

First-tier Tribunal Care Standards

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

**NCN: [2025] UKFTT 00803 (HESC)
2025-01493.EY-SUS**

Hearing held via CVP on 30 June 2025

BEFORE

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

BETWEEN:

MS JACQUELINE ANDERSON

Appellant

-v-

OFSTED

Respondent

DECISION

REPRESENTATION

The Appellant represented herself.

M Smart (solicitor) represented the Respondent his witnesses were Louise Chinyuku and Hayley Lapworth.

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

THE HEARING

2. This is an Appeal brought by Ms Anderson against a decision dated 3 June 2025 made by Ofsted against the decision to suspend her registration for a period of 6 weeks from 3 June to 14 July as a childcare provider on the Early Years Register.
3. Application was made by Mr Smart at the outset of proceedings to admit late evidence in the form of updating statements from Ms Chinyuku and Ms Lapworth that exhibited meetings from a LADO strategy meeting. These were helpful documents and Ms Anderson raised no objection to our admitting them which we duly did.

BACKGROUND

4. The Appellant runs an establishment called Diamonds in the Rough. It was originally a service providing holistic support to children with special needs involving parental interaction. This currently has 4 children attending. Since January 2025 they have offered an alternative provision to schools to provide tuition and support to children with special Needs. There are three children in that provision and it is staffed by the appellant and her husband together with her son part-time to provide computer lessons.
5. The Appellant registered her service on the voluntary register on 25 April 2023, she says to enable her clients to obtain assistance with fees.
6. On 28 May 2025, the Respondent received concerns about the setting from the Local Authority Designated Officer ("LADO"). The LADO informed the Respondent of two allegations that had been made against the Appellant by Child A, who attends her setting. The LADO advised that Child A attends school three days a week and also attends Diamonds in the Rough two days a week as an alternative provision. They further stated that Child A made the allegations to school staff at school on 13 May 2025.

7. The first allegation involved another child ("Child C") who had been playing with Child A. Child A alleges that, while on the swings at the park, the Appellant said to him, "If you don't get off, I'm going to clap you in the mouth." The LADO informed the Respondent that Child A was not able to provide a specific date for this allegation.
8. The second allegation, which Child A reported to school staff, involved Child B, who also attends the setting. Child A's allegation relates to an incident on 12 May 2025 at Diamonds in the Rough. He states that Child B was dragged across the floor into the office by the Appellant. Child A explained that Child B "was upset because the Appellant dragged him by the arms into her office. He was having a meltdown and screaming and kicking on the floor." In addition, Child A informed Tiverton staff that Child B was kicking and screaming on the floor before the incident and "telling the Appellant to F off."
9. Ofsted have liaised with the police and LADO and investigations into the allegations have progressed apace. We were told that the relevant social worker was due to interview Child C later today and that a review meeting would be held shortly following receipt of information as to what the child said.
10. The Appellant told us that she had launched the appeal as she had not received information as to what had been alleged. She had now received the information through the appeal documentation and understood the concerns of Ofsted. She adamantly denied that the allegations were true and pointed to the particular difficulties that Child A had and how unreliable he was. Nonetheless she reiterated that she understood the concerns and the need for a thorough investigation. Her primary concern was whether the suspension meant that she was unable to carry out her other functions. She obviously needs to obtain separate advice regarding this.
11. The following is the way in which Ofsted put their case:

The Respondent maintains that the continued provision of childcare by the Appellant may expose children to risk of harm. The following factors are significant for the Tribunal to take into account when considering the issue of risk:

- a. The Appellant's alleged actions took place in a public place and within the setting where she was working as the lead practitioner. She was directly involved in incidents concerning the children in her care. This was extremely concerning and suggested that the Appellant may pose a risk to children.*
- b. The children under her care were regarded as vulnerable, and the information suggested that the Appellant had exploited this vulnerability.*
- c. The level of safeguarding concern was such that the local authority team, police, social services, and the LADO were involved.*
- d. The information reported to The Respondent indicated that the Appellant had threatened one child and caused physical harm to another.*

THE LAW

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

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

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

"ill-treatment or the impairment of health or development including, for example,

impairment suffered from seeing or hearing the ill treatment of another”.

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

THE HEARING

15. We heard evidence from Ms Chinyuku and Ms Lapworth from Ofsted as to the progress of their investigations. Ms Anderson also gave evidence denying the allegations and giving a very different picture of allegation 2. She told us that allegation 1 did not occur. Nonetheless as we said above she did acknowledge the seriousness of the allegations and the necessity for Ofsted to investigate thoroughly.

OUR CONCLUSIONS

16. We have read the evidence produced in the bundle and have considered the oral evidence and submissions made by both parties.
17. There is no doubt that the allegations are serious and give cause to believe that children may be at risk of harm. We are clear that Ofsted have acted swiftly and have progressed investigations in an appropriate and thorough manner. It was clear to us from her evidence that Ms Anderson understands the seriousness of the situation and the duties of Ofsted. We were impressed by her insight into this.
18. The test for suspension is that “That the Chief Inspector [the Tribunal] reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm”. There is no doubt at this relatively early stage of investigation that this test is met.

DECISION

To dismiss the appeal

Judge Ian Robertson

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

Date Issued: 01 July 2025