

# First-tier Tribunal Care Standards

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

[2022] 4542.EY  
NCN: [2022] UKFTT 390 (HESC)

Hearing held at Truro Magistrates Court  
on 17<sup>th</sup> to 21<sup>st</sup> October 2022.

**BEFORE**  
**Mr L Ford (Tribunal Judge)**  
**Ms R Smith (Specialist Member)**  
**Ms M Adolphe (Specialist Member)**

**BETWEEN:-**

**C**

**Appellant**

**-v-**

**OFSTED**

**Respondent**

**DECISION**

### **The Application**

1. C (“the Appellant”) appeals to the Tribunal against the decision of Ofsted (“the Respondent”) dated 16th March 2022 to cancel her registration as a childminder on the Early Years Register and both the compulsory parts of the Childcare Register under section 68 of the Childcare Act 2006.

### **Attendance**

2. The Appellant C attended the hearing throughout, supported by her husband. Mr G Reed, Solicitor Advocate, represented the Respondent. We heard oral evidence from Ms L Williamson Ofsted Inspector, Ms D Allotey Ofsted Inspector, Ms T Newman Ofsted Decision Maker, Ms G Barnes Social Worker and from C.
3. The hearing took place from 17<sup>th</sup> - 21st October, 2022, including the tribunals deliberations.

### **Reporting Restrictions.**

4. At the commencement of the hearing the Tribunal ordered that there shall be a restricted reporting order under Rule 41(b) of the Tribunal Procedure (First-Tier

Tribunal) (Health, Education and Social Care Chamber) Rules 2008 prohibiting the publication (including by electronic means) in any written publication available to the public or inclusion in any programme for reception in England and Wales of any matter likely to lead members of the public to identify any child or its family mentioned in the appeal. For that reason, the Appellant, her family and users of her services are referred to by their initials.

5. We should add that both the Appellant and the Respondent made it clear at the hearing that they did not object to the making of such order nor was there any application made for the reporting restriction to go beyond that which we have made.

#### **Adjustments.**

6. We took into account that C was a litigant in person. She was offered and given breaks throughout the hearing, particularly when she became distressed. We assisted her in giving her evidence in chief by asking her relevant questions in support of her arguments and asking questions of the witnesses who attended the hearing. She had helpfully provided a list of questions she had prepared for Ms Williamson. She was given time to consider any additional evidence that was provided by the Respondent and had overnight to consider such evidence. C helpfully clarified her response to the Scott Schedule on the second day of the hearing and was given time overnight to consider the further amendments she had made before cross examination.

#### **Late Evidence**

7. The Respondent made an application, which had been previously submitted on the 11<sup>th</sup> of October 2022, for permission to adduce in evidence the four photographs which Ms Williamson shared with C on the 28<sup>th</sup> of September 2021 and referred to on page H 68 in the bundle. The Appellant did not object to the application.
8. At the outset of the hearing, the Respondent sought permission to rely on a copy of C's health declaration form dated the 18<sup>th</sup> of August 2022, together with four pages of additional notes prepared by Ms D Allotey relating to alleged discrepancies with the information that is recorded on the form. C was given time overnight to consider these. She did not object to them being admitted.
9. Further documentary evidence was provided by C consisting of a statement/list of questions from the entitled 'cross examine' and a number of photographs of her property, DBS certificates, learning resources and a statement from a parent dated 20/09/2022. Additional evidence was provided on the second day of the hearing consisting of four certificates relating to online courses recently completed by the Appellant. All of this evidence is referred to in the supplementary index H550-H573 and I32-I159.
10. There was no dispute about the admission of all of this evidence from either party. 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. We concluded that we would admit the late evidence as it was relevant to the issues that the Tribunal had to determine and the parties were given ample time to consider and respond to the evidence.

11. In compliance with directions, the Respondent submitted a Case Summary and Scott Schedule. This specified the allegations relied upon including failures to meet requirements contained within the Childcare Act 2006; The Childcare (General Childcare Register) Regulations 2008; The Childcare (Early Years Register) Regulations 2008; The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008; Statutory Framework for the Early Years Foundation Stage and Statutory Framework for the Early Years Foundation Stage.
12. As the hearing progressed, the Appellant made further additions to her response to the Scott Schedule and confirmed, on oath during her oral evidence, her approval to the most recent version referred to in this decision.
13. The Appellant is registered as a provider of childcare on domestic premises. The Appellant has been registered since October 2006 on the Early Years Register and both parts of the General Childcare Register.
14. The Respondent is the regulatory authority for childcare providers.

### **Applicable law**

15. There was no dispute as to the applicable law as set out in the Respondent's skeleton argument. We have therefore adopted the legal framework as set out in the Respondent's skeleton argument.
16. The legal framework for the registration and regulation of childcare providers including childminders is to be found in Part 3 of the Childcare Act 2006 ("the Act").
17. Section 32 of the Act provides for the maintenance of two childcare registers. The first register ("the Early Years Register") contains those providers registered to provide early years childcare for children (from birth to the 31 August following the child's fifth birthday) for which registration is compulsory.
18. The second register ("the General Childcare Register") is divided into two parts:  
A register which contains those providers registered to provide later years childcare for children aged between 5 and 8 years for which registration is compulsory ("the compulsory part").  
A register which contains those providers registered to provide later years childcare for children aged over 8 years for which registration is voluntary ("the voluntary part").
19. Section 68 of the Act provides for the cancellation of a person's registration in certain circumstances. Section 68(2) states that Ofsted may cancel the registration of a person registered on the Early Years Register, or on either part of the General Childcare Register, if it appears:

(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,

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

20. The prescribed requirements for Early Years registration are provided for in The Childcare (Early Years Register) Regulations 2008 Schedule 2. This includes the requirement that the person to be registered is suitable, and that the person will secure that the statutory framework for the Early Years Foundation Stage (EYFS) learning and development requirements are met and that they will comply with the EYFS welfare requirements.
21. The EYFS requirements are contained within the EYFS Statutory Framework and apply by virtue of section 39 of the Childcare Act 2006. Section 40 of the Act imposes a duty upon those registered as an early years provider to comply with the requirements of the EYFS, the current version of which is the version effective from 03 September 2021. The EYFS is divided into the Learning and Development Requirements and the Safeguarding and Welfare Requirements.
22. The Childcare (General Childcare Register) Regulations 2008, Schedule 2 and Schedule 5, set out the prescribed requirements for the compulsory and voluntary part of the childcare register. These include the requirement that the person to be registered is suitable. Schedule 3 and Schedule 6 sets out the requirements governing activities in relation to both parts of the General Childcare Register for the purposes of section 59 of the Childcare Act 2006, and therefore those registered on the compulsory and voluntary part of the childcare register, must also meet these requirements.
23. Section 73 of the Act provides that if it is proposed to cancel the registration, the Respondent is required to give notice of this intention and set out the reasons for the decision, and sets out the rights of the registered person to object either orally or in writing. The registered person must be given the opportunity to object and, if they do so, this objection will be considered. If the decision is made not to uphold the objections and to proceed to cancel registration then the registered person must be given notice of this decision.
- Section 74(1) of the Act provides a right of appeal to the Tribunal and the decision does not take effect until either the time limit for lodging an appeal expires or, if an appeal is so lodged, until the conclusion of the appeal proceedings.
24. 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. If the Tribunal decides that cancellation should not have effect, it may consider imposing conditions on the Appellant's registration.

25. The legal burden of proof at appeal lies with the Respondent, who must establish the facts upon which it relies to support cancellation. The standard of proof to be applied is the “balance of probabilities”. It must also demonstrate that the decision to cancel the Appellant’s registration is proportionate and necessary. In considering the appeal the Tribunal “stands in the shoes” of the Chief Inspector in deciding whether or not to confirm the decision to cancel the registration.
26. The Tribunal is not limited to consideration of matters known to the Respondent when the cancellation decision was taken. It can, and should, consider the impact of information that may have come to light since.

### **Evidence**

27. Oral evidence was given under oath or affirmation. The Respondent presented their evidence first.

#### **Ms L Williamson**

28. Ms Williamson is an early childhood regulatory inspector (EYRI). She confirmed the contents of her statement dated the 26<sup>th</sup> of July, 2022 which exhibits detailed preparation and visiting notes, a record of a telephone conversation with C of the 5<sup>th</sup> of March, 2014, inspection forms, event forms and a Welfare Requirements Notice (WRN) dated the 18<sup>th</sup> of October, 2021.
29. Ms Williamson’s initial involvement started with a visit on the 21<sup>st</sup> of March, 2011 in which she found that equipment and toys were dirty, unsafe, and unsuitable, and observed C’s dogs urinate over the toys and there were puddles of dog urine and piles of dog excrement in the garden. She also found that C did not have the statutory requirement of the a daily record of the names, and times of arrival and departure of the children she looked after from 28 February, 2011, to date of her visit. C had not informed Ofsted of a significant event, namely that she and her husband had adopted a child in 2009. She was seen to have left children strapped in buggies in the garden with her two large dogs, without directly supervising them to ensure their safety.
30. Following 3 unsuccessful visits by Ms Williamson in October 2013, it became apparent that C had changed addresses without informing Ofsted. On 4 November 2013 Ms Williamson was informed by the Family Information Services that the Appellant had moved to a new address in March 2013.
31. Following concerns from a parent that C’s husband was collecting a child from pre-school, C confirmed, at a visit on 5<sup>th</sup> November, 2013, that she had allowed her husband to collect children from another setting by himself. C also confirmed that he had collected children from the other setting on his own. C had failed also to notify Ofsted that her husband was her assistant. Ms Williamson found another adult (BB) on the premises who had been working for a month as an assistant.
32. In her questions to Ms Williamson, C produced DBS certificates for her then

husband dated 18<sup>th</sup> March, 2008 and BB dated the 14<sup>th</sup> February, 2013 respectively. It was suggested by C that these certificates were adequate confirmation of suitability. Ms Williamson pointed out that the certificates were provided for different purposes and that DBS checks would not have been adequate as Ofsted would have made specific and relevant checks, before assistants were approved. She was clear that the existence of DBS certificates did not address the potential safeguarding issues.

33. Following information received from a prospective parent, Ms Williamson inspected on 28<sup>th</sup> September, 2021. She found that C had not provided appropriate facilities for the hygienic preparation of food. She observed her cats walking across and sitting on the worktops, which were covered in hairs and dirt. C did not routinely clean them before children sat at the worktop to eat. She did not provide hygienic facilities for nappy changing, did not clean the whole of the nappy changing mat, and left dirt and food residue in the folds. She observed that the mat was stored on the floor leaning against stained and dirty furniture; there were animal hairs and dirt on the carpet and furniture; C did not ensure children were safe when sleeping as there were no restrictors on the windows to prevent children from opening the windows and climbing out of the windows; and under the windows were rusty bicycles and a discarded washing machine.
34. Ms Williamson concluded C's home was unfit for purpose as there was an overpowering smell of cat and dog urine and faeces; furniture, flooring, and children's toys were dirty. Indoors there were many toys in all rooms and hallway, many of these presented as trip hazards. She observed children trip and fall over rugs, table legs, and toys. Units and shelves were stacked excessively, creating a risk. Additional risks were identified in outdoor spaces as set out in Ms Williamson's statement and supported by photographic evidence.
35. Ms Williamson provided details of what was a serious safeguarding issue relating to a child in C's care. The child was in C's care for 8 weeks during which no MARU referral had been made. Ms Williamson concluded C had insufficient understanding of safeguarding procedures and did not have a good enough knowledge of how to identify, and respond appropriately to signs of abuse and neglect. This incident was not reported to the LADO or Ofsted.
36. In relation to her visit on 28<sup>th</sup> September, 2021, Ms Williamson confirmed that she had taken 4 photographs which had been produced as late evidence but shared with C. She described her concerns in relation to the conditions as set out in her statement at H7.
37. C produced a number of photographs (I42-I54) which she asserted showed that all of the issues raised had been rectified. C could not recall the date upon which she had taken the photos and had now deleted them from her mobile phone. However, C stated that they were taken before Ms Williamson's monitoring visit on 21<sup>st</sup> July, 2022. Ms Williamson largely confirmed that the photographs suggested a significant contrast to her own visits and acknowledged improvement but her concern was still sustainability. She

confirmed what she had observed on her visit and described under questioning the observations on her own visit and explained in some detail the outstanding issues and risks that remained by reference to the photographs taken.

38. Ms Williamson responded to the suggestion that C would accept regular monitoring by emphasising that the role of Ofsted was not to advise and support C, but to monitor and ensure the regulatory standards were complied with and maintained. She felt C failed to understand the role of the regulator even though this had been repeatedly explained to her.

Ms D Allotey

39. Ms Allotey confirmed the contents of her two statements dated the 7<sup>th</sup> of July, 2022 and the 24<sup>th</sup> of August, 2022. She is an Early Years Regulatory Inspector who first became involved with C in November, 2019. She describes in her statement the difficulties she encountered in contacting C and visiting her. In January, 2020, Ms Allotey received an email response to a tracked letter indicating that C felt harassed by Ofsted and suggested the previous information received by Ofsted in April 2019, in relation to hygiene, was false.
40. Following the issue of the WRN dated the 27<sup>th</sup> of January, 2020, Ms Allotey made an announced visit on the 20<sup>th</sup> of February, 2020 and described her inability to get access to C's property and her failure to respond to telephone calls. When an email response was eventually received from C, she lodged a formal complaint to Ofsted rather than dealing with the issues raised in the WRN.
41. Ms Allotey describes in detail in her statement the results of her announced visit on the 11<sup>th</sup> of November, 2021 to assess compliance with the WRN dated the 18<sup>th</sup> of October, 2021. As the visit identified extensive lack of compliance, and raised additional concerns, a case review was held on the 16<sup>th</sup> of November, 2021 which concluded that the home posed a risk to children's well-being and registration was therefore suspended. She explained to C during the inspection that suspension was possible, and confirmed in a telephone message that there would be a case review, and the possibility of suspension.
42. Following the suspension, Ms Allotey describes the difficulties in obtaining parents' contact details and telephoned C on the 23<sup>rd</sup> of November, 2021 in relation to suspension and to further attempt to obtain the contact details, but had to terminate the call as C was upset. Further emails were sent and it was not until 9 days into the suspension period that some contact information was provided by C.
43. Ms Allotey confirmed that she had direct discussions with parents in relation to the suspension. In particular Ms T indicated that she did not know that C had been suspended as C had not told her and stated that her children had attended on the 17<sup>th</sup> 18<sup>th</sup> 19<sup>th</sup> and 24<sup>th</sup> of November, 2021. School staff also confirmed that C had been dropping off and collecting the children as normal, with no changes in that pattern during the November suspension. Another parent, Ms S, also stated she had not been told by C that she was suspended and

confirmed her child attended on the 15<sup>th</sup> 19<sup>th</sup> 23<sup>rd</sup> and 25<sup>th</sup> of November 2021.

44. Ms Allotey went on to confirm the information she had received from a range of sources in relation to the involvement of Mr C, C's partner and now husband. She confirmed and expanded upon the information set out on H243.
45. Ms Allotey then went on to deal with the issues relating to the Health Declaration Form (H559-H573) completed by C and dated the 12<sup>th</sup> of September, 2022. She dealt with the information relating to the issue of C's health in a summary of evidence relating to discrepancies at H554-H557. Ms Allotey describes the previous involvement of herself and Ms Madge (whose statement is at H388) in relation to C's previous statements that she was suffering from anxiety and depression and providing differing accounts as to her use of antidepressants. The principal concern was that C had ticked 'no' in answer to the question as to whether she had suffered from "depression, stress-related or emotional issues, or any other condition that causes anxiety, panic attacks, mood swings or anger." She had also left blank the section headed "treatment (in the last five years, current or planned in the future)".
46. Ms Allotey asserted that C's failure to provide relevant information, including an impending hospital appointment, was a further example of C's lack of honesty, integrity, and the reliability of the information she provides.
47. C was given time overnight to consider whether she had any further questions for Ms Allotey, but she did not.

#### Ms G Barnes

48. Ms Barnes was the children's social worker responsible for C's son. Her involvement followed a well-being assessment in March, 2022 which raised safeguarding and welfare concerns in relation to neglect, including dirty and unhygienic conditions, neglect of personal care, and lack of supervision. A subsequent social work assessment resulted in C's son being made subject to a child protection plan following a conference on the 20<sup>th</sup> of April, 2022. At the conference there were ongoing concerns of disguised compliance which Ms Barnes confirmed in her evidence was shared by other agencies.
49. Ms Barnes stated that C can show a high level of intelligence but when she is anxious and under pressure, she becomes overwhelmed very easily which affects her decision making and makes it difficult for her to face challenges.
50. Ms Barnes emphasised that the issues she was considering in relation to child protection were very different to Ofsted's role. Although normally her visits would be unannounced, all of her visits were announced as C had a locked gate. C would sometimes have a week, and sometimes two hours, notice of an appointment. When asked about C's compliance Ms Barnes described one occasion when she called and there was no answer and the windows were open. When she returned an hour later, the windows were closed and there was no answer.



51. Ms Barnes had explained to C the procedure regarding registration on the child protection register, at least 10 times. If she saw a decline in compliance, she would have an open conversation with C. During this period there had been a decline and Ms Barnes had prompted C to improve. She had explained to C several times the differences in the criteria for childminding and child protection. Ms Barnes stated that C would require continuing support from professionals to maintain her progress. She was not yet able to confirm that she will be recommending de-registration at the next child protection review conference.

Mr M Carter

52. C had not requested that Mr Carter attend for cross-examination and did not challenge his evidence. We considered his statement dated 21<sup>st</sup> of July, 2022 and the photographs attached which confirmed C's attendance at school with a young child in a buggy, on the 21<sup>st</sup> of March, 2022.

Ms M Daniels

53. C had not requested that Ms Daniels attend for cross-examination. We considered her statement dated the 7<sup>th</sup> of July, 2022. Ms Daniels, an Early Years Regulatory Inspector, describes a visit on the 21<sup>st</sup> of January, 2020 and the WRN that was subsequently issued as a result of an extensive range of concerns, as set out in her statement at H334/H335. She was further involved after the decision to suspend registration and describes her subsequent difficulties in contacting C. Her evidence was accepted by C.

Ms K Lamb

54. Ms Lamb is a Lead Professional in the Regulation and Care Inspectorate and previously an Early Years Regulatory Inspector for the Respondent. We considered her statement dated 6<sup>th</sup> July, 2022. C did not request her attendance at the hearing and her evidence was unchallenged. She describes her visits in 2020 and her attempts to visit in October 2021. She reports that on all of her visits, C described the concerns raised as 'malicious'.

Ms S Madge

55. Ms S Madge is an Early Years Regulatory Inspector. C did not require her attendance and her evidence was unchallenged. We had particular regard to H 390-391 in relation to C's reference to her partner and C's understanding of the consequences of her suspension and resulting prohibition of childminding.

Ms T Newman

56. Ms Newman confirmed the contents of her statement dated 7<sup>th</sup> July, 2022. She is the Early Childhood Senior Officer for Ofsted and has overall management responsibility for C's registration. She has been involved in C's registration since November, 2021. She has kept the decision-making under review throughout and considered all of the evidence, including that in the appeal bundle from C.

57. She confirmed that none of the evidence she had read and heard had changed her view that the Respondent's decision was appropriate and proportionate.
58. She confirmed that nothing in relation to child protection issues regarding C's son was material to her view. C's son's child protection registration would be relevant if C was making a new application for childminding registration. She acknowledged C's improvements in some areas but questioned her ability to sustain them. In relation to the Health Declaration Form, her concerns related to openness rather than health issues. She was particularly concerned by C's admissions that she was childminding while suspended which suggested a disregard for the regulations and ability to safeguard children in her care.
59. Ms Newman was asked by the panel if Ofsted would consider imposing conditions on the Appellant's registration, she confirmed that Ofsted could not envisage any conditions that would address Ofsted's concerns and confirmed her view that the Respondent's position was proportionate and the only appropriate course of action.

#### C's evidence

60. C gave oral evidence and confirmed the truth of her statement of evidence at I1, the contents of her original appeal document dated 22<sup>nd</sup> March, 2022, 'continued reasons' document date 24<sup>th</sup> March, 2022, letter of objection dated 7<sup>th</sup> March 2022 and undated letter entitled 'additional information'. The panel assisted her in her examination in chief to express the positive elements of her appeal.
61. C confirmed that she had been a childminder since 2006 and had looked after hundreds of children and went on to give specific examples of children, particularly those with learning difficulties, that she had assisted in relation to communication, toilet training, and other aspects of their development. She referred to the 37 five star reviews she had received on the child care website, to which she no longer had access.
62. C submitted a bundle of further certificates of courses that she has undertaken online including additional modules of a safeguarding course which resulted in her producing a 10-page safeguarding policy. In addition to the certificates already exhibited to her statement, she had undertaken an extensive list of training as listed by Ofsted at H40/H41. C's training is in relation to child exploitation, assessing risk, preventing radicalisation, child protection advanced and safer food hygiene; she produced certificates relating to courses completed between August and October 2022 including in relation to 'understanding the EYFS', FGM awareness, food safety and hygiene, and allergen awareness. She has completed these courses online and been awarded certificates after answering online questionnaires. She had financed these courses herself.
63. C described the improvements she has now made to her property including the fitting of a new lounge carpet, a new stainless steel sink and wipe clean

worktop, (as a result of an inspection from environmental health in December 2021) the cost of which had now put her into debt. She now completed daily/weekly checklists that assessed her food hygiene, fridge temperature and risk assessed areas of her home. She described how she would now carry out risk assessments for individual children, had kept an attendance register, and individual plans setting out children's needs. She had tested smoke and carbon monoxide alarms and carried out regular fire drills.

64. C felt that as her social worker was now happy that she had made progress that Ofsted should have regard to that. When asked what she thought the main area of difficulty was in relation to Ofsted's concerns, she confirmed that she admitted that she had made mistakes, the main one being that she did not notify Ofsted when she moved. She stated that no child has had a serious accident while in her care. C referred to the photographs that she stated were taken prior to the visit from Ms Williamson. She relied on these to demonstrate the changes that she has made in relation to hygiene and the physical environment. She accepted that she had made mistakes.
65. C continued her evidence on the third day of the hearing. She produced further evidence, which was admitted by agreement, consisting of a bundle of letters from satisfied parents in relation to the care that she had provided. These were dated 2018, two 2015, some undated letters and cards.
66. Ms Allotey gave some brief additional oral evidence in response to the cards and letters that C had produced. In relation to the letter from Ms T, Ms Allotey stated that she had been informed by Ms T that she has always been concerned about the smell of the property and she therefore had delivered and dropped her children off from outside the property. She informed her that when the children returned home, she bathed them to get rid of the smell and prevent nits.
67. In relation to the information provided by C in her letter of the 9<sup>th</sup> of November 2021 from Ms S, Ms S had informed Ms Allotey that C had not told her about her suspension and that she was herself concerned about issues in relation to cleanliness, but she had got on well with C. Ms S also informed Ms Allotey of the involvement of Mr C, who she named and who was referred to as someone who lived with C and who would drop her child off home. (See statement of Ms S Madge at H388).
68. Prior to resuming her evidence, C signed a copy of the updated Scott Schedule which included further concessions and clarification of her position.
69. Under cross examination C conceded nearly all of the remaining allegations she had denied. In relation to the breach of regulation relating to absence of risk assessments on 21 March 2011, she accepted that she did not have risk assessments in place but stated that she had now changed.
70. In relation to a breach in relation to suitability of premises on 20<sup>th</sup> July, 2020 she agreed the allegations as referred to at H355.

71. In relation to a breach of regulation in relation to food and drink /hygiene on 28<sup>th</sup> September, 2021 C accepted the allegation but added that she would ensure the children sanitised their hands before eating.
72. In relation to breaches relating to food and drink on 11<sup>th</sup> November, 2021 and 1<sup>st</sup> February, 2022, C accepted the allegations when the details were put to her. This was in the context of the previous breach in September 2021 when the risks associated with cat bowls on the worktop were pointed out.
73. In relation to the failure to report a significant event - namely the adoption of a child - C stated that she had sent a letter to Ofsted at the time but had no way of proving it. It was put to her that she previously stated that she was not sure whether she had done so (H10).
74. In relation to the breach of regulation relating to failure to ensure suitability of adults with unsupervised contact on the 5<sup>th</sup> of November, 2013, after questioning, C accepted that she should have notified Ofsted of her husband's and BB's involvement, and confirmed that her then husband did have contact with the children and that she had got the definition of 'assistant' wrong.
75. In relation to the allegation of insufficient knowledge of safeguarding and child protection dated 14<sup>th</sup> of January, 2014, when the details of the allegation at H 27 were put to her, she accepted the allegation.
76. In relation to the breach of regulations relating to child protection dated the 11<sup>th</sup> of November, 2021, she accepted that at the time she was not aware of the name of the safeguarding partnership and, although she knew about LADO, she did not understand their role in relation to the reporting of complaints.
77. In relation to C's child being on the child protection register she accepted the position that, at present, her social worker had not yet formed a view in relation to de-registration.
78. C accepted the allegations in relation to failing to give full contact details for parents and accepted the evidence at H220–H225. She accepted she was not truthful with Ofsted about looking after children while suspended but stated that it was due to her being a single parent and having no other source of income.
79. In relation to the several breaches of regulations relating to a failure to be open and honest with Ofsted in relation to household members and allowing an unvetted adult regular contact with the children, C initially stated in her oral evidence that she admitted that Mr C had seen the children and dropped them off on occasions but stated that she always accompanied them. It was only after further questioning that she accepted that her previous evidence was untrue and that children have been dropped off by Mr C unaccompanied.
80. C described the stress that the suspensions had caused her and the financial difficulties she encountered as a result. She asked to be given a further chance.
81. When it was put to her that she only accepted issues when faced with clear

evidence C described her desperation at having her income taken away - "what am I supposed to do" she stated. She was happy for Ofsted to visit every week, that she had learned her lesson, and that she had been consistent for the last 7 months and had undertaken more training.

### **Submissions**

82. Mr Reed referred in his submissions to 3 written documents relevant to C's lack of openness with Ofsted, cleanliness and hygiene issues, and relevant safeguarding points to Mr C.
83. Submissions were made under the headings of physical safety, safeguarding, and working openly and honestly. Mr Reed argued that nearly all of the factual allegations had been accepted, and those that were not, were supported by overwhelming evidence. Whilst recognising C's improvements in some areas C could not sustain improvements. The improvements made in relation to child protection issues were distinguished from those that relate to regulation by Ofsted and the improvements that have been achieved were as a result of a social worker working closely with C to secure engagement through regular home visits.
84. Mr Reed submitted that improvements were made only as a result of specific concerns and advice but the issue was C did not see the problems herself and can only respond to specific advice. He submitted that this was not sufficient to fulfil the requirements of the regulations which require C to be able to identify and comply with those requirements herself. In the absence of that ability, it is likely that history will repeat itself.
85. Mr Reed reviewed the evidence and schedule of allegations in relation to physical safety, safeguarding and working openly and honestly. He pointed out that C only conceded these issues when she was faced with the evidence and had not identified and addressed the issues herself.
86. Mr Reed referred to the extensive training at H41-43 which C undertook, which included 33 courses in 2020 and an additional 15 undated courses. Even though these included courses in relation to advanced child protection, food safety and hygiene, this still resulted in repeated failures to maintain standards and comply with the regulations in those areas.
87. In relation to openness and honesty, it was submitted that C had admitted several incidents of dishonesty, some of which only been accepted when she was giving evidence.
88. In relation to proportionality Mr Reed pointed to the number of WRNs that had been issued over the years, together with the number of opportunities given to rectify repeated concerns of a similar nature. This, combined with the lack of openness and honesty in her dealings with Ofsted, meant that nothing short of cancellation would address the concerns set out in the evidence, nearly all of which were accepted by C.

89. C made few submissions but accepted that she has not complied with the regulations and felt under stress when she was suspended and had no other source of income. C described her commitment to her role, given the opportunity; she would show that she has broadened her knowledge and is 100% committed to ongoing training at her own cost. She asked for one last chance.

### **Tribunal conclusions with reasons**

90. We considered the schedule of allegations which, by the end of C's oral evidence, had been almost accepted in their entirety. The allegations involve significant and repeated breaches of the regulations in relation to sustainability of premises, environment and equipment; repeated breaches of the regulations relating to carrying out risk assessments; repeated breaches of regulations in relation to ensuring premises are suitable for the age of children cared for; repeated breaches of the regulations in relation to food and drink; failure to report significant events; repeated failures to ensure suitability of adults who supervise and have contact with the children; insufficient knowledge of safeguarding and child protection; breaches of regulations relating to child protection; repeated breaches of regulations relating to staff qualification training support and skills; insufficient knowledge of safeguarding and child protection; failure to meet requirements of WRNs; failure to notify the Respondent that C's child was subject to a child protection plan; failure to provide details of all children on roll following suspension; wrongfully informing the Respondent she had notified all parents of the suspension; childminding while suspended, and failing to be open and honest with the Respondent in relation to household members and allowing an adult regular contact with the children.

91. In relation to the very few areas where the Respondent's evidence was not accepted, in particular C's statement that she had not notified them of the adoption of a child, we prefer the evidence of the Ofsted witnesses. The evidence from those witnesses is supported by very detailed written notes. The evidence is balanced and included reporting of improvements and positive elements as well as the negative.

92. We note C's varying accounts of her statement that she informed Ofsted of the adoption and on a previous occasion, she has been unsure as to whether she had done so.

93. C accepted the vast majority of the allegations against her. It is clear from the chronology of events that the Respondent is correct in the statement that C only accepts shortcomings when the evidence is presented to her and she effectively has no choice but to do so. It was notable that even when she was giving her evidence on oath she initially stated that her husband had not transported any children unaccompanied, insisting that she was present, and only when challenged did she accept this was not true and that he had transported children unaccompanied.

94. In relation to the Health Declaration Form, it was clear that C had failed to

provide the information requested and this was another example of her lack of openness in her dealings with Ofsted. Her statement that she did not see the need to report her impending consultant's appointment was a further example of this. It was clear that the form required disclosure of the appointment.

95. Similarly, it was only when presented with substantial evidence that she had childminded while subject to suspension, did she accept that this was the case, offering an explanation that she was desperate and needed the money. Nothing in her evidence suggested that she was able to maintain an open and honest relationship with the regulator or to reassure us that anything had changed which would make her do so in the future.
96. It was clear from C's evidence that despite years of involvement with the regulator, she had a fundamental misunderstanding of their role and the need for an open and honest working relationship in order for the regime of regulation to be effective.
97. There was a theme throughout C's written and oral evidence that she had confused the role of the Local Authority regarding child protection in relation to her own son, and her relationship and responsibilities towards Ofsted. This was despite the position being explained very clearly and repeatedly by Ms Barnes and Ofsted.
98. We fully recognise the improvements and progress that C has made in her engagement with her social worker in the context of the concerns of neglect in relation to her own child. It was also clear from Ms Barnes' evidence that even with that high degree of support and supervision, the compliance was not complete. We noted that at the outset of the child protection process Ms Barnes referred to "disguised compliance" reported from several agencies.
99. Although C stated that she was under the impression that Ms Barnes was heading towards de-registration of her child at the next child protection conference in November 2022, Ms Barnes' response was clear that she has not yet made that recommendation. Although we accept that C has engaged with her social worker and has made some progress, this was only with a high degree of support and supervision, which will not always be there.
100. The fundamental difficulties in relation to C's continued registration as a registered childminder is that she lacks insight in carrying out the statutory requirements and is unable to identify problems herself and address them. She has demonstrated that she can address issues once they have been the subject of WRNs but cannot sustain such improvements. Added to this is the recurring issue of C's failure to be open and honest in her dealings with Ofsted.

### **Proportionality**

101. We carefully considered the issue of proportionality. We had regard to the chronology of events which are set out in considerable detail at C1 to C4. We note that there were no less than 7 WRNs issued between November 2013 and November 2021. In addition, there were numerous visits and contacts with

Ofsted in relation to concerns regarding compliance from 2011 to date. C has had many opportunities to address issues that have been repeatedly raised over a considerable period of time. The regulator has acknowledged improvements and confirmed compliance with WRNs and have taken a reasonable approach to a long history of compliance issues. It is clear that it is not the role of the regulator to advise, support, and assist a provider on a continuous basis which is something C says she will submit to.

102. The evidence and history of breaches of the regulations demonstrates conclusively that C has an inability to maintain improvements that she has made. She has had many opportunities to rectify repeated concerns of a significant nature over a long period of time.
103. In particular, C's inability to be open and honest with Ofsted in relation to the range of issues relating to safeguarding suggest that there are no steps short of cancellation which could deal with those recurring issues that we have referred to above and set out in the Scott Schedule. C maintained a level of denial and dishonesty throughout the course of this appeal, until the very end of her oral evidence. The fundamental inability to be open and honest with the regulator in relation to important safeguarding issues supports the view that the Respondent's decision was proportionate and we endorse the conclusion that no steps or actions could be put in place short of cancellation to address the issues referred to above. No conditions could satisfactorily address the risks we have identified.

### **Decision**

104. C's appeal is dismissed.
105. Cancellation of registration as a childminder under Section 68 of the Childcare Act 2006 is confirmed.

**Judge L Ford**

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

**Date Issued: 01 November 2022**