



**Care Standards**

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

**NCN: [2025] UKFTT 00161 (HESC)**

**2024-01339.EY-SUS**

**BEFORE**  
**Tribunal Judge Siobhan Goodrich**  
**Specialist Member Michele Tynan**

**Hearing by video-link**  
**on 23 January 2025**

**BETWEEN:**

**REBECCA ROWE**

**Appellant**

**-v-**

**OFSTED**

**Respondent**

**REASONS FOR THE DECISION ON APPEAL AGAINST SUSPENSION**

**Representation**

**Appellant: Mrs Laura Bayley of counsel instructed by Blackfords LLP**

**Respondent: Mr Neil Smart, Ward Hadaway LLP for Ofsted Legal Services**

**Preamble**

The panel delivered a short form decision issued on 28 January 2025 in which we dismissed the appeal and confirmed the Respondent's decision dated 2 December 2024. We now provide the panel's reasoning.

**The Appeal**

1. By notice dated 19 December 2023 the Appellant appeals against the Respondent's decision made on 2 December 2024 to further suspend the Appellant's registration as the manager of a children's home from 5 December 2024 to 26 February 2025.

2. The right of appeal lies under Section 21(4ZA) of the Care Standards Act 2000. The Appellant seeks a direction that the suspension shall cease to have effect. The Respondent resists the appeal and requests that the decision to suspend is confirmed.

### **Restricted Reporting Order**

3. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any children involved in order to protect their privacy.

### **The Background**

4. The Appellant was registered as a manager of Oaklands Children's Home (Oaklands) in Doncaster on 1 February 2022 and, following a change in legal entity of the local authority provider, (Doncaster Metropolitan Borough Council), was re-registered on 1 September 2022.
5. Prior to the Appellant's registration as a manager at Oaklands, she has been employed by the Hesley group between 2018 and 2021. In the initial period this was as a care manager at Wheatley Place (which was part of Fullerton House) and, from 11 October 2019 to 6 August 2021, was a registered manager at Wheatley House.
6. In March 2021, following safeguarding concerns reported about the care and safety of the children, the Respondent suspended the registration at Fullerton House and Wilsic Hall which were children's homes operated by the Hesley group. Wheatley House, a third home operated by the Hesley Group, remained open until its planned closure on 9 June 2022. A key part of the Appellant's submissions is that she had continued as the registered manager at Wheatley House after March 2021 until she left that employment in August 2021.
7. South Yorkshire Police and an Independent Social Work Team commissioned by Doncaster Council, are currently investigating a range of incidents between 2018 to 2021 at Fullerton House, Wilsic Hall and Wheatley House. The investigation, known as Operation Lemur Alpha (OLA), is an ongoing criminal and complex abuse investigation led by South Yorkshire Police, into serious and substantial allegations that children at these homes were abused or neglected by staff.
8. As registered manager at Wheatley House between 11 October 2019 to 6 August 2021, the Appellant was the person with overall responsibility for day to-day management of the children's home and was accountable for the delivery of care, welfare, safety and security of all children and young people in her care.

9. The concerns identified as part of OLA indicate that within the period under investigation the Appellant had either been directly involved in a number of incidents or that staff members had reported concerns regarding how the Appellant had managed these incidents. This included allegations about the Appellant's failure to take appropriate action and act, report and manage incidents correctly.
10. On 3 August 2023 the Respondent received information from Sue Tinian, the Local Authority Designated Officer [LADO] working within OLA, about allegations relating to the Appellant.
11. On 15 August 2023 the Respondent received a formal notification from Ms Tinian. This stated that, 'Ms Rowe, who was working in a position of trust in a regulated activity as registered manager had a substantiated LADO within Operation Lemur Alpha for an overarching safeguarding concern.' As a result of the substantiated LADO outcome, Ofsted was informed in writing that, 'There is sufficient identifiable evidence to prove the allegation. A referral to the Local LADO service in Doncaster Local Authority had been made, along with a referral to DBS for consideration of any barring decision.'
12. On 18 August 2023, the Respondent made a decision to suspend the Appellant's registration to manage Oaklands Children's Home (Oaklands) pursuant to section 20B of the Care Standards Act 2000 until 9 November 2023.
13. The Appellant was also suspended from her role as the registered manager of Oaklands by the Doncaster City Council on 18 August 2023. (She remains suspended on full pay to date. An internal HR meeting is scheduled).
14. The Appellant appealed against the Respondent's decision to suspend but later withdrew her appeal.
15. In her statement dated 20 September 2023 Marisa de Jager, the independent social worker commissioned as Investigation Manager Chair for OLA by Doncaster City Council, explained the context and remit of the investigation. The background is that a national review led by Dame Christine Lenehan is being conducted into the three residential homes run by the Hesley Group. 'Child Safeguarding Practice Review Panel: review into safeguarding children with disabilities and complex health needs in residential settings.' Phase 1 of the review was published in October 2022 and Phase 2 in April 2023. Phase 1 findings (not exhaustive) include that "Leadership and management in the three settings were inadequate, with a 'closed culture' in which incidents of neglect, abuse and harm went unreported and were actively concealed.'
16. In her statement Ms de Jager explains in detail the statutory guidance in "Working Together to Safeguard Children (2018)" and the function of the LADO (both within OLA and at local level). OLA is investigating a range of issues and

the abuse and neglect of children and young adults within the three homes. It is alleged that multiple staff members who were employed by Hesley to provide care and safety are under the consideration in relation to their professional behaviours. Rebecca Rowe has either been directly involved in the incidents or staff members have reported concerns regarding how Rebecca Rowe managed these. She then set out a detailed table of some thirteen allegations against Ms Rowe regarding specified dates between June 2018 and March 2021 – see para 34 at H 138-142.

17. On 22 Sept 2023 the Respondent issued a notice of proposal (NOP) to cancel registration and the Appellant made representations. The allegations set out on the NOP included that the Appellant:

- assaulted a child that has been witnessed by a member of public.
- failed to act on allegations that staff had caused harm to children.
- failed to follow safeguarding policies and procedures when a number of children have presented with unexplained injuries.
- instructed staff on at least two occasions not to respond to calls for help and support resulting in children being harmed.
- have been responsible for a number of failures to administer children's medication resulting in them suffering harm and needing urgent hospital attendance.
- failed to take appropriate action to ensure that the children receive appropriate medical attention when they require this. This has resulted in a child's health deteriorating significantly resulting in them becoming unresponsive and requiring urgent medical attention. In addition, a further child did not receive medical attention following a burn to their hand.
- have intimidated and bullied staff members resulting in them feeling unable to report concerns which led to children being harmed."

18. The Appellant submitted detailed representations in response to the NOP.

19. On 13 November 2023 the Respondent issued a notice of decision (NOD) to cancel the Appellant's registration and the Appellant filed an appeal. In the event the Respondent withdrew the cancellation decision because the evidence held by Operation Lemur Alpha could not be disclosed at that time.

20. The suspension was extended in 2024 on: 30 January, 23 April, 16 July, 8 October, and on 2 December, which is the decision under appeal before us.

## **The Appeal and Response**

21. In essence the Appellant challenges the suspension on the basis that she did not fail to safeguard any child in her care. It is contended that there is no sufficient evidence or reasoning to suggest that it is reasonable to believe that a child may be at risk of significant harm if the applicant were allowed to continue as registered manager while the investigation is ongoing. The continued suspension is disproportionate and unreasonable.
22. The Respondent's position in response to the appeal is that it is unable to make its own decision regarding the Appellant's suitability to remain registered until the police release the evidence regarding the Appellant. The police have declined to release evidence because this may risk prejudice to their investigation. The Respondent submits that it is not realistic for conditions to be considered by Ofsted until the investigation by the police has been completed. Suspension is necessary, justified and proportionate.

### The Legal Framework

23. The statutory framework for a decision to suspend registration is set out in sections 14A and 20B of the Care Standards Act 2000 (CSA) as amended. Section 14A contains overarching provisions regarding the power to extend a period of suspension - see section 14A (4). Section 14A (2) limits the power exercisable to certain grounds, except where notice is given under s 20B.
24. This is a case where the Respondent made its decision under s 20B which concerns the urgent procedure for suspension or variation etc. The applicable test is that set out in section 20B (1) (a). It is that:
- “...the registration authority **reasonably believes** that unless it acts under this section any person **will or may be exposed** to the **risk of harm**.”  
(our **bold**)
25. “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  
“health” means physical or mental health; and  
“ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical.”
26. The Tribunal may confirm the decision or direct that it should cease to have effect – see section 21 (4ZA).
27. Section 21 (5) provides that :

The Tribunal shall also have the power on an appeal-

- a) to vary any condition for the time being in force in respect of the establishment or agency to which the appeal relates;
- b) to direct that any such condition shall cease to have effect;
- c) to direct that any such condition as it thinks fit shall have effect in respect of the establishment or agency or
- (d) to vary the period of any suspension.

28. The first issue to be addressed by the panel is whether we, standing in the shoes of the registration authority, reasonably believe that the continued registration of the Appellant will or may expose any person to the risk of harm (the threshold test).

29. The burden of satisfying us that the threshold test under s. 20B (1) (b) is met lies on the Respondent.

30. In **Ofsted v GM and WM** [2009] UKUT 89 (AAC) the Upper Tribunal considered the imposition of a suspension of childminders and where the “threshold test” is similar to that which applies in this appeal. It was held that 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.

31. The Upper Tribunal also said this:

*“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.*

*22. Regulation 9 sets a threshold but the mere fact that the threshold is passed does not necessarily mean that the power of suspension in regulation 8 must be exercised. ...*

*27... we do not consider that, in all cases, a suspension imposed while there is a police investigation need be maintained until that investigation is formally concluded. If Ofsted is kept informed of the progress of an investigation, as it should be, it may be able to lift a suspension earlier. What is important is that Ofsted should keep its focus on the steps it may need to take depending on the outcome of any investigation, because a suspension imposed on the ground that there is an outstanding investigation can, in our judgment, be justified only for as long as there is a reasonable prospect of the investigation showing that such steps are necessary.*

*28. We stress that the exercise of the judgment required...will turn very much on the facts of a particular case. If Ofsted wishes to resist an appeal against a suspension on the ground that further investigations need to be carried out, it*

*needs to make it clear to the First-tier Tribunal what those investigations are and what steps it might wish to take depending on the outcome of the investigations. It may well be, for instance, that the fact that a child has suffered a non-accidental injury that may have been caused by a childminder will prompt a detailed examination of the childminder's records and interviews with other parents, conducted by Ofsted itself after the police have released any records they have seized and said they will not be interviewing such witnesses themselves. If that be the case, Ofsted should explain that to the tribunal, because the tribunal must consider whether any continuation of the suspension has a clear purpose and therefore is capable of being proportionate having regard to the adverse consequences not only for the childminder but also for the children being cared for and their parents."*

32. Even if the primary threshold test is satisfied the Respondent bears the overall burden of persuading the panel that the decision under appeal is necessary and justified in terms of a legitimate public interest objective, and that it is proportionate in all the circumstances.

### **Additional Evidence**

33. There was no objection to the panel receiving a further witness statement of Tracey Metcalfe, SHMI, dated 21 January 2025. We agreed that the evidence was relevant, and it was fair to receive it.

### **The Hearing**

34. We had read the indexed bundle in advance, the contents of which are set out in the index. We need not relate its contents in detail. We were assisted by detailed skeleton arguments from both parties.
35. There were no significant difficulties with the video connection.
36. At the start of the hearing the judge explained that the focus of the hearing would be on the panel's assessment of risk in the context of the nature and substance of the allegations made and, if the threshold test was met, the issue of proportionality bearing in mind the impact of the suspension upon the Appellant. As the panel is not engaged with fact finding, the focus of oral evidence adduced should be directed to matters relevant to risk assessment, and the issues of necessity, justification and proportionality.

### **The Oral Evidence**

37. We heard oral evidence from:
- Janine Shortman-Thomas, Regulatory Inspection Manager
  - Tracey Ann Metcalfe, Senior His Majesty's Inspector

- Marisa de Jager, Independent Social Worker, commissioned as the Investigation Management Chair for Operation Lemur Alpha
  - Mrs Rowe, the Appellant
- Each witness adopted their witness statement(s) as their evidence in chief and answered questions.

### **The Tribunal's consideration**

38. We will not refer to every aspect of the material before us, the oral evidence or the skeleton or oral submissions. We have taken all the information before us into account. We will refer to main aspects when giving our reasons. If we do not refer to any particular piece of evidence or any particular submission it should not be assumed that these have not been considered.
39. It needs to be again emphasised that we are not today involved in making any findings of fact. Our task is essentially that of a risk assessment as at today's date in the light of the nature and substance of the allegations before us and in circumstances where we are not able to examine the evidence. The police/OLA consider that they are unable to provide evidence to the Respondent because this might compromise the ongoing investigations.
40. We add that whilst reference is drawn from case law to our "placing ourselves in the shoes" of the registration authority we are an independent panel making a risk assessment as at today's date against the legal threshold set out above, and on the basis of the information available today.
41. Applying **Ofsted v GM and WM (above)**, we remind ourselves of the proper approach to the threshold test. Further, even if the threshold is met this does not necessarily mean that the exercise of the power of suspension is necessary, justified or proportionate.
42. In essence the Appellant's case as advanced in cross examination includes that it is not understood why Ofsted cannot carry out its own investigations separate to the OLA investigation and/or why Ofsted cannot disclose the matters discussed at the meetings held by the LADO and/or why Ofsted have not considered the imposition of conditions and/or why the evidence provided by the Appellant has not been investigated or considered.
43. Unsurprisingly, given the fact that serious criminal offences are being investigated, the police are leading the OLA inquiry. We note that there are two statutory agencies under the guidance ("Working Together to Safeguard Children"): the police and social services. The police/OLA have made it very clear that it will not disclose the evidence regarding any individual or the regulator at this stage.
44. It was suggested that Ofsted can, and should, have carried out its own investigation or inquiries. We disagree. Ofsted is not an investigator regarding



safeguarding allegations that fall within the purview of social services or the police. Ofsted's view that its obligation is to respect the limitations imposed on it and cooperate with the two statutory agencies is consistent with the national guidance. We consider that this approach is correct.

45. It appeared to be suggested in cross examination that the Respondent could or should have been able to form a view on the need to suspend the Appellant's registration on the basis of the evidence available to it, which includes detailed statements by the Appellant and evidence from a number of witnesses who have made statements on her behalf. We noted, in particular, that one of the supporting statements suggests that the same allegations have been made against him. We do not consider that it is appropriate to consider the need for suspension on the basis of the evidence of one side only, when the regulator (and also the Appellant) is currently unable to consider the actual evidence that is part of the investigation by the police/OLA.
46. We recognise that the Appellant vehemently disputes that she has ever acted in the manner alleged against her. We sincerely appreciate her frustration, but it is not our role to decide facts or to predict what facts may or may not be supported by evidence gathered by the police. It needs also to be recognised that a police decision not to prosecute would not necessarily be the end of the matter.
47. The Appellant also relies upon her record and service at Oaklands. Her position is that she had turned that provision from "requires improvement" around to "good" in a short period. She wants to return to work at Oaklands which has received poor ratings since she left. We noted also that she had been allowed by DCC, her employer, to remain as the manager at Oaklands when allegations were first raised, and that there had been a risk assessment and other supervision provided by DCC.
48. We accept that OLA, a complex child abuse investigation, is ongoing. Irrespective of the charging decisions that may be made by the police the simple fact is that unless and until the police/OLA disclose the evidence in its possession regarding the Appellant, the Respondent does not have access to the actual evidence. This is demonstrated by the fact that the Respondent was unable to proceed with its purported decision made on 13 November 2023 to cancel the Appellant's registration. It had to withdraw the NOD to cancel registration because it was not in a position to prove the alleged facts given that OLA would not disclose the evidence as it might prejudice its ongoing criminal investigation.
49. Once the evidence regarding the Appellant is made available the Respondent will be able to carry out and complete its own consideration and decision-making in the broader context of the duties and responsibilities of a registered manager of a children's home. We accept that, for reasons beyond its control,

it is not possible for Ofsted to do so until they are provided with the OLA evidence.

50. We are very mindful of the fact that the Appellant has been suspended since August 2023, a period of 18 months to date and continuing. On any basis this is a very long period. In our view this has to be seen in the context of the remit of the OLA inquiry. This involves investigation of events over a number of years, in different locations, involving some 140 children (who are located throughout the country), and where there are more than 700 employees. The alleged victims are some of the most vulnerable members of society and very great care is required when seeking to understand their perspective/experiences, and in seeking to achieve best evidence. We are satisfied that the criminal investigation has been, and is being given, appropriate priority by the police/OLA. In our view there is a clear point and purpose to the police /OLA investigation. The current timeline as explained by Ms de Jager is that the police hope to be able to complete its work with the children potentially involved in about March 2025. The vast bulk of the work regarding life stories has been completed. We recognise that decisions after closure of this work may will take some time.
51. In our view the reality is that the Respondent is unable make its own decision, which will necessarily include consideration of whether steps can be taken to eliminate or reduce any perceived risk, until the primary evidence can be disclosed by the police/OLA.
52. The substance of the matter before us is that there are a large number of allegations made against the Appellant some of which may, or may not, amount to criminal offences. Even if some or all these allegations constitute criminal offences they may, or may not, be charged or prosecuted. It is well known that the police and CPS have to make decisions regarding prosecution applying the criminal standard of proof, and as against other guidelines including whether there are reasonable prospects of conviction by a jury. Even if, as may well be the case, no charges are brought by the police against the Appellant, the allegations before us raise serious issues regarding her suitability to be a registered manager of a children's home and will inevitably require consideration by the Respondent against the framework of the relevant regulatory standards, and applying a different standard of proof i.e. the balance of probabilities.
53. We are satisfied that unless and until the police/OLA are able to agree to the disclosure of the evidence in its investigation, it is not realistic or feasible for the Respondent to progress its own processes and decision-making regarding the Appellant's suitability to be a registered manager.
54. The Respondent has satisfied us that the nature and apparent substance of the allegations is such that the continued registration of the Appellant may pose a risk of significant harm to children who may be looked after in any home that

she manages. For the reasons we have given the Respondent has satisfied us that the threshold test is met.

55. In our view it is not reasonably practicable for reasons beyond the Respondent's control to do other than await the conclusion of the police investigation- at which point the evidence will be disclosed.
56. We have considered all the criticisms made of the Respondent. We are satisfied that the Respondent has kept the issue of the suspension under regular review and has done so in good faith. An illustration of this is the evidence of Ms Metcalfe which is to the effect that the Appellant's account was carefully considered. However, as regulator, Ofsted cannot not investigate the allegations as it does not have the legal power to do so. In our view she is correct in her view that it is not within Ofsted's gift to overturn a decision made by a safeguarding agency (i.e. the substantiated LADO decision), because of the Appellant's submissions.
57. The Respondent has satisfied us that, for reasons beyond its control, and not for want of trying, the Respondent has not been, and is not yet, able to consider the primary evidence, let alone to assess or weigh whether steps might be taken to eliminate or reduce the risk of harm. We consider that the nature and apparent substance of the allegations is such that there is a reasonable prospect that further steps to reduce or eliminate the risk of harm might be necessary.
58. We recognise and understand the Appellant's frustration that her future is on hold because the police/OLA investigation is not yet complete. The reality is that the investigation of very serious allegations, jointly conducted by the police and social workers, is still ongoing. The fact that the evidence in that investigation will not be disclosed to the Respondent until the police consider that there is no risk of prejudice to the overall police investigation means that the body charged with the statutory responsibility for the regulation of registered managers is not able to make its own decision regarding the Appellant's continued registration on a sound basis.
59. The Respondent has satisfied us that its decision is in accordance with the law and is necessary to protect the public interest in the protection of the health, safety and welfare of children pending further investigation.
60. The Respondent has also satisfied that the interference involved in the decision is justified in pursuit of that legitimate public interest aim, namely, the need to safeguard children from the risk of harm. In our view, if the allegations made are true, the risk is one of significant harm.
61. The real issue is proportionality. The exercise of proportionality requires us to consider whether measures short of suspension would achieve the protection that we consider necessary to protect the public interest.

## Proportionality

62. We have carefully considered all the matters raised on the Appellant's behalf. Suspension is always a very serious matter because of the adverse impact on livelihood, professional reputation and standing. A decision whether or not to suspend is never a decision to be taken lightly.
63. If the suspension remains in place the Appellant's ability to work as a registered manager in this field is prevented. In practical terms her ability to work on any area involving childcare will be nigh impossible. In short, the impact of the continued suspension on her life including her health and well-being, her ability to earn her living or pursue her career in any form of childcare cannot be understated.
64. We recognise the point made that there were no issues regarding the Appellant's management at Oakley Children's Home where the outcome on inspection in August 2023 was a judgment of "good". We recognise also that the allegations are historic, in the sense that there is no suggestion that the Appellant's conduct since then has been called into question. We take this into account. The fact is, however, that the allegations, if true, are very serious indeed.
65. We balanced the harm to the interests of the Appellant and others affected against the risk of significant harm to children looked after at a setting managed by her whilst the police investigation is ongoing.
66. We have carefully considered all the matters raised on the Appellant's behalf. We have considered the profound impact of suspension on the Appellant. We have balanced the interests of the Appellant and all those affected against the public interest.
67. We considered the Appellant's submissions regarding the imposition of conditions. In our view the power under section 21(5) is limited to conditions "in respect of the establishment or agency". The allegations before us include assault and/or a repeated disregard for the health, safety, and well-being of vulnerable children by an individual - as the registered manager. We consider that if parliament has intended to grant the power to impose conditions on the registration of a manager it would have done so. Even if we are wrong in how we interpret section 21 (5) we consider that, if the allegations are true, no conditions could reasonably be devised that could adequately address or remediate the potential risks posed to vulnerable children.
68. We recognise that it may be unlikely that any criminal charges against the Appellant will be preferred. As we have explained, this does not mean that the allegations are any less serious, or that there is no substance to the

Respondent's concerns regarding the potential risks posed to children if the Appellant's registration as a manager were not suspended.

69. We recognise that that the Appellant contends that there is no merit in the allegations and that it is unjust that she should be subject to suspension for such a very long period of time, with all the adverse consequences on her health and well-being, and on her career that such a restriction entails.

70. Having considered all the material before us, we consider that the need to protect children against the risk of significant harm pending further investigation outweighs the adverse impacts of suspension on the Appellant and others affected by our decision.

71. We consider that it is fair, reasonable and proportionate to the public interest in the protection of the health, safety and well-being of children that the Appellant's registration is suspended pending further investigation. We confirm the decision to suspend registration made on 2 December to further suspend the Appellant's registration as a manager until 26 February 2025.

#### **Decision**

**The decision to suspend registration is confirmed.**

**The appeal is dismissed.**

**Tribunal Judge Siobhan Goodrich  
First-tier Tribunal (Health Education and Social Care)  
Date issued: 12 February 2025**

