

Neutral Citation Number: [2025] UKFTT 00369 (HESC)

First-tier Tribunal Care Standards

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

**CALL4CARE SERVICES Ltd (1)
NORMAN ZISENGWE (2)**

Appellants

v

OFSTED

Respondent

2024-01065.EY

**BEFORE
Judge Siobhan Goodrich
Specialist Member Mrs Lorna Jacobs
Specialist Member Ms Heather Reid**

**On 10, 11, 12, 13 and 14 February 2025
At the Royal Courts of Justice
And on 27 February 2025 via video link for closing submissions
And on 28 February and 27 March 2025 for panel deliberations**

Representation

For the Respondent: Mr Matthew Howarth, counsel, instructed by Ofsted Legal Services

For the Appellant: Mrs Louise Hartley, counsel, instructed by Stephenson Solicitors LLP

DECISION AND REASONS

The Appeals

1. The Appellants appeal against the decisions made by the Respondent of 29 January 2024:
 - i. to cancel the company's registration to carry on as the provider of the children's home, Solomon's House ("the Home") whose registered address is 26 Five Acres Fold, Northampton, NN4 8TQ.
 - ii. to cancel the Second Appellant's registration as the registered manager at the Home.

2. The Respondent is the Office for Standards in Education, Children's Services and Skills (Ofsted) and is the statutory body responsible for the registration and regulation of children's homes. Amongst other matters, Ofsted's role is to establish whether the person or entity registered continues to meet the regulations made pursuant the Care Standards Act 2000 ("the Act").
3. The Respondent's reason regarding both of the decisions under appeal are essentially the same and so therefore the appeals has been consolidated at the request of the parties.
4. We received indexed and paginated main bundles (1133 pages pdf) as well as the supplementary bundle (877 pages pdf). These included the witness statements, exhibits and other documents which the parties provided pursuant to case management directions regarding the exchange of evidence. In preparation we focussed our attention on the key documents drawn to our attention by the parties. We had also received and read the parties' skeleton arguments.

Restricted Reporting Order

5. The Tribunal made a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matters likely to lead members of the public to identify the children to whom reference had been or might be made. In this decision we will anonymise names by using initials to protect the interests of young children. We will also refer to the names of staff who have not given written or oral evidence, and about whom unfavourable observations have been/might be made by first names only.

Background

6. This appears to be as follows:
 - a. The Home was first registered as a children's home on 3 August 2023. It is relevant to note that it was known to the Respondent that the Home had been operating whilst unregistered. Children were in the home at the time of the inspection for registration. There was a safeguarding matter that arose during the inspection that resulted in advice from the Registration inspector.
 - b. The registration granted permitted the Appellant to provide care and accommodation at the Home for up to two children. The categories of care and accommodation were (and remain) for children with:
 - emotional and/or behavioural difficulties (EBD)
 - learning disabilities (LD)
 - c. At the time of registration the Appellant company had two directors: Mrs Susan Zisengwe and Mr Norman Zisengwe, who are husband and wife. The Registration certificate issued reflected that Mrs Zisengwe was the responsible individual ("the RI"). Mr Zisengwe was the registered manager ("the RM").

- d. On 5 and 6 December 2023 the Respondent carried out an inspection following the notification of an allegation that the Second Appellant had assaulted a child on 26 November 2023. The allegation was the subject of a Local Authority Designated Officer (“LADO”) investigation which was ongoing. The outcome of the inspection was a judgement of “inadequate”. Twenty-five statutory requirements were issued in relation to alleged breaches of the Regulations.
- e. On 6 December 2023 pursuant to section 22B of the Act the Respondent issued a notice of restriction of accommodation at the Home due to safeguarding concerns. The effect of that restriction was effectively to prevent any child being accommodated at the Home.
- f. On 15 December 2023 the Respondent issued Notices of Proposal (NOPs) to cancel the First Appellant’s registration as provider and the Second Appellant’s registration as manager at the Home.
- g. On 8 January 2024 the Appellants submitted joint written representations in response to the NOPs. Having considered the representations made, the Respondent made the decisions to cancel registrations on 29 January 2024. The Appellants lodged their appeals on 28 February 2024.
- h. In a form submitted on 2 April 2024 Ofsted was informed by Mrs Zisengwe that she had stepped down as the RI on 9 February 2024 and that Mr Gangaidzo became the RI on that same date. In April 2024 Mr Zisengwe applied to Ofsted to voluntarily cancel his registration as RM at the Home. This was rejected by the Respondent because the decision to cancel his registration had already been made.
- i. At some stage the Respondent received an SC3 form advising that Mr Gangaidzo had been appointed by the First Appellant as the RI for the home. This was reflected in the (amended) certificate of registration which was issued by the Respondent on 25 April 2024. We have been told that this certificate was issued as the result an administrative error. For our purposes this is not key because it was overtaken by events. On 5 August 2024 the Respondent conducted a Fit Person interview of Mr Gangaidzo and, on 14 October 2024, assessed that he was “suitable” to be the RI for the Home.
- j. The restriction of accommodation at the Home first imposed on 6 December 2023 has been extended at regular intervals and continues to date. Monitoring visits have been conducted by Ofsted as follows: 20 December 2023, 30 January 2024, 16 April 2024; 21 May 2024, 30 October 2024; 14 January 2025.
- k. Termination of the appointment of Mrs Susan Zisengwe as a Director was formally accepted by Companies House on 17 November 2024.

Chronology from November 2025 regarding the appeals and directions given

7. The hearing of this appeal was first listed on 11 November 2024 and was adjourned for reasons fully explained in the decision dated 25 November 2024. The directions given included that:

“6. The Respondent shall, by 4pm on 9 December 2024, send to the Appellants:
 - a) A revised (or additional) Scott Schedule which sets out any allegations or concerns regarding dishonesty and/or lack of integrity on the part of the First and/or Second Appellant and identifies the facts and matters on which it relies.
 - b) Any further witness statements and/or further documents on which it relies.

7. The Appellants shall, by 4pm on 13 January 2025, send to the Respondent:
 - a) their responses to the revised (or additional) Scott Schedule.
 - b) Clarification/revision of those responses to the original Scott Schedule which refer to partial admissions, and so as to specify which aspect of the evidence relied on by the Respondent is partially admitted.
 - c) any further witness statement(s) producing the further documents on which they rely and/or in response to the further evidence relied on by the Respondent.”

8. The time scales for various directions in the order were varied by consent on 30 December 2024, 13 January 2025, 28 January 2025 and 30 January 2025.

9. On 3 February 2025 the Appellant made a further T109 application to rely on further late evidence – a third witness statement (with exhibits) from Mr Zisengwe made on 31 January and signed on 3 February 2025. This was expressly stated to be in response to the character issues raised by the Respondent. On the same day the Respondent also sought to adduce late evidence – the statement from Mrs Sarah Orriss, dated 3 February 2025, which was in response to new information regarding Mr Gangaidzo, and in response to recent evidence filed by the Appellant.

10. The parties agreed that the late evidence of each party as set out above should be received as the late evidence was relevant, and it was fair to receive it. We agreed.

The Parties' Outline Positions

11. The parties' positions at the start of the hearing can be summarised as follows:
 - a) The Respondent maintains that:
 - The decision to cancel both the registration of the provider and RM on the grounds that the Home is being, or has been at any time, been carried on otherwise than in accordance with the regulatory requirements as set out in the Care Standards Act 2000, associated regulations and guidance. The Respondent asserts that since registration, the Appellants have failed to demonstrate that they are

able to meet the requirements in respect of Regulations. 6, 8, 10, 11, 12, 13, 14, 32, 36, 37 and 44 in particular.

- The reasons for the cancellation decision regarding both Appellants were essentially the same and included: Mr Zisengwe attending the Home despite being suspended; no placement plans or risk assessments in place for the children; poor recruitment practices at the Home; no accurate rotas for staff; incidents not recorded or reported to Ofsted; no plans in place to protect children from online risks; ineffective internal and external monitoring of the Home; staff not being provided with appropriate training or induction, and not being provided with regular supervision.
 - The Respondent contends that the reasons for its decision are further supported by relevant evidence regarding Mr Zisengwe's approach to the law and to regulation. The Respondent contends that the Appellant has run unregistered homes which is a criminal offence. He is therefore not a fit and proper person. The Respondent also contends that the evidence demonstrates that Mr Zisengwe has, at worst, been dishonest in material respects or, at best, shown lack of transparency and candour. The Respondent maintains that Mr Zisengwe cannot be trusted to provide a children's home that will comply with the regulations.
 - The Respondent also seeks adverse credibility findings regarding the evidence of Mr Gangaidzo.
- b) The Appellants' position at the start of the hearing, as reflected in the response to both Scott Schedules, included that:
- the decisions to cancel are disproportionate and unjustified as they have not been afforded a sufficient chance to demonstrate positive change. Some of the factual allegations made regarding breach of the regulations made in the first Scott Schedule are disputed. The Appellants firmly deny the allegations of dishonesty and or lack of integrity, transparency or probity made in the supplementary schedule.
 - The First Appellant has a Responsible Individual, Mr Gangaidzo, and has instructed a specialist consultant, Mr Howells, to assist with improving the Home. The First Appellant has also implemented a new system (Sue Solutions) to ensure documents are "uploaded live". It has also implemented an action plan regarding new care plans, risk assessments, further training of staff, an updated statement of purpose, an updated children's guide, monthly team meetings, quality assurance audits, new admissions procedure, new log in and log out system and updated complaints policy. The First Appellant has also ensured that a review of interview and induction processes has been carried out.

- The assessment of the inspectors in their monitoring visits regarding the progress was unduly critical and harsh. The inspectors set out to find fault. Progress has been made in many areas. It is impossible to assess many aspects given that there are no children in the home.
- The Second Appellant denies all the allegations regarding fitness, dishonesty, lack of integrity and/or lack of transparency. The Appellant did operate unregistered homes but so did many others. There is a desperate shortage of children's homes and the Appellant was responding to the need and interest shown by local authorities who then placed children in its care. The Appellants rely on the fact that there had been court involvement in circumstances where the High Court had made Deprivation of Liberty order(s) (DOLs order).
- Progress has been made as shown by Mr Gangaidzo's evidence. Viewed at today's date cancellation is not justified and is unduly harsh. Conditions can, and should be, imposed to proportionately address any residual public interest concerns. A suggested condition is that no children be admitted to the Home until a registered manager has been approved by the Respondent.

The Hearing

12. At the outset of the hearing the judge explained procedural aspects which included that the evidence of each witness in their statements would stand as their evidence in chief, subject to any corrections or alterations that might be made before their adoption as the truth.
13. The judge also explained that:
 - i. The right of appeal lies under section 21 of the Act. The panel takes into account evidence as at the date of the hearing and considers the current position.
 - ii. The burden of proving the breaches of the standards on which reliance is placed rests on the Respondent. The standard is the balance of probabilities.
 - iii. The burden of satisfying/persuading us that the decision is today justified, necessary and proportionate, lies on the Respondent.
 - iv. If a party makes an allegation it bears the evidential burden of adducing evidence to prove that allegation on the balance of probabilities.
 - v. On consideration of the appeal the Tribunal may confirm the decision or direct that it shall not have effect.
 - vi. The panel has the power to impose conditions.

14. The parties confirmed that they agreed with the above.
15. The judge observed that the Appellant's position regarding Ms Gani's application to be appointed as a RM by Ofsted was not clear in relation to what references had been provided and which were outstanding. Pursuant to powers under rule 15 the judge requested a short additional statement from Ms Gani to explain the position regarding the referees nominated by her in support of her application, and the references provided to date, so that the Respondent could take instructions. This was provided after the midday adjournment on the first day of the hearing.
16. Starting in the afternoon of 10 February 2023 we heard evidence from the following witnesses and in the following order:

For the Respondent:

- Mrs Sarah Orriss, Social Care Regulatory Inspector (SCRI)
- Mr Chris Haines, SCRI
- Mr Joseph Matkar-Cox, Social Care Inspection Manager (SCRM)
- Mr Phillip Morris, SCRM
- We also received the witness statement of Ms Caroline Brailsford, the decision maker, which the Appellants agreed could be received as read.

For the Appellant:

- Mr Zisengwe, the sole director of the First Appellant, and who had held the role of RM until he resigned
- Mr Gangaidzo, the Operations Manager since 23 November 2023 and thereafter the RI.
- Ms Gani, the manager employed by the Appellant since 1 October 2024, who has applied for registration by the Respondent as the RM.

The further late evidence application made during the hearing

17. On 10 February, whilst cross examination of Mrs Orriss was underway, Mrs Hartley said that the Appellants wished to make an application to rely on late evidence which it intended to submit. When provided on 11 February 2025 this consisted of a short statement from Mr Zisengwe exhibiting documents regarding: a tenancy agreement regarding Coppice Drive: certificates of training; and a new version of the Home's Safeguarding Policy.
18. The Respondent opposed the application to adduce this late evidence.
19. We heard submissions. We refused the application for reasons that were briefly expressed in the interests of time economy. We expressly reserved our fuller

reasoning which we now give.

20. We considered the overriding objective and our powers under rule 5. We noted that this case had been extensively case managed throughout, and this had included: directions given when the case was postponed on 11 November 2024; numerous applications granted to extend the dates by which evidence was to be provided; and recent applications to admit late evidence which had been granted at the outset of the hearing. The further application before us was made when cross examination of the Lead inspector had already begun. It appeared to us that the Appellants had had very ample opportunity to provide evidence before the start of the hearing. There was no or no satisfactory explanation as to why this application was made so late.
21. Although we consider the appeal and the evidence as at today's date this should not be taken as a general license to any party to produce documents as and when it seeks to do so. There is a time-table for evidence to be provided which is case managed for very good reason i.e. to ensure that the evidence that is proportionate to the issues is received well before the hearing starts so that the parties can prepare. We decided that it was not in the interests of justice to admit the late witness statement and exhibits. A line has to be drawn: otherwise there is a clear risk that daily applications to adduce late documents would risk prejudice to the ability of the opposing party to investigate and/or to respond to new evidence and/or might threaten the planned timetable for proceedings on which the allocation had long since been based. Our refusal to admit these late documents did not necessarily mean that the Appellant's witnesses could not be asked about the steps taken to address compliance issues since the date of their last statements by way of supplementary questions. Such evidence would fall to be assessed in the ordinary way. We did not consider it fair, or in the interests of justice, that further documentary evidence should be introduced after evidence had begun.

The Law

22. Pursuant to section 14(1) of the Act, the registration authority (Ofsted) may at any time cancel the registration of a person in respect of an establishment or agency:

“(c) on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;”.
23. Section 14(3) of the Act defines ‘relevant requirements’ as including “any requirements or conditions imposed by or under this part” and “the requirements of any other enactment which appear to the registration authority to be relevant”.
24. Section 22 of the Act is the enabling provision regarding requirements on a provider. The requirements include the Children’s Homes (England) Regulations 2015 (“the 2015 Regulations”).
25. The requirements of the Regulations relied on in the cancellation decisions

were:

- 6: The quality and purpose of care standard
- 8: The education standard
- 10: The health and well-being standard
- 11: The positive relationships standard
- 12: The protection of children standard
- 13: The leadership and management standard
- 14: The care planning standard
- 32: Fitness of workers
- 36: Children's case records
- 37: Other records
- 44: Independent person: visits and reports

26. The Respondent also now relies on the requirement that any entity or person registered must be a fit and proper person – see regulation 26 and 28. This was not referred to in the decisions under appeal in terms although the Respondent had stated its view about the honesty of Mrs Susan Zisengwe, then a co-director of the First Appellant company, and who was the RI at the date of inspection and at cancellation.
27. It was directed at the hearing on 11 November 2024 that the Respondent should provide a supplementary Scott schedule (SS) in relation to all of its allegations/concerns so that the Appellants should know the case that they had to meet. The Respondent did so and with particular emphasis on fitness provisions under regulation 26 and 28. The Respondent also explained how it said that the standards set out in other regulations: 8, 10, 11, 12, 13, 16, 17, 21, 23, 26, 31, 33, 36, 38, 39, 40, and 43 were engaged/had been also been breached when setting out its case in granular detail. The Appellant duly responded to the supplementary schedule in factual terms.

The Evidence

28. Each witness adopted their statements as evidence in chief. We set out below key parts of the oral evidence as relevant to the leadership and management at the Home from late 2023. It was necessary to give separate warnings to each of the Appellant's witnesses regarding their right to decline to answer questions so as not to incriminate themselves in respect of potential criminal offences.

Mrs Orriss

29. Prior to starting work for Ofsted in 2019, Mrs Orriss had worked for a charity providing residential care in a children's home. She had worked as a children's home manager for 10 years. Particular parts of Mrs Orriss' oral evidence included that:
- a) Regarding the January 2025 visit, some progress had been made but it was minimal. Progress made had not been sustained in some areas.

- b) Apart from one incident report, the inspectors had still not been provided with the records regarding the care of children which she had requested at every monitoring visit she attended.
- c) In his SC2 application regarding Hythe Hill Mr Gangaidzo failed to disclose that he was RI at the Home and made no reference to Call4Care.
- d) Re the December 2023 inspection, the person in charge had to be woken up and was in her pyjamas. It was disconcerting to be locked out of the house in the annex. She (Mrs Orriss) knocked on the kitchen door but it was not opened and she had to move boxes to exit another door and then knock to attract attention.
- e) Information from the police in November 2024 (I538) was that since 27 January 2023 there had been 50 “occurrences” at the Home broken down as: 20 assaults; 17 safeguardings made up “missing” episodes; 7 for criminal damage. Asked if this was common in a setting for children with complex needs Mrs Orriss said she had never had 20 assaults in any setting or over her 10 years’ experience. She agreed that there are high risk children in homes, but it is a question of how they are managed and supported.
- f) It was suggested that it was difficult to demonstrate the standard of care when there are no children at the home. Mrs Orriss said it would have been useful if the inspectors had been able to look at the records (of past children) so they could see what their care looked like but these were never available when asked for.
- g) When asked by the panel what themes caused her greatest concern she referred to the impact of the December inspection. She had never been in a home that was “so poor in terms of indifferent and poor care”. The inspectors were not given information. There were any number of safeguarding concerns, and when a child asked for a drink of water outside hours it led to an incident that resulted in his arrest. It was sad to see how bare the home was. When she spoke to one of the (two) children he said had had a birthday cake but the other child ate it. He loved art and crafts but there were no things (i.e. materials) in the home. He spent most of his time in the bedroom. This child expressed that the other child did not like him, he did not know why.
- h) She had never been in in a home so poor. The staff were unaware of the children’s medication. One child had been receiving the incorrect dose of their medication for a month and had been underdosed. The other child had incorrect medication dispensed by the pharmacy. The pharmacy had contacted the Home to advise of the error, but the Home failed to take action so the child was not receiving the medication prescribed.
- i) She was extremely concerned with the closed culture. Staff sat on the

settee with their feet up and were indifferent to the children, one MoS describing a child as “that gypsy upstairs”. There were punitive care practices where doors were locked and access to areas of the Home was restricted after 8pm. She said that the home had an impact on her and she and Mr Haines were quite upset after the inspection.

- j) She considered in January 2025 that little progress had been made. The Action Plan had been implemented in some areas, but the evidence was scant. She considered that there was a real lack of leadership and management oversight, despite there being an RI and manager.
- k) Asked by the panel about her overriding concern, she said that that the Appellants’ response is very reactive. If Ofsted say something is not right, then that thing would be improved next time, but they do not sustain the change, which reflects poorly on management oversight. She considered that the Appellants do not have the capacity/ability to recognise the need for change themselves.

Mr Haines

30. Mr Haines had recently been appointed as an Inspector by Ofsted when he accompanied Mrs Orriss on 5 and 6 December 2024. His professional background was that he had been employed in residential childcare by a local authority for some 20 years and he had been a RM in two (LA) children’s homes for some 5 years managing the needs of children with EBD and LD. This was the very first inspection he had attended in the role of Inspector at Ofsted and Mrs Orriss was the lead inspector.

31. Mr Haines’ oral evidence included that:

- a. The inspection on 5 and 6 December left him “in a state of shock”. He could not believe that this kind of scenario existed. He kept checking with Mrs Orriss about whether this was usual. She assured him that it was not. He was uncomfortable with the greeting of the staff at the Home and their responses. He was quite stressed by what appeared to him to be misleading responses from staff. He was immediately concerned that he was able to identify the needs of the children at the Home, but he could not see any evidence that the staff understood these at all. On arrival he and Mrs Orriss had been ushered into an annex building and were effectively locked out from the Home for a period. It transpired that the team leader had to be woken up. Once she was awake there were three members of staff to meet the needs of 2 children, one of whom required 2:1 care and the other 1:1 care.
- b. The inspectors asked to view records but the staff did not provide these. The staff on duty could not articulate the children’s needs. The team leader who had been asleep provided a little more information. Mrs Zisengwe arrived later that morning. Mr Haines said that he wanted to see the usual range of documents that show how each child was being supported: care plans: behaviour support plans; health plans, learning

plans and the like. None of that was made available to the inspectors.

- c. He (and Ofsted) had expected this documentation to be produced then or since. It has still not been provided. The absence of records denies the rights of the children. There has been no acknowledgement of the experiences of the children who lived at the Home. There has been no reflection or learning. The failure to produce records means that this time on these children's lives has been "wiped off". Such records have to be maintained for 75 years. They should be available as evidence of the care provided to the children.
 - d. He had stumbled across an incident concerning one of the residents being arrested following an allegation of a disturbance. If he had not stumbled across this Ofsted would not have known about this because there had been no regulation 40 notification.
 - e. He felt from a very early stage that he could not trust what was being said by staff.
 - f. What stood out on day 1 of the inspection was that there was no interaction between staff and the children. Within 10 minutes of talking with one child the inspectors had established his likes and some of the things he was not happy about. The impression Mr Haines had was that staff were not interested in the children and their lives. No explanation was given as to why the Inspectors, who had been placed in the annex, had been effectively locked out of the home.
 - g. He was concerned that shortfalls in files relevant to safe recruitment had been identified on day 1 but some staff files had been removed and others put in their place by day 2. Mrs Zisengwe could not explain this. Mr Haines considered that the replaced files were equally poor. He was concerned that he was not being told the truth. He was also concerned that the rotas shown did not reflect the people who were working at the Home. Mrs Zisengwe had denied that Joseph and Yunis Zisengwe, who appeared to be employees, were her children.
 - h. Regarding his second visit in May 2024, he was not satisfied that the provider had made progress. The experience of the children at the Home had been so poor, and yet there was still no acknowledgment of this. The provider did not need to consider "made up" scenarios: the experiences of children at the Home were (or should have been) available. He remained concerned that there had been no reflection or learning from the actual experiences of the children at the Home. What he saw was a collection of template policies. He considered the lack of improvement to be shocking.
32. In cross-examination Mr Haines did not agree that he had been seeking to "find fault". It was suggested that it was not unreasonable that there was no information in the Children's Guide given that children had not been in the home since 2023. He disagreed. He also considered it unreasonable that the RI had

not been able to access the records and the only people who had access to these were Mr and Mrs Zisengwe. He agreed that Mr Gangaidzo had had to leave the visit in May 2024 early due to a family emergency, but Mr Haines' evidence was that the Respondent had, however, repeatedly asked to see the children's records in and since December 2023. His point was that the Respondent had not seen evidence of any reflection on the experiences of the children at the Home in December 2023. It was not appropriate "to wipe the slate clean" and seek to expunge the experiences of the children who had lived there. The experiences of children had to be considered and understood. He did not agree with the suggestion that the behaviour and conduct of Mrs Zisengwe adequately accounted for the issues or his concerns. His view was that the issues were not just due to the RI or to any one person.

33. Mr Matkar-Cox who had attended some of the LADO meetings gave evidence. Mr Morris gave evidence regarding the unregistered settings run by the First Appellant. Their evidence was not essentially contentious. We will refer to it as necessary in due course.

Mr Zisengwe

34. In his evidence in chief Mr Zisengwe explained his background in detail and described the reasons why he believes he has a passion for the care of children. He referred to his background in a mission school, his studies and his many qualifications. Amongst other matters he said that: he enrolled in his Mental Health nursing degree in 2021 and qualified in 2024; he obtained his level 5 qualification in Residential Care in 2024; he is currently enrolled full time in a master's programme in psychology. He said that his studies were borne of his passion and vision to give back to the community. In his own words he does a lot in religious circles (as a Minister of Religion/pastor) and he had felt the burden to do something in the community.

35. Key parts of Mr Zisengwe's evidence included:

- a) He and his wife had started a domiciliary care agency and it was against the background of its CQC registration that the company was approached to provide care for children. He said that a council (Enfield) approached him saying that "we have a child that we would like you to support". This was JA. Mr Zisengwe said that "we accepted the challenge. We had a house in Nottingham." He said that "the request demanded CQC registration which we had, and we took JA into the home."
- b) Mr Zisengwe said "They (i.e. social services) never meant for a child to stay, it was desperation, they don't have anywhere to take the children and it was from that background they saw that we were doing a good job and we proceeded to register. It was painful to see a child settled and then moving. These placements are a departure lounge. We have not embarked on a syndicate of criminal conduct."
- c) There had been a lot of reflection after the December 2023 inspection.

They had had to let a lot of staff go. They had now recruited more experienced people: Giselle Gani as proposed manager; Alesha, Jackie and Zena (as senior support workers) and three more who were not very experienced but towards Level 3: Faith, Hope and Emma. He was asked in chief if any of the less experienced staff had worked at the home before and he identified Hope.

- d) He took full responsibility for the situation at the 2023 inspection but said that “it might not reflect the real practice that had been going on there”. His reflection was that he had allowed his passion, his dream of saving children to cloud the principles regarding the demands for the setting. He said that what he learned from the inspection was that he had to delegate if he was to do better. He was the manager but had had a lot of things on his plate. He also noticed that “it is vital to put documentation in place before and during the tenure of the children, before you admit, and during their time in the Home.” The biggest lesson he learnt is that he should not trust his own instincts more than principles. He said that what triggered the inspection (i.e. the November 2023 incident) was “poor judgement on my side out of passion to help and that is what led to the LADO investigation. It was a big mistake. My passion and love to save must not override fundamental principles.”
 - e) He had spent four “dedicated” days a week at the Home. He said he had visited Lacewood (an unregistered home) once a week. He could not recall how many children were at the home at the time of the inspection. He was also doing a full-time Mental Health nursing degree, attending study for three days a week.
 - f) After the inspection he had stepped back because he felt that he had failed. He wanted to provide a new team to advance the best interests of children in the Home.
 - g) Asked how he felt/for his reflections about the experiences of the children in the Home Mr Zisengwe said he had felt a bit emotional because he felt the pain. He also said that the biggest lesson was not to allow empathy and passion to overshadow principles like putting a risk assessment in place.
 - h) He had picked up P from the secure unit. He took him in as his son. He had had meals with him a couple of times. Every week he attempted to build the relationship. When the November incident happened it hit him (Mr Zisengwe) hard. He accepted that the care records were not adequate, but he maintained that records were kept.
36. Mr Zisengwe admitted that things were “not alright” at the Home but he completely denied that things were as bad as represented by the Respondent. He accepted that the records were not available for the Inspectors to see. He said that this was because it was a transitional period when records were being moved from paper to Sue Solutions. He said that the paper records were there but they were not up to date. He then said: “remember this was a running

home". He did not know why the inspectors said they could not see any records and said: "I know they were there".

Mr Gangaidzo

37. Amongst other matters Mr Gangaidzo said that:

- a. He has significant experience in working with disadvantaged children. He had come to understand that there was a need (i.e. a demand) for unregistered homes. He had had an influx of enquiries and had supported organisations to register and had reviewed their paperwork. It was this experience that led him to the "crossroads with the Appellant". He said that originally he had been asked by the Appellant to be the independent Regulation 44 visitor in May 2023. He said that he could not do so as he could not be an independent person.
- b. As to incident in November 2023, he "came on board" under contract as the Operations Manager for 2 days a week on the Thursday (23 November) before the incident of alleged assault by Mr Zisengwe on 26 November. By the Friday he had drafted a pathway (i.e. for improvement). He considered that there were a lot of shortfalls and quite a lot of things were missing.
- c. The LADO process arose on the Monday (27 November 2023). He had been informed of the incident on the Sunday. He had asked Mrs Zisengwe what action had been taken and was informed that Mr Zisengwe had been suspended, notification had been given, and the social worker (for P) had been informed.
- d. He was at the meeting on 27 November 2024 which was attended by the LA social worker. This was prior to the involvement of the LADO. He recognised/agreed that the issue should have been referred to the LADO straightaway.
- e. He had also attended the LADO meeting on 27 February 2024. When asked about the entry that suggested that a referral to the DBS had been made by the Home he said that the first he knew of this was when this document had been shown to him during the course of the appeal. He had not been sent any records of the LADO meetings. His recollection was that it had been planned that he would arrange for an independent investigation. At the time of this meeting this was not yet complete.
- f. He understood that the allegation was substantiated at the meeting on 27 February 2024.
- g. He had had some involvement in the Action Plan drafted in response to the NOP. There were a lot of shortfalls. He felt that there was not a lot of time to address these by the Ofsted deadline of 16 January 2025. When asked he said he could not say what a realistic time frame might have been.

- h. It took him until October 2024 to get safe recruitment right. In August/September he still had six inherited staff. He had “let go” three members of staff (MoS). By October 2024 there was a positive outcome in terms of the recruitment files.
- i. In June 2024 he had applied to be the RI at Hythe Hill in Colchester which was an unregistered setting. He said that this came about because there were a number of people who had found themselves in trouble. Hythe Hill offered supported living accommodation. He had visited them in February/March 2023. Because the young people involved required care beyond supported living he had advised Hythe Hill to register as a children’s home. He said that he was hesitant to be the RI at Hythe Hill because of his commitment to the Appellant and because of his family circumstances. His mother in law was unwell. He had plans to withdraw the application he had made to be the RI at Hythe Hill. He said that he mentioned to Mrs Orriss at the end of his interview in August 2024 for the RI role at the Home that he was considering taking on the role as RI at Hythe Hill (Colchester). She said that she could not advise him, but the important issue was the safety of children. He said that he thought that the issue would have been raised in the RI interview because his name would have been linked in the system.
- j. He applied for the role of RI at the Home (Solomon House) but he could not say the month this occurred. He agreed that his advice had been sought by Mr Zisengwe in about February 2023 as a consultant regarding registration, but he said he knew nothing about the Home at the time. He agreed that he was approached by Mr Zisengwe because he was an expert. However, he was not involved in the actual registration of the Home. He agreed that in general he is involved in giving advice regarding planning applications for care homes and how unregistered settings might become registered. If a home is unregistered, he seeks to check whether the setting has any child in residence and gives advice. He said that he was not aware that Mr Zisengwe was running any unregistered care homes when Mr Zisengwe contacted him in about February 2023. He agreed that he had lots of experience in advising care homes how to comply with planning and registration requirements because he had had a number of customers. He again agreed that he was an expert.
- k. He had first had a role with Call4care in November 2023. He said he had been told in July 2023 that the Home has been registered. He had spent time with Mr Zisengwe in February 2023 but there had been no further conversation till later in July when Mr Zisengwe told him he had a date for the (registration) visit. They did not “do any business” regarding the process.
- l. If Mr Zisengwe had told him about the allegation made against staff in July 2023 by child A he would have asked:
Have you suspended staff?

Have you informed the LADO?
Have you informed Ofsted?
Have you informed the duty social worker?
What is your policy?

- m. Further he agreed that if he had been the RI in July 2023 he would have suspended the member of staff involved straightaway and would have ensured that adequate records were made then and there. He agreed there would have been a lot to do in terms of paperwork.
- n. He agreed that he had inducted/trained staff in August 2023 at the Home over 2-3 days but this was not a continuous engagement. He had set up folders regarding Health and Safety, and Fire. The Appellant then asked him to be the independent visitor providing Regulation 44 reports, but he did not take on this role on because there was a conflict given that he had provided training. From November 2023 he was engaged by the Appellant for 2 days a week. He had started as the Operations Manager giving advice regarding compliance, supporting the manager, and with regard to all other aspects overseeing the home.
- o. He could not remember if it was the social worker who had made the referral to the LADO in November 2023. He had heard that social services had learnt of the allegation from the family before the Home informed them.
- p. He disputed that he had told the LADO on 27 February 2024 that he would make/ had made a referral to the DBS. His recollection was that the LADO had said nothing about the DBS at this point because the report of the independent investigator and the outcome of the police investigation were still outstanding. In answer to a question from the panel Mr Gaingadzo confirmed that he would definitely now be making a referral to the DBS.
- q. He said that he was the OM effective from the Thursday before (i.e. 23 November 2023) but he had not been involved in the incident on 26 November 2023 He received information on the Monday (27 November). He agreed that he had not seen evidence of any notification to Ofsted. He agreed that this should have been at the forefront of his mind as OM, but he said that he was not “in the company” in terms of getting to know what had happened. He had checked the action that Mrs Zisengwe had taken. It was suggested to him that as the OM his duty was to check that the requirements that he had already explained in evidence had been carried out. He said that he would have checked.
- r. He agreed that any staff accused of assault should be suspended. He agreed that it was inappropriate for any person accused of assault to continue to be at the Home. When asked why it was appropriate for a MoS accused of assaulting a child in July 2023 to still be in the Home months later, he said that he did not know until Mr Zisengwe gave evidence yesterday that Faith/Gladys had remained employed. He

would have to check if Faith/Gladys was the same person. He had heard a different surname. He said that when he was reviewing files “they were not in place”.

- s. He initially declined to comment on whether Mr Zisengwe was a suitable person to be a provider. He then said that on the basis of the evidence he had heard he would say that Mr Zisengwe was not suitable. Asked why he was still working for the Appellant, Mr Gangaidzo said that he can get the Home to where it is supposed to be. He accepted that there should have been reflection on the experiences of children who had lived at the home. He said that every document /record that had existed was in hard copy and was also scanned to the cloud. He said that he had not produced the documents/records because they had never been requested by the solicitors.
- t. Mr Gangaidzo said that the Home today is not suitable and is not safe. They were working towards it being suitable. He agreed that there is a lot of work that needs to be done.

Ms Gani

- 38. The evidence of Ms Gani was relatively brief. She has been employed by the First Appellant since October 2024 as the deputy manager at the home but she is not yet registered as an RM She applied to be registered by the Respondent on 28 November 2024. A reference from her last known employer has been requested by the Respondent and, as at the date of the hearing, had not been received. Mrs Orriss’ evidence was that Ms Gani’s application to be the RM at the Home has therefore not been progressed because it is not yet considered to be complete.
- 39. Ms Gani exercised her right not to answer a question from the Respondent regarding the unregistered status of a home at which she had worked.
- 40. It is convenient to state at this stage that we consider that it is not for us to make a decision regarding Ms Gani’s fitness/suitability to be the RM at the Home. This is a discrete decision that falls to be made by the Respondent - when and if the application made by her is regarded as complete. It is not complete because the reference from the last known employer has not been received. Further, when and if an application is considered complete there is usually a “fit person” interview. Experience tells us that the Respondent usually considers the information provided so as to assess all aspects of fitness against the specific criteria in regulation 28. The point and purpose of references is that key lines of enquiry may or may not emerge. The statutory process is that an adverse decision, were it to be made, carries a separate right of appeal. We consider that it is not appropriate for us to circumvent the proper process.
- 41. We can, and do, consider Ms Gani’s evidence on the basis that she is working in a manager role at the Home and aspires to be the RM. We have carefully considered the factual evidence that Ms Gani has given regarding the improvements made in the Home. We take her evidence into account and

weigh it alongside all the other evidence before us.

The Application to withdraw the appeals

42. Having completed the oral evidence on 14 February 2025 the hearing was adjourned part heard to 27 February 2025 for final submissions and directions regarding the provision of closing arguments were issued.
43. On 20 February 2025 the Appellant submitted a notice seeking to withdraw the appeals. On 21 February 2025 the panel directed that this application be considered at the resumed hearing.
44. The panel duly received lengthy written closing submissions from both parties. Just before the hearing resumed the Respondent also submitted material in relation to a potential costs application and the Appellant submitted additional written submissions regarding the withdrawal application.
45. We considered all the written and oral submissions before us. As we made clear at the outset of the resumed hearing on 27 February 2025, we did not consider it appropriate that the issue regarding costs had been raised before us: the time for such an application under rule 10 is after the decision has been issued. We had noted that in written closing submissions the Respondent considered that the Appellants' application to withdraw the appeals amounted to a concession. The judge explained that our preliminary view was that that was this was mistaken in fact and in law. Mr Howarth visibly indicated his agreement. Sensibly, Mrs Hartley did not suggest that the fact that costs had been raised prejudiced our ability to make a fair decision. We directed ourselves to put the potential costs application from our minds entirely as it was completely irrelevant to the decision before us.
46. We heard oral submissions regarding the Appellants' application to withdraw the appeals. We will not rehearse all the submissions made but will refer to the key aspects below. Amongst other matters, Mr Howarth accepted that the application to withdraw could not be treated as a concession by the Appellants as to the merits of the appeal which, if the application for withdrawal did not succeed, would fall to be determined in the usual way.
47. We refused the application to withdraw the appeals for reasons which we now give. When deciding whether to consent to the Appellant's application to withdraw made pursuant to rule 17, we considered and applied the overriding objective which is to enable that proceedings are dealt with fairly and justly. Rule 17 provides as follows:

"17.—(1) Subject to paragraphs (2) and (3), a party may give notice of the withdrawal of its case, or any part of it—

(a) by sending or delivering to the Tribunal a written notice of withdrawal;

or

(b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the

withdrawal except—

(a) in proceedings concerning the suitability of a person to work with children or vulnerable adults:

(b) in proceedings started by a reference under section 67 or 71(1) of the Mental Health Act 1983; or

(c) where a local authority notifies the Tribunal before the expiry of the time limit for submitting a response that it will not oppose the appeal in a special educational needs case.....”

48. Both counsel agreed that the proper construction of rule 17 is that the panel has to consider whether or not to exercise its discretion to consent to the Appellant's withdrawal of the appeals. Mr Howarth had argued in written closing submissions that rule 17 (2) (a) applied in that the proceedings concern the issue of suitability i.e. fitness under regulation 26 and this precludes withdrawal. We indicated our preliminary view that rule 17 (2) (a) did not assist. In the event it was agreed in discussion that the effect of rule 17 (2) was to provide that the Tribunal's consent is not required in the situations set out in 17 (2) (a), (b), or (c).
49. The bald issue regarding withdrawal is this. The Respondent wants a decision that will resolve the issues in dispute and contends that the adverse credibility findings should be made. Conversely, the Appellant seeks to withdraw the appeals which will have the effect that no findings regarding facts and/or credibility will be made.
50. The Appellant's position is that since the effect of withdrawal would be that the decisions to cancel will take effect, consent to withdrawal is consistent with the overriding objective because the time taken for the Tribunal to make and explain its findings would be saved. Findings on the issues in dispute in this appeal are not needed because the Respondent's view of the Appellants would be a matter within its own internal records, if and when needed.
51. We considered all the submissions made. We decided not to consent to the withdrawal of the appeals. It is true that the effect of withdrawal will leave the decisions to cancel intact and so the Respondent's concerns regarding the safety of children who might otherwise be accommodated in the Home run by the Appellant will therefore be met. We recognised also that the restriction notice imposed regarding the Home will continue during the 28 days period that any appeal might be advanced, if we were to dismiss the appeals. We also agree if the appeals were withdrawn the Respondent would have available its own views regarding the issues in the appeal when, for example, considering any future application for a waiver that might be made. However, consistent with the fact that hearings are conducted de novo in this jurisdiction we have, with the agreement of the parties, heard a great deal more evidence which goes to the issue of the Second Appellant's credibility, in particular.
52. We read with care the decision of Mr Brennan KC sitting in the High Court in **Marshall v Commission for Social Care Inspection [2009] EWHC 1286 (Admin)** on which the Respondent relied. In essence this judgement concerned the challenge on appeal in the High Court principally directed to the procedural

decisions made by the Tribunal who heard the appeal against cancellation. The Tribunal had decided to deal with a fitness issue first in circumstances where a judicial finding has been made by another Tribunal panel that the Appellant was not a fit and proper person, and considered that resolution of the fitness issue might prove dispositive. In very brief summary, the facts in Marshall concerned an appeal against a cancellation decision regarding a second home, Harvest Two, when a judicial finding had already been made by a different panel hearing an appeal against the refusal of registration in relation to Harvest One that the Appellant was not a fit and proper person because of lies told in her application form.

53. It is well established that the burden of proof in an appeal against the refusal of registration lies on the applicant for registration – see **Peter Jones v Commission for Social Care Inspection** [2004] EWCA Civ 1713. Mr Justice Brennan KC having considered what was said regarding the burden of proof in **Jones**, said this at [26]

“In my judgement, there is no justification for taking a different approach in a case where the Commission has cancelled an individual's registration and he or she has appealed to the Tribunal. A person is prohibited from carrying on a care home unless he is fit to do so. One of the requirements of fitness is integrity and good character. Where that is in issue before the Tribunal, it is completely appropriate that the person who alleges that he is of integrity and good character should satisfy the Tribunal of that proposition. That he was once registered, but that the question of registration is under appeal, cannot make any difference. As Miss Broadfoot points out on behalf of the Commission in this case, the very registration itself may, as in this case, have been obtained on dishonest suppression of material facts.”

54. In our view it is unfortunate that the Respondent did not draw the attention of the panel to **Marshall** at the beginning of the hearing. The judge had explained the panel's approach regarding the burden and standard of proof at the start of the hearing and both the Respondent and the Appellant had agreed.
55. We are concerned with the cancellation of registration on the grounds that “(c) on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;” The relevant requirements include the “fit and proper” test in regulation 26 and 28. In the appeal before us, consistent with the fact that we are conducting a de novo hearing, the Respondent has relied on further material which, amongst other matters, relies on the Appellant's operation of a number of unregistered homes. This Tribunal had directed that all the matters on which the Respondent sought to rely be fully set out in a further schedule of allegations/concerns so that the Appellants knew the case they had to meet. This was undertaken and the Appellants have duly responded to the supplementary SS, and have always accepted that consideration of the allegations raised are relevant to the cancellation decision. Amongst other matters, the Appellants' case is that the fact that they have run unregistered homes is unremarkable when viewed in proper context.

56. In our view the Respondent's concerns/allegations regarding the First and Second Appellant are relevant to our decision making, but none of the above alters the fact that our task is to make a decision on the appeals against cancellation i.e. whether the decisions should be confirmed or set aside, or whether conditions should be imposed as the proportionate response as per the Appellant's case. In short, evidence regarding the Second Appellant's honesty and integrity may well be relevant to our decision regarding the cancellation decision(s) and/or the imposition of conditions, but these aspects not, in our view, alter the overall burden of proof in a cancellation appeal.
57. Returning to the application made for withdrawal of the appeals, in ordinary civil litigation if one party decides to withdraw its claim or appeal before a decision is made the court is generally bound to accept that position and is relieved of the burden of having to make and explain its decision. There are, of course, situations where the Court's approval is required i.e. in claims brought by a minor or a person under disability, but this does not detract from the general proposition that in "ordinary" litigation a claimant is free to withdraw from the action they have commenced as and when they choose.
58. The hearing of an appeal in the HESC chamber is different as is reflected in the fact that rule 17 explicitly requires that the Tribunal consents to withdrawal. In our view the discretionary power under rule 17 is consistent with the fact that a care standards appeal involves a de novo and merits-based hearing against the decision of a public body which is charged with the responsibility of assessing the quality of care being provided to children. Experience informs us that findings of fact made by an independent Tribunal are at least capable of informing the decision-making of other bodies. One example is the Disclosure and Barring Service ("the DBS").
59. We should record that, in our experience, applications to withdraw made before or at the start, or even in the early stages, of a hearing are frequently granted. However, the exercise of discretion in any given case must be informed by the context and importance of the issues raised in the appeal by both sides. The very late stage at which the application was made in these appeals is a highly relevant factor but is not, in itself, determinative.
60. We considered all the arguments advanced before us carefully. In our view it is in the public interest that the evidence in these appeals is considered and that, as an independent judicial body, we make findings on the evidence which has been fully tested before us, and where the oral evidence had concluded before the application to withdraw was made. We consider that this decision to refuse the application is in accord with the interests of justice and is fair. Accordingly, we refused to consent to the withdrawal of the appeals.

Our Consideration

61. We have considered in the round all the witness statements, documentary and oral evidence before us, as well as the Scott schedules, the skeleton arguments and written and oral closing submissions. If we do not refer to any particular part of the evidence or submissions, it should not be assumed that we have not

taken all matters placed before us into account. We will not make findings on every issue raised before us by each party: our focus is on the main matters that inform our decision.

Findings of Fact

62. The first Scott Schedule before us alleged breaches of Regulations as set out above at [25]. Some of these were admitted in the Appellant's response to the first SS and others were said to be partially admitted. In the event all of these breaches were unequivocally admitted by the Appellants in closing written submissions. We find all the breaches of regulations 6, 8, 10, 11, 12, 13, 14, 32, 36, 37 and 44 set out in the first SS proved.
63. The extent to which it is necessary to detail the proven breaches can vary from case to case. In this appeal there are some aspects that, in our view, are particularly important in examining the significance of the proven breaches but we will do so under the rubric of our consideration of the supplementary SS.
64. As discussed above the thrust of the supplementary SS goes to the Respondent's allegations of dishonesty and/or lack of credibility and/or lack of transparency in relation to the breaches relied on in the first and supplementary SSs. The latter sets out some 148 paragraphs under various headings detailing allegations/matters of concern along with commentary, the purpose of which was to highlight the importance attached by the Respondent to the various matters relied on in the regulatory context. However, there is a great deal of overlap and/or unnecessary detail. We will not deal with many of the matters/allegations raised but will make findings on those matters in dispute that inform our decision on the merits of the appeals against cancellation. Our main focus is on those allegations that bear more directly on the care provided to children, and their safety, needs and well-being. We should say that when we refer to "children" we automatically include "young persons".
65. We directed ourselves that a finding of dishonesty requires that the Respondent must satisfy us on the balance of probabilities that a deliberate and conscious lie has been told in order to deceive, or that a material fact has been deliberately and consciously withheld, in order to deceive. There are many cases where the evidence that is given may not be accepted, but this, in itself, does not warrant a conclusion that the witness has been dishonest.
66. It is convenient to approach our findings on the key issues by reference to our own sub-headings and in a different order. References in square brackets are to some (but not all) of the key paragraphs in supplementary SS and/or in witness statements.

Record keeping practices – [42, 75, 93]

67. The Appellants' broad response in the supplementary SS is that it has records which are "on a drive and are available for inspection." Mr Zisengwe said in his

first witness statement that in December 2023 they were moving from a paper-based system to an electronic data base with Sue Solutions, and plans and risk assessments were available but were not complete. Mrs Orriss' evidence is that Mrs Zisengwe had only shown one child's file which consisted of a few pages, which were incomplete. Mr Zisengwe alleged at [34] of his first witness statement that "the Inspectors then outright refused to review the risk assessments on the assumption that they would be incomplete as well." We reject that account, and not simply on the basis that it is hearsay. It is highly improbable that either inspector would have said this. We accept the evidence of the Inspectors that they had asked to see the records of children at the home at the December Inspection, and at the monitoring visits thereafter, but to no avail.

68. We do not accept that the transfer to the electronic system accounts for the lack of records produced regarding the care said to have been provided to children at the Home. It is a requirement that records made (whether paper or electronic) are kept for 75 years. Mr Gangaidzo said that paper records had been scanned and were available on the cloud. In our view if the Appellants had any records that met the requirements of the regulations they would have been produced to the Inspectors when requested at the December 2023 inspection and/or on any of the many monitoring visits and/or would have been exhibited to witness statements in this appeal. We are aware that Mr Zisengwe sought to address the records issue in his very first witness statement by describing what he "would do" and by reference to some examples. Further, he made the comment (at [37] of his WS 1) that it was unfortunate that he was not part of the inspection as he was the staff member with most knowledge to provide this paperwork. The notion that staff at the home, including key workers, would not be able to access or produce the care plan, the Behaviour Support Plan ("BSP"), any risk assessments, any education and health and care plans (EHCPs) or other documents as and when they need to is startling. The point and purpose of the records is that they are supposed to guide the staff in caring for very vulnerable children, and in meeting the individual needs of each child in their daily lives.
69. Mr Zisengwe was interviewed by a Ms Olufemi during the external investigation conducted by an HR consultant (Far Sight) instructed by the Appellant (the external Investigation Report (IR) which took place between 5 February and 5 March 2024. We noted that during the IR, Ms Olufemi had asked for the BSP/risk management plan for PL and Mr Zisengwe told her he would provide this. The annex to the IR produces a very basic daily record re P between 26 and 29 November (J64). There is also a very brief document headed "Risk Summary sheet" regarding P and an even briefer document headed "Behaviour Management Plan" (J628- 629). No other records for P or any other child at the Home have been produced in this appeal.
70. In our view the absence of the key documentation that one would expect to see regarding the care provided to the children at the Home is very startling indeed. In particular, no care plans have been produced that addressed the needs,

wishes and preferences of either child. No care plans made by the placing authority have been produced.

71. It is notable that in its response (undated but received by the Respondent on 8 January 2024) to the NOPs to cancel both registrations the First Appellant set out a number of case studies regarding children who had been in its care. In our view, if the contents of these case studies are accurate, the First Appellant must have relied on records to provide this information. We noted that one child (N) had been resident at the Home prior to, and just after, its registration.
72. The suggestion that the concerns raised by the Respondent can be answered by the assertion that the records are on a drive and available for inspection is, in our view, facile. We find that the Appellants have failed to engage with the Respondent regarding its concerns regarding the absence of records. To seek to shift responsibility for this to the inspectors by stating that notice had not been given that records would be requested at the visit on 14 January 2025 lacks transparency and candour. We draw the inference that such records as were made/held have not been provided because they would not favour the Appellants' case.

Regulation 12 (Protection of Children) and Notification of Serious Events

73. In his first witness statement Mr Haines described the paucity of records provided on inspection. There was no file produced for one child and the other child's file had only their basic information. There were no care plans of any description. Staff were not able to demonstrate they understood the needs of either of the children. One child had complex learning needs and a learning disability. The other child had social and learning needs. There were no plans as to how the children should be supported. He was unable to view evidence of the children's activities, family time or positive experiences. The inspectors were not able to view suitable records for significant events that they were aware of, or informed of, during the inspection.
74. Mr Haines said that inspectors were told by a MoS that police had attended the Home earlier in November because staff were struggling with the behaviour of one child who was then arrested. There was no record of this and the staff member who provided the information had to look at her phone to remember the date. There had been no notification of the incident to Ofsted. There was no evidence of oversight from the manager about any incidents. Not keeping records meant that information was not properly recorded and shared with relevant professionals and lessons learned from incidents, and risk factors could not be adequately evaluated in order to inform children's care and behaviour support plans.
75. In his first witness statement Mr Zisengwe addressed the incident regarding the child arrested in November 2023 with a long explanation about the police not stating that they were going to arrest the child, but that they were going to take him for a drive. He now accepts that the child was in fact, arrested. In our view his explanation does not begin to address the issue of the lack of care and

protection provided for this child. He accepted that the incident was not recorded in the child's file and said this was "an error". He referred to training that had since been undertaken but, notably, he did not then, and has not since, produced any records to seek to show that other incidents were recorded in children's files (of which there appear to have been many - see the police evidence regarding the call-outs by the police to the Home albeit over a longer period). He has not addressed the fact the issue of a notification of this incident (or many others) in accordance with regulation 40. The fact is that incidents of this nature should have been reported to Ofsted and within 24 hours pursuant to regulation 40. This is precisely so that the independent regulator is promptly provided with information regarding the issue of risk and how this is being managed in a registered setting.

Safeguarding Incident July 2023

76. This safeguarding incident arose during the registration visit. The allegation was later considered by the LADO to be unsubstantiated. An independent investigation was carried out which determined that Mrs Zisengwe, the RI, and Mr Zisengwe as RM did not follow prescribed safeguarding policies and did not notify the LADO in a timely way [I38-39]. In her statement dated 5 December 2024 Mrs Orriss set out the Respondent's concerns regarding the learning taken from that incident. She considered that the provider had failed to take recommended action in response to allegation made on 31 July 2023. The evidence from the first inspection on 5 and 6 December 2023) showed that leaders and managers had not worked in line with the local safeguarding board procedures in managing allegations. They had not reviewed the organisation's safeguarding policy and procedures and ensured all staff were aware of what action to take in response to an allegation. Leaders and managers had not ensured that safeguarding notifications were sent to Ofsted within 24 hours. Training around safeguarding, reporting and recording of incidents, management of complaints, and behaviour management training had not been completed. Risk assessments that took into consideration all of the children's behaviours and impact risk assessments prior to any child moving into the home, including whether the staff were suitably trained to manage a child's needs, had not been completed. Her concern was that leaders and managers had failed to demonstrate learning from the allegation and apply the recommendations into practice.

77. In closing submissions, the Appellant accepted the July matter demonstrated several failures to manage a safeguarding incident but contended that Mr Zisengwe is not in a front-line role in the Home any longer – to which point we return in due course. We accept Mrs Orriss' evidence. We find also that the failure to notify Ofsted was also a feature regarding the 26 November 2023 allegation of assault which was not notified to Ofsted within 24 hours. It was only notified to the Respondent after Ofsted (who had received information from the LADO) wrote to Mrs Zisengwe.

Mr Zisengwe's involvement /presence in the home – [60-62]

78. It is common ground that at the inspection on 5 December 2023 a MoS telephoned Mr Zisengwe although he was, in fact, suspended. The fact that the MoS telephoned Mr Zisengwe at all tends to suggest that staff were unaware of the fact of his suspension. That Mr Zisengwe was telephoned, rather than Mrs Zisengwe or Mr Gangaidzo, tends to suggest that the MoS still viewed him as in control of leadership and management. Mrs Orriss said that she was handed the telephone and Mr Zisengwe asked her if he should come in. She asked him why he would come into the Home given that he was suspended. Mr Zisengwe denies that he attempted to speak to Mrs Orris at all. Mrs Orriss had no reason to dissemble. We prefer her evidence.

Mr Zisengwe's alleged presence in the Home after suspension

79. Mr Zisengwe denies that he had been in the Home at all after his suspension. Mrs Orriss' evidence is that in the course of speaking with S about supervision she said that Mr Zisengwe has supervised her on one occasion and, on 4 December 2023, (the day before the inspection) had been working with her and supporting with the children. Mrs Zisengwe had denied this and said that the MoS was either "lying or confused". Mrs Orriss said that the information provided by S was unprompted by her. It is submitted that little weight can be attached to the uncorroborated, hearsay account of a staff member given during a chaotic inspection. Having reviewed the evidence we consider it likely that the staff member unwittingly revealed information to the Inspector. We can see that the evidence regarding the date of supervision is unclear but, in our view, the information provided by S about Mr Zisengwe's working in the home on 4 December 2023. i.e. the very day before the inspection, was clear, and was very probably accurate. In our view it is startling indeed that Mr Zisengwe acted in breach of the suspension, and not least when the child who had alleged assault against him was still at that home.

Unregistered Homes - [70]

80. We find that the basic facts regarding the Appellants' operation of children's homes that were unregistered include the following:

1. Solomon House, Northampton, from 2021 - roughly six children before registration (N/S/H/E and the two at the time property was inspected for registration purposes in July 2023).
2. 4 Lacewood Close, Nottingham- one child/young person, JA, from July 2022 to April 2024
3. 55 Cressex Road, High Wycombe – one child J from 5 October 2023 until 29 February 2024
4. 46 Darian Road, Leicester – one child J from June 2023 to November 2023
5. 33 Anton Way Aylesbury - two children from February 2023 to August 2023

6. 102 Coppice Drive, Northampton – as least one child.

81. It is trite law that the operation of an unregistered home is a criminal offence under section 11 of the Act. The background here is that the Respondent knew that the Home with which we are concerned in these cancellation appeals was in operation prior to its registration: there were children in the home at the time of the registration inspection in July 2023. Mrs Orriss made clear in her written evidence that the Respondent was aware that Call4Care was running six unregistered homes prior to registration of the Home. It follows that the Respondent decided that it was satisfied at the point of registration in August 2023 that the Appellant was, nonetheless, a “fit and proper” provider, and that Mr Zisengwe was a fit and proper person to be the RM.
82. It is apparent from the evidence of Mr Morris that warning letters had been sent to the Appellant after information came to light regarding the other unregistered homes at [81] 2-6 above.
83. We noted the submissions made by the Respondent at [34] of its closing argument. We consider it would be inappropriate to make any finding about the absence of any documentation/records regarding the unregistered homes. We also do not consider it appropriate to make any findings based on any inferences that might be drawn from the email from the police regarding some 40 “call outs” to 102 Coppice Drive. In our view our focus should be on what the bare facts regarding the unregistered homes tell us, if anything, about the merits of the appeals against the cancellation of the provider registration of Solomon House, and that of Mr Zisengwe as RM at that setting.
84. We consider that the fact and the circumstances in which the Appellant, by Mr Zisengwe, was operating/managing unregistered homes goes to matters such as: insight/understanding of the regulations, motivation/purpose, understanding of safeguarding principles, capacity to meet the regulations regarding standards of care, and attitude to regulation - all of which are relevant considerations in a cancellation appeal.
85. Mr Zisengwe spoke of the desperation on the part of local authorities to place children, many of whom required urgent placement outside of London, or other cities, because of the need to be safe from criminal gangs, county lines or other risks. It is common ground that such children are highly vulnerable and require high levels of care to keep them safe and well, and to seek to enable them to achieve their potential. It is well known that there is a significant shortage of suitable children’s homes that can provide for such complex needs. It is also known that placements in unregistered, (and therefore, unregulated) homes have been made by local authorities who, irrespective of any involvement of the High Court in the context of DOLs orders, are under a statutory duty to ensure that the placement they make is in the child’s best interests. Such placements are often urgently required because a child is at imminent risk. On the facts the Respondent registered the First Appellant as a provider for the Home, and the Second Appellant as the manager of the Home, despite its knowledge both

Appellants had been operating unregistered, and therefore, “illegal” homes. So it was, that the Appellants came within the purview of regulation and inspection.

86. The Appellant relies on evidence to show that the LA's involved were happy with the service provided at the many unregistered homes it operated. In our view this evidence is, to say the least, weak. Parliament has entrusted the registration and regulation of children's homes to the Respondent. It does not appear to us that those making favourable comments about the quality of Appellants' care of children were/are aware of the issues or the evidence base in this appeal.
87. In broad terms Mr Zisengwe told us that the payments made by local authorities to his company for each placement were in the order of between £5,000 and £10,000 a week, the range being attributable to the extent to which the child or young person had any additional needs, and/or needed 1:1 or 1:2 care. He explained that a weekly figure of £7,500 was the usual charge for a child needing 1:1 care and £10,000 if the care was 1:2. It seems to us as a matter of common sense that the level of payments made reflects market forces (i.e. the shortage of places in homes and the pressures on local authorities to secure swift placement), but it is also likely to bear a relationship to the fact that the care of children with complex needs is demanding and important work which requires knowledge, skill and experience, as well as commitment to the interests of very vulnerable children.
88. In the response to the NOPs, in his witness statements and in his oral evidence Mr Zisengwe described at some length his motivation: he spoke at length of his “passion” to save children and to “give back.” He also provided a great deal of evidence regarding his studies and qualifications. On his own case from 2021 he was studying full time for a Mental Health nursing degree which he was awarded in 2024. When asked about the detail in evidence he was reluctant to agree that the commitment to a nursing degree course effectively involved a full working week, but he did agree that the course required regular work placements in hospital or other clinical units. When asked about the funding for the two other houses that were purchased in cash in December 2023 and May 2024 for nearly £800,000 in total, he said that he funded the purchase of these by the sale of property in South Africa. Mr Zisengwe told us he still has a haulage business in South Africa, (Green Leas Transport), with contracts with the government to transport copper and asbestos to Zimbabwe. Thus, it became apparent Mr Zisengwe may have had even more demands on his time than had ever been considered, even leaving aside his involvement in unregistered homes – to which we now turn.
89. Mr Zisengwe's account to Ms Olufemi on 17 February 2024 was that Solomon House had been in (unregulated) operation since 2021 and that he was also managing three unregulated units (at that time) (J606). In his evidence to us he said he had been working as the RM at the Home for four dedicated days a week. At the same time, he was undertaking a demanding full-time nursing degree and which included regular work placement for periods up to 3 months.

He also said that he spent a day a week at Lacewood. Further, as is apparent from his CV, he began a level 5 course in Leadership and Management in Residential Care in 2023 and he had pastoral responsibilities within the community.

90. There are only so many hours in a day/week. One might think that in 2021 and thereafter, the new venture in providing a children's home at Solomon House, the management of the Home (both pre and post registration), the study and work placements involved in a full time nursing degree, plus or minus oversight of the business in South Africa and/or the other demands on his time as a pastor, stretch credulity. Our specialist experience informs us that seeking to set up and run even one home in accordance with the regulations is extremely demanding and takes considerable dedication, time and effort. We find that, instead of paying attention to compliance with the standards of care required under the regulations at the Home, the company, of which Mr Zisengwe was then a co-director, went on to acquire yet more properties (whether rented or purchased) so as run further unregistered settings. We consider it unlikely that someone who is "passionate" about the care for children with such complex needs would take on so many unregistered settings, unless their primary motivation was rooted in the profitability of the business.

November 2023 incident regarding child P- [109 – 120]

91. The background facts are not in dispute. On 26 November 2023 P was driven to Oxford, and later collected, by Mr Zisengwe so that he could visit his aunt and younger siblings in Oxford. An incident occurred when P was in a vehicle driven by Mr Zisengwe on the return journey. There was an argument. The incident led to P calling the police who stayed on the telephone with him until the end of the journey. P told the police that he had been "back-handed" by Mr Zisengwe. Mr Zisengwe made counter allegations that he had been punched by P.
92. It appears from the LADO documents that the "threshold test" was met for the purposes of a LADO investigation as there was an allegation that the young person had been hit in a situation of transport (I 511). The final view of the LADO on 27 February 2024 (I 517) was that the allegation was substantiated "based on Mr Zisengwe's decision making as a manager, the risks that were created could have been avoided in the first place." It appears from the minutes of the various LADO meetings that the police considered that self-defence was a possibility. There was also reference to possible charges against P although the social worker expressed her view that this was inappropriate. In our view the ultimate conclusion of the LADO, which seems to have been based on decision making/practice regarding risk assessment, does not prevent us from analysing the evidence and reaching our own view in the context of many strands of evidence before us, much of which was not before the LADO. Further, the LADO process does not involve any testing of the evidence.
93. Stripped to its essence Mr Zisengwe's case before us is that he did not assault P but that he defended himself against P who had punched him, and he had

acted instinctively to prevent a car accident. Mrs Hartley submits that there is insufficient evidence for the panel to make any findings of “assault”, and not least because of issue of self-defence. However, as will be seen, Mr Zisengwe denied any physical contact at all - save removing P’s hand from the steering wheel.

94. In our view our task is to make findings (in so far as we can) as to what happened based on the evidence before us which includes Mr Zisengwe’s oral evidence. We recognise that in the absence of any direct witness evidence from P there are obvious difficulties in assessing and weighing the child’s untested hearsay account. This is not unusual in safeguarding allegations made by a child about physical contact usually unwitnessed by others at the time, but this does not relieve us of the burden of considering the various accounts given at the time so as to consider what findings can, or cannot, be safely made. We remind ourselves that the weight to be afforded to disputed hearsay evidence is less than it might carry had the evidence been tested in cross examination. We recognise also that a serious allegation such as assault must be considered with great care when deciding where the balance of probabilities lie.

What happened on 26 November 2023?

95. We set out below the material parts of the records that provide some information as to what was said at the time by P and Mr Zisengwe about the incident.
96. We noted that the documentary evidence before us supports that:
- i. P told the police when he called them that Mr Zisengwe “backhanded” him. The fact that he said this does not make it true but we are entitled to view this as a complaint that was made within minutes which reduces the risk of fabrication.
 - ii. The records show that P has always been consistent in his fuller account that he spat at Mr Zisengwe who then “backhanded” him. The fact that he told the police that he spat at Mr Zisengwe tends to support his credibility.
 - iii. PL also told the police that after he was back-handed, he punched Mr Zisengwe on the jaw a number of times. The fact of this admission (against interest) tends to support his credibility.
 - iv. P’s key worker stated that when P arrived back at the Home he said that the manager had backhanded him and he wanted to call the police (J615). She also said that P phoned his aunt who encouraged him to calm down.
 - v. The Home’s daily record, and the account of Bernadette in the IR, support that P did not want to go into the house until the police arrived.
 - vi. We noted that a theme in the argument in the car, and to the police, and to the social worker, was that P preferred to be in (what we know to be the restrictive environment of) a secure unit rather than stay at the Home. It is clear to us that he did not feel safe in the Home because he

was reported to have said that he considered that the staff “were Mr Zisengwe’s friends.”

- vii. According to Daniel Hay, social worker, it was recorded that PL had told his cousin that he had blood on his face and the cousin rang social services to report the incident (J621).
- viii. At the Strategy meeting held on 30 November 2023 (J623) it was recorded that the reason for the meeting was the allegation by P. “P... said that he spat at Norman which he shouldn’t have done but then Norman hit him. P...says he doesn’t feel safe and would like to move”.

97. We refer to the IR which the LADO requested from the setting. It is apparent from the IR itself that Ms Olufemi made a contemporaneous record of the answers given to those interviewed by her, albeit not a verbatim record. According to her record of interview:

- a) Mr Zisengwe described to Ms Olufemi the overall circumstances and the conversation in the car that had led to P becoming very dysregulated. He said that they drove for a while and then P began spitting in his face, saying that he would rather return to the secure unit. Mr Zisengwe said that he challenged P and asked him to stop spitting. He told Ms Olufemi he was unable to stop the car because of road construction. P then punched him on his left chin and was very aggressive and held the steering. He said that he managed to swing him from the steering by “flicking his hands backwards.” (J606-607). Mr Zisengwe said he would call the police but P called them before he did. P told the police that he was being assaulted by the manager and he (Mr Zisengwe) explained to the police what was happening.
- b) Asked by Ms Olufemi how he had flicked P’s hand Mr Zisengwe demonstrated how P held the steering wheel between his hands. He said he had removed his (i.e. P’s) hand from the wheel. He could not remember whether he pushed his hand or held his wrist to remove his hands from the steering wheel. It was a reflex action. He did not hit P in the face. The only physical contact he had was when he removed his hand from the steering wheel. He went back home and wrote an incident report the same night and handed it to his manager.
- c) Mr Zisengwe went on to say that the DOLs was removed after one month and the staffing reduced to 1:1 as P was engaging well and “going for activities. And then he became quiet again for almost a month because he wanted to go and see his brother and these (sic) was being looked into by social services but he lost patient (sic) and started isolating himself in his bedroom and barricading himself inside his bedroom. Before that he was progressing well.”
- d) Mr Zisengwe told Ms Olufemi that the known “risk behaviours” were “risk of exploitation, county lines and absconding. He also told Ms Olufemi that P “also has a history of substance misuse that we did not witness” but he displayed aggression, both physical and verbal as he was

breaking stuff in the placement. He also displayed physical aggression to staff.

- e) Asked if P had a behaviour support/risk management plan Ms Z said that he would send this to Ms Olufemi (J608). He confirmed that they did not have a risk assessment plan in place for contact. This was put in place after the incident.
- f) Mr Zisengwe said that he thought there were 2 staff on shift on 26.11.23. He was not sure that the other child was in the placement that day. He said that he was off that day, but he went in to cover because it was a request from the auntie that they wanted to facilitate.
- g) He said that he “would not say that he knew P...very well because he had only been with us for two months. My knowledge is based on the previous behaviour support plan. I had had interactions with him since he moved in. I had intense supportive sessions when he moved in for two weeks and he did not display aggression and was pleasant initially. I regarded him as a pleasant young man who is not aggressive. But his behaviour later changed.”
- h) He described P’s behaviour prior to the incident as “isolating himself and not engaging with staff at all, he was quiet and he was withdrawn. I felt contact would help his emotional well-being.” He could not say when P had last displayed aggressive behaviour in the Home.
- i) In answer to question about substance abuse (J609) Mr Zisengwe said that P was angry from the time they left Oxford. His judgement was that P had wanted to spend more time with his siblings but he “was not ruling out other influences that could be in play. He could be drug induced because he was really heightened. I have seen him angry before but on that day he was really heightened.” He said that P was very aggressive even before they started the journey.
- j) Asked by Ms Olufemi what were the control measures in P’s behaviour support plan to manage his aggression, Ms Z said that “in this case I gave him listening...while he vents his anger about being in care. He was just venting out his anger. He went on to talk about his money... I think it was the money bit that made him more aggressive.” Mr Zisengwe said that there was no indication that it could escalate further during the journey. He made an error in judgement in the situation.
- k) He said that he called the OM (Mr Gangaidzo) and reported to the RI (Mrs Zisengwe) the next day.

98. We have considered the undated incident report (J622) made by Mr Zisengwe in which he described the lead up to the incident on 26 November. He told Ms Olufemi that he wrote this that same evening. As to the contact between him and P during the incident Mr Zisengwe reported that P swung to grab the steering wheel whilst saying that he would kill him and go to the secure unit. Mr

Zisengwe's written account was: "...I swiftly grabbed P's hand from the wheel and said "P.....what are you doing? This is the only point I had contact with P...He was very angry and started fist punching me on my face I think 4/5 times on my left side. It was very serious dangerous to stop ...I said that I am calling the police for you and he said I will call them, that when he reported I slept (sic) him" (i.e. "slapped").

99. The IR also contains the account by Stewart Dan of Northamptonshire Police: "P.. said he spat in their face, landing on face. The carer then backhanded P... across his face, caused minor swelling in right eye. P... then said that he punched the carer a few times and caused a cut and this caused the car to swerve. They reached back home, and the IP (i.e. P) sat outside refusing to go in until the police arrived. The job has been downgraded with no immediate requirement for us to attend. He went back of his own accord...PL...advised that he does not want to make a statement..."

100. We note from the visitor's log dated 28 November that PC1471 attended the home between 19.45 and 20.30. The daily record kept by staff at the home states that the police asked P questions and took a statement. We simply note that, if a formal statement was taken, it does not appear to have been provided to the LADO by the police.

101. We have considered with care the accounts given by Mr Zisengwe during these proceedings about the November 2023 incident:

- i. In his first witness statement (26 June 2024) Mr Zisengwe did not describe the incident in much detail. He said that around five minutes into the journey he (PL) started shouting and swearing and began reaching for the steering wheel. He (Mr Zisengwe) "stopped the car and attempted to de-escalate the situation however (P) would not calm down. I confirmed that I would need to call the police if he continued attempting to interfere with my driving. The child ended up calling the police himself and alleged on the phone that I assaulted him." We note that he made no reference in this statement to any physical contact between him and P. However, he stated that he stopped the car.
- ii. In his second witness statement (24 January 2025) Mr Zisengwe described P shouting and swearing and that he spat at him. He said that P spat at him and punched him once "and causing swelling before reaching for the steering wheel. During this interaction and self-defence I did move the young person's hand away (sic) the steering wheel swiftly, but I did not hit him." He went on to say, consistent with his first statement, that he did pull over and attempted to de-escalate the situation and PL called the police.
- iii. In oral evidence Mr Zisengwe said that his relationship with P was that he saw him every day. Mr Zisengwe told us that he knew P very well but in the IR he had said that he did not. He told us that he had taken P for two meals and said that this was to invest time to get to know the child.

He said regarding the incident on 26 November 2023 that it all depended on the definition of “backhanding.”

- iv. In cross-examination he was taken to the LADO referral form dated 27 November 2023 in which Mrs Zisengwe said: “The Staff reported that when the young person finally came (i.e. to the car) he was high as he exhibited unusual behaviour and started swearing”. Mr Zisengwe did not agree that he had told his wife that P was “high”. He agreed that if he had thought that P was “high” this would have been a matter of concern that would have required P to be taken to the hospital and/or would need to have been reported to the social worker, and the GP. Asked if he has made the allegation that P was high to undermine PL’s allegation of assault he said he could not remember.
- v. Mr Zisengwe said that he “flipped his (P’s) hand backwards” and said he was calling the police. This was in the construction zone on the A43 so he could not stop the vehicle. The officer stayed on the telephone line and they arrived back at the Home.
- vi. Mr Zisengwe said that he had flicked back P’s hand from the steering wheel in a swift movement. He demonstrated lifting P’s hand on the steering wheel with his own hand going straight up to the level above and just slightly to the left of his own left shoulder. However, when asked about this by the panel he then demonstrated a different movement with his hand going straight across from left to right, from and at the level of the elbow, and sideways.

102. In re-examination Mr Zisengwe’s reflection on the incident was that they should have waited until the Monday to take P to his aunt with another member of staff.

103. We noted that Ms Olufemi reported that Mr Zisengwe said that he went out alone with P because he was 1:1 staffing and was “sensitive about being identified as a child in care in the community.” This does not ring true because the drive was to visit his aunt. We find that Mr Zisengwe’s account that he had generously come in on his day off to facilitate PL’s wish to visit his aunt paints a positive picture that does not bear scrutiny. The “Logbook Layout” that was provided to Ms Olufemi showed that Shenise and Jansia were on the day shift on 26 November (J627) and the only child in the Home was P. Shenise was P’s key worker. The other child living at the home was with his family for the weekend. Granted that Mr Zisengwe told us that the staff available could not drive, there was no good reason why the 1:1 care that P was supposed to receive, (and for which the Home was being paid at public expense), was not provided. On any basis 1:1 care does not embrace the single carer being the driver. The arrangement was unsafe. We find that the arrangements that day had nothing to do with any consideration of the welfare of P, or any risk assessment.

104. We find there are many inconsistencies in Mr Zisengwe's account of the incident. We find that he told Mr Olufemi, and said in his first and second witness statement, that he stopped the car to de-escalate the situation, but he now states that he could not stop and so he acted instinctively to prevent a car accident. He maintained that the only contact he had with P was removing his hand from the wheel but the child almost immediately, and consistently, said he was "backhanded" which was the (second) movement Mr Zisengwe demonstrated before us.
105. A disturbing feature in the evidence Mr Zisengwe's evidence were his attempts to paint himself in a positive light, and at the expense of the child. Firstly, we find that the account in the LADO referral form that the child was "high", although written by Mrs Zisengwe, came from Mr Zisengwe. The IR interview tends to support that Mr Zisengwe encouraged the suggestion that P was "high", this allegation having originated from the account he had already given to Mrs Zisengwe. Secondly, we find that he told Ms Olufemi that the child had a history of substance abuse whereas the only risk assessment we have seen said the very opposite. We consider Mr Zisengwe's account in the IR was deliberately misleading in order to seek to exculpate himself from the allegation of assault. He presented P in a false light so as to undermine his account.
106. We are mindful of the fact that we have no first-hand account from P before us, let alone one that had been tested in cross examination. However, P was very consistent in the accounts he gave at the time. What he described was wholly consistent with the second movement Mr Zisengwe demonstrated before us. Having considered all the evidence we find that Mr Zisengwe did back-hand P, and it was probably landed on P's face. Mr Zisengwe's back-handing of P may have been instinctive reaction to being spat at, but we find that his back-handing of the child was a disproportionate and violent response. Mr Zisengwe knew that he had back-handed the child but we find he deliberately wove a false narrative. We find that his account to Ms Olufemi, and his evidence to us, was dishonest and manipulative.
107. On the subject of records, we considered those included within the IR. A behaviour support plan (BSP) was provided to Ms Olufemi (J609). To say that this document is brief is an understatement. There is no evidence that the BSP (such as it was) was ever updated or revised. A BSP such as this is plainly not a living document that reflects changing needs and/or strategies. We noted also the differing accounts provided in the IR regarding when P came to live at the Home. If the IR is accurate, his key worker, Shenise, said he was "admitted" on 11 November 2023 and she had been working with him since (J614). Mr Zisengwe said that P came on October 12 (J607) (c.f. his evidence). Bernadette, a support worker, said P was admitted in September 2023 (J617). We noted that the BSP refers to the "D.OA" as 11 September 2023. It was said in the interviews in the IR that P was 12 years old. If the DoB recorded in the incident report is correct P had turned 13 years of age in October 2023.

108. Because of the Appellant's failure to produce the other records of P or other children who lived at this Home after registration, we have little evidence that speaks to the general experiences of children who have lived at the home. There is, however, some information in the IR. We noted the account of Shenise regarding P which included "P was not engaging in activity and would be in his room all day. He doesn't clean up after himself." Bernadette, another support worker stated that P was normally in his room and only came downstairs to have drinks. She also said "mostly P stayed in his room. He was mostly isolated and talks to staff through the door... we can tell when he is in a bad mood and would leave him alone." (J619). This is consistent with the information provided by the inspectors that the children living at the home when they inspected in December 2023 spent their time alone in their rooms with little interaction with carers.
109. In our view Mrs Orriss was a very impressive witness. When challenged she explained the factual matters that underpinned her reasoning and opinions very clearly. Her evidence was consistent. The overall impact of her evidence was that, despite her experience at the inspection on 5 and 6 December 2024 she was genuinely looking for improvement at each monitoring visit. Her evidence was that she did find improvement in some respects but she still held grave concerns about the quality of leadership and management and the ability to sustain improvement in the key areas that had been identified. Her concerns remain.
110. Mr Haines was also a very impressive witness. His evidence was clear, direct, and was well-informed by his depth of his experience working in children's homes.
111. In our view the evidence of both Mrs Orriss and Mr Haines was consistent, credible, and reliable. In so far as there is conflict between evidence of the witnesses for the Appellant and those for the Respondent regarding the inspection and monitoring visits, we prefer the evidence of the Inspectors.
112. We accept that Mr Gangaidzo has a better understanding of the regulations than his employer, but knowing what is required and taking effective steps to address compliance are different skills. It is a matter of concern that Mr Gangaidzo has not reflected on the experience of the children who were in the care of the Appellant after he became the OM, or since he became the RI.
113. We are also concerned by the lack of understanding of safeguarding principles shown in the policy regarding the management of allegations against staff which provided as recently as January 2025. This includes colour coding of an allegation (red for sexual abuse and blue for physical abuse) which would alert the alleged perpetrator to the nature of the allegation. This has the clear potential to impact on any internal or external investigation because the alleged perpetrator would therefore be alerted to the nature of the complaint. It may also place a child making such an allegation at risk of harm if an alleged

perpetrator is informed of the type of allegation that a child has made an allegation against them. It is difficult to understand how anyone with any understanding of basic safeguarding principles would countenance such a policy. The Appellant's case seeks to deflect this by putting responsibility on external advice given, and that the policy has since been amended. The policy document may have been changed in response to the obvious point. We do not consider that what the earlier version revealed i.e. a lamentable lack of understanding of basic safeguarding principles, is so easily remedied.

114. In her statement dated 5 November 2024 Mrs Orriss gave a very detailed description of what had been done to effect improvement in relation to each and every monitoring visit up to and including 30 October 2024. In her statement dated 17 January 2025 she set out her views in relation to the extent to which the requirements were met following the monitoring visit on 14 January 2025. We accept her evidence. We find that such improvement as has been made has been minimal and has been extremely slow.

115. It can be said that the fact that Mr Gangaidzo said in cross examination that the Home is not currently suitable showed a degree of insight, as does the fact he agreed that there was still a great deal still to be done. The reality is that this represents the First Appellant's best-case, after 15 or more months, regarding its potential ability to provide care in compliance with the regulations under Mr Gangaidzo's leadership.

116. The Respondent submitted in closing that adverse credibility findings should be made regarding the evidence of Mr Gangaidzo in three respects.

1. As to the failure of the First and Second Appellants to produce the records consistently requested, Mr Gangaidzo stated that he had seen the paper records had been scanned to the cloud.

In our view:

- a) There was no exploration or challenge to Mr G's evidence that he had to leave the monitoring visit in May 2024 soon because of a family emergency, just after the inspectors had asked to see the records.
- b) Given that he has been RI since August 2024 Mr Gangaidzo is associated with the approach of the Appellants - as per the response to the supplementary schedule that the records are "available to be seen", which approach we have already described as facile and, with specific regard to Mr Z, as lacking in candour. The specific issue raised by the Respondent is that Mr G was dishonest in that he did not produce the records to Ofsted or to the Tribunal. We consider it fair to take into account that, albeit that he was the RI, Mr Gangaidzo is not the Appellant, and therefore, not the person in charge of the litigation We consider that the real responsibility for the failure to

produce the records of children cared for at the Home lies with Mr Zisengwe. We have already made findings regarding Mr Gangaidzo's failure to reflect on the records that he said he has seen. We do not consider that Mr Gangaidzo's role regarding the production of records to Ofsted properly falls to be characterised as dishonest.

2. The Respondent' contends that:
 - a) During a suitability interview on August 5, 2024, Mr Gangaidzo explicitly denied being an RI for any other organization despite having already applied re Hythe Hill House, and that this was dishonest.

We have considered the evidence:

The question asked (I706) was "How many other homes are you RI to? (our underlining), to which Mr Gangaidzo said: "None, because I wanted this (i.e. Solomon House) to go through..." Pausing there, the first point is that we find that Mr Gangaidzo was not, in fact, the RI to Hythe Hill in August 2024. It can be said that he had previously declared an intention to be connected to Hythe Hill, but this was not the question asked. In answering the actual question posed in interview he went on to explain at some length that he had a client that wanted him to be an RI for the organisation, but he (Mr Gangaidzo) did not want to take on too much commitment to multiple services. It is clear to us that this explanation referred to Hythe Hill. The Respondent has not satisfied us that the answer Mr Gangaidzo gave was misleading, let alone dishonest.

- b) As to the evidence regarding his SC2 application regarding Hythe Hill submitted in June 2024 (I768) Mr Gangaidzo was asked in that form:

"Have you or your organisation applied to register any children's social services with Ofsted before?" to which he answered "No."

He signed the declaration that "the information I have provided is true and complete to the best of my knowledge".

Mr Gangaidzo agreed in cross examination that the answer to this question was a misrepresentation, but the effect of his evidence was that this was unintentional. It is well known that a misrepresentation can be made innocently, carelessly, recklessly or dishonestly. The issue of the Appellant's state of mind was not explored in cross examination. It was not put to Mr Gangaidzo that when he answered "No" he did so dishonestly i.e. to hide from Ofsted his involvement with Call4Care. The Respondent has not satisfied us that Mr Gangaidzo was dishonest as alleged.

3. It is contended that Mr Gangaidzo had told the LADO on 27 February 2024 that he had referred the matter to the DBS. This allegation was based on the LADO Referral and Outcome Form signed by the LADO, Andy Smith, on 29 February 2024 which includes:

"Referral to Disclosure and Barring Service Yes

*If yes, by whom and date referred
By Setting”*

Mr Gangaidzo told us he had never been sent any LADO meeting records. We noted that he had said this to Ms Olufemi when interviewed on 13 February 2024 (J613). No direct evidence had been provided to the contrary. Mr Gangaidzo’s evidence was that at the last meeting on 27 February 2024 the LADO had asked about the provider’s investigation report (requested by the LADO on 20 December 2023) and he said this was not yet ready. We note that the IR was not completed until 5 March 2024. Mr Gangaidzo’s evidence was that his understanding was that the LADO was waiting to see the IR before determining whether a DBS referral should be made. The effect of Mr Matkar-Cox’ evidence was that it would make sense that an “Outcome” form would await the IR. We noted the LADO had recorded in the Outcome form that the Home would hold a disciplinary process. No witness statement has been provided from the LADO. There is, thus, no direct evidence as to whether Mr Gangaidzo did or did not say he would refer the matter to the DBS. We do not consider that we can attach much weight to the particular note in the record. We have no direct evidence as to who entered this note and/or the basis on which this note was made. In our view the suggestion that Mr Gangaidzo was dishonest and/or that he “failed” to refer the matter to the DBS has not been established.

Overview

117. The heart of this case is that we find that the safety and well-being of children at the Home were not a priority for the Appellant company and/or its directors and/or its manager in late 2023, at which point the accommodation was made subject to restrictions with the result that no child has lived there since. In our view the evidence regarding the operation of this Home in late 2023 has clearly shown that the provider’s focus and that of Mr Zisengwe as RM was directed to the financial interests of the business. There is, of course, nothing wrong with the business model in care. Private sector provision lies at the heart of the provision of care services children across the UK who, for many reasons, are unable to live with their families. The Act is designed so that the Respondent can seek to ensure that children are being properly looked after in accordance with the care standards set by the regulations, and to take such regulatory action as may be appropriate.

118. In this appeal the Home, albeit that it had been run whilst unregistered since 2021, was registered by the Respondent on 3 August 2023. It follows that the Respondent was satisfied that the requirements for registration, including the “fit and proper” requirements of regulations 26 and 28 were met at that time. We have considered what was discovered on inspection on 5 and 6 December 2023. We accept the evidence of the inspectors that the situation they found in December 2023 was shocking. In our view the First and Second Appellants were not meeting basic standards of care although that the First Appellant was receiving significant sums at public expense for “care” that was, at best, perfunctory and, at worst, neglectful.

119. It is our view that the evidence in this appeal regarding the Home has clearly shown that Mr Zisengwe has no respect for the standards of care, or for the needs of very vulnerable children, or for the regulatory process. We found his evidence regarding his “passion” for looking after children and “saving” them was insincere. It is not credible that anyone who sincerely cares about the welfare of very vulnerable children would run a home where no proper records are made, or if they made, were not provided to the regulator when requested. It is not credible that anyone with a passion for the care, health and well-being of children would provide a setting run in the manner that was found by the inspectors.
120. In our view that P and the other child living there at the date of inspection were looked after at a level that effectively amounted to little more than very basic “bed and board”. We considered whether Mr Zisengwe’s reference to the placements of children by the LA as equivalent to a “departure lounge” simply represented a poor choice of words or some other difficulty in expression of meaning. After careful consideration of all the evidence we find that his reference to the placements being a “departure lounge” is apt to describe the prevailing culture at the Home on inspection in December 2023.
121. We have considered all the evidence about the steps the Appellants have put in place since December 2023. It is accepted that many of the Written Requirement Notices (WRNs) have been met and improvements have been made, for example, in areas such as safer recruitment, improving the environment in the Home, and some aspects of training. However, if the First Appellant had been concerned to address the very significant shortfalls shown in its past care of children it could, and in our view, should have used the actual experiences of children in the Home to reflect on the shortfalls and to show how it would seek to improve the quality of care and the experience of very vulnerable children. In our view the Appellants and Mr Gangaidzo have not acknowledged or learnt from the experiences of children at the Home.
122. We have considered all the evidence. We consider that the efforts to date reflect an attitude that steps had to be taken in order seek to retain registration. In our view Mr Zisengwe has not acknowledged how extremely poor the standards of care were at the Home. We do not consider that Mr Zisengwe truly subscribes to any of the principles that underpin the regulations: the welfare and safety of children; transparency; accountability; understanding of the vulnerability and needs of children in care; assessing and responding to the individual needs of each child; the need to provide good quality care and to keep vulnerable children safe from harm.
123. We find that, as the sole director, Mr Zisengwe is the controlling mind of the company. We do not accept that the welfare and safety of children in the care of the Appellant company and the core values to which we have referred have ever been key to how this company has been run. In our view Mr Zisengwe’s first and foremost consideration has been, and is always likely to be, his business interests in the company he and his wife created.

124. We recognise the risk of double counting/overlap regarding the extent to which the regulations were breached. That said, the breadth and extent to which this Home fell very seriously below the reasonable standards set by the regulations is truly startling. The volume of the breaches that we have found proved on the admissions now fully made to the first schedule amply shows that the deficits in this Home were systemic in nature. In our view the pattern and extent of the admitted breaches showed a blatant disregard for the appropriate standards of care, and for the safety, health and well-being of very vulnerable children.
125. We have found that Mr Zisengwe did not tell the truth regarding the 26 November incident when, as we find, he back-handed P. In our view his attempt to blame the child by suggesting that P was “high” was a dishonest attempt to evade responsibility at the expense of the child. He was dishonest in his denial of having been in the Home whilst suspended. In nearly all other respects his evidence was evasive and unsatisfactory. His evidence regarding the “available” records at the Home lacked candour. We did not find him to be a credible or reliable witness.
126. In our view Mr Zisengwe is not a fit and proper person to be a registered provider of care in a Children’s Home, or to be a registered manager. Quite apart from our findings as to what actually happened on 26 November 2023, we find that Mr Zisengwe is not trustworthy. In our view, the continued registration of the First and Second Appellant is fundamentally incompatible with regulations 26 and 28.
127. Since conditions have been raised we should deal with this. Conditions cannot be imposed to try and make a provider (or manager) who has been found to be dishonest “fit and proper”- for obvious reasons. Irrespective of our view regarding Mr Zisengwe’s honesty, no conditions could be possibly devised or realistically imposed that would adequately address the significant risk to the safety and well-being of children who might be accommodated in a home provided by the First Appellant and/or managed by Mr Zisengwe.
128. The Appellant’s case is that the Tribunal can be satisfied that Mr Zisengwe will take a back seat, and Mr Gangaidzo and the new manager will ensure that standards will be met. In our view Mr Zisengwe is, and is always likely to be, the directing force of the First Appellant. Further, we have no confidence in Mr Gangaidzo’s leadership as the RI for the reasons we have given above. Ms Gani, despite the fact that she started as a manager on 1 October 2024, has not submitted an application considered to be complete because a reference is still outstanding.
129. The essential plea made regarding proportionality in the response to the NOPs was that cancellation of both registrations will cause emotional damage to the directors and the business that employs over 30 workers. The point has also been made that there is a desperate shortage of homes for children and this Home should be given the opportunity to improve. However, we have no confidence at all that any children’s home in which Mr Zisengwe has any interest, or in which he is involved in any way, would be run in accordance with

the regulations which are in place to ensure good quality care, and so protect the welfare and safety of vulnerable children.

130. We recognise the profound impact of the interference involved in our decision on the Appellants' business interests and the consequences for others. We have balanced the impact of the decision upon the interests of each of the Appellants against the public interest. We consider that the need to safeguard the interests of children far outweigh the interests of the First and Second Appellants and all those affected. In our view the decisions to cancel the registration of the First and Second Appellants were (and remain) reasonable, necessary and proportionate.

Decision

The decisions to cancel the registrations of the First and Second Appellants are confirmed.

The appeals are dismissed.

**Tribunal Judge Goodrich
First-tier Tribunal (Health, Education and Social Care)
Date Issued: 28 March 2025**