

First-tier Tribunal Care Standards

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

2025-01472.EY-SUS

Neutral Citation Number: [2025] UKFTT 00675 (HESC)

**Hearing held by video
on 5 June 2025**

**BEFORE
Tribunal Judge E Whittall
Specialist Member Mr R Graham**

BETWEEN:

Child First Nurseries Limited

Appellant

-v-

Ofsted

Respondent

DECISION ON APPEAL AGAINST SUSPENSION

Appellant: Mr Williams (Counsel)

Respondent: Mr Saigal (Solicitor, PS Law LPP)

The Application

1. By notice dated 16 May 2025, the Appellant, an early years childcare provider, appeals against the Respondent's decision on 9 May 2025 to suspend their registration as a childcare provider for a period of six weeks until 19 June 2025. The Respondent is the regulator of childcare providers.
2. Regulation 12 of the Childcare (Early Years and General Childcare Registers (Common Provisions)) Regulations 2008 (the '2008 Regulations') sets out the right to appeal. We have the power to either confirm the suspension or direct that it ceases to have effect. The Applicant seeks a direction that the suspension shall cease to have effect. The Respondent resists the appeal and requests that the decision to suspend registration is confirmed.

Attendance

3. The Appellant was represented by Mr Williams (Counsel). The Respondent was represented by Mr Saigal (Solicitor, PS Law LPP).
4. We heard live evidence from Teresa Lester (Early Years Regulatory Inspector) and William Good (Early Years Senior Officer) on behalf of the Respondent. We heard live evidence from Judith Knibbs (Area Manager) and Christopher Coxhead (Chief Operating Officer) on behalf of the Appellant. The bundle contained three statements by Angela Green (nursery manager) on behalf of the Appellant, but the Appellant did not call her to give live evidence for reasons detailed below.

The Bundle

5. We received and pre-read the hearing bundle which consisted of 455 pages in electronic format. We also received late witness statements of Christopher Coxhead dated 3 June 2025 and William Good dated 4 June 2025.

Restricted Reporting Order

6. The Tribunal makes a restricted reporting order under Rule 14(1)(a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (the '2008 Rules'), prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any minor child (or the parents of any minor children) in order to protect the privacy and interests of the children involved.

Late Evidence

7. The Appellant applied for the late admission of a second witness statement by Christopher Coxhead dated 3 June 2025. The Respondent applied for the late admission of a second witness statement of William Good dated 4 June 2025. Both parties agreed to the admission of the statements.
8. We applied Rule 15 of the 2008 Rules and considered the overriding objective as set out in Rule 2. We decided that it is appropriate to admit the late evidence as its admission is agreed between the parties and it is relevant to the issues in dispute.

Background and chronology

9. The Appellant's registration was suspended following a serious allegation that a 33 month old female child had been sexually assaulted by a member of its staff on 6 May 2025, whilst the child was in the care of the setting.

10. We do not set out the details of each and every matter in the evidence before us but summarise the key matters as follows:

- a) On 13 August 2024 the Appellant notified the Respondent about three complaints made in relation to staff rough handling and shouting at children. the Respondent conducted a regulatory visit on 14 August 2024, LADO had been informed and the Appellant was investigating the matter. No further action was taken by any of the agencies.
- b) On 31 July 2024 the Appellant was inspected by the Respondent and judged to be 'Good'.
- c) On 6 May 2025 in the evening the child made a disclosure to their parents of alleged sexual assault and named a member of staff.
- d) On 7 May 2025, the parents report the allegation to the Appellant. The Appellant then made a referral to the LADO. The member of staff was on annual leave that day.
- e) On 8 May 2025, the Appellant reported the matter to the police. The LADO held an initial strategy meeting which decided that a section 47 investigation should commence, with the police conducting the lead investigation. The Respondent was not invited to the meeting by the LADO. The meeting concluded at around 2:30pm.
- f) On 8 May 2025, the Appellant had initially placed the member of staff on non-contact duties but later that day suspended the member of staff.
- g) On 8 May 2025 at 7:36pm the Appellant notified the Respondent of the allegation, detailing that the child had made a disclosure to her parents but omitting that the child had also made a disclosure to a member of the Appellant's staff on 7 May 2025.
- h) On 9 May 2025 the Respondent's Early Years Senior Officer Mr William Good suspended the Appellant's registration for a period of six weeks until 19 June 2025. Mr Good raised concerns about internal delays in notifying him of this matter given the seriousness of the allegation.
- i) On 12 May 2025 there was a Joint Evaluation Meeting attending by the Parties, LADO and the police. It was established the child had made three separate disclosures in a 24 hour period from 7 to 8 May 2025, two to parents and one to a member of staff.
- j) On 15 May 2025, the Respondent was informed by the police that the member of staff's previous employment had been terminated in 2022 due to rough handling of a child.

- k) On 22 May 2025 the Respondent received an email at 20:40 hours stating that the member of staff had been further arrested (after the ABE interview with the child in question) and that they were seeking advice from the CPS with a view to getting him charged. The member of staff was not charged but was released on bail with an increase in bail conditions.
- l) On 3 June 2025, Mr Coxhead investigated concerns around the nursery manager, Ms Green's professional judgment in relation to her recruitment decisions. Mr Coxhead's review of this matter lead him to conclude that, whilst her recruitment practices met safer recruitment guidelines, he would not have recruited three members of staff Ms Green had recruited, one of whom is the member of staff accused of sexual assault. In light of this, the Appellant suspended Ms Green pending finalisation of the investigation.
- m) Since the above date, the police are continuing to investigate. The Respondent is liaising with the police who have confirmed that they do not want the Respondent to investigate in case it prejudices the police investigation.

The Parties' positions

- 11. The Respondent's position is that there is a reasonable belief that children may be at risk of significant harm if the suspension is lifted. This is on the basis that the incident itself is very serious. Suspending the member of staff is not sufficient to consider that the risk of harm is suitably mitigated, it is too simplistic to simply put this down as a rogue operator or one-off incident.
- 12. They have concerns that other members of staff and / or leaders may be implicated, either complicit in the abuse itself and / or in implementing safeguarding procedures. They have concerns about the Appellant's safer recruitment practices and oversight of the setting and monitoring of staff. They want to investigate to ensure that no other persons are implicated and the Appellant is complying with the Early Years Foundation Stage requirements. The Respondent's position is that these matters need to be investigated and the full range of enforcement powers of the Respondent will be considered as appropriate at the conclusion of their investigation.
- 13. The Respondent's position is that Mr Coxhead's evidence about concerns around Ms Green's recruitment decisions heightens their concerns about safe recruitment and confirms that they need to investigate this issue further.
- 14. Furthermore, the Respondent raises concerns that the incidents in 2021, 2023 and 2024 indicate a potential pattern of safeguarding failures. Furthermore, the Appellant's delay in notifying the Respondent until 7:36pm on 8 May 2025 indicates a lack of understanding of the importance of the Respondent's role.

The Respondent was also concerned about incomplete information on the notification meaning they did not have all of the available information to risk assess. The Respondent also states that it cannot be said all agencies involved are supportive of the Appellant as the police are still investigating and the Respondent is still to do so.

15. The Appellant's position is that the risk assessment needs to focus on the fact that the risk is in relation to one member of staff who will not be returning to the nursery. Furthermore, that the steps the Appellant has taken in suspending the nursery manager who recruited the member of staff in question evidences that any risks around failures in recruitment have been proactively managed by the Appellant.
16. Furthermore, the Appellant submitted that the historic incidents should not be considered as relevant as they were all concluded at the time with no further action by any authority, including the Respondent. In any event, they must be considered in the context of the Respondent's inspection of the Appellant nursery in July 2024 which assessed the nursery, including for safeguarding, as 'good'.
17. In relation to the alleged delay around notification of the Respondent, the Appellant denies there was any delay. The Appellant accepts that there was an omission in the notification in that it failed to mention a disclosure the child in question had made to a member of staff but that these matters do not indicate a current risk.

Legal Framework

18. The statutory framework for the registration and suspension of early years childminders and general childcare is provided under the Childcare Act 2006 and Childcare (Early years and General Childcare Registers (Common Provisions)) Regulations 2008 (the '2008 Regulations').
19. The Respondent is the regulator of childcare and has the power to suspend a childcare provider. Regulation 9 of the 2008 Regulations states that the Respondent can suspend a childcare provider when "...the Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child **may** expose such a child to a **risk of harm**." (our bold)
20. "Harm" is defined in Regulation 13 as having the same definition as in section 31(9) of the Children Act 1989 (as amended) which states: "*ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another*"; "*development*" means physical, intellectual, emotional, social or behavioural development; "*health*" means physical or mental health; and "*ill-treatment*" includes sexual

abuse and forms of ill-treatment which are not physical.”

21. The first suspension is for a maximum period of six weeks (Regulation 10(1)). It may be extended to 12 weeks (Regulation 10(2)). It may be extended again in certain circumstances.
22. Under regulation 11 suspension “must” be lifted by the Respondent Ofsted if the test in regulation 9 cease to exist. This imposes an ongoing obligation upon the Respondent to keep the need for suspension under review.
23. The first issue we need to decide is whether we reasonably believe that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm (the threshold test).
24. The burden of satisfying us that the threshold test under regulation 9 is met lies on the Respondent. The standard of proof ‘*reasonable cause to believe*’ falls somewhere between the balance of probability test and ‘*reasonable cause to suspect*’. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child may be exposed to a risk of harm.
25. *Ofsted v GM and WM* [2009] UKUT 89 (AAC) at [21] establishes the following: “*Although the word “significant” does not appear in regulation 9, both the general legislative context and the principle of proportionality suggest that the contemplated risk must be one of significant harm.*”
26. If the threshold test is met, the Respondent bears the overall burden of persuading the panel that the decision under appeal is in accordance with the law, is necessary, justified in terms of a legitimate public interest objective, and is proportionate in all the circumstances.

The Tribunal’s conclusions with reasons

27. We have taken all the evidence and the material before us into account. If we do not refer to any particular piece of evidence, argument, or particular submission, it should not be assumed that these have not been considered.
28. As set out above, we are not making findings of fact but are an independent panel making a risk assessment against the threshold set out in paragraph 18 above, and on the basis of the information available on the day of the hearing. We are not resolving any factual disputes and we are not conducting an investigation into whether there **is** a risk of harm to children in the Appellant’s nursery.
29. Applying *Ofsted v GM and WM*, we remind ourselves that Regulation 9 sets a low threshold. It is, nonetheless, a threshold that has to be met. However, even

if the Regulation 9 threshold is met, this does not necessarily mean that the exercise of the power of suspension is necessary, justified or proportionate.

30. It was not in dispute that the allegation against the member of staff is serious. Clearly, significant harm is likely to be caused by sexual abuse. The statutory definition of harm is explicit that ill-treatment includes sexual abuse. Therefore, whether this meets the 'harm' threshold is clearly met'.
31. The first key issue is whether there **may** still be risk of harm given the member of staff in question has been suspended.
32. We have decided that there may be a risk of significant harm to children in the Appellant's nursery if the suspension was lifted today. In making this decision, we are not saying there is a risk but simply that there may be. This is because the Respondent has not been able to conduct their own investigation into the matters set out at paragraph 11 above. Until these investigations are concluded, it cannot be determined what the level of risk, if any, there is. We consider there is a reasonable belief that there may be a risk of harm to children in the childcare setting for the reasons set out below.
33. There is clear evidence that the police investigation is ongoing, that the Respondent is liaising with the police regularly and that the police do not want the Respondent to start their investigation in case it prejudices the police investigation. The Appellant was not challenging that the Respondent had to wait until the police confirmed they were able to start their investigations but considered that any risks had been mitigated by their actions in suspending the member of staff and Ms Green, who had recruited that member of staff. Therefore, the Appellant's case is that it cannot be concluded there may be a risk of harm to children in their childcare setting. The Appellant considers that they can work collaboratively with the Respondent to re-open their setting prior to the conclusion of the police or Respondent's investigation.
34. However, the police investigation is ongoing and we do not know what information may or may not arise out of that investigation. We accept there is no current evidence or suggestion that other staff members are implicated in the abuse. However, the police investigation has not concluded and the investigation into the wider issues the Respondent wishes to investigate simply has not yet been conducted, through no fault of the Respondent.
35. We consider that the suspension of Ms Green, whilst evidencing that the Appellant is now taking steps to proactively consider and manage the risks around the recruitment of the member of staff in question, and others, indicates that there may be wider more systemic issues that the Respondent needs to investigate at the appropriate time. Mr Coxhead explained that steps were being taken, for example, introducing a new recruitment system in September

2025 which will allow easier monitoring of recruitment practices but on the evidence available to us, without the Respondent's investigation into these issues, we cannot conclude that the low threshold of 'may be at risk of harm' has not been met.

36. It was agreed that the matters in 2021, 2023 and 2024 did not lead to any action against the Appellant or individuals involved at the relevant time. We do not agree with the Appellant's submission that because no action was considered necessary at the relevant time the Respondent, and ourselves, cannot take them into consideration when assessing risk. The allegations relate to young children with limited ability to communicate. Young children are particularly vulnerable because they cannot communicate easily. It is important that the Respondent does monitor such incidents and consider them when risk assessing new information comes to light.
37. In any event, we consider that the low threshold that there may be a risk of significant harm is met even on the basis of the single allegation by the child in question against the member of staff, particularly when considering the evidence of Mr Coxhead about the concerns of Ms Green's judgment around recruitment. Ms Green was a longstanding member of staff and Mr Coxhead's evidence is that there were concerns in relation to three members of staff Ms Green had recruited. In these circumstances, we do not think we can conclude on the evidence available to us that the concerns are isolated to the member of staff in question and Ms Green herself.
38. We now consider the issues around the Appellant's notification to the Respondent, namely the alleged delays and failure to include details that the child in question had made a further disclosure to a different member of staff. Whilst we consider the Respondent's position that it was reasonably practicable for the Appellant to notify them earlier is reasonable, we do not consider the delay in and of itself is evidence that children may be at risk of significant harm if the suspension is now lifted. Mr Good accepted there was a delay of a number of hours on the Respondent's side, however the Appellant's delay did cause delay to the Respondent's ability to decide whether to suspend the Appellant's registration or not until 9 May 2025, two days after the Appellant became aware of the disclosure.
39. In relation to the Respondent concerns about the Appellant's understanding of their responsibilities in relation to notifying the Respondent of these matters to ensure the Respondent can fulfil their important duties, this can be dealt with by way of discussion and does not necessitate a suspension. The Appellant had made a referral to the LADO promptly and had ensured that the member of staff in question did not have any contact with children after receiving the referral.

40. In relation to the failure to include the detail, Ms Knibbs accepted responsibility for this error and accepted that it should have been included. It is extremely important that full information is given to the Respondent so that they can properly risk assess but we do not consider this indicates that there may be a current risk of significant harm to children considering Ms Knibbs complete acceptance that it should have been included.
41. There was some discussion of the level of reassurance that could be taken from the Respondent's inspection of the Appellant in July 2024 which rated the Appellant's nursery as 'Good'. We do not consider that this means we can conclude the low threshold of 'may be at risk of harm' is not met. Both witnesses for the Respondent gave evidence that the inspection is an assessment of the childcare provision on the day of the inspection and will focus on what the inspectors deem relevant at that time.

Proportionality

42. We have carefully considered all the matters raised on the Appellant's behalf. Suspension is always a very serious matter. We heard evidence that 163 families use this nursery facility, the vast majority receive government funding for the placements. The impact of the suspension on the families cannot be underestimated. We are sure that there are families struggling to balance work and childcare commitments. Furthermore, it is very disruptive for children to change childcare provision at short notice. Furthermore, there is inevitably an adverse impact on professional reputation, although arguably less given we heard evidence that the allegations have been reported on in the media and so this is likely to be the cause of any negative impact on professional reputation rather than the suspension.
43. We balanced the harm to the interests of the Appellant and others affected against the risk of significant harm to children looked after at the nursery in question. The allegation is very serious. A 33 month old child has made three separate disclosures of potential sexual abuse. The police are conducting an investigation. Sexual abuse is clearly extremely damaging to the victim and individuals involved. It is fundamentally important that the Respondent is able to satisfy themselves that there is no risk of harm to children when there has been such a serious allegation made in a childcare setting and suspend a childcare provider pending their investigation into such matters.
44. We note that the Respondent has an ongoing duty to review the suspension and that was clearly understood by the Respondent's witnesses.
45. Therefore, we consider that the suspension is necessary, proportionate and in the public interest. A reasonable member of the public with understanding of the relevant facts and law would expect the Respondent to suspend the

Appellant's nursery in these circumstances.

Decision:

**The decision dated 9 May 2025 to suspend registration is confirmed.
The appeal is dismissed.**

Judge E Whittall

First Tier Tribunal (Health, Education and Social Care Chambers)

Date Issued: 09 June 2025