

First-tier Tribunal Care Standards

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

2025-01382.EY-SUS
Neutral Citation Number: [2025] UKFTT 00285 (HESC)

**Hearing by video-link
on 03 March 2025**

BEFORE
Tribunal Judge S Goodrich
Specialist Member D Rabbetts

BETWEEN:

IN

Appellant

v

Ofsted

Respondent

DECISION ON APPEAL AGAINST SUSPENSION

Representation

Appellant: Ms IN in person

Respondent: Mr Neil Smart, Ward Hadaway, instructed by the Respondent

The Appeal

1. By notice dated 11 February 2025 the Appellant appeals against the Respondent's decision made on 7 February 2025 to (further) suspend her registration as a Childminder in a domestic setting on the Early Years and the compulsory and voluntary parts of the Childcare Register for a further period of six weeks from 19 February 2025 to 23 March 2025.

2. The right of appeal lies under regulation 12 of the Childcare (Early Years and General Childcare Registers (Common Provisions) Regulations 2008. The Applicant seeks a direction that the suspension shall cease to have effect. The Respondent resists the appeal and requests that the decision to suspend registration is confirmed.

Restricted Reporting Order

3. The Tribunal makes a restricted reporting order under Rule 14 (1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any minor child (or the parents of any minor children) in order to protect the privacy and interests of the children involved.
4. We also decided to identify the Appellant by initials only given that this is a hearing to suspend registration, rather than a substantive hearing.

The Bundle

5. We had received and pre-read the hearing bundle which consists of 489 pages. In particular, we considered the Appellant's grounds of appeal (G7 -G37), which effectively stood as a skeleton and the Respondent's skeleton argument.

The Background and Chronology

6. We need not set out each and every matter since these are fully set out in the bundle before us. By way of summary, the key matters appear to be as follows:
 - a) The Appellant was first registered with Ofsted on the Early Years Register, Compulsory Childcare Register, and Voluntary Childcare Register in January 2012.
 - b) In 2013 and 2017, concerns were raised regarding the Appellant allegedly shouting at children. No further action was taken in respect of these allegations.
 - c) In 2016 and 2019, concerns had been received regarding the Appellant leaving children in the sole care of assistants/apprentices whose suitability had not been checked. In 2016, an outcome summary was published in respect of this breach, and in 2019, a welfare requirements notice was issued.
 - d) In May 2019, the Appellant's registration was inspected and received an 'inadequate with enforcement' outcome. The registration was suspended on

14 June 2019, due to concerns regarding the Appellant's practice which included concerns about meeting children's needs, a chaotic environment and not adhering to ratio requirements. The Appellant subsequently resigned her registration in July 2019.

- e) Following a further application the Appellant was interviewed by the Respondent and was re-registered in March 2021.
- f) On 16 May 2023 the Appellant was inspected by Ofsted and received a grading of 'Good' in all areas.
- g) An incident occurred on 13 December 2023 and was initially raised by both the child and their sibling to the parents, stating that the Appellant had hit the two-year old child on the head with a phone. The parents contacted the Appellant to discuss their concerns and requested the video footage which the Appellant provided. She reported the incident to Ofsted and the Local Authority Designated Officer (LADO'). A police investigation ensued and the Appellant voluntarily attended a police interview. No further action was taken due to the fact that there was insufficient evidence for a charge.
- h) On 8 March 2024 a further ASV (allegations against staff and volunteers) meeting was convened by the LADO with the Metropolitan Police, the Local Authority, MASH and a representative from the children's primary school in attendance. An anonymous concern was raised regarding the Appellant allegedly leaving children with an apprentice assistant for significant periods of time prior to suspension. The allegation of physical abuse linked with the December 2023 incident was unsubstantiated by professionals. The allegation of emotional harm to children was substantiated.
- i) Ofsted first suspended the Appellant's registration on 18 December 2023. The suspension has been renewed by further decisions to suspend for successive six week periods. The Appellant lodged appeals against two of those decisions with the outcome that each decision was confirmed and the appeals dismissed by Tribunal panels (each differently constituted) on 18 April 2024 and 19 December 2024.

The Parties' respective positions

- 7. In essence the Appellant's position is that suspension is no longer necessary, or justified, and is disproportionate. She considers that the risk of harm has been eliminated. She has reflected on the events that led to her suspension. She has attended many courses and has provided her detailed reflections to Ofsted on many occasions, and most recently in her lengthy statement dated 6 February 2025. Her position is that the events of 13 December 2023 will not happen again. She has also provided five witness statements from people who

know her well. One statement is from Ms Evans, her cleaner, and seeks to clarify her position/role in the house. The children of most of the remaining witnesses have been looked after by the Appellant and they have full trust and confidence in her ability to look after children. Their evidence supports she has a reputation for honesty and integrity, and that her services are much valued and needed in the community.

8. The Respondent's position is that the suspension decision was, and remains, necessary, justified and proportionate. Notwithstanding the evidence provided, the Respondent's concerns about the Appellant's practice remain. It is considered that the many assurances the Appellant has provided do not differ from those she provided at registration. The Respondent remains significantly concerned regarding the Appellant's understanding of the needs of children in her care. It is considered that she lacks insight or understanding regarding the appropriate management of the needs of children and appropriate behaviour management. The Respondent is concerned that it took the Appellant some seven months to fully acknowledge the impact of her actions. Further, its holistic investigation has led to concerns about: whether the Appellant was operating her child-minding service over ratio, and/or conflicting accounts regarding the extent to which the Appellant had assistants, and/or whether the Appellant has kept Ofsted informed about changes in her health and/or about assistants, and/or whether DBS checks for persons in the home or assistants had been obtained by the Appellant in good time or at all.
9. Ofsted's position is that from the outset it has actively reviewed all the material provided in order to appropriately review the need for suspension. It has not proved possible to reduce or eliminate the risk it perceives and so the decision to cancel registration on the grounds of suitability was made on 26 July 2024 which the Appellant has appealed. The progress of the appeal against the cancellation has been beyond its direct control.

The Legal Framework

10. The statutory framework for the registration of a childminders is provided under the Childcare Act 2006. Section 69(1) of the Act provides for regulations to be made dealing with appeal against the suspension of a person's registration.
11. When deciding whether to suspend registration the applicable test is that set out in regulation 9 of the 2008 Regulations. It is that:

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

(our bold)

12. "Harm" is defined in regulation 13 as having the same definition as in section 31(9) of the Children Act 1989 which, (as amended by s 120 of the Adoption and Fostering Act 2002) provides as follows:

*"ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another;
"development" means physical, intellectual, emotional, social or behavioural development;
"health" means physical or mental health; and
"ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical."*

13. The immediate duration of suspension under regulation 9 is for a period of six weeks – see 10 (1). It may, however, be extended to 12 weeks – see 10 (2). It may be extended beyond in certain circumstances. Regulation 10 provides that:

"Suspension of registration: further provisions

10.—(1) Subject to paragraph (2), the period for which the registration of a registered person may be suspended is six weeks beginning with the date specified in the notice of suspension given in accordance with paragraph (4).

(2) Subject to paragraph (3), in a case in which a further period of suspension is based on the same circumstances as the period of suspension immediately preceding that further period of suspension, the Chief Inspector's power to suspend registration may only be exercised so as to give rise to a continuous period of suspension of 12 weeks.

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

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

(b) for any necessary steps to be taken to eliminate or reduce the risk of harm referred to in regulation 9, within a period of 12 weeks,

*the period of suspension may continue until the end of the investigation referred to in sub-paragraph (a), **or until the steps referred to in sub-paragraph (b) have been taken.**"*

(our bold in italics)

14. Under regulation 11 suspension “*must*” be lifted by Ofsted if the circumstances described in regulation 9 cease to exist. This effectively imposes an ongoing obligation upon the Respondent to keep the need for suspension under review.
15. The first issue to be addressed by the panel is whether it reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm (the threshold test).
16. The burden of satisfying us that the threshold test under regulation 9 is met lies on the Respondent. The standard of proof ‘reasonable cause to believe’ falls somewhere between the balance of probability test and ‘reasonable cause to suspect’. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child may be exposed to a risk of harm.
17. We are guided by **Ofsted v GM and WM** [2009] UKUT 89 (AAC) at [21]:

“Although the word “significant” does not appear in regulation 9, both the general legislative context and the principle of proportionality suggest that the contemplated risk must be one of significant harm.”
18. If the threshold test is met, the Respondent bears the overall burden of persuading the panel that the decision under appeal is in accordance with the law, is justified in terms of a legitimate public interest objective, and is proportionate in all the circumstances.

The Hearing

19. The judge explained at the outset that the panel had read in advance the e-bundle consisting of 489 pages (PDF), the contents of which are fully described in the index and which includes reference (in red type) to the video footage sent separately, which we had also viewed. We had also received and read the Respondent’s skeleton argument and the Appellant confirmed that she had read this also.
20. There were no difficulties with the video connection during the hearing.
21. At the outset of the hearing the judge explained that our task is to decide the appeal against the Respondent’s decision, made on 7 February 2025, to continue the suspension for a further six weeks. We are not making any findings of facts. Our essential task is that of risk assessment based on the material before us and, if the threshold test is met, the consideration of proportionality. We take into account all evidence available as at today’s date.

22. The panel sought information as to the current position regarding the hearing of the appeal against the substantive decision made on 26 July 2025 to cancel the Appellant's registration as a childminder. We were already aware from the chronology that the Appellant had sought, and on 20 January 2025, had been granted a stay of the appeal proceedings against the cancellation decision until 21 February 2025, whilst she obtained legal advice.
23. The Appellant explained to us that her request for a stay was because she wants to be legally represented under her insurance policy at the hearing of her appeal against the cancellation decision. In essence, she explained that her representative was in the process of providing information to the policy holder. She also said that she understood that her representative/the policy holder wanted to see what the outcome of the appeal today. Based on our experience it appeared to us the consideration underway could be related to the prospects of success in her appeal against the cancellation decision.
24. Mr Smart confirmed that the appeal hearing against the cancellation decision had been listed to be heard on 10 March 2025 and 5 hearing days had been allocated. The hearing was vacated when the stay was imposed. It was also confirmed that a telephone case management hearing is due to be held on Friday 7 March 2025.
25. We indicated that we did not consider that a great deal of oral evidence was necessary in this suspension appeal given the material before us and the nature of our task in deciding the appeal against suspension. (We had noted that the Appellant had been content with a hearing on the papers but the Respondent had not consented to this).
26. Mr Smart adopted his skeleton argument as his opening. We heard oral evidence from Ms Wildman who answered questions from the Appellant and the panel. The Appellant did not give evidence on oath but she explained her position in a manner that was consistent with the detailed written statements she has provided. We also have a number of witness statements before us which mainly go to the issue of good character and suitability.

The Tribunal's consideration of the appeal

27. We have taken all the evidence and the material before us into account. If we do not refer to any particular piece of evidence, argument, or particular submission, it should not be assumed that these have not been considered.
28. We add that whilst reference is drawn from case law to our "placing ourselves in the shoes of the Chief Inspector", we are an independent panel making a risk assessment against the threshold set out in paragraph 9, and on the basis of the information available today.

29. Although the word “harm” in Regulation 9 is not qualified by the word “significant”, we consider that the significance of any potential harm is relevant to the issues of necessity, justification and proportionality.
30. We have read the earlier decisions dated 18 April 2024 and 19 December 2024 by way of background. We are not bound by these decisions. We must make our own independent assessment in relation to the appeal against the decision before us.
31. Applying **Ofsted v GM and WM**, we remind ourselves that Regulation 9 sets a low threshold. It is, nonetheless, a threshold that has to be met. However, even if the Regulation 9 threshold is met, this does not necessarily mean that the exercise of the power of suspension is necessary, justified or proportionate.
32. It needs to be again emphasised that we are not today involved in making any findings regarding any disputed facts. Our task is that of a risk assessment in the light of the nature and apparent substance of the evidence regarding the concerns/allegations before us.
33. Assessing the issue of risk requires us to consider the evidence before us to assess whether the concerns/allegations raised have apparent substance, and to consider the nature, seriousness and/or potential impact of the allegations made, if true, to the issue of risk to children minded by the Appellant in her home. This is a very different exercise to fact finding. We have therefore been circumspect in our analysis. We are very conscious that another panel will be making decisions based upon full evidence in the forthcoming substantive appeal. Today our first task is to decide whether there is a need to protect children, and applying a (relatively low) threshold test.
34. We have considered all the material before us. In our view the video evidence before us causes us very serious concern regarding the Appellant’s ability to understand and manage the needs of young children in an appropriate manner. The child involved was two years old. On the face of it the video seems to show that the manner in which the Appellant dealt with the perceived problem (namely, that the child had not wiped yoghurt from her face) was harsh, humiliating, punitive and inappropriate. The child was obviously distressed.
35. We have considered all the matters placed before us. The LADO has substantiated that the incident caused emotional harm. We acknowledge the substantial amount of material provided by the Appellant regarding the steps she has taken to reflect on what happened, and how she will improve her practice. She has provided a series of reflective journals, has undertaken a very significant number of courses, and is undertaking a degree course “Childhood and youth studies and child psychology” with the Open university.

36. Complex and broader issues regarding the Appellant's suitability have been raised, and with particular regard to whether children had been looked after over ratio, and/or the extent to which assistance was engaged (which is relevant to the issue of child/carer ratio), and/or by whom, and/or whether the suitability of any assistants had been DBS checked. Concerns have been raised about the Appellant's honesty and integrity. All these issues are in dispute. It is to be expected that all of the evidence will be tested, considered and weighed on a holistic basis in the hearing of the appeal against the cancellation decision.
37. Our focus is on the appeal against the decision to suspend registration made on 7 February 2025. In our view what is shown by the video clips and the Appellant's responses thereafter raises serious issues regarding how the Appellant has managed (and therefore how she will manage in future) the needs of children in her care. The Respondent is concerned that the Appellant had given assurances regarding appropriate methods of behaviour management when she registered in 2021, and in these circumstances the risk of recurrence remains. The nature and substance of the material before us is such that we consider that the threshold test was satisfied at the date of the decision and remains satisfied today.
38. For all the reasons we have given the Respondent has satisfied us that the threshold test in regulation 9 is met. Applying regulation 10 (2) we find that the suspension decision under appeal arises from the same circumstances as the immediately preceding suspension.
39. The Respondent decided that necessary steps to eliminate or reduce the risk of harm cannot be taken and so the decision to cancel registration was made on 26 July 2024. The merits of that decision will be duly considered in the appeal against the cancellation decision. The hearing of the appeal against cancellation had been allocated to be heard over five days commencing on 10 March 2025. It is understandable that the Appellant sought a stay of the cancellation proceedings in order to seek legal representation for the hearing of her appeal against cancellation. The reality is that the timing of the hearing against the appeal against the cancellation decision has been beyond the Respondent's control. We consider that the Respondent has satisfied the requirements of regulation 10 (3).
40. We are today unable to conclude that the risk of harm to a child/children has been eliminated or reduced to a sufficient level to render the suspension unjustified or unnecessary.
41. We are also satisfied that the Respondent has conscientiously reviewed the grounds for suspension in an appropriate and timely way throughout.

42. We are satisfied that the decision to further suspend registration made by the Respondent on 7 February 2025 was/remains in accordance with the law and was/remains necessary to protect the public interest in the protection of the health, safety and welfare of children.

Proportionality

43. It is of inevitable concern that the Appellant has been suspended for such a very long period: hence our inquiry regarding the progress of the appeal against the substantive decision.

44. We have no doubt that the fact of suspension, although intended to be a neutral act pending a substantive decision, has had a significant adverse impact on the Appellant's reputation, her health, sense of self and well-being, and on her income and livelihood. Mr Smart informed us that the Appellant is still able to take children to and from school as this does not require registration. Whilst this means that she can earn some income, the impact of suspension of her registration as a childminder in her home is obviously very significant indeed.

45. We have carefully considered all the matters raised by the Appellant. Suspension is always a very serious matter because of the adverse impact on the individual concerned, but also on those who wish to rely on her services to support their family lives. The Appellant states that there are 10 such families. A decision whether or not to suspend (or (further) suspend) is never a decision to be taken lightly.

46. We bear fully in mind the full regulation history including that the inspection judgement in 2023 was that of "good". We take into account the evidence of parents who speak in very favourable terms of the Appellant. They value the service provided by her. They wish her ability to childmind in her home to be restored.

47. We balanced the harm to the interests of the Appellant and others affected against the risk of harm to children looked after by the Appellant as a registered childminder working in her home.

48. Having considered the substance of the material before us we consider that the need to protect young children against the risk of significant harm outweighs the adverse impacts of suspension on the Appellant and others affected. We consider that the decision made on 7 February 2025 was/is fair, reasonable and proportionate to the need to protect the health, safety and well-being of children.

49. We stress, however, that the fact that we are confirming the decision to suspend should not be taken as any indication of the merits of the Appellant's appeal

against the cancellation decision, one way or the other. The appeal against cancellation will be fully determined at the substantive hearing where all the evidence will be heard and tested, and findings of fact made. The fact that suspension orders have been made, in the past or today, should not be taken as any indication as to whether the substantive decision to cancel registration will be confirmed or set aside. We repeat: a suspension decision is a neutral, and protective, decision based on a risk assessment. It is also relevant to note that the Tribunal in the cancellation hearing will be considering the Appellant's position and her evidence as at the date of that hearing.

50. We confirm the decision made on 7 February 2025 to suspend the Appellant's registration for the period of six weeks from 10 February 2025 to 23 March 2025.

Decision

**The decision to suspend registration dated 7 February 2025 is confirmed.
The appeal is dismissed.**

**Tribunal Judge S Goodrich
First-tier Tribunal (Health Education and Social Care)**

Date issued: 5 March 2025