First-tier Tribunal Care Standards

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

2025-01479.EY-SUS
Neutral Citation Number: [2025] UKFTT 00722 (HESC)

Heard on 12 June 2025 remotely via video
with deliberations completed on 17 June 2025

BEFORE
Mr SJW Lewis (Tribunal Judge)
Mrs D Rabbetts (Specialist Member)

BETWEEN:

Mrs Linda Saverina Berry

Appellant

v

Ofsted

Respondent

DECISION

The Appeal

1. The Appellant brings this appeal ("the Appeal") against a decision ("the Decision") by the Respondent, set out in a written notice dated 21 May 2025, to suspend her registration as a childminder – on the early years register, the compulsory part of the childcare register, and the voluntary part of the childcare register – for a period of six weeks, from 21 May 2025 to 1 July 2025 ("the Suspension"). The relevant powers of suspension are set out in section 69 of the Childcare Act 2006 ("the Act") and regulations 8-13 of the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 ("the Regulations").

2. The Respondent opposes the Appeal.

Attendance and representation at the hearing

3. The Appellant represented herself as a litigant-in-person. She gave evidence. She made submissions.

4. The Respondent was represented by Ms R Birks (a solicitor). It called two witnesses: Clare Perry, an early years inspector; and Jayne Godden, an early years senior officer and Ms Perry's line-manager. It was Ms Godden who made the Decision.

5. There were some technical issues during the hearing. While those issues contributed to some delay and inefficiency, we were satisfied that they did not cause any material unfairness to either party.

Evidence

6. A main bundle of written documents, running to 201 pages, had been prepared and provided to us. At the outset of the hearing, with consent of the parties, we gave formal permission for some additional documents to be added to the bundle. We had had time to consider all of these documents before the hearing started.

7. We pre-read a skeleton argument from the Respondent. We gave the Appellant some extra time to consider that document, before we took any evidence, as she did not think she had read it as part of her preparation. The Appellant confirmed, having read the document, that she was ready to proceed.

8. At the outset of the hearing, we explained the purpose of the hearing, the issues we were to consider, the approach we would take, etc. This was designed mainly for the benefit of the Appellant, as a litigant-in-person, in the hope it would assist her to participate fully and effectively in a fair hearing.

9. After opening submissions from the Respondent, we heard oral evidence from Ms Perry and then, after lunch, Ms Godden. We then heard from the Appellant, before hearing closing submissions from Ms Birks and then the Appellant. Each of the witnesses was cross-examined. We asked various questions, too, of each witness.

10. We had witness statements from each of the three witnesses, and a supplemental statement from Ms Perry. The Appellant also relied on a statement relating to Ms Caesar. We had considered it likely that Ms Caesar would be called as a witness. There was an express reference in an earlier order, following a telephone case management hearing on 3 June 2025, to an additional witness wanting to give evidence "at a fixed time", with a record that the parties would liaise to agree such a time. The Appellant told us Ms Caesar was not attending due to not being able to take time off work and/or being a one-parent family. We gave what weight we considered appropriate to Ms Caesar's statement, in all of the circumstances, including the fact it could not be tested and challenged by direct questions.

11. We also had due regard to some video footage the Appellant relied on (see below) and referred to in her evidence.

Preliminary issues

12. We identified and dealt with two preliminary issues at the outset of the hearing. In doing so, we had regard to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 ("the Rules").

Late documents

13. As indicated above, we considered formal applications – from both sides – to admit additional late evidence. Having particular regard to rules 15 and 2 of the Rules, we decided to allow all of those documents. In summary: the Respondent was permitted to admit the second witness statement from Ms Perry, exhibiting two additional documents; the Appellant was permitted to admit two additional videos.

Restricted reporting orders

14. While no restricted reporting orders were applied for, we considered whether we ought to make any such orders. Principally, we considered the position in relation to the (young) children being minded by (or otherwise under the care of) the Appellant at material times. Having heard from both parties and with their consent, we concluded that we should make an order, under rule 14(1)(a) and (b), prohibiting the disclosure or publication of any document or matter likely to lead members of the public to identify those children (or their parents), so as to adequately protect their private/family lives.

Legal framework and principles

15. The statutory framework relating to the registration of childminders is set out in the Act. Section 69(1) provides for regulations relating to suspension of registration.

16. Regulation 8 of the Regulations provides that registration may be suspended, by notice, in the circumstances set out in regulation 9 and for the period set out in regulation 10.

17. Regulation 9 sets out that registration may be suspended in circumstances where "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."

18. Regulation 13 provides that "harm" is to have the meaning set out 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."

19. Regulation 10 provides that the period for which a registration may be suspended is six weeks (though regulation 10 also provides for further periods of suspension in certain circumstances).

20. Regulation 11 provides that a suspension must be lifted by the Chief Inspector if, at any time during it, it appears the circumstances in regulation 9 no longer exist.

21. Regulation 12 provides that a person whose registration has been suspended under regulation 8 may appeal and that, on such an appeal, we, the Tribunal, must either (a) confirm the decision to suspend registration or (b) direct that the suspension shall cease to have effect.

22. On appeal, the Tribunal is to stand in the shoes, as it were, of the Chief Inspector and make its own decision in relation to the test set out in regulation 9. In other words, the Tribunal needs, first, to ask itself whether, at the date of the hearing (rather than, for example, at the date of the decision taken by the Respondent), it holds a **reasonable belief** that the continued provision of childcare by the Appellant to any child **may** expose such a child to a "risk of harm". The burden of proof is on the Respondent. The standard of proof is "reasonable cause to believe", which falls somewhere between "the balance of probabilities" and "reasonable cause to suspect". The relevant belief is to be judged by whether a reasonable person, assumed to know the relevant law and be in possession of the relevant information, would believe that a child may be put at risk of harm. The threshold, therefore, is relatively low. The Tribunal does not need, for example, to be satisfied that there has been any actual harm, or that harm is likely in the future. That said, as made clear by the Upper Tribunal (see paragraph 20) in Ofsted v GM [2009] UKUT 89 (ACC), the "contemplated risk must be one of significant harm". As the Tribunal is focused on assessing current/future risk, it does not need to make conclusive findings of fact.

23. If the Tribunal is satisfied that the test/threshold relating to regulation 9 is met, it then needs to consider whether, objectively viewed, a suspension is proportionate in all the circumstances. The Respondent bears a persuasive burden in relation to that issue. As again made clear in Ofsted v GM: it is difficult to see what grounds a suspension can be justified other than for the purpose of investigating a belief that there may be a risk or to allow time for a risk to be reduced or eliminated (see paragraph 23); a suspension imposed on the ground there is an outstanding investigation, can be justified only as long as there is a reasonable prospect of the investigation showing that further steps to reduce/eliminate risk may be necessary (see paragraph 27); and the exercise of the judgment required by regulation 8 will

turn very much on the facts of any particular case (see paragraph 28).

24. Under paragraph 3.8 of the Statutory Framework for the Early Years Foundation Stage (published 3 March 2017): registered providers "must" inform Ofsted of "any allegations of serious harm or abuse" against any looking after children (whether the allegations relate to harm or abuse committed on the premises or elsewhere). Under paragraph 3.86 of the Early Years Foundation Stage Statutory Framework (dated 11 October 2024), childminders "must" notify Osted of "any significant event which is likely to affect the suitability of the childminder to look after children".

25. We have had careful regard to the principles set out above and approached this matter with an open mind.

Relevant context

26. Given the broad principle that our role is primarily to assess risk (and then to consider the overall proportionality of the relevant intervention being appealed), rather than to resolve factual disputes, nothing in this section ought to be taken as a conclusive finding of fact. However, it is nonetheless important that we set out what appears to us to be the most relevant context. What follows is taken from our reading of the documents and/or oral evidence. Much of it is common ground – but there are some key areas of dispute, which we highlight below.

Previous regulatory record

27. The Appellant first registered as a childminder in 1995. She has, therefore, been a childminder for around 30 years. The evidence indicates that the Appellant has a relatively good record in terms of inspections. There appear to be six (or at least six) on record. The last four were categorised as "good" outcomes, the most recent of which was in 2022. The previous two resulted in "satisfactory" outcomes.

The Incident (and the dispute about the Appellant's alleged conduct)

28. Although there are some relevant matters going back further in time, which we turn to in due course, the Decision initially arose from an alleged incident involving the Appellant at an outdoor/environment centre ("the Centre") on 19 May 2025 ("the Incident"). The Centre seems to be an education/activity centre with a focus on children, where schools, families, and children, etc, visit to explore the outdoor world and learn about nature and environmental matters.

29. The Appellant was at the Centre with two children she was minding and her own grandson. One of those children was a young girl, who at the time of the Incident was a month or so away from turning 3 and who the Appellant appears to have

been minding regularly for nearly two years ("the Child"). The Appellant was at the Centre with a friend, Ms Caesar, who is another childminder, along with three more children Ms Caesar was minding. The Appellant and Ms Caesar met through childminding and appear to have known each for several years.

30. Also present that day at the Centre were two other women with children. First, there was an off-duty police officer ("the Officer"). The Officer, we are told, is a detective inspector, leading for her force on areas including (a) child abuse investigations and (b) referrals to the multi-agency safeguarding hub. She was there, it seems, with her own two children. Second, there was a woman who we are told has been trained as a nursery nurse and then a teacher, and to have worked in early years for over 15 years ("the Teacher"). The Teacher was there with her own two children. The Officer and the Teacher are friends and were visiting the Centre together. Neither had met the Appellant or Ms Caesar before.

31. The Incident involved the Appellant and the Child and occurred in the mid-to-late morning. In broad terms, it seems likely that the Appellant took a view that the Child was wandering off too far away and/or was not listening to her (e.g. to her requests to not wander off). As a consequence, the Appellant appears to have put the Child in what is often referred to as a "Time Out" (i.e. a technique designed for managing behaviour that is considered for whatever reason to be problematic, in which the child is removed from the activity/behaviour there are engaged in for a relatively brief period). The Appellant told us she had been using the Time Out technique in relation to the Child for the previous three months or so, as part of an approach discussed/agreed with the parents. The Child was placed in an area within sight of the Appellant for a period of time that is unclear (but would appear likely to be somewhere between 2-3 minutes).

32. However, there is a marked **dispute** about how the Child was taken to the Time Out location and about what happened next. The Teacher has claimed, in a formal statement provided to the police, that the following took place: the Appellant was "talking firmly" to the Child; the Appellant took the Child's hand and started walking with her, but at a quick pace that the Child could not keep up with; as the Appellant moved to avoid a table, the Child was lifted off the floor, for a number of paces; it was "clear", in the Teacher's view, that the Appellant was "annoyed" with the Child; the Appellant then let go of the Child and was talking "loudly" at her (saying "You need to stand here now, you're not listening to me, I've asked you to listen to me about 20 times"); the Child was quiet and appeared "emotionless". The Teacher said she was "shocked" and "disgusted" by what she had seen and "concerned" for the Child's "welfare". She said she had a "clear view" of what happened and was about 2 metres from the place the Child was brought to. She appears to have alerted her friend, the Officer, about the situation and encouraged her to keep an eye on it.

33. The Appellant, in her oral evidence to us, flatly denied that she dragged the Child in the way asserted above or lifted her off the ground.

34. The Officer did not witness the Child being brought to the Time Out place. But the Officer states, in her police statement, that the Teacher approached her and told her what she believed she'd seen, and that the Teacher was upset. The Officer states that the Appellant was now on her "radar". Her account of what she says happened next can be summarised as follows: the Appellant was talking with Ms Caesar, in and around all the various children; the Appellant told the Child she was in a Time Out; the Child was standing in silence, while the other children played around her; the Appellant continued to talk with Ms Caesar; the Child waited patiently and was well behaved; the sound of a whistle was heard (which, it is common ground, signalled that "Story Time" was about to begin); Ms Caesar started to gather the children and usher them towards the area where Story Time was to begin; the Appellant, according to the Officer, then walked up to the Child from behind and proceeded to "strike her to the back of the head", with her right hand, in a motion that the Officer considered to be "hard and fast", with "what looked like wet wipes"; the Child had been stood still, had "done absolutely nothing to warrant" it, and would "not have expected it". The Officer added, we note, that the Child did "not flinch" in response.

35. The Officer went on to state that, having observed the above, she "immediately" approached and asked to speak to the Appellant. She asserts that: she told the Appellant she was a police officer and had witnessed her "assault" the Child; the Appellant said the Child "wasn't listening and was having one of those days"; she asked the Appellant how she knew the Child; the Appellant said she was her "grandmother"; she told the Appellant that it is not ok to hit children; the Appellant "apologised and walked off". The Officer adds that she then reported the incident to staff: she claims the Appellant would have been aware of her making contact with staff; her "demeanour changed completely towards [the Child]", becoming "nurturing and caring", appearing to "make a conscious effort to involve and include" the Child, and being "on edge". The Officer adds that she was "shocked and appalled". She states that in 15 years as an officer she has "never intervened in an incident off duty" (as she is "acutely aware of the risks" to her children and any other children with her) and was left "feeling very sad" for the Child.

36. The Appellant's account differs in a number of ways. She accepts that she put the Child in a Time Out and that the whistle then sounded. She accepts that the Officer approached her with concerns about her making contact with the Child. And she accepts that she made contact with the Child's head with a packet of wet wipes (when asked to demonstrate the motion, she demonstrated a relatively swift, though relatively gentle, flick-like motion, with, we note, her left hand). But she

claims the relevant context can be summarised as follows: while the Child was in the Time Out, the Appellant was playing a game of "Tag" with the other children; she was tapping them, in the course of the game, with a pack of wet wipes she had with her; after the whistle sounded, she approached the Child and "tapped her gently on the head"; the tap, she says, was "an indication to join in the game of tag"; the Child was not happy at that point – the Appellant says she was not happy because she didn't want chase the other children in the game of Tag (as she prefers to be the one chased); she told the Child they were going to Story Time, but the Child was still unhappy and didn't want to move – she says this was because the Child still thought they would be first playing Tag; the Appellant "took her hand and got her to walk with [her]"; at that point, as they started to walk, the Officer approached her; once at Story Time (or perhaps on the walk to it) the Child was happy again.

37. In relation to the discussion with the Officer, the Appellant says this: the Officer told her she was an undercover police officer but at no point provided identification; the Officer told her she was not happy with what the Appellant had just done; the Appellant responded by saying "I tapped her, it was not hard"; the Officer "continued to question" her, with questions like "Am I a Childminder or Nanny?", to which the Appellant stated "yes"; the Appellant "apologised" and then continued to walk away to join Story Time. After that, the Appellant's group had a picnic.

38. One striking feature of the Appellant's oral evidence related to the pack of wet wipes. There had been no mention of this detail in the written form setting out the Appeal, or in her statement. In oral evidence, she physically showed us what she says is the pack she used during the Incident to make contact with the Child: it seemed to us to be an empty pack (or a near-empty pack), which, therefore, would be very flimsy and light. The Appellant went on to tell us she has a practice of carrying that exact pack around with her, specifically to use while playing Tag with children. She told us she uses it, in effect, to protect herself from perceptions/ allegations that she is hitting children with her hand (or similar). She told us she has done this since an allegation had been made, in 2013, that she smacked a child with her hand (see further below). While it was probably not the same pack, it was one she'd been carrying around and using for this purpose for a year or so. She told us she carries another pack of wet wipes to use for their usual purpose (e.g. wiping the children or surfaces etc).

39. We have an unsigned typed "statement", dated 28 May 2025, in Ms Caesar's name. It is brief. It covers part of the Incident. It states that the Child "kept wandering off", prompting the Appellant to give her a "brief" Time Out. It states that the whistle blew for Story Time and, "to get her attention", the Appellant "gently tapped" the Child "on the head" with "a packet of wet wipes" and "informed her it was time for story time". At that moment, she says, the Officer approached the

Appellant, “claiming to be a safeguarding officer with the police force”, and “began to question her aggressively and with an intimidating manner”, without presenting any proof of her identity. She “did not hear the full conversation”, though, as she was “preoccupied with her children”. There is no mention of a game of Tag, we note, nor any further description of the wet wipe pack, nor any account of the alleged build-up to the Time Out (i.e. the alleged dragged/lifting of the Child etc).

Matters following the Incident

40. The Appellant states in her statement that, on 21 May 2025, at around 9 am, the police came to her door, in circumstances where she had two minded children present. An officer came in and questioned her about the Incident. She co-operated. He left after an hour or so. He gave no instructions. She carried on with her usual plans. She went out with the two children. At about 10.15 am, the police called her and asked her to come back. She was met, back home, by the police and the children’s parents. The children were taken away and she was advised by the officer that she was being “suspended” pending investigations.

41. Later in the morning of 21 May 2025, the Appellant duly contacted the Respondent to notify it of the Incident, and provided an initial account. She also contacted the relevant social care team.

42. Also on 21 May 2025, following the Appellant’s notification, the Respondent made contact with the relevant Local Authority Designated Officer (“the LADO”). The LADO said there had been contact from the police. The Respondent noted that the account conveyed by the police was not consistent with the account provided by the Appellant. The LADO said that an Allegation Against Staff and Volunteers Meeting (“the ADV Meeting”) would need to take place.

43. On the same day, the Respondent carried out a case review. The information about the Incident was considered. It became clear, from consideration of the Appellant’s file, that her previous regulatory history included an allegation, from a member of the public, that she had “smacked” a child on the hand at a local toddler group on 26 April 2013 (“the 2013 Allegation”). The Respondent told us that the member of the public reported the child was trying to take a toy off another child and the Appellant took his hand and “slapped” it. The child starting crying loudly and the Appellant, it was alleged, “picked him up under both arms and took him and threw him near a wall”. The Appellant was suspended, in relation to the 2013 Allegation, by the Respondent on 1 May 2013. In the end, however, there was “insufficient evidence” to justify any further enforcement action by the Respondent. The suspension was lifted on 6 June 2013. One of Ofsted’s inspectors visited the Appellant on 25 June 2013, to discuss/observe behaviour management skills, and considered her to meet the relevant requirements with no new concerns raised.

44. The conclusion of the case review on 21 May 2025 was that the Appellant was to be suspended, from 21 May 2025, for a six week period. The Respondent notified the Appellant of the Decision by letter. The purpose of the Suspension is said to have been to allow time for enquiries to be made (working with other agencies etc) and/or explore the Appellant's continued suitability to be a childminder and/or for steps to be taken to eliminate or reduce any risk of harm.

45. By a form dated 21 May 2025, the Appellant lodged the Appeal. The Respondent then filed and served a written response. On 22 May 2025, the Tribunal listed this hearing and sent out an initial set of orders/directions.

46. On 22 May 2025, the Respondent, by invitation, attended the ASV Meeting (with Ms Perry getting involved at that point and attending it). It was also attended by the LADO, the police (for the record, the relevant force is a different one to the force where the Officer works), and some relevant others such as social workers and early years workers. Further details were shared about the Appellant's alleged conduct during the Incident. The Respondent was made aware of the allegation the Appellant effectively "dragged" the Child and spoke firmly/loudly to her before the contact was made to her head. It was made aware that the Appellant had allegedly been asked by the Officer what her relationship was to the Child and had allegedly given an untrue answer. It was informed of another allegation: the police shared that there had been an allegation – in summer 2021 – of a common assault by the Appellant ("the Assault Allegation"). While no further action had been taken by police in relation to the Assault Allegation, the Respondent was concerned about an apparent failure by the Appellant to notify it, as her regulator, of what appeared to be a significant incident/allegation ("the Disclosure Issue"). It also became clear at the ASV Meeting that: social services were looking to complete an assessment in relation to the Child; there was no relevant CCTV coverage at the Centre; the Child had made no disclosures when spoken to by police; the investigation into the Incident was, initially, likely to be led by the police.

47. Following the ASV Meeting, the Respondent requested further information and documents such as: copies of the initial accounts provided by the Officer and the Teacher; and details of the other childminder present with the Appellant, now known to be Ms Caesar). The same was subsequently provided.

48. On 27 May 2025, the Respondent undertook a further case review. It was decided that the Suspension continued to be justified (and the Appeal would be defended).

49. Following the case review, the Respondent made further requests for information from third parties. The police confirmed they shall be taking no further action in relation to the Incident: the parents were not keen to support further action; the

Incident was considered by them to be deemed a relatively low-level matter, which had not resulted in any reported physical injury to the Child. The LADO indicated it had no further information at present and they consider this, in essence, to be a matter for the Respondent to progress/lead on.

50. The Respondent says some further enquiries will be made with the LADO and that it is still very much in the process of completing its own enquiries.

51. The Respondent has maintained its position that the Suspension is a necessary safeguard. It states that, during this period of further enquires etc, it is keeping the Suspension under review, in accordance with its usual process.

52. On 3 June 2025, the Tribunal held a case management hearing. The Appellant attended in person. The Respondent was represented. The date, time and mode of this hearing was all confirmed.

53. Following the exchange of the bundle and witness statements, there were the two written applications referred to above, seeking permission to add late documents. The Respondent's application was dated 5 June 2025. It referred to an extra statement from Ms Perry, with two exhibits. The exhibits are important: they were the police statements from the Officer (signed and dated 21.06.25, but presumably meant to be 21 May 2025) and the Teacher (approved electronically and dated 21 May 2025). The Appellant's application added two additional videos (see below).

Other evidence of note from the hearing

54. The Appellant seeks to rely on five videos. The first, she told us, was taken shortly before the Incident. It is 5 seconds long. It shows the Child, from behind, going down a slide. The Appellant is talking to her as she goes. They both appear to be enjoying it. The second, the Appellant told us, was taken shortly after the Incident and the Story Time which followed. It is 39 seconds long. It shows the Child, along with the other children present, playing on a wooden play structure. All the children appear relatively content. The Appellant is talking to them as they play. The third, the Appellant told us, was also taken shortly after the Incident. It shows the Child and other children sitting down on a picnic mat eating lunch. The Appellant is talking to them as they do. All the children seem relatively content. It is 14 seconds long. The fourth and fifth were, the Appellant says, taken a few days earlier. The fourth is 42 seconds long and shows the Child alongside another child on a large flat circular swing. They seem to be enjoying things, as does the Appellant. At one point, the Child sits up. The Appellant asks her to sit back down and lie flat (to reduce the risk of falling off). She needs to ask the Child three times to do that: on the third occasion, she complies. The fifth is of the Child and other children in a field. The Appellant is playing a chase type game with them. The children appear

to be content. It seems clear from the videos that the Appellant tends to talk loudly.

55. The Appellant seeks to rely on five character references. The first is addressed to whom it may concern and, importantly, is said to be from the Child's father, on behalf of her father and mother (who both appear to have professional jobs in the civil service). It is exceptionally positive about the Appellant, who is said to have provided "much-needed care and support" to the Child and her sister. He refers to "remarkable growth" and "tremendous progress" under the Appellant's care. He describes her as "warm, caring and passionate". He says his daughters "adore" her; that they "speak highly of her every day" and "cherish" their time with her. He describes her as a "key pillar" in their lives; as indispensable, particularly in light of previous struggles to find an appropriate childminder. There is no mention of the allegations. The other four are similarly positive. Overall, the content is rather striking and very much in the Appellant's favour.

56. The Appellant has provided records of some training she's completed, over the last 15 years or so.

57. The Appellant gave some evidence on the impact that the Suspension, and/or these proceedings, has had on her. She emphasised the personal impact. She talked about having lost a significant amount of weight, for example, in the last 2-3 weeks, as a result of stress or similar. She referred to the situation as "soul destroying", and feeling like a nightmare. She said, however, that the families who use her services highly supportive, and she hopes to get back to where she was before the Incident. She said she cannot earn any income from childminding work at present; but indicated that any immediate financial pressures were limited due to having other resources. She talked more generally about loving her work and having dedicated her career to it.

58. The Respondent gave some evidence, orally, on the potential alternative options it had at the time of the Decision, and why it made the Decision instead. Those options included: to take no action; to issue a notice to improve; to issue a welfare requirement notice; to proceed towards cancellation of the Appellant's registration.

59. The Respondent also gave some evidence, orally, on the steps it has taken and, importantly, further steps it intends to take. A fair summary appears likely to us to be as follows: it has, to some extent at least, waited for the police to conclude its enquires; it has received information, bit by bit, as things have progressed; it has yet to meet with the Appellant – it intends to arrange to carry out that important meeting swiftly (within a few days of this hearing concluding or the outcome of it being made known); it intends to liaise with the LADO, to see whether she/he has any further developments/information; it may need to contact others (Ms Caesar, for example, though it has the written account provided for this hearing in relation

to her). Once such enquiries are sufficiently completed, it will look to swiftly hold a further case review, where it will have a number of options to consider.

Conclusions with reasons

Risk

60. Bearing in mind the principles set out further above, and without going as far as to find facts, we reached the following views on the limited evidence before us. Stepping back and looking at things in the round, we are satisfied that, as at and on 12 June 2025, there are sufficient reasonable grounds to believe that the provision of childcare by the Appellant to children **may** expose such children to a risk of significant harm. We rely on the following in support of this view.

61. First, the Appellant "may", realistically, have engaged in the type of conduct alleged by the Officer and the Teacher (or some broadly similar conduct) in relation to the **Incident**:

    (a) On the face of it, both the Officer and the Teacher appear, individually and collectively, to be credible witnesses who give clear and striking accounts of the Incident, claiming to have been in excellent positions to observe relevant developments. We note, though, of course, that neither we nor the Appellant has had any opportunity to test their evidence directly. We note the possibility that they may be mistaken (e.g. about the force with which the Appellant made contact with the Child's head, or the pace she led the Child to the Time Out place). The statements they provided to the police, however, were formally produced and expose them to liability to prosecution if they have wilfully stated anything in them which they know to be false or not believe to be true. There is no obvious reason why they would concoct or exaggerate their accounts.

    (b) Quite a lot of the Appellant's own evidence is consistent with the context in which the Incident is said by the Officer and the Teacher to have occurred: the apparent wandering and failure to listen by the Child; the moving of the Child to the Time Out zone; the speaking to the Child; the evidence that she did indeed (intentionally) make at least some contact, with a pack of wet wipes, to the head of the Child, having approached her from behind; the intervention by the Officer; the evidence that the Child was unhappy (or, to use the Appellant's phrase, had "the hump") shortly after the contact; etc.

    (c) Where the Appellant's evidence departed from that of the Officer and the Teacher, it did so in way which appeared to us, on the face of it, to give rise to various issues or question marks. For example, her account about the specific wet wipe pack – about carrying around a nearly or entirely empty pack,

purportedly for the purpose of playing Tag – was a surprise to hear (it having not been referred to in the appeal form or witness statement or anywhere else previously) and did not appear, on the face of it, to be particularly persuasive. The Respondent, in closing, referred to it as implausible. To take another example: the Appellant simply denied that she had, in effect, dragged/lifted the Child while taking her by hand to the Time Out zone; there was no detailed or persuasive alternative account.

(d) The written evidence relating to Ms Caesar would, if supported by consistent and persuasive oral evidence from Ms Caesar, have been a significant factor supporting the Appellant's case. But Ms Caesar's absence was notable from the hearing, and was despite the express invitation/opportunity for her to be able to participate at a time more convenient for her. Further, her written "statement" was less formal than those from the Officer and the Teacher. In all the circumstances, we did not feel able to place much weight on it; or, at least, we placed less weight on it than the more detailed and more formal statements from the Teacher and the Officer.

(e) The position in relation to allegedly telling the Officer, dishonestly, that she was the Child's grandmother is far from clear. The Appellant's oral account before us was that the Officer asked if she was a nanny, which she says she interpreted as meaning a grandmother, and it was that to which she replied in the affirmative. It may well be that there was some simple confusion in communication, and that any response from the Appellant that was inaccurate (if it was) was innocently/mistakenly conveyed. On the other hand, it may also be that the Appellant was deliberately seeking to mislead the Officer about her real relationship with the Child, in the hope she may evade further scrutiny or complaints etc. If so, that would add something to the overall risk profile.

(f) The other wider allegations/concerns suggest that there may be other matters which add to the overall risk profile, and which may suggest that the Appellant is not as accurate or reliable a witness as she could be.

62. Second, in relation to the **Disclosure Issue**, the Appellant probably does appear likely to have failed to disclose to Ofsted relevant information relating to the **Assault Allegation**. There appears to have been a relatively serious allegation (of common assault) made and/or a relatively significant incident, which, as a regulated childminder, she may well have been under a duty to disclose to the Respondent. Moreover, some of the Appellant's evidence in relation to the Assault Allegation appeared, again, on the face of it, to be less than persuasive. For example, she told us she was at a wedding with at least one close family member. The family member (an adult man), she said, was very drunk and she intervened to control him (or similar), having him against a wall (or similar) at one point. The

bar staff, she told us, not understanding the context (including the all-important nature of the relationship), reported the matter to the police. She told us she was kept overnight by the police, before being released the next day with no further action. It seemed strange to us, on the face of it, that the police would have held her overnight if her account of the incident was accurate and full. One might have thought explanations could have been readily provided, at the time of any police attendance, if so, which would have led to a different and better outcome for her. Further, she told us that she informed the police that she was a childminder and asked the police whether she needed to report anything to Ofsted. That indicates to us that she had in mind the potential need to report certain matters to Ofsted. There is at least a possibility that the Appellant may have intentionally avoided informing Ofsted of a matter which she knew, or ought to have known, that she should have disclosed. She did not provide any documentary or other evidence, to us, in support of her oral evidence on this issue.

63. Third, although the situation in relation to **the 2013 Allegation**, and what did or did not happen, is unclear, there is enough there, when considered alongside the Incident in particular (which would appear to have some potential similarities), for it, at the present time and on the limited information before us, to add something to the overall risk profile. There is a similarity: she is alleged to have become annoyed (or similar) with a child in her care, in a public place, and then, at least partly in response, made some inappropriate physical contact. Further, it appears that she was also alleged to have picked the child up and placed the child down too close to a wall (or similar) in a way that was considered to be overly rough or otherwise inappropriate. She gave an account to us, orally, which, if sufficiently full and accurate, would appear to remove any reasonable basis for believing she put that child at risk of harm (or caused any actual harm) in 2013. She told us that, in essence, the complainant had, after being shown photographs of the relevant children and/or of her, told the police that the Appellant was not involved in the incident she had observed and/or that it involved other children. But we only, at present, have the Appellant's oral account. We have nothing further, from her, in support of it (e.g. some documentation from the police confirming that it was, in effect, a simple case of "mistaken identity"). We also have nothing of substance, in term of documentation, from the Respondent about the police investigation or its decision to take no further action, the decisions by it regarding the suspension it imposed at the time, or the following session it held with the Appellant at which was satisfied she knew how to manage behaviour in line with expectations.

64. Fourth, and significantly, we were left with concerns relating to the Appellant's level of **insight**. She came across, before us, as though she thought she had done nothing wrong at all in relation to the Incident. She said three times, in response to a similar question from different people in the hearing, that she would not, on reflection, have done anything differently. Later, at the end, she said that, in future,

she would not play Tag again with children; though that appeared to be a position she was minded to take to protect herself. While she said she may need to do some further training, she also stated she had full knowledge of how to manage challenging behaviour etc with children, and she expressed no interest or curiosity in doing any such training (e.g. on the basis she genuinely may learn something useful which would help her work and the children she cares for). On any account, she made (at least some) physical contact with the back of a young child's head, in circumstances where the Child appears to have not been in a position to see that contact coming. She seemed to think there was no issue or risk, at all, with physical contact to a young child's head. She talked about the other children, when playing tag under her care, tagging children in all places including heads. When asked whether she intervenes to discourage such contact with heads, she said no and seemed to see no issue or risk arising from that. Further, the practice of using Time Outs may, in itself, depending on the context and the manner in which it is done, give rise to some relevant risk. The Appellant was unable to give a clear, consistent or persuasive account, for example, of the amount of time the Child was put in Time Out (she referred variously to one, two and three minutes). Three minutes may be a long time for certain children at such a young age. She told us she had used Time Out with the Child about 20 times in the last three months; one is left to wonder how effective it is if it is having to be used with that frequency for a child that the Appellant described to us as having no significant behavioural issues. She justified its use partly on the basis that the parents approved of the technique and were using it at home; but that, without more, may not be a sufficient justification, especially if the technique is used in ways that are more strict or harsh than may be necessary.

65. Relying on a combination of the above, we are satisfied that the (relatively low) **test/threshold** referred to in regulation 9 is met. The harm contemplated is more than merely trivial or minor: it is, in our view, significant. It could, realistically, include a significant level of physical, emotional, or developmental harm. We have, we should stress, had regard to the positive evidence in support of the Appellant – including, for example, the exceptionally strong character references, the good inspection record, her evidence that she's worked as a childminder for around 30 years and had no complaints from parents and no injuries to children, etc. But, at this point in time, in light of the other evidence, those things are not sufficient to reduce the risk profile enough. We would like to say this though: we do not consider it likely that the Appellant hit the Child hard and fast with anything hard or heavy; that would appear to be too inconsistent with the evidence that the Child "did not flinch" on contact being made. The level of risk here may therefore be of a lower order than any such obvious and direct physical abuse may suggest.

Proportionality

66. In all the circumstances, we are further satisfied that the decision to suspend is objectively justified as proportionate.

67. There is a legitimate aim engaged. It is important. It is relates, ultimately, to the protection of vulnerable children from the risk of harm. The suspension relates, directly, to the pursuance or achievement of that aim. Its immediate purpose is to keep children safe during a period in which the Respondent completes necessary further enquiries and/or takes steps to reduce the relevant risk to an acceptable level. We are satisfied that the Respondent has not yet been able to complete a sufficiently full risk assessment and needs to do that. It needs, most obviously, to carry out its session with the Appellant. It may need to meet with others (such as, for example, Ms Caesar, or potentially others such as the Officer or the Teacher). It should be able to complete those steps swiftly, and in a proportionate time period.

68. We are satisfied there is at least a reasonable prospect that, at the end of the Respondent's investigation/enquires/assessment, some form of enforcement action will be taken. Ms Godden indicated in her oral evidence that cancellation would appear unlikely. That said, Ms Godden had yet to hear the Appellant's evidence and much could yet turn on the Respondent's further enquiries. But there seems, to us, to be a reasonable prospect that the Respondent could, for example, take the view that a notice of improvement or a welfare requirement notice (or some similar step) may be justified as a final decision/outcome. Some form of mandatory training or conditions may also, one might think, be a matter to consider here. It would, in our view, be premature for the Respondent to issue an improvement letter or notice etc, at this or any earlier point, because it has yet to reach a decision on what (if anything) the Appellant has actually done wrong – that is part of what it needs first to make further enquiries about.

69. We have had careful regard to the adverse impact of the Suspension on the Appellant and other relevant people. We accept that the matter, generally, has had a substantial emotional/personal impact on the Appellant. The financial impact, however, in context, appears, to date at least, to be relatively modest. The same appears, on the evidence, to be the case regarding any adverse impact on the Appellant's future business prospects, with the families (or most of them) remaining supportive and hoping to use her services again soon. There is no sufficient evidence before us that the children, or others, are, as a result of the Suspension, disproportionately impacted. Overall, we are content that: the importance of the legitimate aim(s) being pursued by the Suspension, limited in time as it is and under regular review as it is and must continue to be, outweigh the impact; and that the Suspension is proportionate, at present, to the relevant risk. We are also satisfied that the legitimate aim(s) cannot be achieved adequately by any less-restrictive measure.

70. Our decision is based, as it must be, at the time of the hearing and on the basis that the Suspension is due to end shortly (on 1 July 2025). While any future decision of any future Tribunal in relation to any extended period of suspension (should they be any such extended period) would necessarily be for it to make, on all the evidence that was then available to it, we consider it doubtful that a suspension in this case beyond 1 July 2025 is likely, on the current body of evidence, to be justified as proportionate. At some point, the balance would likely tip into a disproportionate measure, but in our judgment that point has not yet been reached.

71. In our judgment, the Decision was rational, proportionate and lawful, and continues – for now – to be.

Decision

72. The appeal is dismissed. The Respondent's decision, set out in the written notice dated 21 May 2025, to suspend the Appellant's registration is confirmed.

Judge SJW Lewis

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

Date Issued: 19 June 2025