First-tier Tribunal Care Standards

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

2025-01360.EY-SUS
NCN: [2025] UKFTT 00128 (HESC)

Hybrid hearing held at the Royal Courts of Justice
On 5 February 2025

Before

Mr S Lewis (Judge)
Miss R Smith (Specialist Member)

Ms Marcia Janice Steele

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. The Appellant brought this appeal ("the Appeal") against a decision ("the Decision") by the Respondent, set out in a written notice dated 2 January 2025, to suspend – or to further suspend – her registration as a childminder on the Early Years Register, the compulsory part of the Childcare Register and the Voluntary Part of the Childcare Register, from 3 January 2025 ("the Current Suspension"). The relevant powers of suspension are set out in section 69 of the Childcare Act 2006 ("the Act") and regulations 8-13 of the Childcare (Early Years and General

Childcare Registers) (Common Provisions) Regulations 2008 (“the Regulations”).

2. The Respondent opposes the Appeal.

3. In broad terms, the Decision, and the Appeal, primarily focuses on alleged conduct or capability issues relating to the Appellant in the context of an eviction, carried out by High Court enforcement agents or officers (“HCEAs”), on 12 March 2024 (“the Eviction”), at a property (“the Property”) where the Appellant had that day been providing registered childminding services to a number of children (“the Children”). The Property was also her home. The Appellant has been registered as a childminder since 2011, from a variety of addresses over time.

Hearing and attendance

4. The Appellant attended and represented herself as a litigant-in-person. She made some opening submissions, before giving oral evidence. She then made closing submissions, after having heard those from the Respondent.

5. The Respondent was represented by Mr Praveen Saigal, a solicitor advocate. Ms Sarah Stephens, an Early Years Senior Officer, gave oral evidence. Mr William Chapman, a lawyer at the Respondent, also attended throughout to observe.

6. Although the hearing took place as a hybrid hearing, everyone attended in person, and no one else joined via the remote video link or in any other way. The hearing began around 10.10am and ended around 5.05pm. A break of 50 minutes or so was taken for lunch. Shorter breaks, of around 10 minutes, were taken in both the morning and afternoon sessions.

Evidence

7. The Tribunal had a large bundle of written documents (“the Bundle”), running to 1,809 pages. The Bundle was split into various sections, the last page being J54. The Tribunal permitted some late documents to be added to the Bundle.

8. In addition, the Tribunal was provided with a considerable amount of video evidence relating to the Eviction. Some footage was provided by the Appellant: that seemed to have been taken on a mobile phone, by either the Appellant or, perhaps more likely, one or other of her two assistants. The rest was provided by the Respondent: it included footage taken on a phone by a parent of a child being minded at the time of the Eviction, and a large amount of footage from body-worn cameras worn, throughout the day of the Eviction, by three of the HCEAs involved.

9. The Tribunal heard oral evidence from Ms Stephens in the morning. She relied on a witness statement dated 23 January 2025. The Appellant was provided with an extensive opportunity to ask Ms Stephens questions relevant to the issues in the Appeal. The Tribunal then heard oral evidence from the Appellant in the afternoon. she relied on a witness statement dated 23 January 2025.

10. The Tribunal also considered various other witness statements provided by the Respondent in earlier appeal hearings relating to previous suspension decisions but the same factual scenario. The statements were those from the following:

    (a) Karen Dover, the most senior of the HCEAs involved, dated 8 August 2024.
    (b) Darris Thomas, one of the other HCEAs involved, dated 7 August 2024.
    (c) The father of one of the Children ("Parent 1"), dated 8 August 2024.
    (d) The mother of one of the Children ("Parent 2"), dated 7 August 2024.
    (e) Sandeep Mohan, the Local Authority Designated Officer ("LADO") involved, dated 12 August 2024.
    (f) Naomi Brown, one of the Respondent's inspectors, dated 9 August 2024.
    (g) Emma McCabe, an Early Years Senior Officer, dated 8 August 2024.
    (h) Ms Stephens, on; 9 August 2024, 29 October 2024 and 11 December 2024.

11. The Tribunal gave what weight it considered appropriate in all the circumstances to the above statements, having full regard to the fact that the Appellant (with the exception of those provided by Ms Stephens) was not provided within the hearing an opportunity to test and challenge their content with questions to the witnesses. In doing so, it took into account submissions made by the Appellant about how, when tested under cross-examination in previous hearings, some of that evidence had, in the Appellant's view, been materially undermined.

12. Similarly, the Tribunal considered witness statements provided by the Appellant in relation to previous appeal hearings from (a) one of the other mothers of the Children, dated 11 August 2024 and (b) the Appellant, in August 2024, September 2024, and December 2024.

13. The Tribunal was also provided with helpful skeleton arguments from both parties.

Preliminary issues

14. The Tribunal identified and dealt with three preliminary issues. In doing so, it had regard to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 ("the Rules").

Late documents

15. The Tribunal considered an application by the Appellant, in a notice (on form T109) dated 3 January 2025, to add additional (late) documents to the Bundle. The Respondent had indicated, in a written response, that it did not object but that it did not admit their content and made some points about relevance. The Tribunal, having particular regard to rule 15 and to the overriding objective in rule 2 of the Rules, decided to allow the documents. In doing so, however, it made it clear that the parties would need to take the Tribunal to specific documents if they intended to rely on them and that the parties could make submissions about what weight (if any) the Tribunal ought to give to any relevant document.

Restricted reporting orders

16. The Tribunal considered whether it ought to make any restricted reporting orders. First, the Tribunal considered the position in relation to the young children being minded at the relevant time by the Appellant and their parents/families. Having heard from both parties and with apparent consent, it concluded that it would make an order, under rule 14(1)(a) and (b), prohibiting the disclosure or publication of any document or matter likely to lead members of the public to identify the Children (or their parents), so as to adequately protect their private/family lives.

17. Secondly, the Tribunal considered the position in relation to members of the Appellant's family. In the notice referred to above, the Appellant had applied for an order or intervention designed to protect the identity of (a) her father and (b) her daughters (who had been acting as her assistants during, and were present throughout, the Eviction). The Tribunal invited and received further submissions, orally, from the Appellant, in support of her written application. She submitted, in summary, that her father was vulnerable, that her daughters were innocent parties and victims of crimes (in relation to matters relating to the Eviction which were still being investigated), and that it would be unnecessary and unfair to name them. The Respondent, in opposing the application, maintained the position it had set out in its written response to the application notice. It submitted that there appeared to be no proper basis or justification for any relevant order. It relied on the written reasoning provided by previous tribunals in relation to similar applications. The Tribunal concluded that it would not make any order; that an order was not necessary, proportionate or otherwise justified. In the Tribunal's judgment, the important principle of open justice outweighed the private/family life interests of the Appellant's father and daughters. These are public proceedings. There was insufficient, or insufficiently persuasive, evidence of the father's vulnerability or of any further likely and relevant adverse impact on him. The daughters were present and involved in relevant events on 12 March 2024 and it would be difficult in practice to protect their identity without also making an order

in relation to the Appellant. The Tribunal makes it clear, however, that the focus of the Decision and the Appeal is on alleged matters and concerns relating to the Appellant, rather than any family member.

Video footage

18. The Tribunal raised the potential issue of whether any of the (extensive) video footage should or needed to be played or heard in the hearing itself. Mr Saigal expressed the view that it was not necessary. He said that the parties could make submissions on such matters, and that such matters – given the particular nature of these proceedings and given that it appeared not to be reasonably practicable for such footage to be played in any event – were best dealt with by submissions. The Appellant indicated that she had been told that it would not be reasonably practicable to play the videos. She agreed that she had highlighted some particular videos (or parts of videos) she considered to be most relevant, in her skeleton argument, and that she could make further submissions on such matters.

19. Having considered the views of the parties and wider circumstances, the Tribunal decided to proceed without the intention of trying to play any particular footage in the hearing itself. The Tribunal had had an opportunity, in the course of its preparation, to consider the footage. It would listen to any further submissions, in due course, in relation to it. It could also, if and where necessary, go back to the footage during deliberations, in breaks or after the hearing, to review or check any particular footage highlighted by either of the parties.

Relevant procedural background

20. The Current Suspension is, in fact, the seventh period of suspension, albeit not consecutively, arising from or relating to the events of 12 March 2024. In summary:

    (a) The initial suspension was from 13 March 2024 to 23 April 2024. There was then a second suspension from 24 April 2024 to 4 June 2024. These initial two periods were not appealed. The Appellant accepts that the relevant threshold was met in relation to them.

    (b) The suspension was then lifted on 31 May 2024. The Appellant had, by then, informed the Respondent that she was taking an eight-week break from childminding and had no suitable premises during that time to childmind from. The Respondent took a view, at that time and in those circumstances, that there was no sufficient risk of harm (as no children would be in her care). It attempted to meet the Appellant, on 4 June and 12 June 2024 to discuss its ongoing concerns but those meetings did not happen (due, it seems, to

postponements sought by the Appellant on health grounds).

(c) On 19 July 2024, however, the Appellant was suspended again, to 29 August 2024. That decision was reached following further information/evidence which had by then become available and a "joint evaluation meeting" with the LADO on 19 July 2024 (which concluded that allegations against the Appellant were "substantiated"), which had the effect of changing the Respondent's view in relation to risk. The Appellant appealed this third suspension decision. That appeal was dismissed, following a hearing on 22 August 2024.

(d) A fourth suspension took effect from 30 August 2024, for another six weeks (being due to expire on 10 October 2024). The Appellant appealed. The appeal was dismissed following a hearing over three days in October 2024.

(e) A fifth suspension took effect from 11 October 2024, for a further six weeks (being due to expire on 21 November 2024). The Appellant appealed. The appeal was dismissed following a hearing on 14 November 2024.

(f) A sixth suspension took effect from 22 November 2024, for a further six weeks (being due to expire on 2 January 2025). The Appellant appealed. The appeal was dismissed following a hearing on 23 December 2024.

21. The Respondent issued a notice of a decision to cancel the Appellant's registration on 4 December 2024 ("the Decision to Cancel"). The Respondent relied on the same or similar matters that it did in relation to its suspension decisions and some wider matters which, collectively, it says mean that the Appellant, in its view, is not a suitable person to childmind and has not met various basic requirements. The Appellant has appealed the Decision to Cancel. The Current Suspension is on an ongoing basis, designed by the Respondent to continue until the cancellation process has completed and/or until any risk of harm has been sufficiently reduced. The Respondent is also under an ongoing obligation to keep the suspension under review. As at the time of the hearing, no date is set for the hearing of the appeal against the Decision to Cancel – but things are progressing and the Respondent appeared to be set, for example, to file its formal response on 5 February 2025.

Legal framework and principles

22. The statutory framework relating to the registration of childminders is set out in the Act. Section 69(1) provides for regulations relating to suspension of registration.

23. Regulation 8 of the Regulations provides that registration may be suspended, by notice, in the circumstances set out in regulation 9 and for the period set out in

regulation 10.

24. Regulation 9 sets out that registration may be suspended in circumstances where "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."

25. Regulation 13 provides that "harm" is to have the meaning set out 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."

26. Regulation 10 provides (as far as relevant):

   (1) Subject to paragraph (2), the period for which the registration … may be suspended … is six weeks …
   (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.

27. With regards to the Current Suspension, the Respondent, having now completed its investigation and having made the Decision to Cancel, but in circumstances where there is a live and as yet unresolved appeal in relation to the Decision to Cancel, seeks to rely on regulation 10(3)(b). The "necessary steps" are, the Respondent submits, the steps being taken to cancel the Appellant's registration.

28. On appeal, the Tribunal is to stand in the shoes, as it were, of the Chief Inspector and make its own decision in relation to the test set out in regulation 9. In other words, the Tribunal needs, first, to ask itself whether, at the date of the hearing, it holds a reasonable belief that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm. The burden of proof is on the Respondent. The standard of proof is "reasonable cause to believe", falling

somewhere between “the balance of probabilities” and “reasonable cause to suspect”. The belief is to be judged by whether a reasonable person, assumed to know the relevant law and be in possession of the relevant information, would believe that a child may be put a risk of harm. The threshold, therefore, is relatively low. The Tribunal does not need, for example, to be satisfied that there has been any actual harm, or that harm is likely in the future. As the Tribunal is focused on assessing current and future risk, it does not need to make conclusive findings of fact, especially in relation to relevant matters which may be hotly disputed.

29. If the Tribunal is satisfied that the test/threshold relating to regulation 9 is met, it then needs to consider whether, objectively viewed, a suspension is proportionate. The Respondent bears a persuasive burden in relation to that issue.

30. The Tribunal highlights, as it did in the hearing, that it has approached this matter with an open mind. There have been four hearings of appeals against the previous suspensions, relating to similar issues, each arising from the events of 12 March 2024. There were extensive references to previous decisions and hearings in the Bundle, oral evidence, and submissions. But this fifth appeal was considered afresh, on its own merits, by a panel which had not previously made a decision in relation to the earlier appeals, and which was in no way bound by any previous decision.

Summary of evidence

31. The Tribunal took account all of the evidence it was taken to and all oral evidence in the hearing. There was an extensive amount of evidence. It is summarised in this section – but only summarised and the reader ought not to assume that evidence not expressly referred to below was not also taken into account.

The Respondent’s evidence

32. The Respondent set out, in the various witness statements from Ms Stephens and her colleagues, a detailed account of its investigation and the rationale for the Decision. In broad terms, and having had the benefit of seeing the evidence of Ms Stephens tested under extensive and intelligent questioning by the Appellant, the Tribunal formed a view that Ms Stephens, an experienced inspector for around a decade or more, was a consistent, credible, and reliable witness.

33. In her oral evidence, Ms Stephens began, in response to supplementary questions from Mr Saigal, by stating that, having had an opportunity to consider more recent evidence provided by the Appellant, she remained of the view that the risk posed by the Appellant had not been materially or sufficiently reduced and that it was

necessary to have and maintain the suspension to ensure that children were safe.

34. She maintained her view that the Appellant could have prevented much of the risk on 12 March 2024 had she only called the parents of the Children, as she had been repeatedly urged to do by the HCEAs and/or police, to arrange for their collection, or given the police their contact details so that they could arrange the same. She denied being biased towards the HCEAs or against the Appellant. When asked about a message the Appellant claims to have sent to the parents on a group messaging system ("the Family App"), she reiterated that the Respondent had evidence from two parents (Parent 1 and Parent 2) that neither had received/ viewed it, and neither had been contacted by the Appellant to inform them of the situation or to collect their children early. She provided an explanation as to why the Respondent had not considered it necessary to get statements from other parents. She said that while the Respondent had formed a view that the Appellant was not reliable in all the information she had been providing to it, that was a matter which contributed more to the Decision to Cancel. She stated that the Appellant had a tendency to indicate, at times, that she accepts responsibility for relevant matters but then to seek to blame others without recognising that she had had multiple opportunities during the day to protect the Children and chose not to take reasonable steps to do so, even after her late application to stay the Eviction had (in the mid-to-late afternoon) failed. She added that various opportunities had been provided to the Appellant to discuss ongoing concerns, relating to the Decision to Cancel, but the Appellant gave only very limited availability and then proceeded to cancel on the basis she was not well enough. In relation to the training/reflection the Appellant had engaged in more recently, she said that what matters most was whether the Appellant had learned enough from it and could apply it in practice.

35. As indicated, the Tribunal also had some regard to the statements the Respondent invited it to read. Among other things, the Tribunal noted the following in particular:

    (a) Parent 1 stated or otherwise indicated that: no concerns or notable information was conveyed to his wife when their child was dropped off on 12 March 2024; no contact was made to disclose concerns or notable information throughout the day, whether by phone or any other means of communication (such as the Family App); he heard someone screaming at the Property and a child crying during the Eviction; his child had been impacted, and made more anxious, by the sudden and unexpected disruption to her routine which resulted from the events of 12 March 2024.

    (b) Parent 2 stated that the Appellant had sent her a text message at 4.58pm on 12 March 2024, when she had been due to collect her child at 5.50pm, which

read: “Favour. Can you collect [her child] at 6.30pm, I will let you know why. All is okay”. Having agreed to do so, Parent 2 received another message from the Appellant, at 5.54pm, stating that two other children were staying for a “sleepover” (which Parent 2 considered to mean an overnight stay) and that her child could stay too if she wanted. On receiving that, Parent 2 sensed that something was not right and drove to the Property. She stated how, on arrival, the Appellant came out to meet up in her car. Parent 2 stated that she just wanted to collect her child and became increasingly panicked, especially when it was clear that the Appellant had by then been locked out of the Property (at which point the Appellant told her enforcement officers were present). Parent 2 set out her account of subsequent events, including a physical “tussle” between her (in a “state of distress”) and the HECAs, and how three of the Children had witnessed that. She said she saw some “shocking behaviour from” the Appellant (shouting, being uncooperative with police), while children were present. She said that the whole incident had been made her “extremely distressed” and had been detrimental to her mental health.

(c) The LADO stated that at least one of the Children was “seen clearly crying almost hyperventilating and screaming out for their mum” and that the “final review meeting” on 19 July 2024 had concluded that the allegation (that the Appellant had caused harm to children) was “substantiated”.

(d) Mr Thomas stated his belief that the Appellant had made an attempt to cancel the Eviction arranged for a different date, by claiming “to the office” that her father was at the Property and had “measles” and suggested that the “press” would be present. He claimed that the Appellant had “screamed insults” at him and Ms Dover, calling him a paedophile, and generally behaved “erratically” throughout the day, with some of the Children witnessing the same. He stated how the Appellant had, later in the afternoon, told him and colleagues that they had better contact the court as she had just had a hearing and “won”. He gave an account of the Appellant later, after having left the Property, trying to “rush at us” as they opened the door, and various physical altercations occurring near and around the door at that point (including an allegation the Appellant “assaulted” him by “scratching” his arms) and how such things were witnessed by the child of Parent 2.

(e) Ms Dover stated that she was aware there had been a previous attempt to carry out the Eviction, but that had been called off due to the Appellant saying someone at the Property had measles. The Appellant had seven days’ notice of the Eviction. On arrival, she immediately urged the Appellant to contact the Children’s parents to arrange collection, and that, despite the Appellant giving an impression she was trying to do that, she believed the Appellant had taken

no such steps. She referred to “abuse”, which in her view related to race, that she says the Appellant directed towards the locksmith. She said that, towards the end of the day, a lady suddenly arrived through the back door and dropped two children off, telling her there were “staying overnight” before leaving abruptly. She provided a similar account to Mr Thomas about “pushing and shoving”, involving the Appellant and others, at end the day, how it “happened in front of” a child being collected and how it was “very distressing” for Parent 2 and her child. She described the police taking the final two children away as “very upsetting” and said that the children looked “confused”.

The Appellant’s evidence

36. In her written statement, and her previous statements, the Appellant set out an account of material events and the steps she has taken to address relevant issues. She gave relatively extensive live evidence. She was cross-examined. She was asked a number of questions by the Tribunal. The Tribunal was less confident, in relative terms, in relation to the reliability of at least some significant parts of the Appellant’s evidence; but, as stated above and below, it was not seeking to make conclusive findings of fact on contested matters.

37. The Appellant maintained that she did not think, at the time, that there was clear and obvious risk the Eviction would be completed on 12 March 2024 (but that she knows, today, that she ought to have known that there was and that she ought to have contacted the parents before they dropped off their children). She said she “really thought” there was no lawful right to evict and that previous experience had led her to a view (which she described, with the benefit of hindsight, as “arrogant”) that bailiffs can and do make errors, things can change and she could sort them out. She had made a late application the day before, and that her intention on 12 March 2024 was to try to stop or delay the Eviction. She denied attempts to frustrate the Eviction previously, on the purported basis someone had measles/ chickenpox or “the press” would be present. She maintained that an agreement had been reached that the Eviction would not take place until the Children had all left at about 9.45pm; Mr Saigal put it to the Appellant that there was no such formal agreement and it was the Appellant who had suggested the Children would be gone by 9.45pm. She claimed that the reference to a “sleepover” in the message to Parent 2 had been misinterpreted (as being a proper overnight sleepover) when it was merely a pretend sleepover in which the children dress up in nightwear, are located in a bedroom and act as if it is a proper sleepover. She denied using children as “weapons” to advance her own interests. She agreed that she had, she thought, “misled” Mr Thomas when she indicated to him that she had been successful in the afternoon court hearing; she said that she had been “petty” in so doing, but that he had been “a bit smug”. She agreed that she had the primary

responsibility to keep the Children safe but sought to maintain that she had worked with partners (social services) to carry out a risk assessment during the day, despite being taken to two documents in which social services had denied doing so in the way or to the extent suggested by the Appellant. She alleged that the social services employee was not being “honest” about what they agreed. When asked why she had not cooperated more with the police to bring about the best possible outcome for the Children, the Appellant referred to people being fearful and distrustful of police (referring, in support, to wider issues relating to the death of Stephen Lawrence, strip searches, Sarah Everard, and, more specifically, to her not feeling confident with one particular officer on the day).

38. When asked about her insight, and the recent documents she had produced in relation to insight, she denied ever having blamed others. It was put to her that comments such as the following, taken from her recent insight document, suggest that she has not moved much in terms of her level of insight: “This principle guided my actions on 12th March 2024 when I was faced with Bedfordshire Police officers who failed to arrest the criminals and instead sought to assist them”. The Appellant maintained that she accepts she made mistakes, that she created risk by having the Children there that day, and that she does take responsibility; but, at the same time, she was entitled to the view that others had acted wrongly in various respects and that she had a “moral responsibility” to bring complaints in relation to their conduct. The situation was “nuanced” but, if she had to chose one person who was most responsible it would now be her.

39. In response to questions from the Tribunal, the Appellant gave the following evidence. She had been working, via an agency, as a full-time lecturer at a college from September 2024 for a brief period, before deciding to focus instead, for the time being, on the proceedings relating to her childminding registration. She had also been doing some work in relation to a “supplementary school” (on Saturdays), some nannying and babysitting, among some other things, and generally trying to “make ends meet”. She had notice of the Eviction for “seven or more days”. She had not looked at the worst-case scenario, about what would happen if her application to stay was refused and had been “just a bit narrow in my thinking”. She had experienced a previous eviction from other premises, involving bailiffs, two or three years ago. She had emergency contact numbers for all of the parents. She did not call them. She suggested that one reason why she hadn’t called them is that she was on the phone herself a lot during that day, to the court (being “on hold”), to social services, etc. When it was put to her that she would have been experienced in undertaking risk assessment, given her prior career experience, including as a deputy head, and asked what was so different about the risk assessments in relation to the Eviction, the Appellant said that the Eviction involved “unlawful acts” and was less predictable.

40. The Tribunal also had due regard to the statement from another parent, that the Appellant had provided at one of the earlier hearings.

Submissions

41. Mr Saigal adopted the written submissions set out in his skeleton argument and highlighted some key points. In essence, he submitted that the position remained similar to the position as it was before previous tribunals – that, while there may be evidence of some “emerging insight”, there was insufficient insight to reduce the risk to an acceptable level. The evidence indicated that the Appellant had demonstrated a careless disregard for the safety and wellbeing of the Children and had made a “calculated decision” to accept them on 12 March 2024 for the purpose of delaying or stopping the Eviction. It would have been apparent to any reasonable person that that day was likely to be extremely stressful for her. The Respondent, he submitted, is deeply concerned that the Appellant’s focus was to seek to protect her own interests, rather than the interests of children, and that there had been some very poor decision-making by her. While the Appellant had taken various steps in recent weeks, and while they are important, she has not demonstrated how they would help her practice sufficiently (and, as such, amount to a missed opportunity to “come clean” about all relevant matters). Having concluded its investigation, the Respondent had determined that the registration must be cancelled. He stressed the importance of trust in relation to childminding regulation, particularly in relation to domestic premises, given challenges relating to effective oversight; and of the importance of the public maintaining confidence.

42. The Appellant encouraged the Tribunal to step back and not give too much weight to the Respondent’s evidence. She did accept she had made mistakes – she had made a major mistake and messed up on 12 March 2024 – but those events were extraordinary and based on an illegal eviction. She had expressed legitimate concerns about the conduct of others in relation (about assaults, the legality of the Eviction, false imprisonment etc); but had followed the correct procedures and was not “hot-headed”. She had an obligation to raise concerns, as she had in the past even when it was not in her interests to do so. She did not accept the relationship with her regulator was broken; she had found it to be useful and she would have liked to have had, and would like still to have, more opportunities to discuss the relevant matters (including her insight and remediation etc) with it. Her recent training had been with respected providers. She has learned a lot. The body worn camera footage should be given more weight, and none has been provided by the police. The email from social services, denying an agreement with the Appellant around a risk assessment, should not be given great weight; the author refused her request to attend as a witness. She has been honest and consistent. Parts of

the statements provided to support the Respondent's case have been shown to be confused or incorrect. The Tribunal ought to take a full and rounded look at the high standard of childcare she has provided over the years. She does not agree that the current position in relation to premises amounts to a material issue, especially now there is an option to register as a childminder without domestic premises. The "substantiated" decision by the LADO played a big part in earlier decisions to suspend but that is now being reviewed. People should not be "written off" as childminders just because they made a mistake (even a big one). The Respondent has not discharged the burden. Ongoing suspension is not proportionate. She could, if given the opportunity, demonstrate her ability to keep children safe.

Conclusions with reasons

Risk

43. Bearing in mind the principles set out further above, and without going as far as to find facts, the Tribunal, on the evidence before it, reached the following views.

44. First, it appears likely to the Tribunal that, objectively viewed, the Appellant, by her decision to **accept the Children into the Property** to be minded on 12 March 2024, placed them at a material risk of harm. The Appellant had been aware, for several days at least, that the Eviction was scheduled to take place that day. She made a late application to the court, the day before, in an attempt to contest or stay the Eviction. There was a clear and significant risk, which was reasonably foreseeable, that during the course of that day there would be a situation or a series of scenarios which rendered the Property unsuitable for the safe minding of children (given the attendance of enforcement agents and others, the court hearing, likely disputes, etc, at the Property). Put another way, it is difficult to see how any reasonable childminder would have agreed to accept the Children in the Property in all the circumstances on that particular day.

45. Second, it appears likely to the Tribunal that, objectively viewed, the Appellant, by her subsequent decisions (or omissions) throughout the course of the day, after the arrival of the HCEAs, continued to place the Children at risk of harm by not taking sufficient steps to arrange for them to be **collected early by their parents**. The evidence indicates that the HCEAs, and at times police, advised the Appellant in clear terms to make the necessary arrangements for the Children to be collected as soon as practicable and before normal collection times. While it is possible (though far from clear) that the Appellant may have made some limited attempt to communicate with parents via the Family App, it seems likely that she made no reasonable and sufficient attempt to bring the relevant issue to their attention

and/or to arrange for the early collection of the Children. For example, with one or two limited exceptions perhaps, it seems clear that she did not call (or instruct her assistants to call) each of the parents directly, which would appear to have been the straightforward and obvious step to take. That apparent failure appears to have been even more culpable following the court hearing at which the Appellant did not manage to have the Eviction stayed. Put another way, it is difficult to see how any reasonable childminder would have not taken sufficient steps designed to ensure that the Children were collected earlier to take them out of the situation and away from the risks associated with it.

46. Third, there are then a number of factors which might fairly be considered to be **aggravating factors**, relating to the Appellant's wider conduct on and around the 12 March 2024. These may, for example, include the following:

    (a) There is a realistic argument that the Appellant could and should have **informed the parents well before** 12 March 2024 that she was having to deal with issues relevant to her ability to provide childminding services both on the 12 March 2024 and (if the Eviction was to go ahead as planned) more generally in the future. That would have allowed parents to make informed decisions, in the best interests of their children, and with more notice (e.g. to plan and prepare for any potential transition for their children), about what alternative childcare options might need to be considered. It would appear that the Appellant told most, or at least two of the parents, nothing at all in advance of 12 March 2024.

    (b) There is a realistic argument that the Appellant **failed to work collaboratively** with the HCEAs and/or police during or in relation to the Eviction. Examples may include: steps not taken by the Appellant to contact and inform the parents individually (and giving a misleading impression about steps said to have been taken or being taken); misleading the HCEA about the outcome of the court hearing (describing it as a hearing she had "won" when, in reality, her attempt to stay the Eviction had been unsuccessful).

    (c) There is a realistic argument that the Appellant compounded earlier failings in relation to the collection of the Children by (i) arranging or agreeing for a parent to **drop off two children later** in the day and/or (ii) contacting Parent 2 in **an attempt to arrange for her child to stay longer and/or overnight** for a sleepover. In this way, children may well have been put at further and ongoing risk (even after it was clear to the Appellant that the level of risk in relation to the Property, and any children within it, was increasing or may well increase).

    (d) There is a realistic argument that the Appellant compounded earlier failings in

some other aspects of her conduct. For example, the Appellant appears at one point, according to the videos, to have tried (albeit unsuccessfully) to use some considerable **physical** force to re-enter the Property later in the evening, after she had left and been locked out by the HCEAs. Given that there was still at least one child still present at the Property, that may well be said to be conduct which increased the risks associated with this case. To take another different example, the Appellant does appear to be have been recorded on video as saying, without any obvious reasonable ground to do so, to the locksmith (a white male), while he was changing locks at the Property, that he would not "give a damn" (or similar) about the Children because they "do not look like" him or his children (or similar). The comments were, perhaps understandably, taken by the locksmith as allegation he was racist in some material way. He responded by saying that he had a Jamaican wife, or similar, and that then appears to have led to a series of derogatory comments, relating it seems to race, towards him and/or about politicians (from the Appellant or one of her assistants). Comments such as these, in the vicinity of the Children, may well be said, if nothing else, to rise the risks associated with this case.

(e) There is a realistic argument that, for significant periods of time during 12 March 2024, the Children were either under-supervised, given that the Appellant and her two registered assistants were at times actively engaged in discussions or confrontations or similar with the HCEAs or police and away from the Children, or left to be supervised by an unregistered individual (who was unknown to the Respondent and had not been confirmed by it as a suitable person). Given the relatively large number of children, and their young ages, there are questions to be asked about whether the Children were **adequately and safely supervised** at various points during the day.

47. Fourth, there are, on the other hand, factors which might fairly be considered to be **mitigating factors**. The Appellant appears to have spent a long time in roles relating to children and safeguarding etc (including as a childminder and as a deputy head of a primary school) and, moreover, there is evidence indicating that, in various ways, she has provided a good level of service to children in the course of her childminding work. The events relating to the Eviction are likely to have been inherently stressful and emotional for the Appellant, given the risk it posed to her business and income, her reputation, her children (given that, to some extent at least, they worked for her and may have been dependent on her ability to earn money from the childminding business), and given that the Property was her home as well as her place of business. Some of the conduct, attitude or approach of the HCEAs, or even some of the police officers, may well have added to the stress and/or to feelings of injustice. A wider potential mitigating factor might relate to the Appellant's previous experience or perception of – and her associated degree of

trust and confidence in – the police or HCEAs. In addition, there is one of the Appellant's central points: she continues to assert the belief that she and/or her children were victims of unlawful assaults, false imprisonment, an unlawful eviction, etc. The Tribunal had due regard to all such matters.

48. Stepping back and looking at things in the round, the Tribunal is satisfied that, as at and on 12 March 2024, the Appellant did likely put the Children at material risk of harm during the course of the day of the Eviction:

    (a) The risk included significant **emotional or psychological harm**. The Children may well have heard or seen physical altercations, raised voices (including shouting or screams), heated arguments, multiple people filming others on cameras, someone on the Property drilling and changing locks, intimidating strangers inside the Property (that the Appellant and her assistants were visibly concerned or unhappy about and distracted by) wearing intimidating clothes (such as, in one case, balaclavas), police presence, etc. Two children, at the end of the day, were taken away by the police, for safeguarding purposes, into a police car until they could be collected by a parent. Such things could well have caused harm to some of the Children, particularly any who might be more sensitive or anxious in nature, or more aware of their surroundings and situations. There was, too, a longer term risk relating to the Children having stable and reliable childcare arrangements brought to an end abruptly, especially again for any more anxious children to whom stability is particularly important or where parents are not well-placed to make adequate alternative arrangements.

    (b) The risk also included **physical harm**: there was a risk that one or more of the Children may have got caught up in a physical altercation between the Appellant or her assistants and the HCEAs or the police, or been injured by a door being closed or opened with more than usual force.

49. Although there is no requirement to find that **actual harm** was caused, the Tribunal considers it likely that at least some of the Children would have been harmed, emotionally or psychologically, by the events or consequences of 12 March 2024. Seeing or hearing some of the events that seem to have been captured on camera may have been terrifying for some more anxious, sensitive or aware children to experience.

50. The Tribunal's task is, however, to assess the position in relation to current and future. It may need or otherwise be entitled to have such an assessment informed by apparent or likely events in the past; but the focus must be forward-looking. In order to carry out its task properly, the Tribunal took the view that it was also

helpful to consider what was or may have been **in the mind of the Appellant** during the material events of and connected to 12 March 2024. It took the view that there were two main possibilities:

(a) The **first broad possibility** is that the Appellant made an error of judgment, based on a poor and inadequate risk assessment, in relation to the key decision to take children at the Property that day (and, thereafter, made further errors of judgment in relation to other decisions throughout the day, most notably decisions to not take further and more effective steps to have the Children collected earlier). In other words: the Appellant was negligent or reckless or something similar, and it was that which had the effect of putting the Children at risk. This seems, broadly, increasingly, to be the Appellant's case: she made a mistake (but an honest one); she got the risk assessment wrong; she genuinely believed (if wrongly) that she would avoid the Eviction (whether via her late application to the court or some other development); she never thought (at the time) that, realistically, she was putting the Children at material risk (even though she may well accept, now, that she did).

(b) The **second broad possibility** is that the Appellant was significantly more alive, at the time, to the reality of the situation and the risk that the Children were being put at by her actions or inactions; and that, moreover, the Appellant deliberately and knowingly put the Children, in a calculated and pre-meditated way, at a risk of harm, and did so because she believed that their initial and/or ongoing presence at the Property would help her to delay, avoid or otherwise disrupt the Eviction. In doing so, she would have intentionally put her own interests way above those of the vulnerable children she was trusted, and obligated, to protect and care for. This, broadly, appears to be the position advanced by the Respondent. It amounts to a more serious allegation, of more highly culpable misconduct, against the Appellant. It is one she denies.

51. The Tribunal does not seek to reach a determination as to which of the two broad possibilities is more likely to be true in fact. It does not need to. The Tribunal, on the evidence, considers that either could well be true or that there could have been elements of both. Either way, irrespective of the mindset the Appellant had at the relevant time, the Tribunal is satisfied that there is an **ongoing material risk**:

    (a) If the second possibility is correct or more correct, core and deeply-seated attitudinal issues – relating to the instinct or willingness to knowingly place children in her care at risk, in order to protect or advance her own personal interests – may well be present which may well be difficult, in general, to remediate effectively. Apart from anything else, there would, at present, given the Appellant's denial of this possibility, be a marked lack of insight into her

own conduct, motivation, and risk-factors. The relevant risks would not, in the Tribunal's judgment, be remedied or mitigated sufficiently by the steps that the Appellant has, to date, taken (e.g. additional training and research, the production of some documents relating to risk assessments and insight etc).

(b) But even if it is only the first possibility above which applied, the Appellant still has a significant challenge in persuading the Tribunal that the current level of risk is now acceptably low. The Appellant may well have demonstrated such impaired capability, to undertake adequate risk assessment and/or to make reasonable safeguarding decisions, that her overall capability or suitability to manage risk in relation to children under her care as a childminder is called seriously into question. Such substantial capability issues may be of a nature or degree which would not be easily remedied or mitigated by the steps taken to date by the Appellant. The level of insight developed by the Appellant is, at present, hotly contested between the parties; but, in the Tribunal's view, the Appellant does seem to be continuing to develop a fuller level of insight.

52. In the Tribunal's judgment, there is risk that, **in the future**, the Appellant is faced again with the need to make some kind of significant risk assessment and/or decision relating to safeguarding, and makes a poor decision which places children at risk of harm. Such a decision may, again, relate to issues regarding the property at which the Appellant carries out childminding services or whether she has sufficient permission from the relevant landlord etc. There has been a history of some such issues and there is a real prospect of further such issues in future. But such decisions could relate to a wide range of other potential and foreseeable scenarios: i.e. any decision involving risk assessment or safeguarding, especially one where the Appellant's own personal interests (whether that be the interests of her reputation, her business, her family, etc) do not align readily with the interests of the relevant children. Moreover, the Tribunal can have no sufficient confidence that there is or would be sufficient governance arrangements to adequately ensure that safe decision-making is made – the evidence indicates that the Appellant has no one above or alongside her providing managerial oversight and that while she may have assistants, those assistants are or have been people who do not have sufficient independence or impartiality.

53. The Tribunal is therefore satisfied that the (relatively low) **test/threshold** referred to in regulation 9 of the Regulations is met in this case.

Proportionality

54. In all the circumstances, the Tribunal is satisfied that the decision to suspend, and to suspend up to the point where the cancellation process is resolved rather than

for a fixed period, is objectively justified as proportionate.

55. In relation to the decision to suspend:

(a) There is a **legitimate aim** engaged. It is important. It is about the protection of vulnerable children from harm. The suspension relates, directly, to the pursuance or achievement of that aim.

(b) There is a material risk of harm, currently, to children minded by the Appellant. The Tribunal is entitled to take, and does take, into account the potential impact on children in the event that the risk identified were to materialise.

(c) Although there is likely to be some further adverse impact on the Appellant's interests, that is **outweighed** by the importance of the legitimate aim. The adverse impact would appear to include the ongoing prevention, for the time being at least, of the Appellant operating in her chosen area of work, the reduction or elimination of her income from this line of work, the potential impact on her personal reputation and/or her business's reputation, the impact on her wider family (at least to the extent they may be dependent on or beneficiaries of the childminding business). That needs, however, to be balanced against the apparent fact that the Appellant would still be able to find alternative work and income: the Appellant has some good experience, presents and communicates well, and would appear to have various viable options. It also needs to be balanced against the lack of persuasive evidence presented to the Tribunal to prove the likely ongoing impact. There may, potentially, also be some impact on children, or their parents, who would otherwise choose to be minded by the Appellant and, potentially, benefit from the good things that the Appellant has in the past been able to provide them.

(d) There is, in the Tribunal's judgment, **no less restrictive measure** available to the Respondent (or the Tribunal) which would still be sufficient to achieve, or be adequate in pursuing, the legitimate aim. For instance: there is no workable and practicable option to place a condition on the Appellant's registration that she be adequately supervised in providing childminding services; and it would not workable and practicable for the Respondent to attempt to manage the identified risk by regularly checking on the Appellant's decision-making in some way.

56. In relation to the decision to not restrict the period of the suspension:

(a) The Act specifically provides for this type of suspension. In the Tribunal's judgment, regulation 10(3)(b) is engaged and provides a sufficient justification

for the term of suspension.

(b) The Decision to Cancel was and is a significant one. The Respondent relies on the same or similar matters relating to 12 March 2024 but also other matters too. The Appellant's appeal against that decision needs to be heard at a substantive hearing. There will, it can be expected, be a proper and fair hearing, where conclusive findings of fact may well be made. That will, in effect, decide whether the Appellant may continue to provide any childminding services.

(c) Given the lack of less restrictive options available, but having regard to the ongoing obligation on the Respondent to keep under review the necessity of the suspension under regulation 11, it is appropriate and reasonably necessary in the Tribunal's judgment to, in effect, maintain the suspension pending the final outcome of the substantive cancellation procedure. Although there is no fixed date for that outcome, progress is being made. It is to be hoped, and can be reasonably expected, that the hearing of that appeal will now be held relatively swiftly.

57. In the Tribunal's judgment, the Decision was rational, proportionate, and lawful, and continues to be.

Decision

58. In the light of the above, the appeal is dismissed. The Respondent's decision, set out in the written notice dated 2 January 2025, to suspend the Appellant's registration is confirmed.

59. For the avoidance of doubt: nothing, however, in this written decision is intended to amount to a finding of fact which would bind the tribunal hearing the Appellant's appeal against the Decision to Cancel.

Judge Lewis

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

Date Issued: 10 February 2025

Health Education and Social Care Chamber
First Tier Tribunal