clear that the Appellant's document keeping was not satisfactory, at least until late 2022. In 2006 it was noted (bundle, H492) that not all of the Appellant's documents on promoting welfare were complete or well-maintained, a point conceded by the Appellant in her evidence (bundle, page I5). Concerns of a similar nature were also expressed in 2009 this time in relation to the Appellant's emergency evacuation process and procedures, and the lack of records monitoring progress of children in the setting (the latter of which has never really been put right other than in the production of pro formas).

104. In October 2021 the lack of organisation or preparedness of her paperwork- was noted (bundle, H5) – she had not got everything ready, documents were said to be disorganised and mostly kept on scraps of paper. The report referred to records as 'disorganised and haphazardly kept' (bundle, H83). In September 2022 the inspector noted that the documents were not in order and the Appellant had had to search for them. The inspectors did not comment on record- keeping thereafter.

105. In 2015 the Appellant had failed to show her Ofsted certificate or make available contact details for parents. These issues persisted in 2021, when the Appellant was caught putting up the Ofsted certificate after the inspector had arrived.

106. The 2015 inspection also noted the lack of a complaints' procedure and the lack of a written statement of procedures for the protection of children which was a

requirement of the General Childcare Register. At the October 2021 inspection the Appellant still lacked a written complaints procedure and this was only put right by the December 2021 monitoring visit.

107. The lack of prior consent from parents to emergency medical treatment was a recurring issue in both 2006 and 2009 and in her written evidence the Appellant said she had corrected this at the time. But her evidence in support of this stemmed from various dates in 2020-2022, and the only consent form available to us from a parent for treatment was dated September 2021. This dealt only with the administering of routine medication not the seeking of medical advice or treatment for a severe injury (see H497). The inspector criticised the forms kept in relation to S as lacking in detail about immunisations, details of allergies or who the child's health visitor was (bundle, H63). Although the Appellant said she had minded a significant number of children in the period since 2006, we did not see evidence or examples of other forms completed by parents which supported the Appellant's case.
108. One key consistent difficulty has been the Appellant's safeguarding policy document and content. In 2015, the policy was noted not be in line with the process of the local Safeguarding Children's Board (LSCB) as it did not deal with the issue of mobile phones or cameras in the setting. By the time of the 2021 inspection, this particular issue had been addressed, but the Appellant only had copies of relevant documents on her phone and did not have copies available for parents or others to look at. The inspector said the Appellant lacked a good knowledge of what it said. The relevant policies were emailed to the inspector in January 2022 and were found to be in line with requirements. Documentation was noted in March 2022 but there were no issues in relation to the accident and injury log or complaint log or the safeguarding policy itself (only the Appellant's understanding of the latter).
109. In March 2023 however, Dr Moroz noted at her inspection that the safeguarding policy did not record the correct procedure for reporting allegations against the Appellant herself, and Dr Moroz noted that not having a written policy on safeguarding children from abuse or neglect was a breach of the requirements of the General Childcare Register, if not of the Early Years Register. The Appellant said that this policy was not the one that had been sent to Ofsted the previous year (Bundle K28).
110. The only other substantive area of dispute as to the evidence of the Respondent's inspectors came in relation to the finding by Ms Wink that the Appellant did not have a good knowledge or understanding of the need to maintain written accident and injury records (Bundle, H244). Mr Gilmour said that the Appellant had always had such a record and did not accept that the Appellant had asked about the reason for keeping such records. The question or comment ascribed to Mrs Ofori-Atta by Ms Wink is not contained in the record of the inspection itself but is found in the WRN issued shortly afterwards; in the pre-ambule to the notes of the monitoring visit from November 2022 and in Ms Wink's statement. We do not consider it necessary to resolve whether the question was asked, since it is a minor point and the more important question is whether in substance the Appellant had and maintained an accident and

injury book and understood its importance. It is clear to us that in her answers in the September 2022 inspection the Appellant was confused as to the correct process and did not say in terms that she would record an injury in the accident book. Even with no children present, and when not expecting to have any child join the setting, we would expect the Appellant to have this knowledge after almost 20 years as a child minder. We appreciate that by the time of the monitoring visit in November, the Appellant had regained her knowledge and satisfied the inspector; but this concern bears a worrying similarity to the experience of Ms Maher who was told in October 2021 (bundle, H64) that the Appellant would write down any allegations of abuse on 'a piece of paper' and who said that the Appellant clearly hadn't realised that she had documents that included forms for logging accidents and injuries.

Paediatric first aid certificate (PFA)

111. Like Ofsted we were unable to get to the bottom of the issue of when the Appellant's PFA had expired prior to the October 2021 inspection. The previous certificate was never produced either to one of the inspectors or to us and the reason for this was unclear. We were surprised to hear the Appellant say that she thought she had disposed of this document which one might conclude would be highly relevant to an appeal. We noted the evidence available that in 2015 the certificate was valid and due to expire in January 2017. It was noted at the case review meeting (H162) that the Appellant's PFA certificate had expired on two previous occasions- before 18 November 2014 and again by 22 January 2018 but it was not clear to us when it had been renewed after that date, and how any such renewal was consistent with the 3-year validity of such certificates and an expiry date shortly prior to October 2021. It is not necessary for us to reach any decided conclusion on this, but in our view, it is more likely than not that there was at least some significant period between January 2018 and October 2021 when the most recent PFA was obtained when the Appellant was without a valid certificate.

Does the Appellant's situation meet one or more of the requirements in section 68(2) Childcare Act 2006 and, if so, is cancellation proportionate and necessary?

112. It was the general thrust of the Respondent's case not only that the Appellant had a record of persistent problems with her childminding practice throughout her inspection history but also that the persistence of the problems and the recurrence of allied issues in key areas demonstrated that the Appellant could not sustain improvements that she did make to her practice. This was the key reason why it was necessary and proportionate to cancel the Appellant's registration because she had demonstrated that she was not capable of fully meeting all of the standards.
113. Mr Gilmour accepted in closing submissions that the Appellant's situation was 'close to the line' for de-registration but was on the right side of it. He accepted that the specific requirements of the Act were met but relied on necessity and proportionality. He pointed to the 19 years that Mrs Ofori-Atta had spent childminding; the receptiveness to the advice and judgments of the Respondent and the lack of any hostility to their involvement. He said that Mrs Ofori-Atta

was not someone who had no interest in working with the Respondent or the LA; she was also not dishonest or the subject of any complaints by users. There was no suggestion of any child coming to any harm in her care and it was accepted that Mrs Ofori-Atta had a good bond with the last child she minded, S and was keen to improve. He said that it was not right to say that Mrs Ofori-Atta had 'only sustained failure' in her time as a childminder and that although there had been failures to meet some requirements on each occasion, these should not be determinative.

114. Mr Gilmour noted that Mrs Ofori-Atta had demonstrated she could make improvements and he drew attention to two specific examples: the improvement in her safeguarding knowledge between October and December 2021; and the improvement in her knowledge of the signs of domestic abuse in children between the September 2022 visit and the December monitoring visit. He referred to the 'upward trajectory' in Mrs Ofori-Atta's care and abilities since March 2022 (save for the issues in September 2022 on which he invited us to place little weight).
115. We want to record at this point that there has never been any suggestion in these proceedings that children have ever been unhappy in the Appellant's care; we accept that she had a good bond with the child, S and that there is no suggestion that any child has ever come to harm in her care. Other than some hygiene concerns at various points, there has been no suggestion of any physical risk to the children in Mrs Ofori-Atta's setting. We accept what she says to be true- that she enjoys childminding and loves children and that she wants to continue in a role for which she clearly has some passion.
116. We accept also much of what Mr Gilmour says to be true. We accept that the Appellant was trying her best, and that latterly she did seem to have made some improvements in certain areas of her practice: her safeguarding knowledge is improved and her understanding of the EYFS and its learning requirements is also much more developed. But in the final analysis we have concluded on balance that this is still not enough. It remains the position that the Appellant has not completely met the standards at any of the 4 inspections since 2015, and even then there were concerns raised. The concerns persist about her overall knowledge of the EYFS and her ability to plan and execute purposive learning. The evidence from the March 2023 inspection and her oral evidence to us do not show that she is even now reaching the standard, even though these were issues raised with her at least as long ago as October 2021.
117. Furthermore, whilst it is apparent that the Appellant has undertaken very extensive training in relation to safeguarding and child protection her knowledge of the various elements of it is not sound. We agree with Mrs Ofori-Atta that there is a lot to know. But there are sadly many ways that a child can be at risk of harm. We did not understand the Respondent to be saying that Mrs Ofori-Atta had to know and be able to reel off all of her learning. But it *is* key that she has sufficient knowledge to recognise the signs or indicators of problems, and to make quick, appropriate decisions about recording information and making suitable referrals. We are sorry to say that the evidence from the various inspections was that Mrs Ofori-Atta could learn the theory but struggled to apply

it in practice to scenarios put to her. She often is aware she needs to do something but is confused as to what it is. The repeated WRNs on similar issues bear this out. Ofsted need to be satisfied that if there is a safeguarding concern, whether that be physical abuse, emotional abuse, allegations against Mrs Ofori-Atta or a member of her family, or concerns about potential radicalisation, that the Appellant will record any necessary evidence that comes to her but will not contaminate or compromise any potential investigation into it or compromise the safety of a child. It seems to us to be insufficient to say that the Appellant has known it all at various times in her practice and that the issues that arise are in respect of different areas of knowledge. It needs to remain consistently at the forefront of her work. The repeated issues at inspection, and the fact that repeated training has only had limited impact leads us also to conclude that the Appellant is unlikely to be able to sustain any progress on her safeguarding knowledge over time.

118. Lastly, we also agree that there remain deficiencies in the Appellant's record keeping and policies. It has been consistent that the Appellant's record keeping has been poor; and we found it surprising that the Appellant had never been able to produce the PFA prior to the one she obtained in October 2021 to demonstrate that she continuously complied with a vital requirement of being able to offer first aid in an emergency. Although she did remedy some of the deficiencies in her paperwork at times, issues re-emerged again later- and her safeguarding policies were again deficient in March and April 2023.
119. We find that the Appellant has therefore not secured that her early years provision meets the learning and development requirements or complies with the welfare requirements. She is therefore in breach of the requirements of section 40 of the Act and her registration falls to be cancelled under s. 68(2)(d). We also find that for the same reasons, and for other pertinent failures to have appropriate written procedures at various times, the Appellant is no longer suitable to be a child minder and therefore no longer meets the requirements for registration in the general childcare register compulsory or voluntary parts set out in the Regulations⁸. Her registration as a childminder falls to be cancelled under s. 68(2)(a).
120. We have considered the arguments on necessity and proportionality carefully, but for the reasons given immediately above, have concluded that it is both necessary and proportionate to cancel the Appellant's registration. As a result, the appeal will be dismissed.

Conclusion

121. We appreciate that the decision we have reached will be very disappointing to the Appellant. We were struck during the hearing by her evident love of children and her animation in discussing her enjoyment of the role of looking after them. But we are satisfied that the role of registered child minder, and the obligations as the designated safeguarding lead that come with it are not ones that Mrs Ofori-Atta can completely fulfil or that fit her skill set. There was discussion in the hearing of other roles for which her skill set might be better suited, for

⁸ The Childcare (General Childcare Register) Regulations 2008 SI 2008 No. 975.

example working in a nursery. Whilst as a result of this decision the Appellant would need to apply for a waiver from Ofsted to undertake such a role, Ms Wildman said that such an application in those circumstances would be sympathetically considered against the differing criteria that apply (recognising of course that no guarantees can be given in advance about any decision on specific facts). It is of course a matter for Mrs Ofori-Atta herself; but we consider that at this juncture that might be a more appropriate route for her to consider.

Decision:

The appeal is dismissed.

The decision of the Chief Inspector of the Office for Standards in Education, Children's Services and Skills, dated 14 June 2022 to cancel the registration of Mrs Caroline Ofori- Atta is confirmed.

**Scott Trueman
Tribunal Judge**

First-tier Tribunal (Health, Education and Social Care)

Date Issued: 18 May 2023