

First-tier Tribunal Care Standards

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

Hearing at Royal Courts of Justice on 23/07/24 – 25/07/24

NCN: [2024] UKFTT 737 (HESC)

Case No. [2023] 01005.EY

BEFORE
Tribunal Judge - Timothy Thorne
Specialist Member – Mr. J. Hutchinson
Specialist Member- Ms. J. Heggie

BETWEEN

Mrs JP

Appellant

-v-

Ofsted

Respondent

DECISION

Representation

The Appellant: Mr Nicolas Levisieur, Counsel

The Respondent: Mr Praveen Saigal, Solicitor/Advocate, Ofsted

The Appeal

1. This case involves the appeal of JP against the decision of 15 November 2023 to cancel her registration as a childminder on the Early Years Register and both the compulsory and voluntary parts the General Childcare Register under section 68(2) of the Childcare Act 2006.
2. Ofsted made the decision to cancel the Appellant's registration because she is no longer considered suitable by Ofsted to meet the prescribed requirements for registration set out in the Statutory Framework for the Early Years Foundation Stage (EYFS) and the General Childcare Register. The

Notice of Decision sets out the detailed reasons. The Appellant's case in relation to this is that these allegations are denied.

Restricted Reporting Order

3. 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 users of the service in this case so as to protect their private lives.

Late Evidence

4. During the hearing the Appellant and Ofsted submitted new evidence contained within a supplementary bundle. In relation to all of this new material, the Tribunal applied rule 15 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008 and took into account the overriding objective as set out in rule 2 and admitted the late evidence (as and when such applications were made) as it had some relevance to the issues in dispute.

The Hearing

Evidence on behalf of the Respondent

5. The Tribunal heard the oral testimony and took into account the written evidence of the following witnesses:
 - a. **Natalie Moir**, Ofsted Regulatory Inspector
 - b. **Julie Swann**, Ofsted Senior Officer
 - c. **Amanda Hitchcock**, LADO, Surrey Council
 - d. **Ross Linaker** Acting Detective Inspector
6. Their evidence can be summarised as follows: The Appellant was registered as a childminder with Ofsted in December 2002. She has an 'outstanding' inspection history. The Appellant's husband was separately registered as a childminder with Ofsted but chose to co-childmind together, keeping one register of children between them from their home address. Also living with them were their son and daughter, now aged 23 and 14 respectively. The Appellant's husband's registration has now been cancelled.

7. On 29 June 2023, the Appellant notified Ofsted that her husband had been arrested on an allegation of oral rape against a two-year-old female who had been minded by them both in the past. According to the Ofsted witnesses, at the time of the alleged incident, the Appellant would routinely take the older minded children out of the home for outdoor activities, and leave the younger children in the sole care of her husband.
8. On 30 June 2023 Ofsted suspended the registrations of both the Appellant and her husband pending the police investigation into the allegation. The police confirmed that during a search of the home they had seized a large number of electronic devices, sex toys, and a handwritten letter from the Appellant believed to have been written by her in 2015.

The handwritten letter and the Appellant's concerns about her Husband & Home Environment

9. The letter was undated but references to the Appellant's children indicate it was written by the Appellant in or around 2015, a time when the Appellant and her husband were childminding together. The letter contains references to her husband having an affair and stating "...I don't trust him at all. He revolts me at the moment - I have woken in the past to find him groping at my breasts while he masturbates and it makes me feel ill. I know he looks at porn." The Appellant also writes that she is "very worried about his [her husband's] attitude to sex, especially as our little girl gets older". She describes him as "untrustworthy, abusive and very manipulative" and that she had 'considered suicide' as 'I couldn't see any way out.' She states within the letter that she cannot imagine her life without him. The letter is an exhibit in the case and the Tribunal has read it in its entirety.
10. Ofsted's witnesses stated that the letter showed that the Appellant had serious concerns about her husband and that it demonstrates reliance on him and their relationship. Ofsted's witnesses were very concerned that they were not notified by the Appellant of these serious concerns about her husband, nor about the Appellant's own mental health and wellbeing. Nor had she informed any other safeguarding authority. This raised concerns for

Ofsted regarding the suitability of the Appellant.

11. Ofsted's witnesses stated that Ofsted is also concerned that despite having written that she was worried about her husband's attitude to sex and the risk this could pose to their daughter, the Appellant had, since the letter was written, continued to leave her husband alone with minded children. Furthermore despite expressly harbouring thoughts of suicide she continued to care for minded children and did not seek medical attention in respect of this.
12. On 25 August 2023 a regulatory suspension monitoring visit was undertaken to the Appellant's home. According to Natalie Moir, the Appellant told inspectors that the handwritten letter was written not long after her daughter was born. When it was put to her that references to the Appellant's children contained within the letter indicated it had been written in or around 2015 she continued to maintain that the letter was written when her daughter was first born, stating 'no, it can't have been written at that time. It can't have been.' The Appellant claimed that the letter had been written to a counsellor and that the letter had been given back to her when counselling had ended. Ofsted's witnesses stated that that this is inconsistent with what she told the police, i.e. that the letter was written to a friend but never sent.
13. According to Natalie Moir, when asked about her concerns in the letter about her husband's attitude to sex and his intentions towards their daughter, she stated that 'she was afraid for her daughter' as he may pursue an incestual relationship with her 'as she got older when she was about 16 or 17'
14. According to Natalie Moir, when asked what she had done about her concerns for her daughter she claimed to have spoken to a counsellor who had told her that her husband was 'not the type' to harm their children. She had taken no further action as a result. As to whether this raised concerns about the minded children she said she had no concerns because they were younger, it was only because [husband's name redacted] was interested in

developed women’.

15. According to Natalie Moir, when asked about the arrangements between them for looking after children the Appellant stated that she tried not to leave her husband alone with minded children as she felt that ‘males are more at risk from allegations’. However, she then explained that she would leave her husband regularly each week to care for the younger children, who would often sleep.
16. According to Natalie Moir, when asked what consideration she had given to her own mental health at the time she had referenced suicidal thoughts in the letter, the Appellant stated, ‘I spoke to my counsellor I don’t remember doing anything else, except with the counsellor.’ When asked about what matters should have been reported to Ofsted, the Appellant indicated that she would ask a local authority network coordinator, who would tell her. When asked what she thought about the allegations against her husband, the Appellant stated that it was a false allegation and she did not think he had done anything.

Husband’s electronic devices

17. Ofsted’s witnesses stated that in relation to his electronic devices found at the Appellant’s home the Appellant’s husband admitted that there was pornographic material on them. Examination revealed indecent images of children as young as eight years old. On 2 October 2023. the Appellant’s husband was arrested on suspicion of taking and making indecent images of children (falling into categories A, B and C), sexual assault (against the Appellant based on the contents of her handwritten letter), and voyeurism (based on indecent images found on his electronic devices of the Appellant apparently asleep with her breasts exposed). Bail conditions included not to attend the family home (i.e. the registered childminding address) and not to have contact directly or indirectly with the Appellant (except to arrange child contact with their daughter via a third party). The Appellant’s husband did not oppose a police application for a Sexual Risk Order which was granted by Guildford Magistrates’ Court on 17 October 2023 and remains in place.

The Appellant's Attitude to Police Investigations.

18. Ofsted's witnesses stated that Ofsted also had concerns about the failure by the Appellant to assist the police in their enquiries. The Police approached the Appellant to request an evidential account, however the Appellant declined to answer any questions or to provide a statement to police. She believed the allegations against her husband to be false. Ofsted concluded that the Appellant's refusal raised concerns regarding her ability to comply with safeguarding responsibilities and her priorities.
19. Ofsted's witnesses stated that on 26 January 2024, the police stated that 'it is highly unlikely she (the Appellant) will ever provide an evidential account to support the investigation.' This raised concern with Ofsted that the Appellant continues to not understand and fulfil the requirements of her role as a registered childminder to assist police in their enquiries regarding the safeguarding and welfare of children, and immediately report if she had concerns about a child's safety or welfare.
20. Ofsted's witnesses stated that in respect of the investigation into Voyeurism and Sexual Assault with the Appellant as the complainant, this was closed by police with no further action because the Appellant did not wish to provide evidence in support of the investigation.

Concerns about visits to the Appellant's house and attitude to Ofsted

21. Ofsted's witnesses stated that on 1 August 2023 a regulatory suspension monitoring visit was undertaken to the Appellant's home. The Appellant presented as emotional and anxious during this visit and stated she was reliant on her husband for support, having a much smaller support network than her husband.
22. Natalie Moir stated that on 14 December 2023, she telephoned the Appellant to inform her of her continued suspension. According to Ms Moir, she checked on the Appellant's well-being by asking if someone was at home with her and the Appellant stated that she was at home with her husband. The Appellant then changed her response to 'my son [name

redacted] is at home'. According to Ofsted's witnesses this raised significant concerns that the Appellant's husband was still attending the Appellant's address and contacting the Appellant in breach of bail conditions.

23. Natalie Moir also stated in a witness statement that "...On 13 February 2024 I undertook an unannounced suspension monitoring visit to the Appellant's home address. On arrival at the address at 09:26am, it was apparent someone was home. There were two cars on the driveway, curtains open to all front facing ground floor windows and one window on the first floor, I could see lights on in the property. Despite this, no one came to the door, despite three attempts at making my presence known, two attempts were made by ringing the Appellant's doorbell, and a final attempt made by knocking on the front door, giving several minutes in between attempts..... EYRI Tara Naylor subsequently telephoned me back. She advised that she had spoken with the Appellant by telephone. The Appellant had confirmed to EYRI Tara Naylor that she was at home, but that she refused to grant me access. The Appellant explained to Ms Naylor that I had to make a prearranged appointment and that today was not convenient as she was completing an online training course. Ms Naylor had asked the Appellant if another day during the week would be more suitable, but the Appellant would not engage and provided no dates that would be more accommodating for her. As the Appellant had advised she would not allow me access to the home, I withdrew from the monitoring visit unable to complete it...."

24. Natalie Moir also stated in a witness statement that "...on 21 March 2024, I attempted to carry out a further unannounced visit to the Appellant's home address for the purposes of suspension monitoring. The Appellant's car was visible on the driveway. I made three attempts to gain entry to the property. It was evident that someone was at home. Through the outer glass door, I was able to see a figure of a person walk down the stairs and past the inner door towards the kitchen. I returned to my car that was not in view of the property and attempted to call the Appellant on both the landline and mobile numbers I had for her..."

25. Natalie Moir also stated in a witness statement that "...On 30 May 2024, I made several attempts to contact the Appellant to inform her of the outcome of the case review and her continued suspension. The Appellant did not answer any of my calls. As verbal contact could again not be made, an email was sent to the Appellant and her lawyers with a copy of the new suspension notice. An email response was received from the Appellant. In this email the Appellant claimed that she had not received any missed calls or messages from me. I responded quickly to her email and offered to call her immediately. No response was received from the Appellant...."

26. In cross examination Natalie Moir stated that she never saw minded children in the house and never saw the Appellant's husband in the house when he was not allowed to be there. She also never checked with the parents of minded children. She also agreed that whether the Appellant's husband was having an affair or not was not a matter for Ofsted. She also said that the Appellant had told her that she was hard of hearing and had mobility problems.

Concerns about St. Mark's Church

27. According to Ofsted's witnesses on 21 September 2023, the LADO informed Ofsted that she had been contacted by the safeguarding lead from St Mark's Church because the Appellant and her husband had previously run a playgroup in the local church and this had recommenced without the safeguarding lead's knowledge. The safeguarding lead stated that the Appellant arrived to set up the playgroup and left while the group took place, and then when the group had finished and the children had left, the Appellant and her husband had then returned together to clear away.

28. The safeguarding lead stated that they requested that the Appellant's husband leave the premises at which time the Appellant became distraught but continued to clear away. According to Ofsted this raised further significant concerns about the Appellant's judgement and that she either did not understand or had disregard for the potential safeguarding implications

and bail conditions of her husband that prohibited him from interacting with children.

29. In her oral evidence Julie Swan stated that the circumstances of the visit to the church showed that the Appellant had failed to properly consider the risks if children had been early arriving at the play group or late in leaving.

30. The Tribunal also heard the oral testimony and took into account the written evidence of **Acting Detective Inspector Ross Linaker**, Surrey Police. He confirmed that in relation to the Appellant's husband's electronic devices the following was found:

31. "Exhibit AL/05 – USB Device: The USB contained a folder called 'photos' that had several sub-folders, titled with female names. Within these folders were photographs of different females in various stages of undress. A total of 20 Indecent Images of Children were found to be saved on the device. There is one category A image, three category B images and sixteen Category C images. Also saved on this device was a sub folder named [J] that contained 91 images. 83 of these images are of [the Appellant] and all appear to have been taken covertly and mostly contain images of her naked / partially naked, whilst asleep or in the bath."

32. "Exhibit AL/08 – Hard Drive: The hard drive was found to contain a total of 23 Indecent Images of Children. One Category A, three Category B and nineteen Category C images, including one video. This video is a Category C Indecent video of child and has been taken covertly using an iPhone 5s and is angled upside down. The camera lingers for some time on the child playing on the seesaw and at approximately 29 seconds into the video, the suspect moves the camera closer, deliberately positioning the device to focus on the child's genital region. The device then is then placed on the ground and the child appears to say, what sounds like "ok now you can hold me", to which a male can be heard replying what sounds like "you're prepared to fall off" whilst laughing. The child was formally identified as a child who attended Piccolo's day care between the ages of 1 and 11. Further

photographs of the child were found within the same folder but with different created dates of 21.05.2015 and 10.07.2015, indicating that photographs of them have been taken on different occasions. Although these photographs do not meet the threshold of being indecent, they are angled towards her bare legs and appear to have been taken without her knowledge. A series of images that have been taken underneath a child's dress, were also found saved in a folder named on this device, however this child has not been identified. An additional 346 images / videos of children were found that, although not categorised as illegal, were considered indicative of a sexual interest in children or borderline in age. These images include naked photographs of children in a 'naturist' setting, images of children in swimwear and close-up images of female genital areas with what appears to be children's knickers on. Of note were the presence of several 'breast feeding' images (that appear to be screenshots taken from a mobile phone or tablet device). These images were found saved on the portable hard drive amongst a large amount of pornographic/sexually suggestive images of females of various ages. This device can be attributed to [the Appellant's husband] as there is an incoming message from a [TL] seen on the top of one of the images and this contact can be located within [his] mobile phone. Many photographs taken using a PENTAX camera, were also found saved on this device. These photos consist of females of various ages in their front gardens/public places and appear unaware that these photographs are being taken. One woman has been captured sunbathing and her breasts are exposed. Of note are a series of images taken of a school child in her uniform, the school has been identified as a secondary school located in Godalming."

33. Exhibit PKG/1 – Iphone: This was found to be an Apple iPhone 11 Pro Max and was seized from [the Appellant's husband] directly, with him providing the PIN to access the phone. The Device name is '[H]'s phone' with his email address as his Apple ID. A total of 12 Indecent Images of children were recovered from this device and categorised as follows: one Category A, one Category B and ten Category C. An additional 143 Images/Videos of children were found that, although not categorised as illegal, were

considered indicative of a sexual interest in children or borderline in age. These images include images of children in swimwear and close-up images of female genital areas with what appears to be children's knickers on. Of note are multiple videos of teenagers at a bus stop, which appear to have been taken covertly. This bus stop can be seen opposite the suspect's address, which would indicate these videos have been taken by someone upstairs, within the suspect's house."

34. "Exhibit TGF/6 – Imac: This device was found to contain a total of 3 Indecent Images of Children which are all Category C. An additional 99 Images/Videos of children were found that, although not categorised as illegal, were considered indicative of a sexual interest in children or borderline in age. This device can be attributed to [the Appellant's husband]"
35. "Exhibit SG/2 – Iphone S: Exhibit SG/2 was found to be an Apple iPhone S which was seized from the suspects address and confirmed by the suspect to be his current phone, but he refused to provide the PIN. The phone was therefore accessed by 'bruteforce' and found to have duplicate Indecent Images that had already been located on the other devices."
36. The witness also confirmed the following: "The investigation into the images found on the seized devices has now been submitted to the Crown Prosecution Service for charging advice in respect of the following charges sought by police: - • Between 19th January 2015 and 21st May 2015 have taken 2 indecent images of children, Category C. • Between 10th March 2015 and June 2019 have made 3 indecent images of children, Category A • Between 10th March 2016 and 2nd June 2019 have made 7 indecent images of children, Category B • Between 21st May 2015 and 18th July 2019 have made 50 indecent images of children, Category C There are no current timescales for CPS to complete their review of the case in this type of offence."
37. The witness further confirmed that "In respect of the original investigation into the oral rape of the young child this has been closed by police with no

further action taken against [the Appellant's husband]. The reason the investigation was closed was that the parents of the young child involved made the decision that they did not wish for their child to engage with the police investigation as they felt it would not have been in her best interests. In the absence of evidence from the child there was not going to be a realistic prospect of conviction and the investigation was closed.”

38. The witness also confirmed that “In respect of the investigation into Voyeurism and Sexual Assault with JP as the complainant, this was also closed by police with no further action taken against [the Appellant's husband]. The reason this investigation was closed was that [the Appellant] did not wish to provide evidence in support of the investigation. In the absence of evidence from [the Appellant] there would not be a realistic prospect of conviction and the investigation was closed.”

39. The Ofsted witnesses also exhibited the following: The **Statutory Framework for the Early Years Foundation Stage 2014** which states the following: *3.8. Registered providers must inform Ofsted or their childminder agency of any allegations of serious harm or abuse by any person living, working, or looking after children at the premises (whether the allegations relate to harm or abuse committed on the premises or elsewhere). Registered providers must also notify Ofsted or their childminder agency of the action taken in respect of the allegations.*

3.9. Providers must ensure that people looking after children are suitable to fulfil the requirements of their roles. Providers must have effective systems in place to ensure that practitioners, and any other person who is likely to have regular contact with children (including those living or working on the premises), are suitable.

3.16. A provider must notify Ofsted or the agency with which the childminder is registered of any significant event which is likely to affect the suitability of any person who is in regular contact with children on the premises where childcare is provided.

3.77. All registered early years providers must notify Ofsted or the childminder agency with which they are registered of: [...]

any significant event which is likely to affect the suitability of the early years provider or any person who cares for, or is in regular contact with, children on the premises to look after children;

40. **The Early Years Foundation Stage Statutory Framework for Childminders 2024** which states the following: “3.5 In the case of childminders

working together, each childminder is responsible for meeting the requirements of their own registration. Childminders must know that they have a shared responsibility when working together for the wellbeing of all the children present. Therefore, where childminders work together, each childminder also has a responsibility to refer any concerns where another childminder does not continually meet the requirements of their registration.”

3.9 Depending on how they are registered, childminders must inform Ofsted or their CMA of any allegations of serious harm or abuse by anyone living, working, or looking after children at the premises. This must happen whether the allegations of harm or abuse are alleged to have been committed on the premises or elsewhere, for example, on a visit. Childminders must also notify Ofsted or their CMA of the action they have taken in response to the allegations. Ofsted/the CMA must be notified as soon as is reasonably practicable, but, in any event, within 14 days of allegations being made. A childminder who without a reasonable excuse fails to do this commits an offence.

3.10 Childminders and any assistants must be suitable; they must have the relevant training and have passed any required checks to fulfil their roles. Childminders must also ensure any person who may have regular contact with children (for example, someone living or working on the same premises where the childminding is being provided), must also be suitable

3.86 Depending on how they are registered, all childminders must notify either Ofsted or their CMA of any change:

[.....]

- Any significant event which is likely to affect the suitability of the childminder to look after children.*
- Any significant event which is likely to affect the suitability of any person who cares for, or/is in regular contact with, children on the premises on which childminding is provided”*

41. In her oral evidence Julie Swan stated that the circumstances as evidence in the letter of 2015 constituted evidence that both the Appellant and her husband were not suitable to be childminders and that it also indicated “significant events” which the Appellant was under a duty to report to Ofsted. She also said that the evidence indicated a toxic environment in the Appellant’s house which was not suitable for childminding.

Evidence called on behalf of the Appellant

42. **The Appellant** gave oral evidence and adopted her various witness statements. The following is a summary of the Appellant's evidence.

The handwritten letter and the Appellant's concerns about her Husband & Home Environment

43. The Appellant accepted that she had written the letter referred to above in 2015 and had given it to her husband in a sealed envelope to give to a marriage counsellor that they were both seeing. He had delivered it back to her sometime later. She could not remember whether it was in a sealed envelope when returned. She could not remember telling the police that the letter had been written to a friend but never sent.
44. In relation to the content of the letter she said that she had considered suicide but for no longer than a day. She was worried about her husband's behaviour as it related to sex. She knew that he had groped and assaulted her when she was asleep because she had woken up whilst it was happening. In oral evidence she said "My husband was groping me in my sleep. I woke up. I knew it but I am not a child. I was not concerned about him and children."
45. Moreover she said that she had been very worried when she wrote the letter that her husband had a sexual interest in their daughter who was then aged 6 years old. She explained that her fear was not that he would have sex with his daughter at that time but that he would wait to have sex with her after she grew up.
46. She also knew that he viewed what she described as pornography on the internet and pictures of Russian topless ladies were emailed to the joint email account that they used to run the childminding business. She also knew that he carried on what she described as "affairs" with what she thought to be adult women on suspicious online sites. She also discovered that her husband had been "scammed" by someone on an internet site he

frequented. This had resulted in him paying over the entire contents of their life savings. This had caused serious financial problems for the family and the childminding business. In oral evidence she described this time as her going through “an emotional crisis”.

47. In oral evidence she also said that at the time she wrote the letter she had a fear that her husband might kill her and her children. She said “At the time our daughter was born a boy in my son’s class was murdered by his father. I asked the counsellor if my husband could murder us. She said he was not the type.” She also said that “he was acting so out of character. I didn’t recognise him.”

48. She was referred to the Statutory Framework for the Early Years Foundation Stage 2014 and the Early Years Foundation Stage Statutory Framework for Childminders 2024 but she did not think that any of the fears or concerns recorded in that letter constituted “significant events” which affected the suitability of herself or her husband to carry on childminding in their house.

49. She said that she was herself a victim of child sexual abuse and therefore has a very high index of suspicion in relation to behaviour which may lead to the sexual abuse of children and has a very well-formed understanding of the importance of child protection generally. She also referred to a letter from her GP that stated that she was well enough to care for children.

50. She said that she never had any suspicions that her husband had behaved inappropriately with children or had a sexual interest in children. She said that she was extremely good at caring for children and has provided very good quality care for many years. She has an unblemished record and has demonstrated a capacity to safeguard children.

51. In oral evidence she said that her husband continued to visit the matrimonial home that they owned jointly every 2 or 3 weeks to have supervised contact with their daughter. When ever he attended she would cook dinner for him and they would sit down together as a family. She said

that she had not applied for the contact to take place outside the home at a designated contact centre. She said that their daughter was very close to her husband and wanted to see him. Their son also had the same feelings.

52. She said that she was revolted by what she now knew her husband had done and she would never have him back in a relationship or allow him again to live in the house with her.

Husband's electronic devices

53. The Appellant said that she did not know of the existence of any of the images of children until very shortly before this appeal when a supplementary statement was served by DI Lineker. She said in her witness statement that "No child has ever been exposed to a risk of harm whilst I have been caring for them."

The Appellant's Attitude to Police Investigations.

54. In her witness statement the Appellant stated I have fully cooperated with the police throughout their investigation. I was never formally or informally asked to provide a statement about the statutory rape and to my knowledge that part of the investigation has now concluded and no further action is being taken. Until I read the statements of Julie Swann and Natalie Moir, I was unaware of the details of the images found on my husband's electronic devices. It made me physically sick, and I am shocked and appalled by his behaviour. I accept that I declined to support a prosecution in relation to the offences that my husband committed against me. I made this decision due to very serious concerns that I have about the effect that this would have on my own children, I was also told by the police that it was entirely my choice and was important that I did what was right for me. I

55. In respect of the original investigation into the oral rape of the young child this has been closed by police with no further action because the parents did not wish for their child to engage with the police investigation. In oral evidence the Appellant stated that she did not believe the allegations against her husband in relation to this matter. In oral evidence she said, "My experience of my husband led me to find it difficult to believe."

Concerns about visits to the Appellant's house and attitude to Ofsted

56. In her witness statements the Appellant stated the following "...On the 14th December 2023 I received a telephone call from Ms Moir. During this conversation I had a slip of the tongue regarding my husband's presence, it was in fact my son [name redacted] that was present. I was feeling very stressed about receiving a telephone call from an inspector, that has previously caused me so much trauma....."

57. "...On the 24th January 2024 I do not recall hearing anybody at the front door. I noted one missed call on my landline and one on my mobile phone, but no messages were left. I was not expecting a visit as Ofsted had not contacted me first as they had done for the previous two visits, and as I had requested. 10. On the 13th February 2024 I was undertaking a government sponsored Level 4 Data Analyst Course with live tutorials. I was unable to answer the door as if I had withdrawn from any of the training sessions, I would have been marked as absent, and it would have counted against me. There were no children present in the property apart from my daughter as it was half term. I received a phone call from Ofsted, it was a three minute exchange and I invited the inspector to look through the windows so that she could see that I was working on the computer with my headphones on, that there were no children present and that I was not childminding...." In oral evidence she said, "The only time I refused entry to Ofsted was because it was not convenient because I was doing a course."

58. "...On the 21st March 2024 I was working downstairs on the computer with my headphones on. I did not hear the front doorbell ring, nor did I receive any missed calls..."

59. "...On the 30th May 2024 I did not receive any missed calls from Ofsted. As soon as I received an email I responded, I did not think it was necessary to discuss the continued extension, it was upsetting and there wasn't anything that I could do about it, so I chose not take Ms Moir up on her offer of a telephone conversation..."

Concerns about St. Mark's Church

60. In her witness statement the Appellant stated "...On one occasion in September, my husband offered to help me tidy up and I accepted as I knew that no children would be present. Sheila came in and offered support in her capacity of Vicar. She suggested that it would be better if my husband were not to attend again, just in case there was a child present. I vaguely recall her mentioning that she may discuss the matter with LADO, but she did not raise any direct concerns with me...." In oral evidence she said that it never occurred to her that children might have been present when she attended with her husband either because they had arrived early or stayed late.
61. The Appellant also said in oral evidence that she was hard of hearing and had mobility problems. The Tribunal noted that she had to walk with a stick and had serious problems with hearing what was said to her.
62. **The Appellant's son** also gave evidence and said that his father was not present at the house on 14/12/23. He referred to a detailed list of text messages between him and his father which helped him to remember. The text messages recorded that his father had asked about whether the window cleaner had come to the house and whether he needed to pay him.
63. **NG** (choirmaster) gave evidence and said that he had known the Appellant for 4 years and found her to be dedicated to her role and he had no concerns about her working with children. **KD** also gave evidence and said that she had known the Appellant for 3 years and found her to be a good childminder for her son. **KJ** also gave evidence and said that she had known the Appellant since 2020 and found her to be a good childminder for her children. **CJ** (Assistant Curate) also gave evidence and said that she had known the Appellant since 2020 and found her to be a warm kind hearted soul. The witness statement of **KRK** was read in which she said that she had known the Appellant since 2014 and found her to be a good childminder.

Submissions

64. The Tribunal read the skeleton arguments prepared on behalf of the Respondent and Appellant and heard oral arguments. Both Mr. Saigal and Mr. Levisur adopted their skeleton arguments and developed their contents in oral submissions which it is not necessary to repeat here.

Legal Framework

65. The legal framework for the registration and regulation of childminders is to be found in Part 3 of the Childcare Act 2006. The prescribed requirements in the 2006 Act include matters set out in the Childcare (Early Years Register) Regulations 2008 and the Childcare (General Childcare Register) Regulations 2008. Part 1 Schedule 2 Childcare (Early Years Register) Regulations 2008 state that an applicant must be ‘*suitable*’ to provide early years provision. Part 1 Schedule 2 and Part 1 Schedule 5 of the Childcare (General Childcare Register) Regulations 2008 stipulate that an applicant for registration on part A (compulsory part) of the General Childcare Register and part B (voluntary part) must be ‘*suitable*’ to provide childcare.

66. As set out in the Tribunal decision of *Ofikwu v Ofsted* - 2022 4499 EY; “A key requirement that underpins the statutory framework is that the provider is “*suitable*”. The concept of suitability embraces an evaluation of matters such as honesty, integrity, reliability, openness, transparency, insight, as well as attitude to the regulator and other agencies. It also embraces the issue of trust and confidence.”

67. Section 68(2) of the 2006 Act states that Ofsted may cancel a person’s registration if it appears that the prescribed requirements for registration cannot be satisfied. Section 74(1) of the 2006 Act provides a right to appeal to the Tribunal.

68. In such an appeal Ofsted must prove on the balance of probabilities the facts and matters it relies upon to justify cancellation including the core allegation that the Appellant is unsuitable. It must also demonstrate that the decision to cancel the Appellant’s registration is proportionate and necessary. On appeal, the Tribunal is considering matters afresh. The powers of the Tribunal can be found in section 74(4) of the 2006 Act.

Essentially the Tribunal may either confirm Ofsted's decision to cancel or direct that it shall not have effect.

Conclusion

69. For reasons given below the Tribunal concludes that the Respondent has proved on the balance of probabilities that cancellation of the Appellant's registration was entirely lawful and necessary because she did not and does not now satisfy the prescribed requirements for registration, in particular the core requirement of suitability.

70. The Tribunal is satisfied after considering the evidence as a whole that the Appellant has shown herself in multiple ways to be unsuitable to be a registered childminder. First, she has failed to abide by her duties under the following: The Statutory Framework for the Early Years Foundation Stage 2014 3.8. *Registered providers must inform Ofsted or their childminder agency of any allegations of serious harm or abuse by any person living, working, or looking after children at the premises* 3.16. *A provider must notify Ofsted or the agency with which the childminder is registered of any significant event which is likely to affect the suitability of any person who is in regular contact with children on the premises where childcare is provided and the Early Years Foundation Stage Statutory Framework for Childminders 2024 3.86 Depending on how they are registered, all childminders must notify either Ofsted or their CMA of any change:[.....] • Any significant event which is likely to affect the suitability of the childminder to look after children. • Any significant event which is likely to affect the suitability of any person who cares for, or/is in regular contact with, children on the premises on which childminding is provided"*

71. The Tribunal has read the handwritten letter in detail. The letter clearly records very serious concerns that the Appellant had about her husband in 2015. The content of the letter and the Appellant's oral evidence about it and her husband's behaviour at the time establishes the following:

- a. The Appellant feared that her husband had a sexual interest in their daughter who was 6 years old at the time although she considered that he would only engage in incest by having actual sex with her when she turned 16 or 17 years old. Incest is of course a serious sexual offence.

- b. The Appellant feared that her husband could kill her and her children
- c. The Appellant's husband had sexually assaulted her
- d. The Appellant's husband was untrustworthy, abusive and emotionally manipulative.
- e. The Appellant knew that her husband viewed what she described as pornography on the internet and pictures of Russian topless ladies were emailed to the joint email account that they used to run the childminding business
- f. The Appellant knew that her husband carried on what she described as "affairs" with what she thought to be adult women on suspicious online sites and as a result of which he had been "scammed" resulting in him paying over the entire contents of their life savings, thus causing serious financial problems for the family and the childminding business.
- g. The Appellant was in emotional crisis and considered committing suicide for no more than a day.

72. In the judgement of the Tribunal the above evidence clearly constitutes "significant events" (by reference to the statutory frameworks referred to above) which the Appellant should have identified as affecting the suitability of her husband to be a childminder and therefore she should have informed Ofsted of these concerns. The fact that she did not recognise that her concerns were relevant to her duties to consider the risks to minded children and that she did not these concerns (and her own feelings of being in emotional crisis and feeling suicidal) leads to the Tribunal concluding that she is not suitable to be registered as a childminder.

73. In coming to this conclusion the Tribunal also takes into account that in oral evidence the Appellant was referred to the Statutory Framework for the Early Years Foundation Stage 2014 and the Early Years Foundation Stage Statutory Framework for Childminders 2024 but she did not think that any of the fears or concerns outlined above constituted "significant events" which affected the suitability of herself or her husband to carry on childminding in their house. This indicates to the Tribunal that the Appellant

continues to lack an understanding of her duties towards Ofsted in relation to risk to minded children and is therefore unsuitable to be registered as a child minder.

74. In addition the Tribunal concludes that the incident at the St. Mark's Church also establishes that the Appellant does not have a suitable understanding of risk to children. In oral evidence she said that it never occurred to her that children might have been present when she attended with her husband either because the children might have arrived early or stayed late. This indicates to the Tribunal that the Appellant did not understand or had disregard for the potential safeguarding implications of her and her husband's actions in visiting the church on that occasion.

75. Moreover the Tribunal concludes that the evidence establishes that the Appellant has not been open, honest and transparent in her dealings with Ofsted or in her testimony to the Tribunal. The Tribunal accepts the evidence of Natalie Moir, that the Appellant told inspectors that the handwritten letter was written not long after her daughter was born. When it was put to her by the inspector that references to the Appellant's children contained within the letter indicated it had been written in or around 2015 she continued to maintain that the letter was written when her daughter was first born. This is clearly untrue (as the Appellant later accepted) and indicates that she lied to the Ofsted inspector about this matter. In addition the Tribunal also accepts that the Appellant gave different accounts to the police and Ofsted as to who the letter was addressed to and whether it was sent.

76. Although the Tribunal accepts that the Appellant's husband was not at the house on 14 December 2023, the Tribunal does not accept that the Appellant did not receive the multitude of phone calls made to her by the Ofsted inspector. The Tribunal concludes that the Appellant did not tell the truth to Ofsted or to the Tribunal about these phone calls. Moreover in oral evidence the Appellant said, "The only time I refused entry to Ofsted was because it was not convenient because I was doing a course." This is not a

good reason to refuse access to her premises during her suspension and indicates a lack of understanding of her duties towards Ofsted.

77. In addition the Tribunal concludes that the Appellant's decision not to assist the police with its prosecution of the sexual assault on her also indicates a lack of suitability because it evidences a misunderstanding of her priorities and her safeguarding responsibilities. The Tribunal acknowledges the Appellant's reasons for not pursuing the prosecution but by her own account her husband sexually assaulted her at a time when he was co- childminding with her in their house.

78. Moreover this decision also raises concerns about the reliability of the Appellant's undertakings to Ofsted and the Tribunal that she would never in the future allow her husband to return to the house where she might be minding children in the future. The Tribunal's conclusion in this regard is based on her remarks to the Ofsted inspector that she was reliant on her husband for support (having a much smaller support network than her husband) and also the fact that when the husband visits the home now she always cooks dinner for him and they would sit down together as a family.

79. The Tribunal also takes into account the fact that the Appellant said that she had not applied for the contact with the daughter to take place outside the home at a designated contact centre. Moreover the evidence of the son indicates that the Appellant's husband continues to keep in regular contact with him and also the husband continues to take an interest in the upkeep of the house including paying for the windows to be cleaned.

80. After considering the evidence in the round (including the testimony of the Appellant and her witnesses) the Tribunal concludes that the Respondent has proved on the balance of probabilities that the Appellant is unsuitable to remain registered.

81. In relation to the question of proportionality the Tribunal accepts that the Appellant's human rights are engaged in this case. The Respondent has satisfied us that the decision taken was in accordance with the law. We

are also satisfied that the decision was objectively justified and necessary in order to protect the public interest which includes the safety, wellbeing, and needs of children accessing childcare provision, as well as the maintenance and promotion of public confidence in the system of regulation.

82. The Tribunal accepts that cancellation will have a serious impact on the Appellant's life and career and ambitions. The Tribunal noted the character evidence given on her behalf and the good reports from Ofsted in the past. The decision will also adversely affect the children and families who may rely on the Appellant's services. However, we also note that the suspension of her registration has been in force for some time and we infer that parents who used her services in the past have now made alternative arrangements.

83. In any event we attach very significant weight to the public interest in children being looked after in a way that is compliant with the regulations and in particular that the provider is and remains suitable and is able to deliver care in accordance with the requirements of the regulations. We consider that the public interest outweighs the interests of the Appellant and all those affected. As we have concluded that the Appellant is unsuitable, therefore conditions cannot be imposed.

84. In our judgement the decision to cancel registration was (and remains) lawful, reasonable, necessary and proportionate. The decision to cancel registration on the grounds of suitability is confirmed. The appeal is dismissed.

Decision

The decision to cancel registration of the Appellant on the grounds of suitability is confirmed.

The Appeal is dismissed

**Tribunal Judge Timothy Thorne
Care Standards**

First-tier Tribunal (Health Education and Social Care)

Date Issued: 13 August 2024

NB – the content of this decision has been redacted by the Panel (including replacing the names of the Appellant and others with initials) in order to protect the identity of children.