# First-tier Tribunal Care Standards

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

**2024-01064.EY-SUS**
**NCN: [2024] UKFTT 00429 (HESC)**

**Video Hearing V KINLY**
**26 March 2024, 2 May 2024 and Panel Deliberations 17 May 2024**

**Before**
**Tribunal Judge - Ms Melanie Lewis**
**Specialist Member - Ms. Jane Everitt**
**Specialist Member - Ms Pat McLoughlin**

**BETWEEN:**

**Mrs EI**

**Appellant**

**-v-**

**SUFFOLK CHILDCARE AGENCY**

**Respondent**

**AMENDED DECISION**

**Representation:**

Suffolk Care Agency were represented by Ms Alice de Coverley instructed by DAC Beachcroft LLP with Mr Matthew Butler Associate in attendance.

The Appellant was represented by Ms Sunyana Sharma Counsel instructed by Stephenson's with Ms Skye MacPhee Paralegal in attendance.

**Witnesses :**

**For the Appellant:**
Mr and Mrs EI and their friend Mrs C.

**For the Respondent:**
Ms Claire Chapman Chief Executive Suffolk Childcare Agency ('SCA')
Ms Michelle Boreham Operations Manager of SCA.
Ms Nicola Webb Inspector employed by SCA on a sessional basis.

Ms Kay Newman Local Authority Designated Officer. (By a Witness Summons).

**Appeal**

1. On 23 February 2024, the Appellant appealed against the Respondent's decision. dated 23 November 2023 to suspend her registration as a childminder. Leave to appeal out of time was given on 26 March 2024: See Adjournment and Directions Order 8 April 2024.

2. This case had an unusually long timeframe and was adjourned part heard for both lack of time and to allow the SCA Agency to consider the proposal put forward by the Appellant to mitigate risk. By that proposal her son would be with a family friend whenever minded children were in the house. He is aged 12 and an allegation of serious sexual assault was made against him by a minded child aged 4. That matter is currently under police investigation.

3. The reporting restriction dated 20 March 2024 continues to be in place and it was agreed to anonymise the names of the Parties on any documents which will appear on a public website. The intention was that the Appelllant's child would not be identified and we are satisfied that is only necessary to anonymise the name of the Appellant. This explains why we have included only essential facts. The family do not live in Suffolk but Mrs. E.I registered with SCA who have a national reach.

4. The Respondent is a childminder agency and, therefore, the right of appeal arises under regulation 9 of the Childcare (Childminder Agencies) (Cancellation etc) Regulations 2014 (SI 2014/1922) ("the Regulations").

**Late Evidence**

5. We granted applications from the Respondent to admit late evidence dated 21 and 25 March 2024 and during the hearing on 2 May 2024 correspondence from DC Musgrave, the Police officer in the case, which stated:

   **"***Ms I is the mother of the suspect in an ongoing investigation into the Serious Sexual Assault of a child. We cannot give timescales on the length of the investigation, but we are following lines of enquiry and awaiting forensic testing in this case.*

   *[Police] would state that due to the serious nature of the investigation and the circumstances known to police at this time, that we have concerns about Ms I's ability to protect children that she is childminding, as it appears that this offence has taken place when both children were in her care.*

   *[Police] have spoken to both the SCA and LADO during the*

*investigation for safeguarding purposes. We work in partnership with LADO and so whilst they have received ongoing communication, the information shared with the SCA has been limited.*

*We again ask that civil, employment or other proceedings wait until the outcome of the criminal investigation has concluded, we appreciate the SCA's investigation waiting until our proceedings have concluded. We just ask the correct safeguarding measures are put in place for children whilst our investigation continues."*

6. We admitted that evidence as it had been prompted by an enquiry from us as to the stage the police investigation was at, even if we could not be told details as that might impede the investigation. Further, DC Musgrave had written to the Tribunal on 17 April 2024 asking that we do not hear a civil claim for loss of earnings as that might jeopardise the enquiry. The Judge shared that with counsel at the beginning of the hearing and raised the concern that the nature of the proceedings before us was not understood. We had to look at risk of harm to a minded child. Counsel had not been aware of it so Ms de Coverley caused an email to be sent to the officer in the case who then sent a subsequent email confirming she did know the issue before us was an appeal against suspension.

7. In their skeleton argument dated 20 March 2024, the Appellant objected to the late evidence but did not strenuously maintain that objection at the first hearing when a pragmatic way forward was agreed. We admitted it as it was clearly relevant to the issues we had to consider.

**Background**

8. The Appellant was registered as an Early Years Provider with SCA on 10 October 2022. She was given copies of policies, including the Cancellation and Registration Policy and advised that her monthly fee allowed her access an advice line run by Peninsula, an HR company who have advised the Respondent.

9. On 17 October 2022 the Appellant was inspected and rated "Inadequate". She agreed to undertake additional training particularly around safeguarding. She followed the agreed action plan and was allowed to reopen on 3 November 2022.

10. Shortly after on 23 November 2023, a 4-year-old minded child was collected by his mother and told her immediately after they left the house that the Appellant's son aged 12 had sexually assaulted him in the toilet. They returned to the house after a very short interval. The child was very specific about what they said happened. The Appellant's case is that she asked her son to turn on the light, located outside the downstairs toilet, as she was getting hot food out of the oven. The Appellant's case is that the child was able to toilet himself.

11. There is an issue about the Appellant following incorrect reporting procedures. She did call the SCA office promptly who then reported it to the LADO (Local Authority Designated Officer). The Appellant wrote an incident report which she filed with Social Services and the Multi-Agency Safeguarding Hub ( 'MASH'). .

12. That same night the son was arrested and taken into police custody.

13. The Respondent informed the Appellant by letter attached to an email timed at 01.37 am on 24 November 2024 that her childminder registration was being suspended with immediate effect *"until the investigation has been complete*d".

14. The son was released on bail to the home of Mrs C, a family friend, as a temporary measure for that night. Mrs C now offers that he should always be at her home whenever minded children are in the house. This offer became the 'C option', which was discussed in detail as a means of mitigating the risk to minded children in Mrs I's care. The following morning the Appellant minded children as usual until told that she should not do so during the period of her registration.

15. There is an issue in the case as to why the notice suspending registration did not inform her of a right of appeal. The Respondent's case is that this is not a requirement set out in the Regulations and that she was told that her monthly registration fee covered legal expenses. Further, her original registration documents referred to this right in the event of suspension.

16. It is agreed that on 27 November 2023, Mrs I did ask about looking after a minded child in their own home as their mother had urgent issues to attend to. She was advised that, such an idea would mean she would be a nanny and SCA Agency did not register nannies. She was referred to Ofsted.

17. The Respondent attended a Multi-Agency Meeting on 30 November 2023 where the LADO was present. Mrs I was not present.

18. Ms Webb on behalf of SCA carried out an unannounced inspection on 30 November 2023 and confirmed that the Appellant was not minding children. By letter of the same date the Respondent informed the Appellant that she remains suspended until the police investigation was completed, and the respondent completed a full risk assessment of registration and suitability to work with children.

19. On 22 December 2023 the LADO informed the Respondent that they had concerns about the Appellant's insight into the seriousness of the allegations.

20. The only correspondence after that was in relation to whether the Appellant still needed to pay the monthly fee. She says she had paid but the Respondent says she was advised she did not need to.

21. The Appellant only contacted the advice line on 22 January 2024 and then had to wait to see a barrister. The Appeal was lodged on 27 February 2024.

**Legal Framework**

22. The statutory framework for the registration of childminders is provided under the Childcare Act 2006 as amended. Provision about childminder agencies is made under Chapter 2A of Part 3. Sections 35 and 37 provide for childminder agencies to register childminders operating from domestic premises.

23. Section 69(1) of the Act provides for regulations to be made dealing with the suspension of a person's registration: see regulations 6-11 of the Regulations.

24. When deciding whether to suspend a childminder, the test is set out in regulation 6 of the 2008 Regulations as follows:

> *"in circumstances where the agency reasonably believes that the continued provision of childcare by that provider to any child may expose such a child to a risk of harm."*

25. The decision of the Upper Tribunal in *Ofsted v GM and WM* [2009] UKUT 89 (AAC) was in relation to the power of Ofsted to suspend. That decision predates the creation of childminder agencies. The suspension test is in identical terms for Ofsted and childminder agencies. Therefore, we consider the principles set out in *GM* to be equally applicable in this case.

26. It is not necessary for the agency, (or the Tribunal), to be satisfied that there has been actual harm, or even a likelihood of harm, merely that a child may be exposed to a risk of harm. "Harm" is defined in regulation 6 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".

27. The immediate duration of a suspension under regulation 7 is for a period of six weeks. It may, however, be extended to 12 weeks. Under regulation 8, suspension may be lifted at any time if the circumstances described in regulation 6 cease to exist. This imposes an ongoing obligation upon the Respondent to monitor whether suspension remains necessary.

28. The Tribunal stands in the shoes of the agency. 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 Appellant to any child <u>may</u> expose such a child to a risk of harm (the threshold test).

29. The burden of satisfying us that the threshold test under regulation 6 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.

30. We are further guided by GM at paragraph 20: 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.”

31. Even if the threshold test is satisfied by the Respondent, that is not an end of the matter because the panel must decide whether the decision is necessary, justified and proportionate in all the circumstances.

**Procedural Issues**

32**.** We were assisted by detailed grounds of appeal and opening skeleton arguments by both counsel. Additionally, both counsel submitted written closing arguments

33. The grounds of appeal accepted that the appeal was out of time but argued that the notice of suspension was flawed as it did not advise her of her right of appeal. We accepted the Respondent’s argument that the Regulations do not require that, but it would appear to be good practice and in line with that operated by Ofsted. Further the Appellant is a lay person, operating at a time of stress when a very serious allegation had been made against her son.

34. Of more concern was that Regulations 7 of the Childminder Regulations 2014 had not been complied with. The Respondent is required to initially suspend the Appellant for a maximum of 6 weeks and if the Respondent has reason to believe that there remains a risk of harm in the same circumstances, they may issue a new notice of suspension for a further 6 weeks. Where it is not reasonably practical to complete the investigation or for any steps to reduce or eliminate the risk, only then can the period of suspension continue until the end of the investigation. In this case the Respondent moved straight to an indefinite suspension, contrary to regulation 7.

35. At the beginning of the hearing the Tribunal raised that if they found that the Notice was unlawful, all that was likely to happen is that SCA would issue a new notice and the appeal would begin all over again. Having had time to take instructions, both counsel agreed the proportionate and pragmatic approach set out in the agreed pre amble to the Order of 8 April 2024. The Appellant did not pursue the argument that the Notice was procedurally flawed on a practical basis but asked that the Tribunal consider those points in general terms and provide guidance to childminder agencies on how they should be interpreting regulation 7.

36. For the record we are clear that Regulation 7 allows only for 2 periods of initial suspension for 6 weeks and only then can they move to a longer-term extension.

37. That stepped approach will require the Childcare Agency to do what case law and long-established principles require them to do and keep the suspension under close review. A suspension is likely to have serious consequences for the suspended person, particularly financially. It will also impact on the families who use the service to be able to work. Fairness dictates that both the childminder and the families need to know how long the suspension is likely to last in so far as that is possible.

38. In *GM,* referred to above, the Upper Tribunal gave guidance at paragraphs 25 to 28 as to how the power to suspend should be exercised when it was for the purpose of allowing time for an investigation. There should be a coordination of efforts. Where the childminder agency is the junior partner in an investigation, as is often the case, it should be kept abreast of developments. Each case will be fact specific but not in every case where there was a police investigation did a suspension need to be maintained. The Agency needs to consider what steps it will take after the investigation is concluded. That is particularly important in a case like this, where ultimately the police may take no action but nevertheless a 4-year-old child made a very serious and specific allegation shortly after the incident is alleged to have occurred.

<u>The Evidence:</u>

39. This case took an unusually long time to hear because alternative options (in particular the 'C option') had to be explored for the first time, which then had to be considered and subjected to a risk assessment. We were concerned to find out how fully the witnesses understood what issues should be addressed on a suspension case. We had noted that the police officer had referred to civil proceedings and the LADO to proceedings in the employment tribunal. We summarise the oral and written evidence briefly, highlighting the key points. We have included only a few bare facts about the alleged incident and the police investigation which is ongoing.

40. We have kept in mind at all points that we are not making findings of fact at this point and where concerns or views have been raised by professionals about the Appellant, what evidence that is based on.

41. On Day One we heard from Mr and Mrs I and their friend Mrs C. Each had filed a witness statement and Mrs I and Mrs C made a second witness statement in response to the later statements of the Respondent. We established that Mrs I thought she still had a business and that some parents would return to her. No parents have been identified or submitted any evidence.

42. Mrs C explained her motivation for offering the 'C option'. She is a long standing and close friend of this family who she met through church. She would expect them to help her in similar circumstances. She works full time but mainly from home and if she does need to attend her office could do this when the

child is at school. Mrs C's adult son lives with her and had no objection to this plan.

43. Mrs I's son would leave the house before minded children arrive and his father who works nights would take him to school. His father would pick him up at the end of the school day, take him to Mrs. C's before going on to work himself and then Mrs I would pick him up when minded children had left.

44. The adults would all take time off to look after the child in holiday periods and if an unexpected circumstance arose, then Mrs I would have to cancel minded children coming, possibly at short notice. The son was described as a compliant child. Evidence from the school raised no behavioural concerns so they did not accept that concerns that he would not comply, had any force. There are siblings in the family and the family had changed their sleeping arrangements so that the child was not alone with his siblings in the bedroom in accordance with his bail conditions and a safety plan.

45. Ms Chapman stressed that this was a serious allegation. She was asked questions in cross examination and by the panel as to what active consideration she had given the case. It was the second time she had suspended a child-minder but the first time it had been challenged. Her focus had been the police investigation but at the end of the first day of the hearing she acknowledged that some of the risks now might be mitigated but a risk assessment needed to be undertaken. The risk was the son, not Mrs I.

46. When they gave oral evidence Mr and Mrs I had stressed that they were struggling financially. Mrs Chapman said she was aware of that. Mr and Mrs I had thought the matter would be resolved within 2 months or so.

47. At the second day and by her third witness statement Ms Chapman continued to support a suspension. She relied upon the gravity of the allegation. She acknowledged in her initial oral evidence on day one, that mitigation and safeguards proposed by both parties could reduce the risks but there were significant concerns. It did not appear realistic to cancel the day's childminding at very short notice. As with other witnesses she raised a number of "what ifs" and that it was not realistic to expect the son to spend long hours away from his home. The written and oral evidence of the LADO and Ms Webb stressed his vulnerability at this time, so needed for support from his parents and siblings.

48. Ms Boreham had conducted a risk assessment, not face to face at the home as we had been initially told, but over TEAMS. Mr and Ms I and Mrs C took part in a discussion about a range of scenarios. A range of risks were set out in tabula form with potential mitigation. The son is under police bail and is not permitted to have any unsupervised contact with children under 16 unless agreed by Children's Social Care. Overall, it was concluded that there were certain scenarios when it couldn't be guaranteed the son would not be in the same house as a minded child. Furthermore, he should not have been asked to help look after minded children by taking the 4 year-old child to the toilet.

49. Ms Webb has 15 years of experience in Early Years provision and became an OFSTED inspector three years ago. She clarified that she did freelance work for the Respondent as a consultant, including quality assurance work and site visits. On 17 October 2023 she carried out a quality assurance inspection accompanied by another inspector and formed the view that the Appellant did not fully understand her duty to protect children. Whilst it was not recorded in the report, she did recall asking the Appellant what would happen if a child made allegation against a member of her family but the Appellant was unable to answer beyond saying simply her husband would not do anything like that. It was that inspection that lead to the Appellant being suspended for a few weeks whilst she complied with an Action Plan.

50. Ms Webb considered the Risk Assessment carried out by the Respondent to be very fair, but supported the view that the 'C option didn't adequately reduce the risk of harm. Firstly, the allegation was very serious. The 'C Option' relied on trust and could place the Appellant in a very difficult position of having to turn children away at the last moment. The Appellant would be naturally very protective of her son and was unlikely to report if they had not been able to honour the agreement for any reason. She had significant concerns about the Appellant's commitment to safeguarding procedures, given that only a few weeks had passed since her first suspension and the incident arising. She had failed to follow the correct reporting procedure and that she first contacted the Respondent instead of Children's Social Care (CSC).

51. Ms Webb raised concerns about the welfare of the Appellant's son who would be effectively exiled from his own home for many hours per day. She had concerns about the extent of the information that the Appellant will be required to share with prospective parents. The information would need to be sufficient for them to make an informed decisions to whether to use or continue to use her services. They would also need to know that her son wasn't permitted to be at the present at home when the children were child minded and aware of the protocol that would need to be followed if they saw him there for some reason.

52. Random spot visits were not practical as the son may not be at home or hiding, and in this capacity, she would have no power to insist on looking around the house. She was the only inspector employed by the Respondent and would have to travel many hours to do that visit. The cost would be out of all proportion. She expressed strong concerns but confirmed that she had not been in personal contact with Mrs I since January 2024.

53. Ms Newman's, (the LADO) second statement and oral evidence were much clearer. We were concerned that her first statement, apparently prepared by her had the impression that this hearing was for Employment Tribunal. She had been in touch with the Social Worker on 12 April 2024 who was not aware of the C option. She also said she would have concerns about the emotional impact on the son, who would bear the added stress of knowing the financial strains this allegation had placed on the family after the childminding income was lost. She questioned the Appellant's safeguarding practice because she should not have asked her son to switch on the light for the child. The LADO's additional concern stated at paragraph 13 of her second statement was that the

C option does not take account of the wider concerns in respect of the Appellant's safeguarding practice in her childminding role.

54. Her oral evidence amplified those concerns including her role as a LADO which was to advise, pass on information and give guidance. Overall, her concern was that the 'C option' could not address the "what ifs" that would arise and did not address the wider concerns about Mrs I's practice as a childminder. It had not been shared with the police or the social worker for their comments. She had spoken with them and they did not support the lifting of the suspension. Her concern was that if the suspension was lifted, it could not be effectively monitored.

55. Ms Newman had remained in communication with the police who had concerns about Mrs I working as a childminder. It was not clear what circumstances led to the allegation being made. Mrs I had not provided the police with a statement. She accepted that Mrs I had not prevented the Social Worker speaking with her son. She accepted that Mrs I must have been in shock, but she had not followed the correct reporting procedure. She had undergone courses online, but training alone was not sufficient and what was needed was evidence of embedded practice and real change. Whilst naturally protective of her son the seriousness of the allegations had not been fully acknowledged. In response to questions from the Tribunal she stated that it was even more critical that a childminder was fully conversant with safeguarding and could regulate themselves. This contrasted with the situation of working supervised in say a nursery. As a solo child minder she was effectively the safeguarding lead. At paragraph 20 of her second statement, she concluded "*the suspension is both proportionate and necessary to safeguard other children, who would otherwise be exposed to an unacceptable risk of harm. In my view, the suspension should be upheld until the police investigation evidence can be fully shared with all the relevant agencies and SCA can then commence their investigation into the appellant suitability to continue childminding."*

**Conclusion and Reasons**

56. The Tribunal gave this case particularly anxious scrutiny. We were concerned that the suspension had not been kept under close review and that other options had not been considered. On our analysis, the professionals had spoken to each other, but not directly with Mrs I. We were concerned that judgements about her had been passed on, such as her being more concerned about the finances than the allegation, without balancing that with an understanding of what that impact on the family was. Overall, we are now satisfied that we have as full a picture as we can have. We were assisted by both parties having the benefit of experienced and able representation.

57. We have fully considered the careful written closing submissions for both parties. Essentially the Appellant's argument is that the suspension is no longer necessary and proportionate and that the risk of harm has been eliminated and/or reduced by the "C option". By that option the Appellant's son wouldn't be at the property at the same time as minded children, would not have contact

with minded children and would have therefore no opportunity to abuse a minded child. Very detailed consideration had been given to every possible alternative when Ms. C wouldn't be able to assist including holidays, illness, work commitments and the Appellant's son absconding or failing to wake up in the morning.

58. Ms Sharma also reminds the Tribunal to weigh into the balance the impact on the Appellant's livelihood.

59. Ms De Coverley submits that the suspension remains warranted for three core reasons:-

1. The police investigation into the allegation is outstanding. What the risks of harm are will crystallise on completion of that investigation. At that stage, and not before, it will then be appropriate for the respondent and another statutory bodies to investigate.
2. The Appellant's safeguarding practice-before, during and after the index incident – demonstrates that children are at risk of harm in her care at the present time.
3. The proposed option didn't negate existing risk of harm and in any event generates further risks of harm.

60. The single issue before us is whether there is 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.

61. Having carefully considered all the evidence we conclude that the suspension should remain in force for the following reasons.

62. At points this case got embroiled in the detail of the procedures followed by SCA Agency and the 'C option' but stepping back, at its heart is a very serious allegation for which the Appellant's son is currently under criminal investigation.

63. Without falling into error by making findings of fact at his stage, the allegation was so specific, as to be unlikely to be misunderstood by the 4-year-old child.

64. The child made an immediate complaint to this mother when she collected him, and the mother raised it with Mrs I.

65. It is also common ground that, while the Appellant was carrying out her childminding duties, her son was asked to assist the 4-year-old with the light when he went to the bathroom, the location of the alleged offence. We do not necessarily characterise that as using her own children to care to for a minded child, if that is all it was. Many parents like to use a childminder so that their children are within a family and mixing with older children. There are some issues about whether it was in fact an upstairs bathroom or whether the son

remained to tell the child to flush the toilet and wash his hands, but they do not add much to understanding the allegation.

66. The key issue for us is that the known evidence has moved on little since the allegation was made on 23 November 2023. We do not have any more idea of how taking the child to the toilet lead to such a serious allegation. It seems that the Police have other evidence that causes them to continue investigating. This is ongoing and may yet take more months. No time scale is given. During the hearing on 2 May 2024, in response to queries raised by us, the Police clarified what their position was and what concerns they had.

67. The risk of harm to minded children therefore remains. It is not possible to be more specific at this point. The scale of that risk is not clear at this point.

68. We accept the Respondent's argument that the risk of harm is not just from the Appellant's son. The Respondent's case has always been that the Appellant does not fully appreciate the gravity of the allegations and her own safeguarding obligations. In this case, we conclude that there must inevitably be a conflict between the Appellant as a mother, who wishes to protect her child and as a childminder with professional safeguarding obligations.

69. We were referred to another case before the First Tier Tribunal when a suspension was lifted, as the Appellant's husband against whom an allegation had been made, agreed not to be at home when minded children were there. Each case must be decided on its own facts. The Appellant does not have a long record of good childminding to rely on and in this case the alleged perpetrator is a child. The Appellant was previously suspended on 19 October 2023 shortly after her registration for a range of failings in her safeguarding practice and was given 32 areas of action to improve her performance. She did some training and the suspension ended.

70. What did cause us some concern is that there is evidence that she questioned the 4-year-old child about which of her children had harmed him and her own son in front of his siblings. This highlights that as a mother, no doubt alarmed at what was being alleged against her son asked questions. but good safeguarding practice is that she should merely have recorded not questioned the child and should not have used leading questions, as this risks contaminating the evidence.

71. Despite undergoing recent safeguarding training, she did not report the allegation to the out of hours duty team at the Local Authority but she did raise it straight away with SCA. We would have been more concerned had she sat on the allegation, even if for a short time. Allowing for the stressful situation she found herself in we do find force in other concerns raised by the Respondent regarding reporting the allegation. She had minded children the next day, although the email suspending her registration was only sent in the early hours of the morning.

72. What concerns us more is that she was not active after that in taking action as to how the allegation would be investigated and what steps she could take,

so possibly minimising the allegation. She has not explained why she delayed seeking legal advice which was available to her through her SCA registration, which in our specialist experience is often not available to childminders who can find themselves without support. On the email trail we read, she did not actively seek advice from SCA or keep them informed of her son's bail conditions, nor did she discuss the 'C option' with CSC or the police.

73. Further when spoken to in December 2023 by the LADO and asked if she needed any support or had any worries, she said she was fine or "10/10". It has not been further probed but could suggest a lack of insight into the severity of the allegations, both in what they mean today and could mean for the future. An allegation such as this, once said cannot be unsaid.

74. We accept that it was only after she had taken legal advice and in March 2024 did the Appellant propose that her son be out of the house when minded children were there. She may not have known she could propose this but that comes back to the point that she did not take advice as soon as she could have. The Respondent could have asked her about this possibility, but they can only consider a proposal when it is put forward and then it needs to be detailed.

75. We next examine whether the "C option" can be sufficient mitigation against the risks posed by the Appellant son, not yet identified with any precision and the risks concerning the Appellant herself, also not investigated with sufficient precision. We also accept that the risks about her cannot be fully investigated until the outcome of the police enquiry is known.

76. Such an "out of the house" proposal would often not get off the ground. Put simply, it is an enormous ask of anybody to care for a child after school and during school holidays. It is a particular ask for a woman like Mrs. C who is also in full-time employment.

77. The Respondent, in their closing submissions recognises that Ms C is a "*strong advocate for the Appellant's son and would do her best to support him".* We go further than that. She has given a motivation for the huge undertaking she has agreed to, namely one of long-standing friendship. She knows the son well. We accept her offer was sincere, made in good faith and that she would use her best endeavours to be reliable.

78. The 'C option' was further investigated by the Respondent during the adjournment. This arrangement could go on for a long time and they raised several issues, which Mrs I responded to. She was interviewed over TEAMS with her husband and Ms C present. In our view, this was not a risk assessment which addressed the gravity and complexity of the situation. There must be a conflict between Ms I as a mother and as a childminder. It was raised in the later witness statements by Ms Webb and the LADO how these arrangements which effectively exiled her son from his home could best meet his needs at a time when very serious allegations hang over him. The risk we must address under the Regulations is to minded children but there is also a risk to him. There was no consideration of that or what she would tell potential parents without

jeopardising the police investigation or her son's welfare. Those discussions would have been better done face to face.

79. Ms Sharma's detailed closing submissions seek to address every possible situation and permutation. This is against a background where there are no known concerns about the son having any history of sexually inappropriate behaviour or any other behavioural concerns at home or at school. It seems he is generally a compliant child so the risk of him refusing to co-cooperate does not seem likely or the raised concern of absconding.

80. What we conclude is more likely is last minute situations where Mr I and Ms C are not available. He works in a role where he must be there face to face. She works remotely for much of the time but is in work full time and will need to be available to her employer as required. There may be other situations such as the son being sick at school or waking up too ill to go to school. You cannot cover every situation but they will arise from time to time.

81. It is easy for the Appellant to say she would manage Ms C or her husband not being available by standing parents down, possibly at the last minute but this does not in our view sufficiently address how hard that might be. Parents may be under great pressure themselves to be in work and such a last-minute arrangement could be disruptive and distressing for their children.

82. The arrangement essentially relies on trust. The witnesses having heard Ms C and Ms I did not suggest they could not be trusted.

83. We conclude that if it came down to ensuring compliance by unannounced monitoring visits, that is not trust. The financial and resource implications on the Respondent in regularly inspecting compliance with the "C option" and good safeguarding practice would be significant and arguably not very effective. It is a very hit and miss method as highlighted by Ms Webb in her oral evidence, as she may not visit on a day the son was there. She highlighted that the SCA does not have the same resources as Ofsted, and nor does it have equivalent enforcement powers set out in Section 77 of the Childcare Act 2006 which sets out that Ofsted, by law, has powers of entry, to inspect premises, to take copies of records, to seize or remove documents or materials, to take measurements or recordings, to inspect any children being cared for in the premises and to interview in private the childcare provider. Obstructing an Ofsted inspector exercising these powers is also a criminal offence.

84. We place particular weight on the oral evidence of a very experienced LADO. The LADO also noted that the proposal is not approved by Children's Services or the Police, who have not been contacted by the Appellant about it. In effect the Appellant would be the safeguarding lead in her home and we accept here are reasons to doubt her knowledge, such as it is, is embedded. She has tried to book on a Local Authority course which is not running at this time for lack of numbers but Ms Newman's point about good practice being embedded and demonstrated over time has force.

85. The Appellant has not put forward any clear proposals as to which families would return to her or new families that might use her services. What would they be told in order to decide whether to use her services? The Appellant suggested that she informs all prospective parents about the 'C Option' being in place. Parents will inevitably want to know more to assess if their own child is safe. Parents who drop off and collect daily will be more regular "ears and eyes" than any Inspector, but they can't see a risk that may be plainly there, if they do not know the full background. Should they be told about the Police investigation and what would they be told about what they should do if the son was present, or they had any other concerns? This part of the plan is not thought through.

86. Parents take confidence in a childminder being registered, but they have to make the decision whether to use an individual childminder and they have, we conclude, good reason to be concerned if they make that decision not knowing that such a serous allegation has been made, there is an ongoing police investigation and that continued suspension was supported by the Police, the Local Authority, the LADO and the SCA Agency. This will undermine public confidence in those statutory bodies.

87. The Tribunal does not know what the son thinks of the proposal. We have taken into account that the social worker could have spoken with him and he is said by his parents and Ms C to accept it. There has been no real assessment though of what the risk to his welfare is in effectively being exiled from his family home for an indefinite period, whilst going through a criminal investigation, in order that the Appellant's business may reopen. Ms C knows him well and whilst she can support him, she would be working when he is in her home. When she was being asked how she would make sure he did not abscond, she could only say she would lock the door. There must concerns that he himself may come to risk of harm through the proposal.

88. In summary the Tribunal concludes that the "C Option" is as safe and effective proposal as any such proposal can be but given the other concerns about the Appellant's safeguarding practice, it still only partially mitigates the risk of harm to children in her care.

89. Having made our own very full investigation and analysis of this case we are satisfied that at this time the suspension remains both necessary and proportionate. It has, and will, impact upon the appellant's family finances. That was very real for this family in November 2023 but is now not so acute given we have no identified families for her services. That factor does not currently outweigh the risks.

90. Finally, we comment that the Respondent has chosen to take on the role of a regulator by registering as a childminder agency. The role must be exercised in accordance with the relevant regulations and exercised responsibly and professionally in accordance with the law and well-established principles of necessity and proportionality. We recommend that the Respondent carries out a review of how it exercises its regulatory function, taking whatever professional advice is necessary.

## Order

We therefore direct that the suspension imposed on the Appellant pursuant to the decision dated 23 November 2023 shall continue to have effect.

**Melanie Lewis**
**Tribunal Judge**

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

**Date Issued: 28 May 2024**
**Amended Under Rule 44 Date Issued: 03 June 2024**