

## **First-tier Tribunal Care Standards**

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

**2024-01268.EY-SUS  
Neutral Citation Number: [2024] UKFTT 001041 (HESC)**

**Hearing held via CVP on 14 November 2024**

**BEFORE  
Tribunal Judge Ian Robertson  
Specialist Member Denise Rabbetts**

**BETWEEN:**

**MARCIA JANICE STEELE**

**Appellant**

**-v-**

**OFSTED**

**Respondent**

### **DECISION**

#### **REPRESENTATION**

The Appellant represented herself

Ms Price represented the Respondent her witness was Sarah Stephens

1. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was remote via Video. A face to face hearing was not held as it was not practical and nobody requested it. All issues could be determined in a remote hearing. Due to the nature of the hearing (see below) we considered that this was fair and reasonable in the circumstances. There were no disconnections through the hearing.

#### **LATE EVIDENCE**

2. Both parties made application for the admission of late evidence. There was no objection to this so will allowed these documents to be admitted into evidence

## **THE HEARING.**

3. This is an Appeal brought by Ms Steele against a decision dated 11 October 2024 made by Ofsted to suspend her registration as a childminder on the Early Years Register until 21 November 2024. This is the 5<sup>th</sup> period of suspension and the third appeal by Ms Steele. The Tribunal has delivered extensive decisions on two previous occasions refusing the appeals (ref 2024-01192.EY-SUS and 2024-01236.EY-SUS). The latter decision runs to 88 paragraphs (18 pages) and the hearing took place over 3 days. This is currently the subject of an appeal to the Upper Tribunal who have granted an oral hearing to consider permission to appeal. Additionally we have received a bundle running to over 1000 pages and video footage regarding the incident which triggered this action on 12 March 2024 running to a number of hours. We have considered all this material

## **BACKGROUND**

4. The following is the way in which Ofsted put their case:
5. On 13 March 2024, Ofsted received concerns from the parent of a child attending the Appellant's provision stating that the Appellant had been evicted from her home (and childminding address) at 3 Steele Walk, Wootton, Bedfordshire MK43 9RH on 12 March 2024 and that minded children were present when bailiffs and the police were in attendance. The parent advised that after collecting his daughter the previous evening, he was approached by a lettings agent stood on the street corner who informed him that bailiffs had been at the property since 10am on 12 March 2024 whilst children were present, trying to evict the Appellant. On hearing this, the parent then contacted the Police who confirmed this. The parent advised that at no point had the

Appellant contacted the parents to inform them of this. The parent then went back to the property later that evening at 19:00hrs on 12 March 2024 and saw that Police were there, taking children out of the property and into Police cars until their parents arrived. The parent stated that the Appellant had contacted some parents and asked whether their children wanted to have a sleepover. The parent believed that this was a ploy of the Appellant to stop the bailiffs/police from evicting her. The parent advised that the Appellant had sent a group WhatsApp message to the parents on 13 March 2024 at 07:30hrs, stating that one of the parents had offered their premises to be used as alternative premises for childminding, and that the Appellant would be operating from there for the rest of this week.

6. It was noted that the Appellant failed to notify Ofsted of these significant events, namely eviction from the childminding address at 3 Steele Walk in Wootton, her plans to operate from a parent's unregistered address, and the turmoil involving minded children in breach of the requirements in the Early Years Foundation Stage Statutory Framework (EYFS). The Appellant did notify Ofsted of the eviction on 25 March 2024 (some 13 days after the eviction). While within the 14 days it was not as soon as reasonably practicable as required by the EYFS. Furthermore, there was an allegation made against her of assault (and counter allegations) arising from the eviction on 12 March 2024 that she had also failed to report to the LADO within the specified timeframe, in fact she has never notified LADO of any allegation against her.
7. Following an urgent case review on 13 March 2024 Ofsted suspended the Appellant's childminding registration for a period of six weeks until 23 April 2024 due to the risk of harm to children following information received and concerns that the Appellant intended to provide care from an unregistered premises. Further there was police involvement and Ofsted needed time to work with other agencies and look into these concerns.

8. On 15 March 2024, further concerns were received from another parent regarding her child being at the Appellant's property while she was being evicted. The parent stated that the Appellant knew in advance that the bailiffs were coming and knew she should not have accepted children that day. When the bailiffs arrived, the Appellant did not contact parents and is alleged to have locked all the children away upstairs in a bedroom. The Appellant also delayed parents collecting their children on the day and invited them to stay for a sleepover in an attempt to frustrate the eviction process and prolong her occupation of the premises.
  
9. On 15 March 2024, Ofsted attended a Joint Evaluation Meeting (JEM) convened by the LADO when information was received that there was an active police investigation taking place. Police confirmed that on 12 March 2024 a call was received through 999 from enforcement agents requiring immediate support during the eviction process. There was a repossession warrant, and the Appellant was being uncooperative and abusive. There were seven children present. A female could be heard shouting in the background. Enforcement agents stated if police do not attend they believe the matter will escalate to violence. Police advised for the children to be sent home, however the Appellant was refusing to give parents' details and refusing to contact parents to arrange for their collection. The Appellant was alleged to have assaulted an enforcement agent and was counter alleging that she had been sexually assaulted by an enforcement agent. Police then attended and children had to be taken into police care as Appellant continued to be uncooperative and would not call parents to collect their children whilst the eviction took place or otherwise prioritise their safety and well-being.
  
10. On 25 March 2024, the Appellant provided formal notification of the events on 12 March 2024 stating that she was the victim of an attempted unlawful eviction. She was highly critical of police and bailiffs actions. However she showed no insight into her responsibility

as a registered childminder to prioritise the safety and well-being of minded children who should not have been present and exposed to an environment where she was preoccupied with the eviction, there were disputes, conflict, and allegations of physical and sexual assault whilst she resisted the eviction. She was repeatedly urged by bailiffs and police, throughout the day, to provide contact details for parents for children to be collected and moved out of harm's way, but refused to do so.

11. On 3 April 2024 Ofsted spoke with the landlord of the premises at 3 Steele Walk, Wootton who confirmed that these premises had been let to Keith and Mary Steele, believed to be the Appellant's parents. Repossession action was taken due to substantial rent arrears. A possession order was granted in December 2023 and bailiffs appointed. The letting agent did inform landlord that after Mary Steele died in November 2022 the Appellant wanted to take over the tenancy. The letting agent then spoke about credit check/references and this was not forthcoming from the Appellant. The Landlord was unaware that the Appellant was already living at the premises until early 2024. No permission had been given to operate a childminding business from the premises and business use was prohibited. Ofsted's records show that the Appellant had been living at these premises since 27 July 2022 and the only household members declared to Ofsted at that time were her two adult daughters Olaide Steele (dob 11 June 1996) and Kiara Steele (dob 11 September 2000). This suggested that Keith and Mary Steele though fronting the tenancy arrangements may not have been resident at the property at any time.

12. On 5 April 2024 and 17 April 2024, Ofsted attended further JEMs convened by the LADO. The police investigation was still ongoing and information was received that the Appellant had previously been evicted from 28 Greens Lane, Wixams, Beds on 8 June 2022 due in part to substantial rent arrears. Bailiffs had again requested police assistance as the Appellant was refusing to leave and claiming it was

an illegal eviction. Ofsted's records showed that the Appellant notified Ofsted on 9 July 2022 that she would be changing address from 25 July 2022 (from 28 Greens Lane, Wixams, Beds to 3 Steele Walk, Wootton, Beds) but failed to notify that the reason for her departure from 28 Greens Lane was due to being evicted. This was a significant event impacting on her suitability as a registered childminder and failure to notify Ofsted of significant events breaches the requirements of the EYFS and is an offence.

13. On 24 April 2024 the Appellant's suspension was extended for a further six weeks until 4 June 2024 for the same reasons as before, and to allow the other agencies including the police to complete their enquiries.

14. The Appellant disputes much of this although does not dispute that the eviction did take place on 12 March and that child minded children were present. In her skeleton argument presented for this hearing she sets out her response to the account raised by Ofsted above

15. At approximately 10:00 on 12 March 2024, HCEOs arrived at the property of the Appellant claiming to have a high court writ to evict the Appellant from her home. The Appellant was minding 7 children and 2 more children were scheduled to arrive. The Appellant immediately telephoned the parent and asked her not to bring her 2 children to the setting, explaining the situation and that she would be chasing a court application. These 2 children did not arrive at the setting that day. The Appellant then messaged the remaining parents on the group app, asking them to collect their children as soon as possible. The video shows that the Appellant asked to see the writ of eviction and saw that it did not apply to her – it did not contain her name and it was not signed. The Appellant had an urgent application to the Court for a stay on the enforcement of the writ of possession due to the illegality of the eviction. At approximately 12:30 on 12 March 2024 and prior to these events, risk assessments conducted in consultation with Thomas Munn of Bedford Borough Social Services and PC Brooke of

Bedfordshire Police concluded that the children were safe and should remain in the property (SW2, 13:34, 13:37, 13:41). The HCEOs agreed to this arrangement at (See exhibit SW2 at 12:49, 13:37, 13:37, 13:40, 14:02) At 14:02, it is confirmed that the last children will be collected at 21:45 (Appellant Recording 3) and if the application for a stay was unsuccessful, the eviction would commence at 21:45 after the last child was scheduled to leave.

16. Despite the prior agreement and explicit instructions of Bedfordshire Police and Bedford Social Services captured on body worn camera footage that is submitted to the Panel, at approximately 18:30 and without notice, the HCEOs unlawfully locked the Appellant out of the property (Appellant Recording 4), placing the children at risk of harm. The Appellant immediately phoned 999 for assistance and attempted a citizen's arrest of the HCEOs. Bedfordshire Police officers who attended the scene were misled by the HCEOs, who falsely claimed that they had a valid writ of possession and that the Appellant had caused a breach of the peace. The Appellant asked the police officers to view the body worn footage. Rather than do so, the attending officers believed the false accounts of the HCEOs and after removing the 2 remaining children from the property, assisted the HCEOs with the unlawful eviction. These events are captured on camera.

17. Both parties submitted skeleton arguments ahead of this hearing. To precis the case put by Ofsted; the matter has been extensively litigated twice in short time based upon the same factual matrix, On both occasions the appeals were unsuccessful, the basis of the Tribunals decisions were explained at length, further there has been no new evidence produced and no new relevant evidence is before this Tribunal. Furthermore the Appellant had not engaged in the Notice of Intention process (although a date has now been agreed for a meeting) thereby causing delay in finalising the case generally and she has not shown that she has permission to child mind in her current property.

18. The Appellant sets out a number of reasons why her appeal should be successful. She argues that the grounds for the suspension are unsubstantiated, that Ofsted failed to apply a less drastic remedy, there were procedural irregularities, that the suspension was disproportionate and that there was a failure to consider remediation.

19. These arguments were considered by the previous Tribunals and dismissed for the purpose of the necessary test under regulation 9 (see below)

20. In the second appeal the Tribunal found as follows;

76. The reality regarding care of young children in a domestic setting is that the regulator must have confidence that the registered childminder can be trusted to safeguard the best interests of children, and not least in any situation of challenge. Experience in this specialist area informs us that there are many and various situations that will arise which require the registered childminder to actively put the need to safeguard the interests of children first. The sorts of challenges that require the need to “do the right thing”, over and above self-interest, are relatively common occurrences in childcare. The need for trust and confidence is enhanced when children are minded in a private domestic setting because of the absence of other protection/oversight such as might be available in a nursery setting.

77. We have considered the evidence regarding the up to date position of the parties. The nature and substance of the material before us is such that we consider that the test was satisfied at the date of the decision and remains satisfied today. In our view the nature and substance of the evidence regarding the events of 12 March 2024 raises serious issues regarding the Appellant’s behaviour and the choices she made. On the basis of



*the material before us we have little or no confidence that faced with any challenge which impacts on her interests the Appellant would place, or would be able to place, the interests of children above her own interests.*

## THE LAW

21. Section 69(1) of the Childcare Act 2006 provides for regulations to be made dealing with the suspension of the registered provider's registration. The section also provides that the regulations must include a right of appeal to the Tribunal.
22. Under the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 when deciding whether to suspend a childminder the test set out in regulation 9 is:

*"That the Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm".*

"Harm" is defined in regulation 13 as having the same definition as in section 31(9) of the Children Act 1989:

*"ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another".*

23. ***Ofsted v GM and WM [2009] UKUT 89*** established that on an Appeal under Regulation 12 *"The First-tier Tribunal stands in the shoes of the Chief Inspector and so, in relation to Regulation 9, the question for the First- tier Tribunal is whether, at the date of its decision, it reasonably believes that the continued provision of childcare by the Registered Person to any child may expose such a child to a risk of harm".*

## THE HEARING

24. In accordance with Regulation 5 The Tribunal Procedure (First tier Tribunal) (Health Education and Social Care Chamber ) Rules 2008 we determined that in the light of the litigation history to date and the extent of the written material before us that it would not be appropriate, necessary or proportionate to hear oral evidence from the enforcement officers given that we had read all the papers in the bundle. It was more important in our view to hear the evidence of the decision maker Sarah Stevens,
25. Ms Stevens was cross examined at length by Ms Steele. She put to her that she had done all that was appropriate according to her procedures previously approved by OFSTED and that she had used the group App to contact parents. The subsequent difficulties that arose were due to the actions of the High Court enforcement officers and the police and accordingly she had done all that was reasonably necessary. Ms Stevens did not accept this. It was her view that she restated on a number of occasions that the responsibility for the care of the children was the Appellants. That she should not have minded the children that day knowing that she was due to be evicted, that she should have contacted each child's parents individually to arrange their collection and that the children had suffered harm, as defined by the Act due to her actions because of the chaotic scenes that they witnesses particularly at the end of the day. Despite quite fierce cross examination she did not resile from that view.
26. Ms Steele then gave evidence. She said that she had not thought the eviction would actually happen on 12 March but accepted she knew that was the day it was due. She said she had contacted the parents via her App but felt it would take too long to contact them all individually. She accepted in cross examination that she knew that if an eviction took place it would be distressing but she had not thought it would actually take place. She did not think what the children saw was distressing and did not think it had caused the children harm. She criticised Ofsted for not following up with parents to see if it had

caused actual harm. She did not feel the situation was chaotic. She said the actions of the enforcement officers and police were not her responsibility. She accepted she had contacted one parent to ask that they delay pick up, this was as she said she was involved in challenging the eviction.

27. When asked by the Tribunal if she had made the parents aware in advance that she was due to be evicted she acknowledged she had not. Nor had she notified the parents that they may have to make alternative child care arrangements.

## **OUR CONCLUSIONS**

28. We have considered this matter afresh as we are bound to. We have read the evidence produced in prodigious quantities in the bundle, the video clips and have considered the oral evidence of Ms Stevens and the Appellant and submissions made by both parties.

29. Our decision is based therefore on the situation as it stands today. We are however extremely alive to the litigation history to date and the very careful and thoughtful decisions of our colleagues previously. We are not bound by those decisions but they do carry great weight. What we are really looking for in this situation is evidence that is new and fresh and addresses the core issues namely Ms Steeles insight and willingness to reflect upon matters and show understanding of the concerns articulated by both Tribunal decisions.

30. We are aware that the test for suspension is that “That the Chief Inspector [ the Tribunal ] 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”. This is in reality a low test as the emphasis is upon the safeguarding of children who may be minded by the Appellant.

31. We are also very alive to the fact that at this stage in the process we should not be making findings of fact

32. Sadly we have come to the conclusion that far from reflecting upon the situation and accepting the distress and potential harm caused to the children on 12 March Ms Steele has become entrenched and increasingly florid in tackling what she sees as a grave miscarriage of justice. In pursuing the fight she has sadly lost sight of the core issues that we have articulated above.

33. We were particularly struck by the lack of consideration shown by the Appellant regarding the future child care arrangements for these children. She was well aware that she was subject to eviction proceedings but had not told the parents and had not allowed them either to make enquiries regarding future child care arrangements or prepare the children for a change in their circumstances. An abrupt change for the children in this manner undoubtedly ran the risk of causing them emotional harm. She knew that eviction was due on 12 March but did not warn parents in advance and did not notify individually the parents of the children already with her that the eviction was actually taking place and to therefore come and collect them. We do not accept that young children seeing three Enforcement officers in black uniforms with masks and a number of police officers in the house would not have been distressed. We do not accept that children witnessing the chaotic scenes later in the day as shown in the video footage would not have been harmed.

34. The Appellants lack of insight into this does not give us confidence that she will act in a child centred fashion to prevent harm in the future if a crisis occurs.

35. We agree with the reasoning of our colleagues as set out at paragraph 20 above.

## **DECISION**

To dismiss the appeal

**Judge Ian Robertson**

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

**Date Issued: 20 November 2024**