



## First-tier Tribunal Care Standards

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

2024 – 01240 EY-SUS

[2024] UKFTT 00889 (HESC)

Hearing by video-link  
on 4 October 2024

BEFORE  
Tribunal Judge Siobhan Goodrich  
Specialist Member Ms Michele Tynan

BETWEEN:

Little Oaks Grimsby Ltd

Appellant

v

Ofsted

Respondent

### DECISION ON APPEAL AGAINST SUSPENSION

**Amended under the slip rule so as delete material in para 4(g).**

#### Representation

Appellant: Ms Natasha Jackson, instructed by Wilkin Chapman  
Respondent: Ms Lucy Keeler, Ofsted Legal Services

#### The Appeal

1. By notice dated 17 September 2024 the Appellant appeals the Respondent's decision made on 11 September 2024 to suspend its registration to provide childcare at Little Oaks Nursery until 22 October 2024.
2. The right of appeal lies under regulation 12 of the Childcare (Early Years and General Childcare Registers (Common Provisions) Regulations 2008 ("the Regulations"). The Applicant seeks a direction that the suspension shall cease to have effect. The Respondent resists the appeal and requests that the decision to suspend registration is confirmed.

## 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 any child or parents involved. This is in order to protect the best interests of children.

## The Background and Chronology

4. This appears to be as follows:
  - a) The Appellant company (hereafter “the Appellant”) was first registered with Ofsted as a childcare provider on the Early Years Register and both the compulsory and voluntary parts of the Childcare Register in 2019.
  - b) In November 2021 the service was rated as inadequate on inspection. In April 2022 the service was rated as good.
  - c) On 11 September 2024 Ofsted received serious safeguarding concerns about the Appellant. Senior Officer Allison decided to suspend the Appellant’s registration pursuant to regulation 9 until 22 October 2024. Ofsted informed the Local Authority Designated Officer (LADO) for North East Lincolnshire. The LADO advised Ofsted that a relevant safeguarding authority would be investigating the allegations.
  - d) On 13 September 2024 the Humberside Police (hereafter “the Police”) executed a warrant at the nursery premises and seized material.
  - e) On 19 September a LADO Complex Strategy meeting took place.
  - f) On 27 September 2024 a further LADO Complex Strategy meeting took place. The Police stated that their investigation is still ongoing and that another team has stepped in to investigate to deal with matters quickly.
  - g) On 30 September 2024, the Appellant received an email from the Police providing an update on the ongoing investigation and providing further information about the **range and** nature of a number of **safeguarding** concerns/allegations. **as follows:**
  - h) The email set out that: *“The Police investigation is ongoing and the investigation team is in the process of sharing information with Ofsted, the Lado and the local authority, officers are still gathering material to enable them to decide if criminal proceedings are required or not.*

## The Appeal and Response

5. In essence, in the Notice of application the Appellant's position is that the threshold test in regulation 9 is not satisfied so the suspension should be lifted. Alternatively, suspension is not necessary or justified and/or is disproportionate.
6. The Respondent's position is that it is unable to conduct its own investigations, until the Police consider that this will not risk prejudice to their investigation. There is a reasonable prospect of the Respondent's investigation showing that further steps to reduce or eliminate or reduce risk might be necessary. Suspension is proportionate and necessary.

## The Legal Framework

7. The statutory framework for the registration of nursery provision is provided under the Childcare Act 2006. Section 69(1) of the Act provides for regulations to be made dealing with appeal against the suspension of a person's registration: see regulations 8-13 of the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 (hereafter "the 2008 Regulations").
8. When deciding whether to suspend registration the applicable test is that set out in regulation 9 of the 2008 Regulations. It is that:  
*"...the Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm."*  
(our bold)
9. "Harm" is defined in regulation 13 as having the same definition as in section 31(9) of the Children Act 1989:  
*"ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another".*
10. The immediate duration of suspension under regulation 9 is for a period of six weeks. It may, however, be extended to 12 weeks under regulation 10. This provides that:  
*"Suspension of registration: further provisions*  
*10.—(1) Subject to paragraph (2), the period for which the registration of a registered person may be suspended is six weeks beginning with the date specified in the notice of suspension given in accordance with paragraph (4).*  
*(2) Subject to paragraph (3), in a case in which a further period of suspension is based on the same circumstances as the period of suspension immediately preceding that further period of suspension, the Chief Inspector's power to suspend registration may only be exercised so as to give rise to a continuous period of suspension of 12 weeks.*

*(3) Where, however, it is not reasonably practicable (for reasons beyond the control of the Chief Inspector)—*

*(a) to complete any investigation into the grounds for the Chief Inspector's belief referred to in regulation 9, or*

*(b) for any necessary steps to be taken to eliminate or reduce the risk of harm referred to in regulation 9, within a period of 12 weeks, the period of suspension may continue until the end of the investigation referred to in sub-paragraph (a), or until the steps referred to in sub-paragraph (b) have been taken."*

11. Under regulation 11 suspension "must" be lifted by Ofsted at any time if the circumstances described in regulation 9 cease to exist. This effectively imposes an ongoing obligation upon the Respondent to keep the need for suspension under review.
12. The first issue to be addressed by the panel is whether, as at today's date, it reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm (the threshold test).
13. The burden of satisfying us that the threshold test under regulation 9 is met lies on the Respondent. The standard of proof 'reasonable cause to believe' falls somewhere between the balance of probability test and 'reasonable cause to suspect'. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child may be exposed to a risk of harm.
14. Further the Respondent bears the burden of persuading the panel that the decision under appeal is justified in terms of a legitimate public interest objective, and is proportionate in all the circumstances.
15. We are guided by **GM [2009] UKUT 89 (AAC) at [21]**

*"Although the word "significant" does not appear in regulation 9, both the general legislative context and the principle of proportionality suggest that the contemplated risk must be one of significant harm."*

### **Additional Evidence and other preliminary matters**

16. The Respondent made a T109 application to provide late evidence: a second witness statement from Ms Allison dated 3 October 2024. In essence this statement provided the same information regarding the allegations being investigated that had been provided by the Police to the Appellant by email on 30 September. The statement also explained Ofsted's role and approach. Whilst there was no objection to the panel receiving this late evidence Ms Jackson submitted that an adjournment was necessary so that the Appellant could consider its response to Ms Allison's further statement, and with particular regarding to the issue of proportionality.

17. We agreed that it was in the interests of justice to receive the second statement of Ms Allison as it brought the evidence up to date regarding the ongoing Police investigation. Further it addressed the concern raised by the Appellant in its skeleton argument regarding the point and purpose of suspension pending Police investigation.
18. The panel said that it would allow time that day so that instructions might be taken as needed on the new statement as needed, but it became clear that a far longer adjournment (i.e. to a future date before 22 October) was sought. Ms Jackson informed us that Ms Allison's second statement had been received by the Appellant on 3 October.
19. We retired to consider the Appellant's application for a longer adjournment and had regard to all aspects of the overriding objective – see paragraph 2 of the Rules. We refused the application. It was clear that the essential information conveyed in Ms Allison's second statement regarding the nature and substance of the allegations had, indeed, already been conveyed to the Appellant by email from the Police on 30 September. The Appellant has had time to consider the information provided by the Police. Further an adjournment is not necessary to enable the Appellant to consider Ofsted's position as set out in Ms Allison's second statement. We were not persuaded that an adjournment was necessary in order for representations to be made or for us to make a fair decision on this appeal. We were not satisfied that an adjournment would achieve any real purpose.

### **The Hearing**

20. We had read the indexed e-bundle in advance, the contents of which are set out in the bundle index and include the statements of Miriam Caldecott and Emma Allison for the Respondent and that of Jessica Formby on behalf of the Appellant. We have also been assisted by skeleton arguments from both parties. Both skeletons drew our attention to *Ofsted v GM & WM* [2009] UKUT 89 (AAC), and at paragraphs 26 to 28 in particular.
21. There were no significant difficulties with the video connection.
22. We take into account the second statement of Emma Allison. This states that the Police investigation team is in the process of sharing information with Ofsted, the Local Authority Designated Officer (LADO) and the local authority. The Police are still gathering material to enable them to decide if criminal proceedings are required or not. Humberside Police informed the Appellant that when they have all the information they require to enable them to make an informed decision the LADO, Ofsted and the local authority will be updated, at this time those decisions will also be shared with the Appellant. Contact details for Humberside Police were also shared with the Appellant.
23. In the event neither party sought to ask questions of any of the witnesses, all of whom were in attendance. The representatives adopted their skeleton arguments and made brief oral submissions.

## The Tribunal's consideration

24. We will not refer to every aspect of the material before us, the oral evidence or the skeleton or oral submissions. We have taken all the information before us into account. We will refer to key aspects when giving our reasons. If we do not refer to any particular piece of evidence or any particular submission it should not be assumed that these have not been considered.
25. It needs to be emphasised that we are not today involved in making any findings of fact. Our task is essentially that of a risk assessment as at today's date in the light of the nature and substance of the allegations before us and in circumstances where the evidence is inevitably incomplete. The Police investigation is on-going and because of this the Respondent is not yet able to conduct its own investigations. The nature of the Respondent's role in these circumstances is such that it has to await permission from the Police before it is able to carry out its own investigations. The reasons for this are well known and understood: there is a risk that the Police investigation might be compromised by parallel enquiries made by another body.
26. We add that whilst reference is drawn from case law to our "placing ourselves in the shoes of the Chief Inspector", we are an independent panel making a risk assessment as at today's date against the threshold set out in paragraph 9 and on the basis of the information available today.
27. Although the word "harm" in regulation 9 is not qualified by the word "significant", we consider that the significance of any (potential) harm is relevant to the issues of necessity, justification and proportionality.
28. Applying **Ofsted v GM & WM**, we remind ourselves that Regulation 9 sets a low threshold. However, the mere fact that the Regulation 9 threshold is met does not necessarily mean that the exercise of the power of suspension is necessary, justified or proportionate.
29. On the face of it, the allegations made, if true, are very serious indeed. In short, the allegations appear to allege a pattern of neglect and repeated failures to safeguard children in a number of different ways.
30. We find that Respondent has satisfied us that there is a clear point and purpose to the suspension. The background includes a Police instruction that the Respondent cannot carry out its own investigation until given permission to do so. It is clear to us that the statutory agencies are working together under the auspices of the LADO and with appropriate speed. We are satisfied that the Police are aware of the need to permit Ofsted to carry out its own enquiries, as regulator, as and when the Police consider that appropriate. The Respondent has stated that once given permission by the Police its own investigation will start straightaway. Ms Keeler stated that that a further LADO Complex Strategy meeting is scheduled for 8 October.

31. We are satisfied that the Respondent's decision to suspend registration until 22 October 2024 is in accordance with the law and is necessary to protect the public interest in the protection of the health, safety and welfare of children pending further investigation.
32. We are also satisfied that the interference involved in the decision is justified in pursuit of that legitimate public interest aim, namely, the protection of the welfare and best interests of children.
33. On the Appellant's case as advanced at the hearing the issue is proportionality.

### **Proportionality**

34. We have carefully considered all the matters raised on the Appellant's behalf. Suspension is always an extremely serious matter because of the adverse impact on business viability, livelihood, professional reputation and standing. It needs always to be recalled that allegations may not ultimately be pursued or proven. In addition to the profound impact upon the provided a decision to suspend a setting also has a very significant impact upon children and families attending the setting. A decision whether to suspend is never a decision to be taken lightly.
35. We balanced the harm to the interests of the Appellant and everyone concerned against the risk of significant harm to children looked after at the setting if suspension is not in place whilst the allegations are investigation.
36. We have considered the profound impact of suspension on the Appellant company and its employees, as well as the loss of a valuable and well-regarded service to the community and the families that it serves. We have well in mind that the Appellant's setting provides care for some 75 children, in an area where there is significant social need. The Appellant's setting is a resource that is highly valued by parents and is needed by children. Continuity of care is highly important to children. We have carefully considered all the matters raised on the Appellant's behalf, which includes the financial loss each month in the order of £30,000. There is an obvious risk that the setting may not survive a prolonged period of suspension.
37. We have paid regard to all these matters when balancing the interests of the Appellant and all those affected against the potential risk to children. Having considered all the material before us we consider that the need to protect children against the risk of harm pending further investigation outweighs the adverse impacts of suspension on the Appellant and others affected.
38. We consider that it is fair, reasonable and proportionate to the public interest in the protection of the health, safety and well-being of children that the Appellant's registration is suspended pending further investigation. We confirm the decision to suspend registration made on 11 September 2024 which expires on 22 October 2024.

**Decision**

The decision to suspend registration until 22 October 2024 is confirmed.

The appeal is dismissed.

Tribunal Judge Siobhan Goodrich

First-tier Tribunal (Health Education and Social Care)

Date issued: 7 October 2024

**Amended under the slip rule Date reissued: 29 October 2024**