



## Care Standards

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

2024-01326.EY-SUS  
[2024] UKFTT 001155 (HESC)

Hearing held via CVP on 23 December 2024  
Deliberation: 24 December 2024.

Before

Mr H Khan (Judge)  
Ms S Jacoby (Specialist Member)

Ms Marcia Janice Steele

Appellant

-v-

Ofsted

Respondent

### DECISION

#### The Appeal

1. Ms Marcia Janice Steele (“the Appellant”), appeals to the Tribunal against OFSTED’s (“the Respondent”) decision dated 21 November 2024 to suspend her registration for further period of six weeks from 22 November 2024 to 2 January 2025 pursuant to section 69 of the Childcare Act 2006 (‘2006 Act’) and the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 (‘2008 Regulations’).

2. The decision relates to her registration on the Early Years Register, Compulsory part of the Childcare Register and voluntary part of the Childcare Register.

### **Attendance**

3. The Appellant represented herself.
4. Mr P Saigal, Solicitor, represented the Respondent. Ms Sarah Stephens, Early Years Senior Officer gave oral evidence.
5. The following witness evidence was read;
  - Darris Thomas, Bailiff
  - Karen Dover, Bailiff
  - Sid Walters, Parent
  - Janel Palmer, Parent
  - Sandeep Mohan, LADO
  - Naomi Brown, EYRI
  - Emma McCabe, EYSO

### **Video Hearing**

6. This was a remote hearing. The form of remote hearing was by video. The documents that we were referred to are in the electronic hearing bundle (1623 pages). There was also video evidence.
7. The hearing started at 10am and finished at around 5.40pm.

### **Restricted reporting order**

8. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the children or their parents in this case so as to protect their private lives.
9. The Tribunal was asked by the Appellant to extend the reporting restriction to her family members on the grounds that they were vulnerable. We concluded on balance that such an extension of the reporting restriction was neither necessary nor proportionate. These are public proceedings. We considered that there was a strong public interest in the principle of open justice which outweighed the impact on the private and family life interests of the Appellant's family.
10. We do however wish to acknowledge that these proceedings only relate to the Appellant and not any members of her family.

### **Preliminary Issue**

11. The Appellant set out in her skeleton argument that as a litigant in person and a full-time worker, she had been unable to read through the entire bundle. The Appellant had also raised concerns about the documents from previous hearings being included in the bundle.
12. We noted that the new documents for this hearing were few and that the main the bundle included documents from previous hearings. We did not consider that this would prejudice the Appellant. She was aware of the documents, had been served with a copy of the hearing bundle, and had the opportunity to read them. In any event, she had had the opportunity to read them previously.
13. The Appellant at the hearing made it clear that she had read the hearing bundle and wished to proceed with the hearing.

### **Late Evidence**

14. The Tribunal was asked to admit additional evidence by the Appellant pursuant to an application dated 23 December 2024. This was late evidence which consisted of a number of documents. The documents included self-evaluation forms dated 2012 and 2015. There was also information in support of the application made in respect of the reporting restriction. The application was not opposed by the Respondent on the basis that it could submit its written response. Neither party objected to the other's application or response.
15. We admitted the late evidence and gave the parties the opportunity to make submissions in respect of what weight should be attached to the evidence if they considered it appropriate.
16. In considering any late evidence, the Tribunal applied rule 15 and took into account the overriding objective as set out in rule 2 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008.

### **“Without Prejudice” Correspondence**

17. The Appellant raised an issue with regards to “*without prejudice*” correspondence being included in the hearing bundle. The correspondence in question which is marked “*without prejudice*” largely related to correspondence between the Appellant and parents. That correspondence did not relate to these proceedings. Insofar as there was any other correspondence in the bundle marked “*without prejudice*” (such as that between the Appellant and the Respondent) that was brought to our attention, the Respondent made it clear that “*there was nothing to negotiate and there have been no negotiations of any sort between the parties.*” In fairness, the Appellant acknowledged that she had received

advice which had advised her to mark correspondence as “*without prejudice*”. For example, she had marked correspondence “*without prejudice*” which related to arranging a meeting with the Respondent (dated 29 July 2024). The Appellant was invited to set out any particular correspondence and informed us that she had not gone through the bundle to identify all the correspondence. In any event, none of the correspondence marked “*without prejudice*” had any material impact on the final decision.

**Events leading to the issue of the current notice of statutory suspension.**

18. The Appellant has been a registered childminder with Ofsted since 8 March 2011 initially from 9 Olivers Court, Shefford, Bedfordshire SG17 5FJ.
19. This is the sixth period of suspension overall but not consecutively. The initial suspension period was from 13 March 2024 to 23 April 2024. The second period of suspension was from 24 April 2024 to 4 June 2024. The first two periods of suspension were not appealed and the Appellant accepts that the threshold for these periods of suspension was met.
20. On 31 May 2024, the Appellant’s suspension was lifted as the Appellant stated that she was taking an eight-week break from childminding, had no suitable premises to childmind from and was moving to a new property. Therefore, according to the Respondent, there was no identifiable risk of harm to children as there would be no children in her care.
21. On 19 July 2024 the Appellant was again suspended based on new information presented to the Respondent at a meeting convened by Bedford Borough Council LADO and a reasonably held belief that the provision of childcare may expose children to a risk of harm. The suspension was for a period of six weeks until 29 August 2024. The Appellant appealed against this period of suspension and the appeal was dismissed following an oral hearing on 22 August 2024 (decision notified on 28 August 2024) – case reference 2024-01192.EY-SUS.
22. A further decision to continue suspension for a further six weeks was made by the Respondent on 30 August 2024 and was due to expire on 10 October 2024. The Appellant appealed against this period of suspension and the appeal was dismissed following an oral hearing which took place on 1, 8 and 9 October 2024 (full decision dated 23 October 2024) – case reference 2024-01236.EY-SUS.
23. A further decision to continue suspension for a further six weeks was made by the Respondent on 11 October 2024 and was due to expire on 21 November 2024. The Appellant appealed against this period of suspension and the appeal was dismissed following an oral hearing on 14

November 2024 (full decision dated 20 November 2024 – case reference 2024-01268.EY-SUS).

24. The decision under appeal which was to continue suspension for a further six weeks was made by the Respondent on 22 November 2024 to expire on 2 January 2025.

### **Legal framework**

25. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. Section 69(1) of the Act provides for regulations to be made dealing with the suspension of a registered person's registration. The section also provides that the regulations must include a right of appeal to the Tribunal.

26. When deciding whether to suspend a childminder, the test is set out in regulation 9 of the 2008 Regulations as follows:

“that the Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.”

27. “Harm” is defined in regulation 13 as having the same definition as in section 31(9) of the Children Act 1989:

“ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another”.

28. The suspension shall be for an initial period of six weeks, which can be extended by a further period of six weeks where based on the same circumstances. Thereafter it can only be extended, under regulation 10 where it is not reasonably practical for the Chief Inspector, for reasons beyond her control, to complete any investigation into the grounds for her belief under regulation 9, or, for any necessary steps to be taken to eliminate or reduce the risk of harm referred to in regulation 9. In those circumstances the suspension may be extended. Suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist. This imposes an ongoing obligation upon the Respondent to monitor whether suspension is necessary.

29. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector and so in relation to regulation 9, the question for the Tribunal is whether at the date of its decision it reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.

30. Regulation 10 sets out further provisions relating to suspension. Regulation 10(2) deals with further periods of suspension which allows a further period of up to 6 weeks suspension to be imposed if it is based on the same circumstances as the previous period of suspension. This may only be exercised to give a continuous period of suspension of 12 weeks unless subsection 3 is satisfied, in which case the period of suspension may continue beyond 12 weeks.
31. Regulation 10(3) provides that where it is not reasonably practicable to complete any investigation (10(3)(a)) or for any necessary steps to be taken to eliminate or reduce the risk of harm (10(3)(b)) the suspension may continue until the investigation is concluded or the risk of harm is eliminated or reduced. It is the Respondent's position that 10(3)(b) applies and that the steps being taken by the Respondent are to cancel the Appellant's registration.
32. The burden of proof is on the Respondent. The standard of proof 'reasonable cause to believe' falls somewhere between the balance of probability test and 'reasonable cause to suspect'. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child might be at risk.

### **Evidence**

33. We took into account all the evidence that was presented in the bundle and at the hearing. We have summarised the evidence insofar as it relates to the relevant issues before the Tribunal. We wish to make it clear that what is set out below is not a reflection of everything that was said or presented at the hearing.
34. Ms Stephens set out that on 12 March 2024 the Appellant was evicted from her home (and childminding address) at 3 Steele Walk, Wootton, Bedfordshire MK43 9RH.
35. Ms Stephens set out the Respondent's case which was that in the course of a lengthy eviction process lasting over nine hours minded children were exposed to a very unpleasant environment witnessing the Appellant resisting the eviction that potentially left them traumatised. Ms Stephens explained that the Appellant was aware that the eviction was going to take place but made the decision to accept children into her care that day, *including* later in the evening while the eviction was ongoing.
36. The investigation by the other agencies including the police and the LADO having concluded, the Respondent was able to view the Body Worn Footage first from the police on 19 July 2024 and subsequently from the bailiffs' office. This, according to the Respondent, showed that the Appellant's actions on 12 March 2024 exposed children to significant emotional distress which could have been prevented had the Appellant conducted a robust risk assessment and put children's safety first.

37. Ms Stephens explained that there had been no change in circumstances since the last appeal that would reduce the risk of harm at this case and there is no new or further information since the last appeal which would ameliorate its concerns regarding the Appellant. Accordingly, the imposition of a further suspension period from 22 November 2024 was necessary and proportionate. The Appellant continues to lack insight into the 12 March 2024 incident which significantly impacts on her ability to safeguard children.
38. Ms Stephens explained that since the current suspension notice was served on 22 November 2024, the Respondent has concluded its enquiries and has determined that the Appellant's registration must be cancelled as she is no longer considered suitable to provide childcare. On 4 December 2024 the Appellant was issued with a NOD to cancel registration on the basis that she no longer meets the prescribed requirements of registration and is no longer considered suitable to provide childcare. The Respondent's position is that the Appellant's registration should remain suspended whilst steps are being taken to cancel her registration, as otherwise the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm.
39. Ms Stephens explained that her concerns included that the Appellant would prioritise her needs over the children, the Appellant lacked insight, had a profound lack of awareness of the impact of the day of the eviction on the children, failed to take responsibility for her actions, could not see another perspective and blamed others.
40. The Respondent's case is that the Appellant continues to lack insight into the 12 March 2024 incident which significantly impacts on her ability to safeguard children.
41. The Appellant disputed the Respondent's case that she would prioritise her needs over other children. She stated that the evidence did not support this. Her thinking on the 12 March 2024 was that she considered the eviction to be illegal. She did not think it would go ahead. She acknowledged that this was "arrogance" of her thinking. The Appellant accepted that she should have taken "*a more cautious route*" than she did. However, it was the High Court Enforcement Officers who created a breach of the peace and it was the actions of the High Court Enforcement Officers and the police that created a risk. There had been an agreement for the eviction not to proceed until 9:45 PM, which was when the last child was scheduled to leave her home.
42. The Appellant maintained that she did risk assess in consultation with others including social services and the police and the children were deemed to be safe in her care whilst the eviction took place, and those feeding information to the Respondent were malicious and had an axe to grind with her.

43. The Appellant further contended that the Respondent's continued suspension of her registration was disproportionate, particularly considering the remediation measures she has undertaken, including months of reflection, moving to a new home, completing safeguarding training, and receiving support from parents.

### **The Tribunal's conclusions with reasons**

44. We took into account all the evidence that was included in the hearing bundle and presented at the hearing. For the avoidance of any doubt, we have taken into account all the evidence presented even if we don't refer to it below.

45. We wish to place on record our thanks to the Appellant, Mr Saigal and Ms Stephens for their assistance at the hearing.

46. We remind ourselves that the standard required to justify a suspension is not a high one. During the short period of the suspension, it is for the Respondent to investigate matters to determine if there is a case for longer-term enforcement action, or whether the outcome of the investigation is that there is no longer reasonable cause to believe children may be harmed.

47. We reminded ourselves of the lower threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts.

48. We concluded that we were satisfied that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm. Our reasons for doing so are set out below.

49. We found Ms Stephens to be a credible and reliable witness. Her evidence was balanced, fair and was corroborated by the presented documentary evidence. We acknowledge the Appellant's detailed evidence including her reflection on the events of 12 March 2024.

50. We acknowledge that, according to the Respondent, this is the sixth period of suspension overall. There have also been 3 previous first-tier Tribunal decisions in relation to the previous suspensions. We wish to make it clear that despite constant references at the hearing to the conclusions of the previous first-tier Tribunal's, we determined this matter afresh and based on the evidence that was presented to us either in the hearing bundle or at the hearing.

51. In the present case, Ms Stephens has made it clear that during the previous periods of suspension, it was for the Respondent to determine if there was a case for longer-term enforcement action, or whether the



outcome of its enquiries was that there is no longer reasonable cause to believe children may be harmed. Those enquiries have now been concluded and the Respondent has determined that the Appellant's registration must be cancelled as she is no longer considered suitable to provide childcare.

52. Accordingly, the Respondent's case now is that it has concluded its enquiries and found that very real and substantial concerns exist about the quality of the Appellant's provision and her suitability, which impact on children's safety. The Respondent's position is that, at present, the Appellant's registration should remain suspended, as the only means of eliminating or reducing the risk of harm.
53. We acknowledge that at the hearing the Appellant informed the Tribunal that she had reflected on the events which led up to the suspension of the registration in the first place. We acknowledge that her evidence included that she had considered that the eviction on 12 March 2024 was "*illegal*" and therefore would not take place. We also acknowledge that she "*feels awful about the impact on children*".
54. However, whilst we acknowledge that the Appellant was now offering some emerging insight into the events of 12 March 2024, nevertheless, we were concerned about the extent of the Appellant's insight. For example, the Appellant after referring to her own "*arrogance of thinking*" in relation to thinking the writ of possession would not be executed, continues to attribute blame on a plethora of professionals including the Police, the High Court Enforcement Officers (for carrying out the eviction earlier) the Local Authority (for carrying out a risk assessment which it denied) and others.
55. We were concerned about the Appellant's current ability to make appropriate risk assessments regarding children in her care. The Appellant despite reflecting on events on 12 March 2024, continues to make reference to events before and after 6pm as justification for having the children on the premises. The reference to 6pm being after her application to stay the eviction proceedings was refused by the Court.
56. The Appellant knew in advance that the High Court Enforcement Officers would be attending the premises on 12 March 2024 and there was a real possibility, despite her belief that the eviction was illegal, that the eviction would take place. She was also repeatedly urged by bailiffs and police, throughout the day, to provide contact details for parents for children to be collected and moved out of harm's way but refused to do so.
57. We were concerned that the Appellant, despite her reflection, continues in her belief that her actions on the day including having children on the premises were justified to some extent and that others including the police and the bailiffs are to blame for the chaos that ensued.

58. Whilst we acknowledge that there is some emerging insight, we are not satisfied that this is enough at this stage to satisfy us that the continued provision of childcare by the Appellant to any child may not expose such a child to a risk of harm. In our judgement, the Appellant continues to lack the depth of insight into the 12 March 2024 incident which significantly impacts on her ability to safeguard children.
59. In reaching our decision, we also took into account a range of factors including the Appellant's circumstances and the disputed nature of the allegations. We acknowledge that the Appellant has been a registered childminder since 2011 and has had a "Good" Judgment previously. However, on balance, taking into account all the circumstances of the case, we consider that the continuation of the suspension is both appropriate, necessary and proportionate.
60. We reminded ourselves that suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist. This imposes an ongoing obligation upon the Respondent to monitor whether the suspension is necessary.
61. We conclude therefore that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm.
62. For the avoidance of any doubt, we wish to make it clear that we are not making any findings of fact. That is a matter for the cancellation proceedings.

### **Decision**

63. The Respondent's decision dated 21 November 2024 to suspend the Appellant's registration is confirmed and the appeal is dismissed.

**Judge H Khan**

**Date Issued: 30 December 2024**

